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1982 Edition ☆ Supplement III

TITLES 1–17

JANUARY 15, 1983, TO JANUARY 20, 1986

UNITED STATES CODE

1982 EDITION

SUPPLEMENT III

CONTAINING THE GENERAL AND PERMANENT LAWS OF
THE UNITED STATES, ENACTED DURING THE
98TH CONGRESS AND 99TH CONGRESS, FIRST SESSION

Prepared and published under authority of Title 2, U.S. Code, Section 285b,
by the Office of the Law Revision Counsel of the House of Representatives

JANUARY 15, 1983, TO JANUARY 20, 1986

VOLUME ONE

TITLE 1—GENERAL PROVISIONS

TO

TITLE 17—COPYRIGHTS

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*3. The President.
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*5. Government Organization and Employees; and Appendix.
†6. [Surety Bonds.]
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*9. Arbitration.
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*This title has been enacted as law. However, any Appendix to this title has not been enacted as law.
†This title was enacted as law and has been repealed by the enactment of Title 31.
‡This title has been eliminated by the enactment of Title 10.

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PREFACE

This third supplement to the 1982 edition of the United States Code has been prepared and published pursuant to section 285b of Title 2 of the Code. It contains the additions to and changes in the general and permanent laws of the United States enacted during the Ninety-eighth Congress and the Ninety-ninth Congress, First Session. This supplement together with the 1982 edition establishes prima facie those laws in effect on January 20, 1986, except that Titles 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 37, 38, 39, 44, 46, and 49 have been revised, codified, and enacted into positive law and the text thereof is legal evidence of the laws therein contained. Pending preparation of supplemental codification bills, various sections of former Titles 46 and 49 (not included in the original codifications) are set out in the Appendixes to those Titles and retain their prior section numbers.

This supplement was prepared and published under the supervision of Edward F. Willett, Jr., Law Revision Counsel of the House of Representatives, with the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company, and the Government Printing Office for their untiring efforts and cooperation.

Thomas P O'Neill Jr. M.C.

Speaker of the House of Representatives

WASHINGTON, D.C., *January 20, 1986.*

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19. School Construction in Areas Affected by Federal Activities.
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22. National Council on the Arts [Repealed].
23. Training and Fellowship Programs for Community Development.
24. Grants for Educational Materials, Facilities and Services, and Strengthening of Educational Agencies [Omitted, Repealed, or Transferred].
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30. Basic Education for Adults.
31. General Provisions Concerning Education.
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35. Environmental Education [Omitted].
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49. Asbestos School Hazard Detection and Control.
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20. Tribally Controlled Community College Assistance.
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4. Penalties [Repealed].
5. Prohibition Reorganization Act of 1930 [Repealed].
6. Transportation in Interstate Commerce.
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11. Labor-Management Reporting and Disclosure Procedure.
12. Department of Labor.
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14. Age Discrimination in Employment.
15. Occupational Safety and Health.
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4. Lease of Gold, Silver, or Quicksilver Deposits When Title Confirmed by Court of Private Land Claims.
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6. Synthetic Liquid Fuel Demonstration Plants [Omitted].
7. Lease of Mineral Deposits Within Acquired Lands.
8. Development of Lignite Coal Resources.
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10. Coal Mine Safety [Repealed].
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18. Coal Research and Development.
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20. Conveyances to Occupants of Unpatented Mining Claims.
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22. Mine Safety and Health.
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5. Navigation Rules for Red River of the North and Rivers Emptying Into Gulf of Mexico and Tributaries [Repealed].
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15. Flood Control.
16. Lighthouses.
17. National Ocean Survey.
18. Longshore and Harbor Workers' Compensation.
19. Saint Lawrence Seaway.
20. Pollution of the Sea by Oil.
21. International Regulations for Preventing Collisions at Sea [Repealed].
22. Sea Grant Colleges and Marine Science Development.
23. Pollution Control of Navigable Waters [Omitted or Transferred].
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25. Ports and Waterways Safety Program.
26. Water Pollution Prevention and Control.
27. Ocean Dumping.
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30. International Regulations for Preventing Collisions at Sea.
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8A. The National Yeomen F.
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12. Reserve Officers Association.
13. National Academy of Sciences.
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22. Pershing Hall Memorial Fund.
23. Board for Fundamental Education.
24. Sons of Union Veterans of the Civil War.
25. The Foundation of the Federal Bar Association.
26. The National Fund for Medical Education.
27. Legion of Valor of the United States of America, Inc.
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29. Boys' Clubs of America.
30. Presidential Inaugural Ceremonies.
31. Civil War Centennial Commission [Omitted or Repealed].
32. Veterans of World War I of the United States of America.
33. The Congressional Medal of Honor Society of the United States of America.
34. Military Order of the Purple Heart of the United States of America.
35. Blinded Veterans Association.
36. Big Brothers—Big Sisters of America.
37. Jewish War Veterans, U.S.A., National Memorial, Inc.
38. Blue Star Mothers of America.
39. Agricultural Hall of Fame.
40. National Woman's Relief Corps, Auxiliary to the Grand Army of the Republic.
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42. Audits of Federally Chartered Corporations.
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55. National Academy of Public Administration.
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57. Polish Legion of American Veterans, U.S.A.
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60. Navy Wives Clubs of America.
61. National Society, Daughters of the American Colonists.
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13. Dependency and Indemnity Compensation for Service-Connected Deaths.
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17. Hospital, Nursing Home, Domiciliary, and Medical Care.
19. Insurance.
21. Specially Adapted Housing for Disabled Veterans.
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31. Training and Rehabilitation for Veterans with Serivce-Connected Disabilities.
32. Post-Vietnam Era Veterans' Educational Assistance.
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5. Hours of Labor and Safety on Public Works.
6. Acquisition of Sites for and Construction of Public Buildings.
7. Acquisition of Land in District of Columbia for Use of United States by Condemnation Proceedings [Repealed].
8. Emergency Public Works and Construction Projects.
9. Non-Federal Public Works.
10. Management and Disposal of Government Property.
11. Real Property Transactions by Military Departments [Repealed].
12. Construction, Alteration, and Acquisition of Public Buildings.
13. National Capital Transportation Program [Repealed or Omitted].
14. Safety Standards for Motor Vehicles.
15. Government Losses in Shipment.
16. General Services Administration.
17. Alaska Communications Disposal.
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18. National Visitor Center Facilities; Union Station Redevelopment; Capitol Guide Service.
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3. Leprosy [Repealed].
3A. Cancer [Repealed].
4. Viruses, Serums, Toxins, Antitoxins, etc. [Repealed].
5. Maternity and Infancy Welfare and Hygiene [Repealed].
6. The Children's Bureau.
6A. Public Health Service.
7. Social Security.
7A. Temporary Unemployment Compensation Program [Omitted].
8. Low-Income Housing.
8A. Slum Clearance, Urban Renewal, and Farm Housing.
8B. Public Works or Facilities [Omitted].
8C. Open-Space Land [Omitted].
9. Housing of Persons Engaged in National Defense.
10. Federal Security Agency [Transferred or Omitted].
11. Compensation for Disability or Death to Persons Employed at Military, Air, and Naval Bases Outside the United States.
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13. School Lunch Programs.
13A. Child Nutrition.
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16. National Science Foundation.
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19B. Water Resources Planning.
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29. Juvenile Delinquency and Youth Offenses Control [Omitted].
30. Manpower Development and Training Program [Repealed].
31. Public Works Acceleration Program.
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34. Economic Opportunity Program.
35. Programs for Older Americans.
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38. Public Works and Economic Development.
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40. Soil Information Assistance for Community Planning and Resource Development.
41. Demonstration Cities and Metropolitan Development Program.
42. Narcotic Addict Rehabilitation.
43. Department of Health and Human Services.
44. Department of Housing and Urban Development.
45. Fair Housing.
46. Justice System Improvement.
47. Juvenile Delinquency Prevention and Control [Omitted].
48. Guarantees for Financing New Community Land Development [Repealed or Omitted].
49. National Housing Partnerships.
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53. Advisory Commission on Intergovernmental Relations.
54. Cabinet Committee on Opportunities for Spanish-Speaking People [Omitted].
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59. National Urban Policy and New Community Development.
60. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Program.
61. Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs.
62. Intergovernmental Personnel Program.
63. Lead-Based Paint Poisoning Prevention.
64. Public Service Employment Programs [Omitted].
65. Noise Control.
66. Domestic Volunteer Services.
67. Child Abuse Prevention and Treatment and Adoption Reform.
68. Disaster Relief.
69. Community Development.
70. Manufactured Home Construction and Safety Standards.
71. Solar Energy.
72. Juvenile Justice and Delinquency Prevention.
73. Development of Energy Sources.
74. Nonnuclear Energy Research and Development.
75. Programs for Persons With Developmental Disabilities.
76. Age Discrimination in Federally Assisted Programs.
77. Energy Conservation.
78. National Petroleum Reserve in Alaska.
79. Science and Technology Policy, Organization and Priorities.
80. Public Works Employment.
81. Energy Conservation and Resource Renewal.
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83. Energy Extension Service.
84. Department of Energy.
85. Air Pollution Prevention and Control.
86. Earthquake Hazards Reduction.
87. Water Research and Development [Repealed or Transferred].
88. Uranium Mill Tailings Radiation Control.
89. Congregate Housing Services.
90. Neighborhood and City Reinvestment, Self-Help and Revitalization.
91. National Energy Conservation Policy.
92. Powerplant and Industrial Fuel Use.
93. Emergency Energy Conservation.
94. Low-Income Energy Assistance.
95. United States Synthetic Fuels Corporation.
96. Biomass Energy and Alcohol Fuels.
97. Acid Precipitation Program and Carbon Dioxide Study.
98. Ocean Thermal Energy Conversion Research and Development.
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100. Wind Energy Systems.
101. Magnetic Fusion Energy Engineering.
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103. Comprehensive Environmental Response, Compensation, and Liability.
104. Nuclear Safety Research, Development, and Demonstration.
105. Community Services Programs.
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109. Water Resources Research.
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5. Land Districts.
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7. Homesteads.
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8A. Grazing Lands.
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11A. Board on Geographic Names.
12. Reclamation and Irrigation of Lands by Federal Government.
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13. Federal Lands Included in State Irrigation Districts.
14. Grants of Desert Lands to States for Reclamation.
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17. Reservation and Sale of Town Sites on Public Lands.
18. Survey of Public Lands.
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21. Grants in Aid of Railroads and Wagon Roads.
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22. Rights-of-Way and Other Easements in Public Lands.
23. Grants of Swamp and Overflowed Lands.
24. Drainage Under State Laws [Repealed].
25. Unlawful Inclosures or Occupancy; Obstructing Settlement or Transit.
25A. Lands Held Under Color of Title.
26. Abandoned Military Reservations [Repealed].
27. Public Lands in Oklahoma.
28. Miscellaneous Provisions Relating to the Public Lands.
29. Submerged Lands.
30. Administration of Public Lands [Repealed or Omitted].
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3. Government Printing Office.
5. Production and Procurement of Printing and Binding.
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19. Depository Library Program.
21. National Archives and Records Administration.
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23. National Archives Trust Fund Board.
25. National Historical Publications and Records Commission.
27. [Repealed].
29. Records Management by the Archivist of the United States and by the Administrator of General Services.

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6. Mediation, Conciliation, and Arbitration in Controversies Between Carriers and Employees [Repealed or Omitted].
7. Adjustment Boards and Labor Boards [Repealed].
8. Railway Labor.
9. Retirement of Railroad Employees.
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11. Railroad Unemployment Insurance.
12. Temporary Railroad Unemployment Insurance Program.
13. Railroad Safety.
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103. Foreign and Intercoastal Voyages.
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107. Effects of Deceased Seamen.
109. Proceedings on Unseaworthiness.
111. Protection and Relief.
113. Official Logbooks.
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5. Discriminating Duties and Reciprocal Privileges.
6. Regulation as to Vessels Carrying Steerage Passengers.
8. Limitation of Vessel Owner's Liability.
11. Officers and Crews of Vessels.
12. Regulation of Vessels in Domestic Commerce.
13. Passports and Papers of Vessels Engaged in Foreign Commerce.
14. Inspection of Steam Vessels.
15. Transportation of Passengers and Merchandise by Steam Vessels.
17. Regulation of Fishing Voyages.

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18. Merchant Seamen.
19. Wrecks and Salvage.
19A. Admiralty and Maritime Jurisdiction.
20. Suits in Admiralty by or Against Vessels or Cargoes of United States.
21. Death on the High Seas by Wrongful Act.
22. Suits in Admiralty Against United States for Damages Caused by Public Vessels or for Towage or Salvage Services.
23. Shipping Act.
23A. Intercoastal Shipping.
24. Merchant Marine Act, 1920.
24A. Merchant Marine Act, 1928.
25. Ship Mortgages.
26. Home Port of Vessels.
27. Merchant Marine Act, 1936.
28. Carriage of Goods by Sea.
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34. Safe Containers for International Cargo.
35. Maritime Administration.
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TITLE 47—TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

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5. Wire or Radio Communication.
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7. The Virgin Islands.
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10. Territorial Provisions of a General Nature.
11. Alien Owners of Land.
12. The Virgin Islands.
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TITLE 48—TERRITORIES AND INSULAR POSSESSIONS—Continued

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105. Jurisdiction.
107. Rates, Tariffs, and Valuations.
109. Licensing.
111. Operations of Carriers.
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117. Enforcement: Investigations, Rights, and Remedies.
119. Civil and Criminal Penalties.

SUBTITLE V [RESERVED—MISCELLANEOUS]

TITLE 49, APPENDIX—TRANSPORTATION
1. Interstate Commerce Act, Part I; General Provisions and Railroad and Pipe Line Carriers [Repealed in Part].
2. Legislation Supplementary to "Interstate Commerce Act" [Repealed, Transferred, or Omitted].
3. Termination of Federal Control [Repealed or Transferred].
4. Bills of Lading.
5. Inland Waterways Transportation.
6. Air Commerce.
7. Coordination of Interstate Railroad Transportation [Repealed].
8. Interstate Commerce Act, Part II; Motor Carriers [Repealed or Transferred].
9. Civil Aeronautics [Repealed, Omitted, or Transferred].
10. Training of Civil Aircraft Pilots [Omitted or Repealed].
11. Seizure and Forfeiture of Carriers Transporting, etc., Contraband Articles.
12. Interstate Commerce Act, Part III; Water Carriers [Repealed].
13. Interstate Commerce Act, Part IV; Freight Forwarders [Repealed].
14. Federal Aid for Public Airport Development [Repealed or Transferred].
15. International Aviation Facilities.
16. Development of Commercial Aircraft [Omitted].

Chap.
17. Medals of Honor for Acts of Heroism.
18. Airways Modernization [Repealed].
19. Interstate Commerce Act, Part V; Loan Guaranties [Repealed].
20. Federal Aviation Program.
21. Urban Mass Transportation.
22. High-Speed Ground Transportation [Omitted or Repealed].
23. Department of Transportation [Repealed in Part].
24. Natural Gas Pipeline Safety.
25. Aviation Facilities Expansion and Improvement [Repealed in Part].
26. Hazardous Materials Transportation Control [Repealed].
27. Hazardous Materials Transportation.
28. National Transportation Safety Board.
29. Hazardous Liquid Pipeline Safety.
30. Abatement of Aviation Noise.
31. Airport and Airway Improvement.
32. Commercial Motor Vehicles.
33. Public Airports.
34. Motor Carrier Safety.
35. Commercial Space Launch.

TITLE 50—WAR AND NATIONAL DEFENSE
1. Council of National Defense.
2. Board of Ordnance and Fortification [Repealed].
3. Alien Enemies.
4. Espionage [Repealed or Transferred].
4A. Photographing, Sketching, Mapping, etc., Defensive Installations [Repealed].
4B. Disclosure of Classified Information [Repealed].
4C. Atomic Weapons and Special Nuclear Materials Information Rewards.
5. Arsenals, Armories, Arms, and War Material Generally.
6. Willful Destruction, etc., of War or National-Defense Material [Repealed].
7. Interference with Homing Pigeons Owned by United States [Repealed].
8. Explosives; Manufacture, Distribution, Storage, Use, and Possession Regulated [Repealed].
9. Aircraft [Omitted, Repealed, or Transferred].
10. Helium Gas.
11. Acquisition of and Expenditures on Land for National-Defense Purposes [Repealed, Omitted, or Transferred].
12. Vessels in Territorial Waters of United States.
13. Insurrection.
14. Wartime Voting by Land and Naval Forces [Repealed].
15. National Security.
16. Defense Industrial Reserves.
17. Arming American Vessels [Repealed].
18. Air-Warning Screen.
19. Guided Missiles.

TITLE 50—WAR AND NATIONAL DEFENSE—Continued

Chap.

20. Wind Tunnels.
21. Abaca Production [Omitted].
22. Uniform Code of Military Justice [Repealed or Omitted].
22A. Representation of Armed Forces Personnel Before Foreign Judicial Tribunals [Repealed].
23. Internal Security.
24. National Defense Facilities [Repealed].
25. Armed Forces Reserve [Repealed or Omitted].
26. Gifts for Defense Purposes.
27. Reserve Officer Personnel Program [Repealed or Omitted].
28. Status of Armed Forces Personnel Appointed to Service Academies [Repealed].
29. National Defense Contracts.
30. Federal Absentee Voting Assistance [Transferred].
31. Advisory Commission on Intergovernmental Relations [Transferred, See Chapter 53 of Title 42].
32. Chemical and Biological Warfare Program.
33. War Powers Resolution.
34. National Emergencies.
35. International Emergency Economic Powers.
36. Foreign Intelligence Surveillance.

TITLE 50, APPENDIX—WAR AND NATIONAL DEFENSE

Proclamations, Executive Orders, Joint Resolutions and Treaties Respecting War, Neutrality and Peace.

Trading With the Enemy Act of 1917.

Soldiers' and Sailors' Civil Relief Act of 1918 [Omitted].

Selective Draft Act of 1917 [Omitted or Repealed].

Selective Training and Service Act of 1940 [Omitted or Repealed].

Office of Selective Service Records.

Service Extension Act of 1941 [Repealed].

Army Reserve and Retired Personnel Service Law of 1940 [Omitted].

Military Selective Service Act.

Soldiers' and Sailors' Civil Relief Act of 1940.

First War Powers Act, 1941 [Repealed, Omitted, or Transferred].

Second War Powers Act, 1942 [Repealed or Omitted].

Exportation Restrictions on Certain Articles [Repealed or Omitted].

Requisition of Military Equipment, Materials and Supplies [Omitted].

Territorial Use of Army and Extension of Service Period [Omitted, Transferred, or Repealed].

Civilian Protection From War Hazards [Omitted].

Decorations, etc., for Merchant Marine [Repealed].

Use of Public Lands for War Purposes [Repealed].

Miscellaneous Provisions Affecting Military Establishment [Omitted, Repealed, or Transferred].

Photographing, Mapping or Other Representation of Military or Defense Properties [Omitted].

Exemption of Certain Articles From Import Duties and Taxes [Omitted or Repealed].

Temporary Appointments, Promotions, etc., of Navy, Marine Corps, and Coast Guard Officers [Omitted or Repealed].

Jurisdiction of Prizes and Prize Proceedings [Transferred].

Certain Allowance Assistance for Civilian and Military Personnel [Repealed or Omitted].

Free Entry of Gifts From Members of Armed Forces [Omitted].

Free Postage for Armed Forces Personnel [Omitted].

Emergency Price Control Act of 1942 [Omitted].

Stabilization Act of 1942 [Omitted].

Extension of Sugar Controls [Omitted].

Missing Persons Act [Repealed].

Small Business Mobilization Act [Omitted, Transferred, or Repealed].

War and Defense Contract Acts [Omitted or Repealed].

National Emergency and War Shipping Acts.

Farm Labor Supply Appropriation Act, 1944 [Omitted].

War Overtime Pay Act of 1943 [Repealed].

Training of Nurses Through Grants to Institutions [Omitted].

Civilian Reemployment of Members of Merchant Marine [Repealed].

War Labor Disputes Act [Omitted].

Voluntary Enlistments in the Regular Military Establishment [Repealed].

TITLE 50, APPENDIX—WAR AND NATIONAL DEFENSE—Continued

Women's Army Corps [Repealed].

United Nations Relief and Rehabilitation Administration [Omitted].

Temporary Appointments of Army Nurse Corps Members, etc., as Officers of Army of the United States [Omitted].

Disposal of Materials on Public Lands [Omitted].

Surplus Property Act of 1944.

War Mobilization and Reconversion Act of 1944 [Omitted].

Fleet Admiral of the Navy and General of the Army [Repealed].

Disposal of Censored Mail [Omitted].

Disbursing Officers' Additional Functions [Transferred].

General of the Marine Corps [Omitted].

Admiral in the Coast Guard [Omitted].

Exception of Navy or Coast Guard Vessels From Certain Navigation Rules [Transferred].

Sale of Surplus War-Built Vessels.

Rehabilitation of Philippines [Omitted].

Return and Interment of Persons Buried Outside United States [Repealed].

Veterans' Emergency Housing Program [Repealed or Omitted].

Naval Vessels as Atomic Targets [Omitted].

Admission of Alien Fiancées Into United States [Omitted].

Military Assistance to Philippine Republic [Omitted].

Naval Aid to China [Omitted].

Naval Aid to Foreign Nations [Omitted].

Housing and Rent Acts.

Stabilization of Economy and Commodity Prices.

Domestic Rubber-Producing Industry [Omitted].

Disposal of Government-Owned Rubber-Producing Facilities.

Displaced Persons, Refugees and Orphans [Omitted].

American-Japanese Evacuation Claims.

Medical Care for Philippine Veterans [Repealed].

War Claims.

Micronesian War and Postwar Claims [Omitted].

Export Controls [Omitted].

Alien Property Damage Claims [Omitted].

Defense Production Act of 1950.

Domestic Minerals Program Extension.

Domestic Tungsten, Asbestos, Fluorspar and Columbium-Tantalum Purchase Programs [Omitted].

Dependents Assistance Act of 1950 [Omitted or Repealed].

Civil Defense.

Emergency Food Aid to India [Omitted].

Korean Combat Pay [Repealed].

World War II License Agreements.

Emergency Ship Repair Program [Omitted].

Export Regulation.

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THE ORGANIC LAWS
OF
THE UNITED STATES OF AMERICA

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ARTICLE [XIX.]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

PROPOSAL AND RATIFICATION

The nineteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Sixty-sixth Congress, on the 4th of June, 1919, and was declared, in a proclamation of the Secretary of State, dated the 26th of August, 1920, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Illinois, June 10, 1919 (and that State readopted its resolution of ratification June 17, 1919); Michigan, June 10, 1919; Wisconsin, June 10, 1919; Kansas, June 16, 1919; New York, June 16, 1919; Ohio, June 16, 1919; Pennsylvania, June 24, 1919; Massachusetts, June 25, 1919; Texas, June 28, 1919; Iowa, July 2, 1919; Missouri, July 3, 1919; Arkansas, July 28, 1919; Montana, August 2, 1919; Nebraska, August 2, 1919; Minnesota, September 8, 1919; New Hampshire, September 10, 1919; Utah, October 2, 1919; California, November 1, 1919; Maine, November 5, 1919; North Dakota, December 1, 1919; South Dakota, December 4, 1919; Colorado, December 15, 1919; Kentucky, January 6, 1920; Rhode Island, January 6, 1920; Oregon, January 13, 1920; Indiana, January 16, 1920; Wyoming, January 27, 1920; Nevada, February 7, 1920; New Jersey, February 9, 1920; Idaho, February 11, 1920; Arizona, February 12, 1920; New Mexico, February 21, 1920; Oklahoma, February 28, 1920; West Virginia, March 10, 1920; Washington, March 22, 1920; Tennessee, August 18, 1920.

Ratification was completed on August 18, 1920.

The amendment was subsequently ratified by Connecticut on September 14, 1920 (and that State reaffirmed on September 21, 1920); Vermont, February 8, 1921; Delaware, March 6, 1923 (after having rejected it on June 2, 1920); Maryland, March 29, 1941 (after having rejected it on February 24, 1920; ratification certified on February 25, 1958); Virginia, February 21, 1952 (after rejecting it on February 12, 1920); Alabama, September 8, 1953 (after rejecting it on September 22, 1919); Florida, May 13, 1969; South Carolina, July 1, 1969 (after rejecting it on January 28, 1920; ratification certified on August 22, 1973); Georgia, February 20, 1970 (after rejecting it on July 24, 1919); Louisiana, June 11, 1970 (after rejecting it on July 1, 1920); North Carolina, May 6, 1971; Mississippi, March 22, 1984 (after having rejected it on March 29, 1920).

PROPOSED AMENDMENT

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

[DISTRICT OF COLUMBIA STATUS]

"ARTICLE—

"SECTION 1. For purposes of representation in the Congress, election of the President and Vice President, and article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State.

"SEC. 2. The exercise of the rights and powers conferred under this article shall be by the people of the District constituting the seat of government, and as shall be provided by the Congress.

"SEC. 3. The twenty-third article of amendment to the Constitution of the United States is hereby repealed.

"SEC. 4. This article shall be inoperative, unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission."

Passed by Congress on Aug. 22, 1978, and submitted to the Legislatures of the States for ratification under Const. Art. 5.

This article shall be valid to all intents and purposes as part of the Constitution of the United States when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress.

RATIFICATION BY THE STATES

New Jersey	Sept. 11, 1978
Ohio	Nov. 30, 1978
Michigan	Dec. 12, 1978
Massachusetts	Mar. 19, 1979
Minnesota	Mar. 19, 1979
Connecticut	Apr. 11, 1979
Wisconsin	Nov. 12, 1979
Maryland	Mar. 19, 1980
Hawaii	Apr. 17, 1980
Oregon	June 20, 1981
Maine	Feb. 16, 1983
West Virginia	Feb. 23, 1983
Rhode Island	May 14, 1983
Iowa	Jan. 19, 1984
Louisiana	June 24, 1984
Delaware	June 28, 1984

THE CODE OF LAWS OF THE UNITED STATES OF AMERICA

TITLE 1—GENERAL PROVISIONS

This title was enacted by act July 30, 1947, ch. 388, § 1, 61 Stat. 633

CHAPTER 1—RULES OF CONSTRUCTION

§ 1. Words denoting number, gender, and so forth

CROSS REFERENCES

Person as including associations, see section 1401 of Title 19, Customs Duties; section 801 of Title 46, Appendix, Shipping; section 30 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 101; title 30 sections 1511, 1531; title 31 section 5312; title 32 section 101; title 37 section 101; title 39 section 5215; title 49 section 10102.

§ 3. "Vessel" as including all means of water transportation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 101; title 32 section 101; title 37 section 101; title 46 section 2101; title 46 App. section 1241*o*.

CHAPTER 2—ACTS AND RESOLUTIONS; FORMALITIES OF ENACTMENT; REPEALS; SEALING OF INSTRUMENTS

§ 106a. Promulgation of laws

Whenever a bill, order, resolution, or vote of the Senate and House of Representatives, having been approved by the President, or not having been returned by him with his objections, becomes a law or takes effect, it shall forthwith be received by the Archivist of the United States from the President; and whenever a bill, order, resolution, or vote is returned by the President with his objections, and, on being reconsidered, is agreed to be passed, and is approved by two-thirds of both Houses of Congress, and thereby becomes a law or takes effect, it shall be received by the Archivist of the United States from the President of the Senate, or Speaker of the House of Representatives in whichsoever House it shall last have been so approved, and he shall carefully preserve the originals.

(As amended Oct. 19, 1984, Pub. L. 98-497, title I, § 107(d), 98 Stat. 2291.)

AMENDMENTS

1984—Pub. L. 98-497 substituted "Archivist of the United States" for "Administrator of General Services" in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

§ 106b. Amendments to Constitution

Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.

(As amended Oct. 19, 1984, Pub. L. 98-497, title I, § 107(d), 98 Stat. 2291.)

AMENDMENTS

1984—Pub. L. 98-497 substituted "National Archives and Records Administration" and "Archivist of the United States" for "General Services Administration" and "Administrator of General Services", respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

§ 112. Statutes at Large; contents; admissibility in evidence

The Archivist of the United States shall cause to be compiled, edited, indexed, and published, the United States Statutes at Large, which shall contain all the laws and concurrent resolutions enacted during each regular session of Congress; all proclamations by the President in the numbered series issued since the date of the adjournment of the regular session of Congress next preceding; and also any amendments

to the Constitution of the United States proposed or ratified pursuant to article V thereof since that date, together with the certificate of the Archivist of the United States issued in compliance with the provision contained in section 106b of this title. In the event of an extra session of Congress, the Archivist of the United States shall cause all the laws and concurrent resolutions enacted during said extra session to be consolidated with, and published as part of, the contents of the volume for the next regular session. The United States Statutes at Large shall be legal evidence of laws, concurrent resolutions, treaties, international agreements other than treaties, proclamations by the President, and proposed or ratified amendments to the Constitution of the United States therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.

(As amended Oct. 19, 1984, Pub. L. 98-497, title I, § 107(d), 98 Stat. 2291.)

AMENDMENTS

1984—Pub. L. 98-497 substituted "Archivist of the United States" for "Administrator of General Services" in three places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

§ 113. "Little and Brown's" edition of laws and treaties; slip laws; Treaties and Other International Acts Series; admissibility in evidence

The edition of the laws and treaties of the United States, published by Little and Brown, and the publications in slip or pamphlet form of the laws of the United States issued under the authority of the Archivist of the United States, and the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence of the several public and private Acts of Congress, and of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.

(As amended Oct. 19, 1984, Pub. L. 98-497, title I, § 107(d), 98 Stat. 2291.)

AMENDMENTS

1984—Pub. L. 98-497 substituted "Archivist of the United States" for "Administrator of General Services".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

CHAPTER 3—CODE OF LAWS OF UNITED STATES AND SUPPLEMENTS; DISTRICT OF COLUMBIA CODE AND SUPPLEMENTS

§ 201. Publication and distribution of Code of Laws of United States and Supplements and District of Columbia Code and Supplements

In order to avoid duplication and waste—

(a) Publishing in slip or pamphlet form or in Statutes at Large

Publication in slip or pamphlet form or in the Statutes at Large of any of the volumes or publications enumerated in sections 202 and 203 of this title, shall, in event of enactment, be dispensed with whenever the Committee on the Judiciary of the House of Representatives so directs the Archivist of the United States;

[*See main edition for text of* (b) *and* (c)]

(As amended Oct. 19, 1984, Pub. L. 98-497, title I, § 107(d), 98 Stat. 2291.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-497 substituted "Archivist of the United States" for "Administrator of General Services".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

§ 204. Codes and Supplements as evidence of the laws of United States and District of Columbia; citation of Codes and Supplements

UNITED STATES CODE TITLES AS POSITIVE LAW

The following titles of the United States Code were enacted into positive law by the acts enumerated below:

Title 1, General Provisions—Act July 30, 1947, ch. 388, § 1, 61 Stat. 633.

Title 3, The President—Act June 25, 1948, ch. 644, § 1, 62 Stat. 672.

Title 4, Flag and Seal, Seat of Government, and the States—Act July 30, 1947, ch. 389, § 1, 61 Stat. 641.

Title 5, Government Organization and Employees—Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378.

Title 6, Surety Bonds—Act July 30, 1947, ch. 390, § 1, 61 Stat. 646, as amended June 6, 1972, Pub. L. 92-310, title II, § 203(4), 86 Stat. 202, and repealed Sept. 13, 1982, Pub. L. 97-258, § 5(b), 96 Stat. 1068, 1085. See, now, Title 31, Money and Finance.

Title 9, Arbitration—Act July 30, 1947, ch. 392, § 1, 61 Stat. 669.

Title 10, Armed Forces—Act Aug. 10, 1956, ch. 1041, § 1, 70A Stat. 1.

Title 11, Bankruptcy—Pub. L. 95-598, title I, § 101, Nov. 6, 1978, 92 Stat. 2549.

Title 13, Census—Act Aug. 31, 1954, ch. 1158, 68 Stat. 1012.

Title 14, Coast Guard—Act Aug. 4, 1949, ch. 393, § 1, 63 Stat. 495.

Title 17, Copyrights—Act July 30, 1947, ch. 391, § 1, 61 Stat. 652, as amended Oct. 19, 1976, Pub. L. 94-553, title I, § 101, 90 Stat. 2541.

Title 18, Crimes and Criminal Procedure—Act June 25, 1948, ch. 645, § 1, 62 Stat. 683.

Title 23, Highways—Pub. L. 85-767, § 1, Aug. 27, 1958, 72 Stat. 885.

Title 28, Judiciary and Judicial Procedure—Act June 25, 1948, ch. 646, § 1, 62 Stat. 869.

Title 31, Money and Finance—Pub. L. 97-258, § 1, Sept. 13, 1982, 96 Stat. 877.

Title 32, National Guard—Act Aug. 10, 1956, ch. 1041, § 2, 70A Stat. 596.

Title 34, Navy—See Title 10, Armed Forces.

Title 35, Patents—Act July 19, 1952, ch. 950, § 1, 66 Stat. 792.

Title 37, Pay and Allowances of the Uniformed Services—Pub. L. 87-649, § 1, Sept. 7, 1962. 76 Stat. 451.

Title 38, Veterans' Benefits—Pub. L. 85-857, § 1, Sept. 2, 1958, 72 Stat. 1105.

Title 39, Postal Service—Pub. L. 86-682, § 1, Sept. 2, 1960, 74 Stat. 578, as revised Pub. L. 91-375, § 2, Aug. 12, 1970, 84 Stat. 719.

Title 44, Public Printing and Documents—Pub. L. 90-620, § 1, Oct. 22, 1968, 82 Stat. 1238.

Title 46, Shipping (in part)—Pub. L. 98-89, § 1, Aug. 26, 1983, 97 Stat. 500.

Title 49, Transportation (in part)—Pub. L. 95-473, § 1, Oct. 17, 1978, 92 Stat. 1337; Pub. L. 97-449, § 1, Jan. 12, 1983, 96 Stat. 2413.

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Chap. Sec.
20. Emergency Powers To Eliminate Budget Deficits 901

CHAPTER 2—ORGANIZATION OF CONGRESS

Sec.
29c. Office for Bicentennial of House of Representatives.
(a) Establishment; coordination of planning.
(b) Management, supervision, and administration; appointment of Historian.
(c) Payment of expenses.
(d) Termination.

§ 25b. Delegate from District of Columbia; applicability of certain Federal laws

REFERENCES IN TEXT

Section 60g-2 of this title, referred to in par. (22), which was based on House Resolution No. 416, Eighty-ninth Congress, June 16, 1965, as enacted into permanent law by Pub. L. 89-545, § 103, Aug. 27, 1966, 80 Stat. 369, was repealed by section 2 of House Resolution No. 420, Ninety-third Congress, Sept. 18, 1973, as enacted into permanent law by Pub. L. 93-245, ch. VI, § 600, Jan. 3, 1974, 87 Stat. 1979. Present section 60g-2 of this title is based on section 1 of House Resolution No. 420 as enacted into permanent law by Pub. L. 93-245.

§ 29c. Office for Bicentennial of House of Representatives

(a) Establishment; coordination of planning

There is hereby established in the House of Representatives an office to be known as the Office for the Bicentennial of the House of Representatives. This office will coordinate the planning of the commemoration of the two-hundredth anniversary of the House of Representatives.

(b) Management, supervision, and administration; appointment of Historian

The management, supervision, and administration of the Office shall be under the direction of the Speaker of the House of Representatives and shall be staffed by a professional historian. The Historian shall be appointed by the Speaker of the House of Representatives without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. Any person so appointed shall serve at the pleasure of the Speaker.

(c) Payment of expenses

All expenses of such office may be paid from the contingent fund of the House on vouchers solely approved and signed by the Speaker, until otherwise provided by law or resolution.

(d) Termination

The Office shall cease to exist not later than September 30, 1989, unless otherwise provided by law or resolution.

(Pub. L. 98-367, title I, § 102, July 17, 1984, 98 Stat. 479.)

CODIFICATION

Section is based on clause 10, rule I, of the Rules of the House of Representatives as in effect before July 17, 1984, relating to the Office for the Bicentennial for the House of Representatives, established by House Resolution No. 621, Ninety-seventh Congress, Dec. 17, 1982, which was enacted into permanent law by Pub. L. 98-367.

CHAPTER 3—COMPENSATION AND ALLOWANCES OF MEMBERS

Sec.
31-1. Maximum amount of honoraria which may be accepted by Members of Congress.
(a) Definitions.
(b) Maximum as percentage of aggregate salary.
(c) Honoraria paid to charitable organizations.
31a-2. Representation Allowance Account for Majority and Minority Leaders of Senate.
(a) Establishment; purpose.
(b) Payments; allotment; reimbursement for actual expenses; taxability.
(c) Authorization of appropriations.
31a-3. Expense allowance for Chairmen of Majority and Minority Conference Committees of Senate; method of payment; taxability.
31b-3. Repealed.
31b-6. Repealed.
58a. Telecommunications services for Senators, payment of costs out of contingent fund.
59d. Transportation of official records and papers to House Members' district.
(a) Payment of reasonable expenses from contingent fund of House; rules and regulations.
(b) "Member" and "official records and papers" defined.

§ 31. Compensation of Members of Congress

SALARY INCREASES

1985—Pursuant to the authority vested in him by Pub. L. 94-82, the President, under Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of Title 5, Government Organization and Employees, adjusted the annual rate of pay for the following positions, effective on the first day of the first applicable pay period beginning on or after Jan. 1, 1985:

Schedule 6—CONGRESSIONAL SALARIES

Senators	$75,100
Members of the House of Representatives	75,100
Delegates to the House of Representatives	75,100
Resident Commissioner from Puerto Rico	75,100
President pro tempore of the Senate	85,000
Majority leader and minority leader of the Senate	85,000
Majority leader and minority leader of the House of Representatives	85,000
Speaker of the House of Representatives	97,900

1984—Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended by Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, which provided for the adjustment of pay rates effective Jan. 1, 1984, was superseded by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of Title 5.

1983—Pub. L. 98-63, title I, § 908(d), (f), July 30, 1983, 97 Stat. 338, provided that, effective with respect to service as a Member performed on or after July 1, 1983: "Notwithstanding any other provision of law, in the case of a Member who is serving in the office or position of Senator, President pro tempore of the Senate, Majority Leader of the Senate, or Minority Leader of the Senate during a calendar year, the annual rate of pay that is paid to such Member for such service shall not be less than the annual rate of pay payable for such position on December 17, 1982, increased by 15 percent and rounded in accordance with section 5318 of title 5, United States Code."

1982—Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, which provided for the adjustment of pay rates effective Oct. 1, 1982, was superseded by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended by Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

§ 31-1. Maximum amount of honoraria which may be accepted by Members of Congress

(a) Definitions

For the purposes of this section—

(1) "charitable organization" means an organization described in section 170(c) of title 26;

(2) "honorarium" means a payment of money or anything of value to a Member for an appearance, speech, or article, by the Member; but there shall not be taken into account for the purposes of this section any actual and necessary travel expenses, incurred by the Member, and spouse or an aide to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed;

(3) "Member" means a United States Senator, a Member of the House of Representatives, a Delegate to the House of Representatives, or the Resident Commissioner from Puerto Rico; and

(4) "travel expenses" means with respect to a Member, and spouse or an aide, the cost of transportation, and the cost of lodging and meals while away from his or her residence or the metropolitan area of Washington, District of Columbia.

(b) Maximum as percentage of aggregate salary

(1) Notwithstanding any other provision of law, except as provided in paragraph (2), on and after January 1, 1984, a Member shall not accept honoraria which are attributable to any calendar year and total more than the amount that is equal to 40 percent of the aggregate salary paid to such Member for service as a Member during such calendar year.

(2) An individual who becomes a Member on a date after the first day of a calendar year shall not accept honoraria which are attributable to the remaining portion of that calendar year on and after the date such individual becomes a Member and total more than the amount that is equal to 40 percent of the aggregate salary paid to the Member for service as a Member during such calendar year.

(3) For the purposes of this subsection, an honorarium shall be attributable to the period or calendar year in which payment is received.

(c) Honoraria paid to charitable organizations

Any honorarium, or any part thereof, paid by or on behalf of a Member to a charitable organization shall be deemed not to be accepted for the purposes of subsection (b) of this section.

(Pub. L. 98-63, title I, § 908(a)-(c), July 30, 1983, 97 Stat. 337; Pub. L. 99-190, § 137, Dec. 19, 1985, 99 Stat. 1323.)

CODIFICATION

Section is from the Supplemental Appropriations Act, 1983.

AMENDMENTS

1985—Subsec. (b)(1), (2). Pub. L. 99-190 substituted "40 percent" for "30 percent".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 137 of Pub. L. 99-190 provided in part that the amendment of this section by Pub. L. 99-190 is effective on and after Jan. 1, 1986.

§ 31a-1. Expense allowance of Majority and Minority Leaders of Senate; expense allowance of Majority and Minority Whips; methods of payment; taxability

Effective fiscal year 1978 and each fiscal year thereafter, the expense allowances of the Majority and Minority Leaders of the Senate are increased to $10,000 each fiscal year for each leader: *Provided*, That, effective with the fiscal year 1983 and each fiscal year thereafter, the expense allowance of the Majority and Minority Whips of the Senate shall not exceed $5,000 each fiscal year for each Whip: *Provided further*, That, during the period beginning on January 3, 1977, and ending September 30, 1977, and during each fiscal year thereafter, the Vice President, the Majority Leader, the Minority Leader, the Majority Whip, and the Minority Whip may receive the expense allowance (a) as reimbursement for actual expenses incurred upon certification and documentation of such expenses by the Vice President, the respective Leader or the respective Whip, or (b) in equal monthly payments: *Provided further*, That effective January 3, 1977, the amounts paid to the Vice President, the Majority or Minority Leader of the Senate, or the Majority or Minority Whip of the Senate as reimbursement of actual expenses incurred upon certification and documentation pursuant to the second proviso

of this section shall not be reported as income, and the expenses so reimbursed shall not be allowed as a deduction, under title 26.

(As amended Pub. L. 98-63, title I, § 101, July 30, 1983, 97 Stat. 333.)

AMENDMENTS

1983—Pub. L. 98-63 substituted provisions increasing allowances for each Whip to $5,000 each fiscal year, effective fiscal year 1983 and each fiscal year thereafter, for provisions authorizing not to exceed $2,500 each fiscal year for each Whip, effective Apr. 1, 1977.

§ 31a-2. Representation Allowance Account for Majority and Minority Leaders of Senate

(a) Establishment; purpose

There is hereby established an account, within the Senate, to be known as the "Representation Allowance Account for the Majority and Minority Leaders". Such Allowance Account shall be used by the Majority and Minority Leaders of the Senate to assist them properly to discharge their appropriate responsibilities in the United States to members of foreign legislative bodies and prominent officials of foreign governments and intergovernmental organizations.

(b) Payments; allotment; reimbursement for actual expenses; taxability

Payments authorized to be made under this section shall be paid by the Secretary of the Senate. Of the funds available for expenditure from such Allowance Account for any fiscal year, one-half shall be allotted to the Majority Leader and one-half shall be allotted to the Minority Leader. Amounts paid from such Allowance Account to the Majority or Minority Leader shall be paid to him from his allotment and shall be paid to him only as reimbursement for actual expenses incurred by him and upon certification and documentation of such expenses. Amounts paid to the Majority or Minority Leader pursuant to this section shall not be reported as income and shall not be allowed as a deduction under title 26.

(c) Authorization of appropriations

There are authorized to be appropriated for each fiscal year (commencing with the fiscal year ending September 30, 1985) not more than $20,000 to the Allowance Account established by this section.

(Pub. L. 99-88, title I, § 197, Aug. 15, 1985, 99 Stat. 350.)

CODIFICATION

Section is from the Supplemental Appropriations Act, 1985.

§ 31a-3. Expense allowance for Chairmen of Majority and Minority Conference Committees of Senate; method of payment; taxability

For each fiscal year (commencing with the fiscal year ending September 30, 1985), there is hereby authorized an expense allowance for the Chairmen of the Majority and Minority Conference Committees which shall not exceed $3,000 each fiscal year for each such Chairman; and amounts from such allowance shall be paid to either of such Chairmen only as reimbursement for actual expenses incurred by him and upon certification and documentation of such expenses, and amounts so paid shall not be reported as income and shall not be allowed as a deduction under title 26.

(Pub. L. 99-88, title I, § 100, Aug. 15, 1985, 99 Stat. 348.)

CODIFICATION

Section is from the Supplemental Appropriations Act, 1985.

§ 31b-1. Former Speakers of House of Representatives; retention of office, furniture, etc., in Congressional district following expiration of term as Representative; exceptions

(a) Each former Speaker of the House of Representatives (hereafter referred to in sections 31b-1 to 31b-6 of this title as the "Speaker") is entitled to retain, for as long as he determines there is need therefor, commencing at the expiration of his term of office as a Representative in Congress the complete and exclusive use of one office selected by him in order to facilitate the administration, settlement, and conclusion of matters pertaining to or arising out of his incumbency in office as a Representative in Congress and as Speaker of the House of Representatives. Such office shall be located in the United States and shall be furnished and maintained by the Government in a condition appropriate for his use.

[*See main edition for text of* (b)]

(As amended Pub. L. 99-225, Dec. 28, 1985, 99 Stat. 1743.)

REFERENCES IN TEXT

Sections 31b-3 and 31b-6 of this title, included in reference in text to sections 31b-1 to 31b-6 of this title, were repealed by Pub. L. 99-151, title I, § 102(b), Nov. 13, 1985, 99 Stat. 797.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-225 substituted "one office selected by him in order to facilitate the administration, settlement, and conclusion of matters pertaining to or arising out of his incumbency in office as a Representative in Congress and as Speaker of the House of Representatives. Such office shall be located in the United States and shall be furnished and maintained by the Government in a condition appropriate for his use" for "the Federal office space which is currently made available for his use in the congressional district represented by him and which shall be maintained by the Government in a condition appropriate for his use as he may request, together with all furniture, equipment, and furnishings currently made available by the Government for his use in connection with such office space, including any necessary replacements of such office furniture, equipment, and furnishings, in order to facilitate the administration, settlement, and conclusion of matters pertaining to or arising out of his incumbency in office as a Representative in Congress and as Speaker of the House of Representatives".

§ 31b-2. Allowance available to former Speaker for payment of office and other expenses for administration, etc., of matters pertaining to incumbency in office as Representative and Speaker

The Speaker is entitled to have the contingent fund of the House be available for payment of, for as long as he determines there is need therefor, commencing at the expiration of his term of office as a Representative in Congress, an allowance equal to the base allowance component of the Official Expenses Allowance then currently in effect for each Member of the House (to be paid in the same manner as such Allowance) for office and other expenses incurred in connection with the administration, settlement, and conclusion of matters pertaining to or arising out of his incumbency in office as a Representative in Congress and as Speaker of the House of Representatives.

(As amended Pub. L. 99-151, title I, § 102(b), Nov. 13, 1985, 99 Stat. 797.)

AMENDMENTS

1985—Pub. L. 99-151 substituted "have the contingent fund of the House be available for payment of" for "reimbursement, from the contingent fund of the House" and "an allowance equal to the base allowance component of the Official Expenses Allowance then currently in effect for each Member of the House (to be paid in the same manner as such Allowance)" for "in the manner provided by applicable provisions of the Legislative Appropriation Act, 1955, as amended by the Act of June 13, 1957 (71 Stat. 82; Public Law 85-54), and by the provisions of House Resolution 831, Eighty-eighth Congress, adopted August 14, 1964, enacted as permanent law by section 103 of the Legislative Branch Appropriation Act, 1966 (79 Stat. 281; Public Law 89-90; 2 U.S.C. 122a), in an aggregate quarterly amount equal to the aggregate quarterly amount to which a Member of the House of Representatives is entitled under such provisions of law as in effect on January 8, 1971, or as amended or supplemented after such date,".

§ 31b-3. Repealed. Pub. L. 99-151, title I, § 102(b), Nov. 13, 1985, 99 Stat. 797

Section, based on H. Res. No. 1238, § 3, Dec. 23, 1970, enacted into permanent law by Pub. L. 91-665, ch. VIII, § 800, Jan. 8, 1971, 84 Stat. 1989; Pub. L. 93-532, § 1(a), Dec. 22, 1974, 88 Stat. 1723, provided for reimbursement of the former Speaker of the House for telephone service charges for administration, etc., of matters pertaining to incumbency in office as Representative and Speaker.

§ 31b-5. Staff assistance to former Speaker for administration, etc., of matters pertaining to incumbency in office as Representative and Speaker; compensation and status of staff

In order to provide staff assistance to the Speaker in connection with the administration, settlement, and conclusion of matters pertaining to or arising out of his incumbency in office as a Representative in Congress and as Speaker of the House of Representatives, the contingent fund of the House is hereby made available, for as long as he determines there is need therefor, commencing at the expiration of the term of office of the Speaker as a Representative in Congress to enable the Clerk of the House to pay the salaries of an Administrative Assistant, who shall be paid at a basic per annum rate of not to exceed the then current rate for step 5 of level 11 of the House Employees Schedule, as determined by the Speaker, a Secretary, who shall be paid at a basic per annum rate of not to exceed the then current rate for step 9 of level 8 of such Schedule, as determined by the Speaker, and an additional Secretary, who shall be paid at a gross per annum rate of not to exceed the then current rate for step 1 of level 6 of such Schedule as determined by the Speaker, designated and appointed by the Speaker to serve as members of his office staff in such period. Each person so designated and appointed shall be held and considered, for the duration of such appointment, as—

[*See main edition for text of (1) and (2)*]

(As amended Pub. L. 99-151, title I, § 102(a), Nov. 13, 1985, 99 Stat. 797.)

AMENDMENTS

1985—Pub. L. 99-151 substituted "not to exceed the then current rate for step 5 of level 11 of the House Employees Schedule" for "not to exceed $3,000" the first place it appeared, "not to exceed the then current rate for step 9 of level 8 of such Schedule" for "not to exceed $3,000" the second place it appeared, and "not to exceed the then current rate for step 1 of level 6 of such Schedule" for "not to exceed $9,000".

§ 31b-6. Repealed. Pub. L. 99-151, title I, § 102(b), Nov. 13, 1985, 99 Stat. 797

Section, based on H. Res. No. 1238, § 6, Dec. 23, 1970, enacted into permanent law by Pub. L. 91-665, ch. VIII, § 800, Jan. 8, 1971, 84 Stat. 1989; Pub. L. 93-532, § 1(a), Dec. 22, 1974, 88 Stat. 1723, provided for an allowance to the former Speaker of the House for stationery and other office supplies.

§ 57. Adjustment of allowances by Committee on House Administration

COMMITTEE ORDER No. 35

Resolved, That effective May 1, 1983, until otherwise provided by the Committee on House Administration, the Clerk-Hire Allowance and the Official Expenses Allowance are adjusted as follows:

1. The base allowance for Official Expenses is increased by $15,000.

2. Each session a Member may allocate not to exceed $30,000 from the basic Clerk-Hire Allowance which may be used to supplement the Official Expenses Allowance, and may allocate not to exceed $30,000 from the Official Expenses Allowance to supplement the basic Clerk-Hire Allowance, provided however that monthly Clerk-Hire disbursements may not exceed 10 percent of the basic Clerk-Hire Allowance.

All disbursements and allocations shall be made in accordance with rules and regulations established by the Committee on House Administration.

COMMITTEE ORDER No. 36

Resolved, That effective January 3, 1984, until otherwise provided by the Committee on House Administration, the Allowance for Official Expenses is adjusted as follows:

(1) The Travel Allowance is increased to reflect a cost per mile variable ranging from $.23 to $.39, with a minimum of $6,200.

Expenditures of these funds shall be made in accordance with rules and regulations established by the Committee on House Administration.

COMMITTEE ORDER No. 37

Resolved, That effective October 1, 1985, until otherwise provided by order of the Committee on House Administration, each Member is entitled to three FTS lines for use in district office(s) without charge to the official expenses allowance.

COMMITTEE ORDER No. 38

Resolved, That effective August 1, 1985, until otherwise provided by the Committee on House Administration, the Clerk-Hire Allowance and the Official Expenses Allowance are adjusted as follows:

Each session a member may allocate not to exceed $40,000 from the basic Clerk-Hire Allowance which may be used to supplement the Official Expenses Allowance, and may allocate not to exceed $40,000 from the Official Expenses Allowance to supplement the basic Clerk-Hire Allowance, provided however that monthly Clerk-Hire disbursements may not exceed 10% of the basic Clerk-Hire Allowance.

All disbursements and allocations shall be made in accordance with rules and regulations established by the Committee on House Administration.

§ 58. Mail, telegraph, telephone, stationery, office supplies, and home State office and travel expenses for Senators

(a) Authorization for payment from Senate contingent fund

Effective January 1, 1973, and thereafter, the contingent fund of the Senate is made available for payment to or on behalf of each Senator, upon certification of the Senator, for the following expenses incurred by the Senator and his staff:

[*See main edition for text of (1) to (5)*]

(6) for telephone service charges officially incurred outside Washington, District of Columbia, which are based on the amount of time the service is used;

[*See main edition for text of (7) to (9)*]

Reimbursement to a Senator and his employees under this section shall be made only upon presentation of itemized vouchers for expenses incurred and, in the case of expenses reimbursed under paragraph (9), only upon presentation of detailed itemized vouchers for such expenses. The reports of the Secretary of the Senate under section 104a of this title shall contain a separate section setting forth, in detail, all expenses reimbursed under paragraph (9) to each Senator. No reimbursement shall be made under paragraph (5) or (9) for any expense incurred for entertainment or meals.

[*See main edition for text of (b) to (d)*]

(e) Transportation, essential travel-related expenses, and per diem expenses; coverage; limitations; amounts

A Senator and the employees in his office shall be reimbursed under this section only for actual transportation expenses, essential travel-related expenses (as defined hereafter in this subsection), and per diem expenses (but not exceeding actual travel expenses) incurred by the Senator or employee while traveling on official business within the United States. In the case of an employee, reimbursement shall be made only for trips which begin and end in Washington, District of Columbia, or, in the case of an employee assigned to an office of a Senator in the Senator's home State, on trips which begin and end at the place where such office is located. However, a Senator or an employee in the office of a Senator shall not be reimbursed for any per diem expenses or actual travel expenses (other than actual transportation expenses) for any travel occurring during the sixty days immediately before the date of any primary or general election (whether regular, special, or runoff) in which the Senator is a candidate for public office (within the meaning of section 431(b) of this title), unless his candidacy in such election is uncontested. As used in this subsection, the term "essential travel-related expenses" means travel expenses (other than transportation expenses) which are essential to the transaction of official business while the Senator or employee is away from his official station or post of duty. Reimbursement of per diem expenses under this subsection shall be at the rates prescribed by the Committee on Rules and Administration. For purposes of this subsection and subsection (a)(8) of this section, an employee in the Office of the President pro tempore, Deputy President pro tempore, Majority Leader, Minority Leader, Majority Whip, Minority Whip, Secretary of the Conference of the Majority, or Secretary of the Conference of the Minority shall be considered to be an employee in the office of the Senator holding such Office.

[*See main edition for text of (f) to (j)*]

(As amended Pub. L. 98-51, title I, § 102, July 14, 1983, 97 Stat. 266; Pub. L. 98-181, title I, § 1204(a), Nov. 30, 1983, 97 Stat. 1290; Pub. L. 99-65, § 1(a), July 12, 1985, 99 Stat. 163.)

AMENDMENTS

1985—Subsec. (a)(6). Pub. L. 99-65 amended par. (6) generally, substituting "for telephone service charges officially incurred outside Washington, District of Columbia, which are based on the amount of time the service is used" for "reimbusement to each Senator for telephone service charges officially incurred outside Washington, District of Columbia".

1983—Subsec. (e). Pub. L. 98-181 added references to the Secretary of the Conference of the Majority and the Secretary of the Conference of the Minority.

Pub. L. 98-51 inserted provisions authorizing reimbursement for essential travel-related expenses and defined those expenses for the purposes of this subsection.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 2 of Pub. L. 99-65 provided that: "The amendments made by this Act [amending sections 58 and 58a of this title] shall take effect on the first day of the first calendar month which begins more than sixty days after the date of enactment of this Act [July 12, 1985]."

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1204(b) of Pub. L. 98-181 provided that: "The amendment made by subsection (a) [amending subsec. (e) of this section] shall be effective in the case of expenses incurred or charges imposed on or after October 1, 1983."

§ 58a. Telecommunications services for Senators; payment of costs out of contingent fund

The Sergeant at Arms and Doorkeeper of the Senate shall furnish each Senator local and long-distance telecommunications services in Washington, District of Columbia, and in such Senator's State (except services for which the charge is based on the amount of time the service is used) in accordance with regulations prescribed by the Senate Committee on Rules and Administration; and the costs of such service shall be paid out of the contingent fund of the Senate from moneys made available to him for that purpose.

(Pub. L. 98-181, title I, § 1205(a), Nov. 30, 1983, 97 Stat. 1290; Pub. L. 99-65, § 1(b), July 12, 1985, 99 Stat. 163.)

CODIFICATION

Section is from the Supplemental Appropriations Act, 1984.

PRIOR PROVISIONS

A prior section 58a, Pub. L. 95-94, title I, § 112(g), Aug. 5, 1977, 91 Stat. 665, which directed the Sergeant at Arms and Doorkeeper of the Senate to furnish not more than two WATS lines to any Senator requesting them, with the cost of such service to be paid out of the contingent fund of the Senate, was repealed by section 1205(b) of Pub. L. 98-181, effective the first day of the first calendar month which begins more than thirty days after Nov. 30, 1983.

AMENDMENTS

1985—Pub. L. 99-65 inserted "and in such Senator's State (except services for which the charge is based on the amount of time the service is used)".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-65 effective the first day of the first calendar month beginning more than 60 days after July 12, 1985, see section 2 of Pub. L. 99-65, set out as a note under section 58 of this title.

§ 58b. Transfer to Senator's Official Office Expense Account of remaining balance of that Senator's clerk hire allowance

(a) Transfer authority

Effective in the case of each fiscal year (commencing with the fiscal year ending September 30, 1981) each Senator, at his election, may transfer from his Administrative, Clerical, and Legislative Assistance Allowance (hereinafter referred to as the "clerk hire allowance") to such Senator's Official Office Expense Account any balance remaining, or any portion thereof in such clerk hire allowance as of the close of the fiscal year; except that the total amount so transferred from any such balance remaining as of the close of the fiscal year 1982 shall not exceed an amount equal to $15,000 or 25 per centum of the amount of such Senator's Official Office Expense Account, whichever is greater, as determined under section 58(b)(1) of this title, for the calendar year 1982. Each Senator, at his election, may, during any fiscal year (but not earlier than August 1 thereof), transfer from his clerk hire allowance to such Senator's Official Office Expense Account such amounts in such clerk hire allowance as the Senator shall determine, but not in excess of the balance (or accrued surplus in case of transfers made prior to October 1, 1984) as of the end of the month which precedes the date of such transfer. Any amount so transferred to a Senator's Official Office Expense Account shall be available only for expenses incurred during the calendar year in which occurred the close of the fiscal year. Each Senator electing to make such a transfer shall advise the Senate Disbursing Office in writing, no later than December 31 of the calendar year in which occurs the close of such fiscal year, and such transfer shall be made on such date (but not earlier than August 1 of such calendar year) as may be specified by the Senator.

[*See main edition for text of* (b)]

(As amended Pub. L. 98-367, title I, § 11(a), July 17, 1984, 98 Stat. 476.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-367 added provision that each Senator, at his election, may, during any fiscal year (but not earlier than Aug. 1 thereof), transfer from his clerk hire allowance to such Senator's Official Office Expense Account amounts in such clerk hire allowance as the Senator determines, but not in excess of the balance (or accrued surplus in case of transfers made prior to Oct. 1, 1984) as of the end of the month which preceded the date of such transfer; substituted "Any amount" for "Any balance" in second sentence; and substituted "December 31 of the calendar year in which occurs the close of such fiscal year, and such transfer shall be made on such date (but not earlier than August 1 of such calendar year) as may be specified by the Senator" for "December 31, and such transfer shall be made on such date (but not earlier than the October 1 which next succeeds the close of the fiscal year with respect to which the balance occurs) as may be specified by the Senator" in third sentence.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 11(b) of Pub. L. 98-367 provided that: "The amendments made by subsection (a) [amending subsec. (a) of this section] shall be effective in the case of fiscal years beginning after September 30, 1983."

§ 59. Homestate office space for Senators; lease of office space

[*See main edition for text of* (a) *and* (b)]

(c) Maximum annual rental rate; maximum aggregate amount for acquisition of furniture, equipment, and other office furnishings

[*See main edition for text of* (1)]

(2) The aggregate amount that may be paid for the acquisition of furniture, equipment, and other office furnishings heretofore provided by the Administrator of General Services for one or more offices secured for the Senator is $30,000 if the aggregate square feet of office space is not in excess of 4,800 square feet. Such amount is increased by $734 for each authorized additional incremental increase in office space of 200 square feet.

[*See main edition for text of* (d) *and* (e)]

(As amended Pub. L. 99-88, title I, § 194, Aug. 15, 1985, 99 Stat. 349.)

AMENDMENTS

1985—Subsec. (c)(2). Pub. L. 99-88 substituted "$30,000" for "$22,550" and "$734" for "$550".

§ 59d. Transportation of official records and papers to House Member's district

(a) Payment of reasonable expenses from contingent fund of House; rules and regulations

Effective August 16, 1978, notwithstanding any provision of law and until otherwise provided by law, the contingent fund of the House shall be available to pay the reasonable expenses of sending or transporting the official records and papers of any Member of the House of Representatives from the District of Columbia to any location designated by such Member in the district represented by the Member.

The Clerk of the House of Representatives is authorized and directed to provide for the most economical means of sending or transporting such documents to insure the orderly and timely delivery to the specified location. The Committee on House Administration shall have the authority to issue rules and regulations to carry out the provisions of this section.

(b) "Member" and "official records and papers" defined

As used in this section—

(1) the term "Member" means a Representative, a Resident Commissioner in the House, and a Delegate to the House; and

(2) the term "official records and papers" means books, records, papers, and official files which could be sent as franked mail.

(Pub. L. 98-51, title I, § 111(1), July 14, 1983, 97 Stat. 269.)

CODIFICATION

In subsec. (a) "August 16, 1978" was substituted for "upon the date of adoption of this resolution" meaning the date of adoption of House Resolution No. 1297, which was agreed to Aug. 16, 1978.

Section is based on House Resolution No. 1297, Ninety-fifth Congress, Aug. 16, 1978, which was enacted into permanent law by Pub. L. 98-51.

Sections 1 and 2 of House Resolution No. 1297 were redesignated subsecs. (a) and (b) of this section, respectively, for purposes of codification.

CHAPTER 4—OFFICERS AND EMPLOYEES OF SENATE AND HOUSE OF REPRESENTATIVES

Sec.
60g-2. Lyndon Baines Johnson congressional interns.
(a) Hiring authority of House Members, Delegates, and Resident Commissioners; allowance for payment of compensation.
(b) Certification of intern status; filing.
(c) Regulations by Committee on House Administration.
60j-4. Longevity compensation not applicable to individuals paid by Secretary of Senate; savings provision.
61-1b. Availability of appropriations during first three months of any fiscal year for aggregate of payments of gross compensation made to employees from Senate appropriation account for "Salaries, Officers and Employees".
61e-4. Designation by Sergeant at Arms and Doorkeeper of Senate of persons to approve vouchers for payment of moneys.
61f-9. Employment of personnel by Sergeant at Arms and Doorkeeper of Senate at daily rates of compensation; authorization; limitation on amount of compensation.
61g-7. Services of consultants to Majority or Minority Conference Committee of Senate.
(a) Authorization of expenditure with approval of Committee on Rules and Administration.
(b) Procurement by contract or employment.
(c) Selection of consultant or organization by Conference Committee chairman.
61h-5. Assistants to Senate Majority and Minority Leaders for Floor Operations; establishment of positions; appointment; compensation.
65d. Funds advanced by Secretary of Senate to Sergeant at Arms and Doorkeeper of Senate to defray office expenses; accountability; maximum amount; vouchers.
65e. Transferred.
68-3. Separate accounts for "Secretary of the Senate" and for "Sergeant at Arms and Doorkeeper of the Senate"; establishment within Senate contingent fund; inclusion of funds in existing accounts.
68-4. Deposit of moneys for credit to account within Senate contingent fund for "Sergeant at Arms and Doorkeeper of the Senate".
68-5. Purchase, lease, exchange, maintenance, and operation of vehicles out of account for Sergeant at Arms and Doorkeeper of Senate within contingent fund of Senate; authorization of appropriations.
72a-1f. Designation by Senator who is Chairman or Vice Chairman of Senate Select Committee on Ethics of employee in office of that Senator to perform part-time service for Committee; amount reimbursable; procedure applicable.
74a-5. Limits on uses of funds provided under section 74a-4.
88b-5. Page residence hall and page meal plan.
(a) Revolving fund; establishment within House contingent fund.
(b) Deposits in revolving fund; disbursements by Clerk of House.
(c) "Clerk" defined.
(d) Regulations.
88b-6. Charges for lodging, meals, and related services furnished Senate pages in page residence hall; withholding from salary.
88c-1. Educational services and related items for pages; payment authority pursuant to contract, etc., by Page Board.
88c-2. Academic year and summer term for page program.
88c-3. Service of page during academic year and summer term; filling of vacancies; eligibility.
88c-4. Definitions.
92e. Repealed.
111b. Contracts to furnish property, supplies, or services to Congress; terms varying from those offered other entities of Federal Government.
117d. Reimbursements to Sergeant at Arms and Doorkeeper of Senate for equipment provided to Senators, etc., which has been lost, stolen, damaged, or otherwise unaccounted for; deposit of receipts.

§ 60a. Omitted

LEGISLATIVE BRANCH APPROPRIATION ACTS

The following acts have provided for funds for the operation of Congress:

Nov. 13, 1985, Pub. L. 99-151, title I, § 100, 99 Stat. 792.

July 17, 1984, Pub. L. 98-367, title I, § 100, 98 Stat. 472.

July 14, 1983, Pub. L. 98-51, title I, § 100, 97 Stat. 263.

§ 60a-1. Senate pay adjustments; action by President pro tempore of Senate

DIRECTIVE OF THE PRESIDENT PRO TEMPORE OF THE SENATE ESTABLISHING A SALARY INCREASE FOR OFFICERS AND EMPLOYEES OF THE SENATE UNDER AUTHORITY OF THE FEDERAL PAY COMPARABILITY ACT OF 1970

JANUARY 4, 1985

By virtue of the authority vested in me by section 4 of the Federal Pay Comparability Act of 1970 (2 U.S.C. 60a-1), it is hereby—

Ordered,

DEFINITIONS

SECTION 1. For purposes of this Order, the term "employee" includes an officer (other than a United States Senator).

RATE INCREASES FOR SPECIFIED POSITIONS

SEC. 2. (a) The annual rates of compensation of the Secretary of the Senate, the Sergeant at Arms and Doorkeeper, and the Legislative Counsel (as in effect immediately before the effective date of this Order) are increased by 3.5 percent and, as so increased, are rounded in the same manner as is provided in section 5318 of title 5, United States Code. Notwithstanding the provisions of this subsection, an individual occupying a position the annual rate of compensation for which is determined under this subsection shall not be paid at any time, by reason of the promulgation of this Order, at an annual rate in excess of either of the following: (1) the annual rate in effect for positions in level III of the Executive Schedule under section 5314 of title 5, United States Code, or (2) an annual rate of compensation which is $1,000 less than the annual rate of compensation of Senators.

(b) The annual rates of compensation of the Secretary for the Majority and the Secretary for the Minority (as in effect immediately before the effective date of this Order) are increased by 3.5 percent and, as so increased, adjusted to the next higher multiple of $1.00. Notwithstanding the provisions of this subsection, an individual occupying a position the annual rate of compensation for which is determined under this subsection shall not be paid at any time, by reason of the promulgation of this Order, at an annual rate of compensation in excess of $500 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in subsection (a) of this section.

(c) The annual rates of compensation of the five Senior Counsels in the Office of the Legislative Counsel and the maximum annual rates of compensation of the Assistant Secretary of the Senate, the Parliamentarian, the Financial Clerk, the Assistant to the Majority Leader for Floor Operations, and the Assistant to the Minority Leader for Floor Operations (as in effect immediately before the effective date of this Order) are increased by 3.5 percent and, as so increased, adjusted to the next higher multiple of $1.00. Notwithstanding the provisions of this subsection, an individual occupying a position the annual rate of compensation for which is determined under this subsection shall not be paid at any time, by reason of the promulgation of this Order, at an annual rate of compensation in excess of $1,000 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in subsection (a) of this section. The maximum annual rate of compensation for the non-statutory position known as the "Special Deputy to the Federal Elections Commission" shall be equal to the maximum annual rate of compensation for positions specified in the first sentence of this subsection.

(d) The maximum annual rate of compensation of the Director of the Office of Classified National Security Information in the Office of the Secretary of the Senate (as in effect immediately before the effective date of this Order) is increased by 3.5 percent and, as so increased, adjusted to the next higher multiple of $1.00. Notwithstanding the provisions of this paragraph, an individual occupying the position the annual rate of compensation for which is determined under this paragraph shall not be paid at any time, by reason of the promulgation of this Order, at an annual rate of compensation in excess of $2,000 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in subsection (a) of this section.

CHAPLAIN'S OFFICE

SEC. 3. The annual rate of compensation of the Chaplain and the maximum annual rate of compensation for the position of secretary to the Chaplain (as in effect immediately before the effective date of this Order) are each increased by 3.5 percent and, as so increased, adjusted to the next higher multiple of $1.00. Notwithstanding the preceding provisions of this section, the Chaplain shall not be paid at any time, by reason of the promulgation of this Order, at an annual rate in excess of the annual rate in effect for positions in level IV of the Executive Schedule under section 5315 of title 5, United States Code.

OFFICES OF THE SENATE

SEC. 4. (a) The following individuals are authorized to increase the annual rates of compensation of the employees specified by 3.5 percent and, as so increased, adjusted to the next higher multiple of $1.00:

(1) the Vice President, for any employee under his jurisdiction;

(2) the President pro tempore, for any employee under his jurisdiction;

(3) the Majority Leader, the Minority Leader, the Majority Whip, and the Minority Whip, for any employee under their respective jurisdictions;

(4) the Majority Leader and the Minority Leader, for the Assistant to the Majority Leader for Floor Operations and the Assistant to the Minority Leader for Floor Operations, respectively (subject to the provisions of section 2(c) of this Order);

(5) the Secretary of the Conference of the Majority and the Secretary of the Conference of the Minority, for any employee under their respective jurisdictions;

(6) the Secretary of the Senate, for any employee under his jurisdiction (subject to the provisions of section 2(c) and (d) of this Order);

(7) the Sergeant at Arms and Doorkeeper, for any employee under his jurisdiction;

(8) the Chaplain, for his secretary;

(9) the Legislative Counsel, subject to the approval of the President pro tempore, for any employee under his jurisdiction (other than the five Senior Counsels);

(10) the Senate Legal Counsel, for any employee under his jurisdiction (subject to the provisions of section 701(b) of the Ethics in Government Act of 1978 (2 U.S.C. 288(b)));

(11) the Secretary for the Majority and the Secretary for the Minority, for any employee under their respective jurisdictions; and

(12) the Capitol Guide Board, for the Chief Guide, the Deputy Chief Guide, the Assistant Chief Guide, and the Guides of the Capitol Guide Service.

(b) The limitations on the gross compensation which may be paid during a fiscal year to employees in the Offices of the Vice President, the President pro tempore, the Majority Leader, the Minority Leader, the Majority Whip, the Minority Whip, the Secretary of the Senate, the Sergeant at Arms and Doorkeeper, the Secretary of the Conference of the Majority, the Secretary of the Conference of the Minority, the Secretary for the Majority, the Secretary for the Minority, the Conference of the Majority, and the Conference of the Minority (as in effect immediately before the effective date of this Order) are each increased by 3.5 percent and, as so increased, adjusted to the next higher multiple of $1.00.

(c) Except for those officers and employees referred to in section 2 of this Order, no officer or employee within the Office of the Secretary of the Senate and no officer or employee within the Office of the Sergeant at Arms and Doorkeeper shall, for any period of time, be paid gross compensation at an annual rate which is in excess of either of the following: (1) the maximum rate prescribed in section 105(f) of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 61-1(f)) (as such rate is adjusted in section 7(b)(1) of this Order), or (2) an annual rate of compensation which is $2,500 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order.

COMMITTEE STAFFS

SEC. 5. (a) Subject to the provisions of section 105 of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 61-1) (as modified by this Order), and to the other provisions of this Order, the chairman of any standing, special, or select committee of the Senate (including the majority and minority policy committees and the conference majority and the conference minority of the Senate), and the chairman of any joint committee of the Congress whose funds are disbursed by the Secretary of the Senate, are each authorized to increase the annual rate of compensation of any employee of the committee, or any subcommittee thereof, of which he is chairman, by 3.5 percent and, as so increased, adjusted to the next higher multiple of $1.00.

(b)(1) The maximum annual rates of "$67,694", "$68,172", and "$69,966" appearing in section 105(e) of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 61-1(e)) (as in effect immediately before the effective date of this Order) are each increased by 3.5 percent and, as so increased, adjusted to the next higher multiple of $1.00, and shall be deemed to refer to the figures "$70,064", "$70,559", and "$72,415", respectively.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, any individual occupying a position on the staff of a standing committee of the Senate or the majority or minority policy committee of the Senate to which such rate applies shall not be paid at any time at an annual rate in excess of $1,000 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, any individual occupying a position on the staff of any special or select committee of the Senate or the conference majority or conference minority of the Senate to which any such rate applies shall not be paid at any time at an annual rate in excess of $2,500 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, any individual occupying a position on the staff of any joint committee of the Congress whose funds are disbursed by the Secretary of the Senate to which any such rate applies shall not be paid at any time at an annual rate in excess of $2,900 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order.

SENATORS' OFFICES

SEC. 6. (a) Subject to the provisions of section 105 of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 61-1), as modified by this Order, and to the other provisions of this Order, each Senator is authorized to increase the annual rate of compensation of any employee in his office by 3.5 percent and, as so increased, adjusted to the next higher multiple of $1.00.

(b) The table contained in section 105(d)(1) of such Act [2 U.S.C. 61-1(d)(1)] shall be deemed to read as follows:

"$695,244 if the population of his State is less than 2,000,000;

"$715,410 if such population is 2,000,000 but less than 3,000,000;

"$764,017 if such population is 3,000,000 but less than 4,000,000;

"$826,587 if such population is 4,000,000 but less than 5,000,000;

"$877,780 if such population is 5,000,000 but less than 7,000,000;

"$931,558 if such population is 7,000,000 but less than 8,000,000;

"$959,999 if such population is 8,000,000 but less than 9,000,000;

"$989,989 if such population is 9,000,000 but less than 10,000,000;

"$1,034,979 if such population is 10,000,000 but less than 11,000,000;

"$1,093,927 if such population is 11,000,000 but less than 12,000,000;

"$1,138,916 if such population is 12,000,000 but less than 13,000,000;

"$1,196,314 if such population is 13,000,000 but less than 15,000,000;

"$1,253,713 if such population is 15,000,000 but less than 17,000,000;

"$1,311,110 if such population is 17,000,000 but less than 19,000,000;

"$1,354,028 if such population is 19,000,000 but less than 21,000,000;

"$1,396,947 if such population is 21,000,000 or more.".

(c)(1) The second sentence of section 105(d)(2) of such Act (2 U.S.C. 61-1(d)(2)) (as in effect immediately before the effective date of this Order) is modified to read as follows: "The salary of an employee in a Senator's office shall not be fixed under this paragraph at a rate less than $1,295 or in excess of $70,559 per annum.".

(2) Notwithstanding the modification made by paragraph (1) of this subsection, any individual occupying a position in a Senator's office shall not be paid at any time at an annual rate in excess of $2,500 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order.

(d) The figures "$208,341" and "$69,447" appearing in subsections (a), (b)(1), and (b)(2) of section 111 of the Legislative Branch Appropriation Act, 1978 (2 U.S.C. 61-1 note) (as provided in section 6(d) of the Order of the President pro tempore of January 1, 1984, as amended), shall be deemed to refer to the figures "$215,634" and "$71,878", respectively.

GENERAL LIMITATION

SEC. 7. (a) The figure "$1,251" appearing in section 105(f) of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 61-1(f)) (as provided in section 7(a) of the Order of the President pro tempore of January 1,

1984, as amended), shall be deemed to refer to the figure "$1,295".

(b)(1) The maximum annual rate of compensation of "$68,172" appearing in section 105(f) of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 61-1(f)) (as provided in section 7(b)(1) of the Order of the President pro tempore of January 1, 1984, as amended) is increased by 3.5 percent and, as so increased, adjusted to the next higher multiple of $1.00, and shall be deemed to refer to the figure "$70,559".

(2) Notwithstanding the provisions of paragraph (1) of this subsection, any individual occupying a position to which such rate applies shall not be paid at any time at an annual rate in excess of $2,500 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order.

NOTIFYING DISBURSING OFFICE OF INCREASES

SEC. 8. In order for an employee to receive the increase in his annual rate of compensation pursuant to section 4, 5, or 6, the individual designated to authorize such increase for that employee shall notify the Disbursing Office of the Senate in writing that he authorizes such increase for that employee and the date (prescribed in accordance with section 105(a)(2) of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 61-1(a)(2))) on which such increase is to be effective. Such increase shall become effective as provided in section 105(a)(2) of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 61-1(a)(2)), except that if the notice required by the preceding sentence is given within five days (not counting Saturdays, Sundays, or holidays) after the date on which this Order is issued, such increase may become effective on January 1, 1985.

DUAL COMPENSATION

SEC. 9. The figure "$16,495" contained in section 5533(c)(1) of title 5, United States Code (as provided in section 9 of the Order of the President pro tempore of January 1, 1984, as amended) shall be deemed to refer to the figure "$17,073".

OFFICE OF THE SENATE LEGAL COUNSEL

SEC. 10. (a) Notwithstanding any other provision of law—

(1) the Senate Legal Counsel shall not be paid at any time at an annual rate of compensation which is in excess of the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order, and

(2) the Deputy Senate Legal Counsel shall not be paid at any time at an annual rate of compensation which is in excess of $1,000 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order.

(b) The foregoing provisions of this Order, other than subsection (a) of this section, shall not be applicable to the annual rate of compensation of the Senate Legal Counsel or the Deputy Senate Legal Counsel.

EFFECTIVE DATE

SEC. 11. Sections 1 through 10 of this Order are effective January 1, 1985.

STROM THURMOND,
President pro tempore.

DIRECTIVE OF THE PRESIDENT PRO TEMPORE OF THE SENATE ESTABLISHING A SALARY INCREASE FOR OFFICERS AND EMPLOYEES OF THE SENATE UNDER AUTHORITY OF THE FEDERAL PAY COMPARABILITY ACT OF 1970

DECEMBER 20, 1983, AS AMENDED MAY 2, 1984

By virtue of the authority vested in me by section 4 of the Federal Pay Comparability Act of 1970 [2 U.S.C. 60a-1], it is hereby—

Ordered,

DEFINITIONS

SECTION 1. For purposes of this Order—

(1) "employee" includes an officer (other than a United States Senator); and

(2) "annual rate of compensation" includes compensation described in section 107 of Public Law 98-51 [2 U.S.C. 60j-4].

RATE INCREASES FOR SPECIFIED POSITIONS

SEC. 2. (a) The annual rates of compensation of the Secretary of the Senate, the Sergeant at Arms and Doorkeeper, and the Legislative Counsel (as such rates were increased by prior orders of the President pro tempore and were reduced by section 304 of Public Law 98-51 (97 Stat. 279; 5 U.S.C. 5318 note)) are further increased by 4.0 percent and, as so increased, are rounded in the same manner as is provided in section 5318 of title 5, United States Code. Notwithstanding the provisions of this subsection, an individual occupying a position the annual rate of compensation for which is determined under this subsection shall not be paid at any time, by reason of the promulgation of this Order, at an annual rate in excess of either of the following: (1) the annual rate in effect for positions in level III of the Executive Schedule under section 5314 of title 5, United States Code, or (2) an annual rate of compensation which is $1,000 less than the annual rate of compensation of Senators.

(b) The annual rates of compensation of the Secretary for the Majority and the Secretary for the Minority (as such rates were increased by prior orders of the President pro tempore and were reduced by section 304 of Public Law 98-51 (97 Stat. 279; 5 U.S.C. 5318 note)) are further increased by 4.0 percent and, as so increased, adjusted to the next higher multiple of $1.00. Notwithstanding the provisions of this subsection, an individual occupying a position the annual rate of compensation for which is determined under this subsection shall not be paid at any time, by reason of the promulgation of this Order, at an annual rate of compensation in excess of $500 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in subsection (a) of this section.

(c) The annual rates of compensation of the five Senior Counsels in the Office of Legislative Counsel and the maximum annual rates of compensation of the Assistant Secretary of the Senate, the Parliamentarian, the Financial Clerk, the Assistant to the Majority Leader for Floor Operations, and the Assistant to the Minority Leader for Floor Operations (as such rates were increased by prior orders of the President pro tempore and were reduced by section 304 of Public Law 98-51 (97 Stat. 279; 5 U.S.C. 5318 note)) are further increased by 4.0 percent and, as so increased, adjusted to the next higher multiple of $1.00. Notwithstanding the provisions of this subsection, an individual occupying a position the annual rate of compensation for which is determined under this subsection shall not be paid at any time, by reason of the promulgation of this Order, at an annual rate of compensation in excess of $1,000 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in subsection (a) of this section. The maximum annual rate of compensation for the non-statutory position known as the "Special Deputy to the Federal Elections Commission" shall be equal to the maximum annual rate of compensation for positions specified in the first sentence of this subsection.

(d) The maximum annual rate of compensation of the Director of the Office of Classified National Security Information in the Office of the Secretary of the Senate (as such rate was increased by prior orders of the President pro tempore and was reduced by section 304 of Public Law 98-51 (97 Stat. 279; 5 U.S.C. 5318

note)) is further increased by 4.0 percent and, as so increased, adjusted to the next higher multiple of $1.00. Notwithstanding the provisions of this paragraph, an individual occupying the position the annual rate of compensation for which is determined under this paragraph shall not be paid at any time, by reason of the promulgation of this Order, at an annual rate of compensation in excess of $2,000 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in subsection (a) of this section.

CHAPLAIN'S OFFICE

SEC. 3. The annual rate of compensation of the Chaplain and the maximum annual rate of compensation for the position of Secretary to the Chaplain are increased by 4.0 percent and, as so increased, adjusted to the next higher multiple of $1.00. Notwithstanding the preceding provisions of this section, the Chaplain shall not be paid at any time, by reason of the promulgation of this Order, at an annual rate in excess of the annual rate in effect for positions in level IV of the Executive Schedule under section 5315 of title 5, United States Code.

OFFICES OF THE SENATE

SEC. 4. (a) The following individuals are authorized to increase the annual rates of compensation of the employees specified by 4.0 percent and, as so increased, adjusted to the next higher multiple of $1.00:

(1) the Vice President, for any employee under his jurisdiction;

(2) the President pro tempore, for any employee under his jurisdiction;

(3) the Majority Leader, the Minority Leader, the Majority Whip, and the Minority Whip, for any employee under their respective jurisdictions;

(4) the Majority Leader and the Minority Leader, for the Assistant to the Majority Leader for Floor Operations and the Assistant to the Minority Leader for Floor Operations, respectively (subject to the provisions of section 2(c) of this Order);

(5) the Secretary of the Conference of the Majority and the Secretary of the Conference of the Minority, for any employee under their respective jurisdictions;

(6) the Secretary of the Senate, for any employee under his jurisdiction (subject to the provisions of section 2(c) and (d) of this Order);

(7) the Sergeant at Arms and Doorkeeper, for any employee under his jurisdiction;

(8) the Chaplain, for his secretary;

(9) the Legislative Counsel, subject to the approval of the President pro tempore, for any employee under his jurisdiction (other than the five Senior Counsels);

(10) the Senate Legal Counsel, for any employee under his jurisdiction (subject to the provisions of section 701(b) of the Ethics in Government Act of 1978 [2 U.S.C. 288(b)]);

(11) the Secretary for the Majority and the Secretary for the Minority, for any employee under their respective jurisdictions; and

(12) the Capitol Guide Board, for the Chief Guide, the Deputy Chief Guide, the Assistant Chief Guide, and the Guides of the Capitol Guide Service.

(b) The limitations on the gross compensation which may be paid during a fiscal year to employees in the Offices of the Vice President, the President pro tempore, the Majority Leader, the Minority Leader, the Majority Whip, the Minority Whip, the Secretary of the Senate, the Sergeant at Arms and Doorkeeper, the Secretary of the Conference of the Majority, the Secretary of the Conference of the Minority, the Secretary for the Majority, the Secretary for the Minority, the Conference of the Majority, and the Conference of the Minority are each increased by 4.0 percent and, as so increased, adjusted to the next higher multiple of $1.00.

(c) Except for those officers and employees referred to in section 2 of this Order, no officer or employee within the Office of the Secretary of the Senate and no officer or employee within the Office of the Sergeant at Arms and Doorkeeper shall, for any period of time, be paid gross compensation at an annual rate which is in excess of either of the following: (1) the maximum rate prescribed in section 105(f) of the Legislative Branch Appropriation Act, 1968 [2 U.S.C. 61-1(f)] (as such rate is adjusted in section 7(b)(1) of this Order and prior orders of the President pro tempore and was reduced by section 304 of Public Law 98-51 (97 Stat. 279; 5 U.S.C. 5318 note)), or (2) an annual rate of compensation which is $2,500 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order.

COMMITTEE STAFFS

SEC. 5. (a) Subject to the provisions of section 105 of the Legislative Branch Appropriation Act, 1968 [2 U.S.C. 61-1] (as modified by this Order and section 304 of Public Law 98-51 (97 Stat. 279; 5 U.S.C. 5318 note)), and the other provisions of this Order, the chairman of any standing, special, or select committee of the Senate (including the majority and minority policy committees and the conference majority and the conference minority of the Senate), and the chairman of any joint committee of the Congress whose funds are disbursed by the Secretary of the Senate, are each authorized to increase the annual rate of compensation of any employee of the committee, or any subcommittee thereof, of which he is chairman, by 4.0 percent and, as so increased, adjusted to the next higher multiple of $1.00.

(b)(1) The maximum annual rates of "$61,640", "$63,135", and "$67,275" appearing in section 105(e) of the Legislative Branch Appropriation Act, 1968 [2 U.S.C. 61-1(e)] (as provided in section 5(b)(1) of the Order of the President pro tempore of October 1, 1982), and as reduced by section 304 of Public Law 98-51 (97 Stat. 279; 5 U.S.C. 5318 note), are each further increased by 4.0 percent and, as so increased, adjusted to the next higher multiple of $1.00, and shall be deemed to refer to the figures "$64,106", "$65,661", and "$69,966", respectively.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, any individual occupying a position on the staff of a standing committee of the Senate or the majority or minority policy committee of the Senate to which such rate applies shall not be paid at any time at an annual rate in excess of $5,900, $4,600, and $1,000, respectively, less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, any individual occupying a position on the staff of any special or select committee of the Senate or the conference majority or conference minority of the Senate to which any such rate applies shall not be paid at any time at an annual rate in excess of $5,900, $4,600, and $2,500, respectively, less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, any individual occupying a position on the staff of any joint committee of the Congress whose funds are disbursed by the Secretary of the Senate to which any such rate applies shall not be paid at any time at an annual rate in excess of $5,900, $4,800, and $2,900, respectively, less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order.

SENATORS' OFFICES

SEC. 6. (a) Subject to the provisions of section 105 of the Legislative Branch Appropriation Act, 1968 [2 U.S.C. 61-1] (as modified by this Order and section 304 of Public Law 98-51 (97 Stat. 279; 5 U.S.C. 5318 note)), and the other provisions of this Order, each Senator is authorized to increase the annual rate of compensation of any employee in his office by 4.0 percent and, as so increased, adjusted to the next higher multiple of $1.00.

(b) The table contained in section 105(d)(1) of such Act [2 U.S.C. 61-1(d)(1)] shall be deemed to read as follows:

"$671,733 if the population of his State is less than 2,000,000;

"$691,217 if such population is 2,000,000 but less than 3,000,000;

"$738,180 if such population is 3,000,000 but less than 4,000,000;

"$798,634 if such population is 4,000,000 but less than 5,000,000;

"$848,096 if such population is 5,000,000 but less than 7,000,000;

"$900,056 if such population is 7,000,000 but less than 8,000,000;

"$927,535 if such population is 8,000,000 but less than 9,000,000;

"$956,511 if such population is 9,000,000 but less than 10,000,000;

"$999,979 if such population is 10,000,000 but less than 11,000,000;

"$1,056,934 if such population is 11,000,000 but less than 12,000,000;

"$1,100,401 if such population is 12,000,000 but less than 13,000,000;

"$1,155,858 if such population is 13,000,000 but less than 15,000,000;

"$1,211,316 if such population is 15,000,000 but less than 17,000,000;

"$1,266,772 if such population is 17,000,000 but less than 19,000,000;

"$1,308,239 if such population is 19,000,000 but less than 21,000,000;

"$1,349,707 if such population is 21,000,000 or more.".

(c)(1) The second sentence of section 105(d)(2) of such Act [2 U.S.C. 61-1(d)(2)] (as modified by prior orders of the President pro tempore and section 304 of Public Law 98-51 (97 Stat. 279; 5 U.S.C. 5318 note)) is further modified to read as follows: "The salary of an employee in a Senator's office shall not be fixed under this paragraph at a rate less than $1,251 per annum or in excess of $40,721 per annum except that (i) the salaries of three employees may be fixed at rates of not more than $64,106 per annum, (ii) the salaries of five employees may be fixed at rates of not more than $64,704 per annum, and (iii) the salary of one employee may be fixed at a rate of not more than $68,172 per annum.".

(2) Notwithstanding the modification made by paragraph (1) of this subsection, any individual occupying a position to which a rate referred to in clause (i), (ii), or (iii) of such modification applies shall not be paid at any time at an annual rate in excess of $5,900, $5,400, and $2,500, respectively, less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order.

(d) The figures "$200,328" and "$66,776" appearing in subsections (a), (b)(1), and (b)(2) of section 111 of the Legislative Branch Appropriation Act, 1978 [2 U.S.C. 61-1 note], (as provided in section 6(d) of the Order of the President pro tempore of October 1, 1982), shall be deemed to refer to the figures "$208,341" and "$69,447", respectively.

GENERAL LIMITATION

SEC. 7. (a) The figure "$1,202" appearing in section 105(f) of the Legislative Branch Appropriation Act, 1968 [2 U.S.C. 61-1(f)] (as provided in section 7(a) of the Order of the President pro tempore of October 1, 1982), shall be deemed to refer to the figure "$1,251".

(b)(1) The maximum annual rate of compensation of "$65,550" appearing in such section (as provided in section 7(b)(1) of such Order of October 1, 1982, and as reduced by section 304 of Public Law 98-51 (97 Stat. 279; 5 U.S.C. 5318 note)) is further increased by 4.0 percent and, as so increased, adjusted to the next higher multiple of $1.00, and shall be deemed to refer to the figure "$68,172".

(2) Notwithstanding the provisions of paragraph (1) of this subsection, any individual occupying a position to which such rate applies shall not be paid at any time at an annual rate in excess of $2,500 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order.

NOTIFYING DISBURSING OFFICE OF INCREASES

SEC. 8. In order for an employee to receive the increase in his annual rate of compensation pursuant to section 4, 5, or 6, the individual designated to authorize such increase for that employee shall notify the Disbursing Office of the Senate in writing that he authorizes such increase for that employee and the date (prescribed in accordance with section 105(a)(2) of the Legislative Branch Appropriation Act, 1968 [2 U.S.C. 61-1(a)(2)]) on which such increase is to be effective. Such increase shall become effective as provided in section 105(a)(2) of the Legislative Branch Appropriation Act, 1968, except that if the notice required by the preceding sentence is given within five days (not counting Saturdays, Sundays, or holidays) after the date on which this Order is issued, such increase may become effective on January 1, 1984.

DUAL COMPENSATION

SEC. 9. The figure "$15,860" contained in section 5533(c)(1) of title 5, United States Code (as provided in section 9 of the Order of the President pro tempore of October 1, 1982) shall be deemed to refer to the figure "$16,495".

OFFICE OF THE SENATE LEGAL COUNSEL

SEC. 10. (a) Notwithstanding any other provision of law—

(1) the Senate Legal Counsel shall not be paid at any time at an annual rate of compensation which is in excess of the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order, and

(2) the Deputy Senate Legal Counsel shall not be paid at any time at an annual rate of compensation which is in excess of $1,000 less than the annual rate of compensation which is now or may hereafter be in effect for those positions referred to in section 2(a) of this Order.

(b) The foregoing provisions of this Order, other than subsection (a) of this section, shall not be applicable to the annual rate of compensation of the Senate Legal Counsel or the Deputy Senate Legal Counsel.

EFFECTIVE DATE

SEC. 11. Sections 1 through 10 of this Order are effective January 1, 1984.

STROM THURMOND,
President pro tempore.

§ 60g–2. Lyndon Baines Johnson congressional interns

(a) Hiring authority of House Members, Delegates, and Resident Commissioners; allowance for payment of compensation

Until otherwise provided by law and notwithstanding any other provision of law, each Member of, Delegate to, and Resident Commissioner in, the House of Representatives is authorized to hire for two months in any year one additional employee to be known as a Lyndon Baines Johnson congressional intern in honor of the former President. Each such intern shall be a student or a teacher and certified as such under subsection (b) of this section. Each such Member, Delegate, or Resident Commissioner shall have available for payment of compensation to such intern a total allowance of $1,000, to be payable to such intern at a rate not to exceed $500 per month, out of the contingent fund of the House. Such intern and such allowance shall be in addition to all personnel and allowances made available to such Member, Delegate, or Resident Commissioner under other provisions of law or other authority.

(b) Certification of intern status; filing

No person shall be paid compensation as a Lyndon Baines Johnson congressional intern who does not have on file with the Clerk of the House of Representatives, at all times during the period of his employment as such intern, an appropriate certificate which is applicable to his intern status, as described below:

(1) if the intern is a student, a certificate that such intern was during the academic year immediately preceding his employment, a bona fide student at a college, university, or similar institution of higher learning; or

(2) if the intern is a teacher, a certificate that such intern was, in the year immediately preceding his employment, a bona fide teacher in government or social studies at a secondary school or a postsecondary school.

(c) Regulations by Committee on House Administration

The Committee on House Administration shall prescribe such regulations as may be necessary to carry out this section.

(Pub. L. 93–245, ch. VI, § 600, Jan. 3, 1974, 87 Stat. 1079.)

CODIFICATION

Section is based on section 1 of House Resolution No. 420, Ninety-third Congress, Sept. 18, 1973, which was enacted into permanent law by Pub. L. 93–245.

PRIOR PROVISIONS

A prior section 60g–2, based on House Resolution No. 416, Eighty-ninth Congress, June 16, 1965, as enacted into permanent law by Pub. L. 89–545, § 103, Aug. 27, 1966, 80 Stat. 369, which related to employment of student congressional interns by Members of the House of Representatives and the Resident Commissioner from Puerto Rico, was repealed by section 2 of House Resolution No. 420, Ninety-third Congress, Sept. 18, 1973, as enacted into permanent law by Pub. L. 93–245, ch. VI, § 600, Jan. 3, 1974, 87 Stat. 1079, which provided that: "H. Res. 416, Eighty-ninth Congress, adopted June 16, 1965, and enacted as permanent law by section 103 of the Legislative Branch Appropriation Act, 1967 (80 Stat. 369; Public Law 89–545; 2 U.S.C. 60g–2), shall not be effective in the Ninety-third Congress on and after the effective date specified in sction 3 of this resolution; and, effective on the date of enactment of the provisions of this resolution as permanent law, such H. Res. 416, Eighty-ninth Congress, is repealed."

EFFECTIVE DATE

Section 3 of House Resolution No. 420, Ninety-third Congress, as enacted into permanent law by Pub. L. 93–245, provided that: "The provisions of this resolution [enacting this section and repealing House Resolution No. 416, Eighty-ninth Congress, formerly classified to this section] shall become effective on January 1, 1974."

§ 60j. Longevity compensation

INAPPLICABILITY OF SECTION TO CERTAIN EMPLOYEES ON AND AFTER OCTOBER 1, 1983

This section not to apply, on or after Oct. 1, 1983, to any individual whose pay is disbursed by the Secretary of the Senate except for individuals entitled to longevity compensation prior to Oct. 1, 1983, on the basis of service performed prior to such date, see section 60j–4 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 60j–1, 60j–2, 60j–4, 61–1 of this title.

§ 60j–1. Capitol Police longevity compensation

INAPPLICABILITY OF SECTION TO CERTAIN EMPLOYEES ON AND AFTER OCTOBER 1, 1983

Section 60j of this title, referred to in text, not to apply, on or after Oct. 1, 1983, to any individual whose pay is disbursed by the Secretary of the Senate except for individuals entitled to longevity compensation prior to Oct. 1, 1983, on the basis of service performed prior to such date, see section 60j–4 of this title.

§ 60j–2. Longevity compensation for telephone operators on United States telephone exchange and members of Capitol Police paid by Clerk of House

INAPPLICABILITY OF SECTION TO CERTAIN EMPLOYEES ON AND AFTER OCTOBER 1, 1983

Section 60j of this title, referred to in text, not to apply, on or after Oct. 1, 1983, to any individual whose pay is disbursed by the Secretary of the Senate except for individuals entitled to longevity compensation prior to Oct. 1, 1983, on the basis of service performed prior to such date, see section 60j–4 of this title.

§ 60j–4. Longevity compensation not applicable to individuals paid by Secretary of Senate; savings provision

Section 60j of this title on or after October 1, 1983 shall not apply to any individual whose pay is disbursed by the Secretary of the Senate; except that, any individual who prior to such date was entitled to longevity compensation under such section on the basis of service performed prior to such date shall continue to be entitled to such compensation, but no individ-

ual shall accrue any longevity compensation on the basis of service performed on or after such date.

(Pub. L. 98-51, title I, § 107, July 14, 1983, 97 Stat. 267.)

CODIFICATION

Section is from the Congressional Operations Appropriation Act, 1984.

§ 61-1. Gross rate of compensation of employees paid by Secretary of Senate

(a) Annual rate; certification

[*See main edition for text of (1)*]

(2) New or changed rates of compensation (other than changes in rates which are made by law) of any such employee (other than an employee who is an elected officer of the Senate) shall be certified in writing to the Disbursing Office of the Senate (and, for purposes of this paragraph, a new rate of compensation refers to compensation in the case of an appointment, transfer from one Senate appointing authority to another, or promotion by an appointing authority to a position the compensation for which is fixed by law). In the case of an appointment or other new rate of compensation, the certification must be received by such office on or before the day the rate of new compensation is to become effective. In any other case, the changed rate of compensation shall take effect on the first day of the month in which such certification is received (if such certification is received within the first ten days of such month), on the first day of the month after the month in which such certification is received (if the day on which such certification is received is after the twenty-fifth day of the month in which it is received), and on the sixteenth day of the month in which such certification is received (if such certification is received after the tenth day and before the twenty-sixth day of such month). Notwithstanding the preceding sentence, if the certification for a changed rate of compensation for an employee specifies an effective date of such change, such change shall become effective on the date so specified, but only if the date so specified is the first or sixteenth day of a month and is after the effective date prescribed in the preceding sentence; and, notwithstanding such sentence and the preceding provisions of this sentence, any changed rate of compensation for a new employee or an employee transferred from one appointing authority to another shall take effect on the date of such employee's appointment or transfer (as the case may be) if such date is later than the effective date for such changed rate of compensation as prescribed by such sentence.

[*See main edition for text of (b) and (c)*]

(d) Compensation of employees in office of Senator; limitation; titles of positions

(1) The aggregate of gross compensation paid employees in the office of a Senator shall not exceed during each fiscal year the following:

$695,244 if the population of his State is less than 2,000,000;

$715,410 if such population is 2,000,000 but less than 3,000,000;

$764,017 if such population is 3,000,000 but less than 4,000,000;

$826,587 if such population is 4,000,000 but less than 5,000,000;

$877,780 if such population is 5,000,000 but less than 7,000,000;

$931,558 if such population is 7,000,000 but less than 8,000,000;

$959,999 if such population is 8,000,000 but less than 9,000,000;

$989,989 if such population is 9,000,000 but less than 10,000,000;

$1,034,979 if such population is 10,000,000 but less than 11,000,000;

$1,093,927 if such population is 11,000,000 but less than 12,000,000;

$1,138,916 if such population is 12,000,000 but less than 13,000,000;

$1,196,314 if such population is 13,000,000 but less than 15,000,000;

$1,253,713 if such population is 15,000,000 but less than 17,000,000;

$1,311,110 if such population is 17,000,000 but less than 19,000,000;

$1,354,028 if such population is 19,000,000 but less than 21,000,000;

$1,396,947 if such population is 21,000,000 or more.

In the event that the term of office of a Senator begins after the first month of a fiscal year or ends (except by reason of death, resignation, or expulsion) before the last month of a fiscal year, the aggregate amount available for gross compensation of employees in the office of such Senator for such year shall be the applicable amount contained in the table included in the preceding sentence, divided by 12, and multiplied by the number of months in such year which are included in the Senator's term of office, counting any fraction of a month as a full month.

(2) Within the limits prescribed by paragraph (1) of this subsection, Senators may fix the number and the rates of compensation of employees in their respective offices. The salary of an employee in a Senator's office shall not be fixed under this paragraph at a rate less than $1,295 or in excess of $70,559 per annum. A Senator may establish such titles for positions in his office as he may desire to designate, by written notification to the disbursing office of the Senate.

(e) Gross rate of compensation of employee of committee of Senate employed by joint committee, select committee, or standing committee

(1), (2) Repealed. Pub. L. 96-304, title I, § 112(b)(1), July 8, 1980, 94 Stat. 892.

(3) No employee of a committee of the Senate shall be paid at a gross rate in excess of $70,064, in case of an employee of a joint committee the expenses of which are paid from the contingent fund of the Senate, $70,559, in case of an employee of a select committee (including the conference majority and conference minority of the Senate), or $72,415, in case of an employee of any standing committee (including the majority and minority policy committees) of the

Senate. For the purpose of this paragraph, an employee of a subcommittee shall be considered to be an employee of the full committee.

(f) General limitation

No officer or employee whose compensation is disbursed by the Secretary of the Senate shall be paid gross compensation at a rate less than $1,295 or in excess of $70,559 unless expressly authorized by law.

[See main edition for text of (g)]

(As amended Pub. L. 98-181, title I, § 1203(a), Nov. 30, 1983, 97 Stat. 1289; Pub. L. 98-367, title I, §§ 3(a), 12(a), (b), July 17, 1984, 98 Stat. 475, 476.)

AMENDMENTS

1985—Subsec. (d)(1). The table was revised upward, effective Jan. 1, 1985, by section 6(b) of Salary Directive of President pro tempore of the Senate, Jan. 4, 1985, set out as a note under section 60a-1 of this title. Prior to such upward revision the table was set out as follows:

"$671,733 if the population of his State is less than 2,000,000;

"$691,217 if such population is 2,000,000 but less than 3,000,000;

"$738,180 if such population is 3,000,000 but less than 4,000,000;

"$798,634 if such population is 4,000,000 but less than 5,000,000;

"$848,096 if such population is 5,000,000 but less than 7,000,000;

"$900,056 if such population is 7,000,000 but less than 8,000,000;

"$927,535 if such population is 8,000,000 but less than 9,000,000;

"$956,511 if such population is 9,000,000 but less than 10,000,000;

"$999,979 if such population is 10,000,000 but less than 11,000,000;

"$1,056,934 if such population is 11,000,000 but less than 12,000,000;

"$1,100,401 if such population is 12,000,000 but less than 13,000,000;

"$1,155,858 if such population is 13,000,000 but less than 15,000,000;

"$1,211,316 if such population is 15,000,000 but less than 17,000,000;

"$1,266,772 if such population is 17,000,000 but less than 19,000,000;

"$1,308,239 if such population is 19,000,000 but less than 21,000,000;

"$1,349,707 if such population is 21,000,000 or more."

Subsec. (d)(2). Figures "$1,251" and "$68,172" to be deemed to refer, effective Jan. 1, 1985, to "$1,295" and "$70,559", respectively, see section 6(c)(1) of the Salary Directive of the President pro tempore of the Senate, Jan. 4, 1985, set out as a note under section 60a-1 of this title.

Subsec. (e)(3). Figures "$67,694", "$68,172", and "$69,966" to be deemed to refer, effective Jan. 1, 1985, to the figures "$70,064", "$70,559", and "$72,415", respectively, see section 5(b)(1) of Salary Directive of President pro tempore of the Senate, Jan. 4, 1985, set out as a note under section 60a-1 of this title.

Subsec. (f). Figures "$1,251" and "$68,172" to be deemed to refer, effective Jan. 1, 1985, to the figures "$1,295" and "$70,559", respectively, see section 7(a), (b)(1) of the Salary Directive of the President pro tempore of the Senate, Jan. 4, 1985, set out as a note under section 60a-1 of this title.

1984—Subsec. (d)(1). Pub. L. 98-367, § 3(a), struck out subpar. (A) designation, substituted "In the event that the term of office of a Senator begins after the first month of a fiscal year or ends (except by reason of death, resignation, or expulsion) before the last month of a fiscal year, the aggregate amount available for gross compensation of employees in the office of such Senator for such year shall be the applicable amount contained in the table included in the preceding sentence, divided by 12, and multiplied by the number of months in such year which are included in the Senator's term of office, counting any fraction of a month as a full month" for "In any fiscal year in which a Senator does not hold the office of Senator at least part of each month of that year, the aggregate amount available for gross compensation of employees in the office of that Senator shall be the applicable amount contained in the table included in this subparagraph, divided by 12, and multiplied by the number of months the Senator holds such office during that fiscal year, counting any fraction of a month as a full month", and struck out subpar. (B), which provided that the aggregate of payments of gross compensation made to employees in the office of a Senator during each fiscal year would not exceed at any time during such fiscal year one-twelfth of the applicable amount contained in the table included in former subpar. (A) multiplied by the number of months (counting a fraction of a month as a month) elapsing from the first month in that fiscal year in which the Senator held the office of Senator through the end of the current month for which the payment of gross compensation was to be made.

Subsec. (d)(1)(A). The table was revised upward, effective Jan. 1, 1984, by section 6(b) of Salary Directive of President pro tempore of the Senate, Dec. 20, 1983, set out as a note under section 60a-1 of this title. Prior to such upward revision the table was set out as follows:

"$645,897 if the population of his State is less than 2,000,000;

"$664,631 if such population is 2,000,000 but less than 3,000,000;

"$709,788 if such population is 3,000,000 but less than 4,000,000;

"$767,917 if such population is 4,000,000 but less than 5,000,000;

"$815,476 if such population is 5,000,000 but less than 7,000,000;

"$865,438 if such population is 7,000,000 but less than 8,000,000;

"$891,860 if such population is 8,000,000 but less than 9,000,000;

"$919,722 if such population is 9,000,000 but less than 10,000,000;

"$961,518 if such population is 10,000,000 but less than 11,000,000;

"$1,016,282 if such population is 11,000,000 but less than 12,000,000;

"$1,058,077 if such population is 12,000,000 but less than 13,000,000;

"$1,111,401 if such population is 13,000,000 but less than 15,000,000;

"$1,164,726 if such population is 15,000,000 but less than 17,000,000;

"$1,218,050 if such population is 17,000,000 but less than 19,000,000;

"$1,257,922 if such population is 19,000,000 but less than 21,000,000;

"$1,297,795 if such population is 21,000,000 or more."

Subsec. (d)(2). Pub. L. 98-367, § 12(a), substituted "The salary of an employee in a Senator's office shall not be fixed under this paragraph at a rate less than $1,251 or in excess of $68,172 per annum" for "The salary of an employee in a Senator's office shall not be fixed under this paragraph at a rate less than $1,251 per annum or in excess of $40,721 per annum except that (i) the salaries of three employees may be fixed at rates of not more than $64,106 per annum, (ii) the salaries of five employees may be fixed at rates of not more than $64,704 per annum, and (iii) the salary of one employee may be fixed at a rate of not more than $68,172 per annum".

Figures "$1,202", "$39,154", "$71,101", "$68,938", and "$72,061" to be deemed to refer, effective Jan. 1, 1984, to "$1,251", "$40,721", "$64,106", "$64,704", and "$68,172", respectively, see section 6(c)(1) of Salary Directive of President pro tempore of the Senate, Dec. 20, 1983, set out as a note under section 60a-1 of this title.

Subsec. (e)(3). Pub. L. 98-367, § 12(b), substituted "No employee of a committee of the Senate shall be paid at a gross rate in excess of $67,694, in case of an employee of a joint committee the expenses of which are paid from the contingent fund of the Senate, $68,172, in case of an employee of a select committee (including the conference majority and conference minority of the Senate), or $69,966, in case of an employee of any standing committee (including the majority and minority policy committees) of the Senate" for "No employee of any standing or select committee of the Senate (including the majority and minority policy committees and the conference majority and conference minority of the Senate), or of any joint committee the expenses of which are paid from the contingent fund of the Senate, shall be paid at a gross rate in excess of $64,106 per annum, except that (A) two employees of any such committee (other than the Committee on Appropriations), who are otherwise authorized to be paid at such rate, may be paid at gross rates not in excess of $65,661 per annum, and four such employees may be paid at gross rates not in excess of $69,966 per annum; and (B) sixteen employees of the Committee on Appropriations who are otherwise authorized to be paid at such rate, may be paid at gross rates not in excess of $65,661 per annum, and five such employees may be paid at gross rates not in excess of $69,966 per annum".

Figures "$71,101", "$73,983", and "$78,066" (as reduced to "$61,640", "$63,135", and "$67,275", respectively, by section 304 of Pub. L. 98-51, 5 U.S.C. 5318 note) to be deemed to refer, effective Jan. 1, 1984, to the figures "$64,106", "$65,661", and "$69,966", respectively, see section 5(b)(1) of Salary Directive of President pro tempore of the Senate, Dec. 20, 1983, set out as a note under section 60a-1 of this title.

Subsec. (f). Figure "$1,202" to be deemed to refer, effective Jan. 1, 1984, to the figure "$1,251", see section 7(a) of Salary Directive of President pro tempore of the Senate, Dec. 20, 1983, set out as a note under section 60a-1 of this title.

Figure "$78,066" (as reduced to "$65,550" by section 304 of Pub. L. 98-51, 5 U.S.C. 5318 note) to be deemed to refer, effective Jan. 1, 1984, to the figure "$68,172", see section 7(b)(1) of Salary Directive of President pro tempore of the Senate, Dec. 20, 1983, set out as a note under section 60a-1 of this title.

1983—Subsec. (a)(2). Pub. L. 98-181 amended par. (2) generally. Prior to amendment par. (2) read: "New or changed rates of compensation of any such employees shall be certified in writing to the disbursing office of the Senate on or before the day on which they are to become effective, except that in the case of any change, other than an appointment, to become effective on or after the first day and prior to the tenth day of any month, such certification may be made at any time not later than the tenth day of such month."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 3(b) of Pub. L. 98-367 provided that: "The amendments made by subsection (a) of this section [amending subsec. (d)(1) of this section] shall be effective with respect to fiscal years beginning after September 30, 1984."

Section 12(c) of Pub. L. 98-367 provided that: "The amendments made by subsection (a) of this section [amending subsec. (d)(2) of this section] shall take effect on October 1, 1984."

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1203(b) of Pub. L. 98-181 provided that: "The amendment made by subsection (a) [amending subsec. (a)(2) of this section] shall be applicable in the case of new or changed rates of compensation which are certified to the Disbursing Office of the Senate on or after January 1, 1984."

AGGREGATE OF GROSS COMPENSATION FOR EMPLOYEES IN OFFICE OF SENATOR FOR EACH FISCAL YEAR; INCREASE IN AMOUNT; REDUCTION IN AMOUNTS FOR COMMITTEE CHAIRMEN, RANKING MINORITY MEMBERS, ETC.

Section 111(a), (b) of Pub. L. 95-94, as amended by Pub. L. 95-240, title II, § 206, Mar. 7, 1978, 92 Stat. 117, eff. Oct. 1, 1977, provided that:

"(a) Except as provided in subsection (b), the aggregate of the gross compensation which may be paid to employees in the office of a Senator during each fiscal year under section 105(d) of the Legislative Branch Appropriation Act, 1968, as amended and modified (2 U.S.C. 61-1(d)), is increased by $215,634.

"(b)(1) In the case of a Senator who is the chairman or ranking minority member of any committee, or of any subcommittee that receives funding to employ staff assistance separately from the funding authority for staff of the full committee, the amount referred to in subsection (a) shall be reduced by $71,878 for each such committee or subcommittee.

"(2) In the case of a Senator who is authorized by a committee, a subcommittee thereof, or the chairman of a committee or subcommittee, as appropriate, to recommend or approve the appointment to the staff of such committee or subcommittee of one or more individuals for the purpose of assisting such Senator solely and directly in his duties as a member of such committee or subcommittee, the amount referred to in subsection (a) shall be reduced, for each such committee or subcommittee, by an amount equal to (A) the aggregate annual gross rates of compensation of all staff employees of that committee or subcommittee (i) whose appointment is made, approved, or recommended and (ii) whose continued employment is not disapproved by such Senator, if such employees are employed for the purpose of assisting such Senator solely and directly in his duties as a member of such committee or subcommittee thereof as the case may be, or (B) $71,878, whichever is less.

"(3) In the case of a Senator who is serving on more than three committees, one of the committees on which he is serving, as selected by him, shall not be taken into account for purposes of paragraphs (1) and (2). Any such Senator shall notify the Secretary of the Senate of the committee selected by him under this paragraph."

[The figures "$215,634" and "$71,878" appearing in subsecs. (a), (b)(1), (2) were in the original "$149,286" and "$49,762", respectively, and were increased by the following Salary Directives of the President pro tempore of the Senate, set out as notes under section 60a-1 of this title: Oct. 9, 1978, § 6(d); Oct. 13, 1979, § 6(d); Oct. 1, 1980, § 6(d); Oct. 5, 1981, as amended Dec. 15, 1981, § 6(d); Oct. 1, 1982, § 6(d); Dec. 20, 1983, as amended May 2, 1984, § 6(d); Jan. 4, 1985, § 6(d).]

LIMITATION ON 1985 INCREASES IN MAXIMUM ANNUAL RATES TO STAFF MEMBERS OF STANDING, SPECIAL, AND SELECT COMMITTEES OF SENATE AND JOINT COMMITTEES OF CONGRESS WHOSE FUNDS ARE DISBURSED BY SECRETARY OF SENATE

Section 5(b)(2)-(4) of Salary Directive of President pro tempore of the Senate, Jan. 4, 1985, set out as a note under section 60a-1 of this title, provided that, notwithstanding the provisions of section 5(b)(1) of that Order, any individual occupying a position on the staff of a standing committee of the Senate or the majority or minority policy committee of the Senate to which such rate applied should not be paid at any time at an annual rate in excess of $1,000 less than the annual rate of compensation which was then or might thereafter, be in effect for those positions referred to

in section 2(a) of that Order, that notwithstanding the provisions of section 5(b)(1) of that Order, any individual occupying a position on the staff of any special or select committee of the Senate or the conference majority or conference minority of the Senate to which any such rate applied should not be paid at any time at an annual rate in excess of $2,500 less than the annual rate of compensation which was then or might thereafter be in effect for those positions referred to in section 2(a) of that Order, and that notwithstanding the provisions of section 5(b)(1) of that Order, any individual occupying a position on the staff of any joint committee of the Congress whose funds are disbursed by the Secretary of the Senate to which any such rate applied should not be paid at any time at an annual rate in excess of $2,900 less than the annual rate of compensation which was then or might thereafter be in effect for those positions referred to in section 2(a) of that Order.

LIMITATION ON 1984 INCREASES IN MAXIMUM ANNUAL RATES TO STAFF MEMBERS OF STANDING, SPECIAL, AND SELECT COMMITTEES OF SENATE AND JOINT COMMITTEES OF CONGRESS WHOSE FUNDS ARE DISBURSED BY SECRETARY OF SENATE

Section 5(b)(2)-(4) of Salary Directive of President pro tempore of the Senate, Dec. 20, 1983, set out as a note under section 60a-1 of this title, provided that, notwithstanding the provisions of section 5(b)(1) of that Order, any individual occupying a position on the staff of a standing committee of the Senate or the majority or minority policy committee of the Senate to which such rate applied should not be paid at any time at an annual rate in excess of $5,900, $4,600, and $1,000, respectively, less than the annual rate of compensation which was then or might thereafter, be in effect for those positions referred to in section 2(a) of that Order, that notwithstanding the provisions of section 5(b)(1) of that Order, any individual occupying a position on the staff of any special or select committee of the Senate or the conference majority or conference minority of the Senate to which any such rate applied should not be paid at any time at an annual rate in excess of $5,900, $4,600, and $2,500, respectively, less than the annual rate of compensation which was then or might thereafter be in effect for those positions referred to in section 2(a) of that Order, and that notwithstanding the provisions of section 5(b)(1) of that Order, any individual occupying a position on the staff of any joint committee of the Congress whose funds are disbursed by the Secretary of the Senate to which any such rate applied should not be paid at any time at an annual rate in excess of $5,900, $4,800, and $2,900, respectively, less than the annual rate of compensation which was then or might thereafter be in effect for those positions referred to in section 2(a) of that Order.

LIMITATION ON 1985 INCREASES IN MAXIMUM ANNUAL RATES TO EMPLOYEES IN OFFICES OF SENATORS

Section 6(c)(2) of Salary Directive of President pro tempore of the Senate, Jan. 4, 1985, set out as a note under section 60a-1 of this title, provided that, notwithstanding the modification made by section 6(c)(1) of that Order any individual occupying a position in a Senator's office should not be paid at any time at an annual rate in excess of $2,500 less than the annual rate of compensation which was then or might thereafter be in effect for those positions referred to in section 2(a) of that Order.

LIMITATION ON 1984 INCREASES IN MAXIMUM ANNUAL RATES TO EMPLOYEES IN OFFICES OF SENATORS

Section 6(c)(2) of Salary Directive of President pro tempore of the Senate, Dec. 20, 1983, set out as a note under section 60a-1 of this title, provided that, notwithstanding the modification made by section 6(c)(1) of that Order any individual occupying a position to which a rate referred to in clause (i), (ii), or (iii) of such modification applied should not be paid at any time at an annual rate in excess of $5,900, $5,400, and $2,500, respectively, less than the annual rate of compensation which was then or might thereafter be in effect for those positions referred to in section 2(a) of that Order.

LIMITATION ON 1985 INCREASE IN MAXIMUM ANNUAL RATE TO OFFICERS OR EMPLOYEES PAID BY SECRETARY OF SENATE

Section 7(b)(2) of Salary Directive of President pro tempore of the Senate, Jan. 4, 1985, set out as a note under section 60a-1 of this title, provided that, notwithstanding the provisions of section 7(b)(1) of that Order, any individual occupying a position to which such rate applied should not be paid at any time at an annual rate in excess of $2,500 less than the annual rate of compensation which was then or might thereafter be in effect for those positions referred to in section 2(a) of that Order.

LIMITATION ON 1984 INCREASE IN MAXIMUM ANNUAL RATE TO OFFICERS OR EMPLOYEES PAID BY SECRETARY OF SENATE

Section 7(b)(2) of Salary Directive of President pro tempore of the Senate, Dec. 20, 1983, set out as a note under section 60a-1 of this title, provided that, notwithstanding the provisions of section 7(b)(1) of that Order, any individual occupying a position to which such rate applied should not be paid at any time at an annual rate in excess of $2,500 less than the annual rate of compensation which was then or might thereafter be in effect for those positions referred to in section 2(a) of that Order.

INCREASE IN ALLOWANCES FOR ADMINISTRATIVE AND CLERICAL ASSISTANCE TO SENATORS—1985

Pub. L. 99-88, title I, § 191, Aug. 15, 1985, 99 Stat. 348, provided that: "Effective October 1, 1984, the allowance for administrative and clerical assistance of each Senator from the State of Missouri is increased to that allowed Senators from States having a population of five million but less than seven million, the population of said State having exceeded five million inhabitants."

INCREASE IN ALLOWANCES FOR ADMINISTRATIVE AND CLERICAL ASSISTANCE TO SENATORS—1983

Section 9 of Pub. L. 98-367 provided that: "Effective October 1, 1983, the allowance for administration and clerical assistance of each Senator from the State of Arizona is increased to that allowed to Senators from States having population of three million but less than four million, the population of such State having exceeded three million inhabitants."

INCREASE IN ALLOWANCES FOR ADMINISTRATIVE AND CLERICAL ASSISTANCE TO SENATORS—1982

Pub. L. 98-63, title I, § 901, July 30, 1983, 97 Stat. 335, provided that:

"(a) Effective October 1, 1982, the allowance for administrative and clerical assistance of each Senator from the State of Texas is increased to that allowed to Senators from States having a population of fifteen million but less than seventeen million, the population of said State having exceeded fifteen million inhabitants.

"(b) Effective October 1, 1982, the allowance for administrative and clerical assistance of each Senator from the Sate of Colorado is increased to that allowed to Senators from States having a population of three million but less than four million, the population of said State having exceeded three million inhabitants."

§ 61-1b. Availability of appropriations during first three months of any fiscal year for aggregate of payments of gross compensation made to employees from Senate appropriation account for "Salaries, Officers and Employees"

At no time during the first three months of any fiscal year (commencing with the fiscal year which begins October 1, 1984) shall the aggregate of payments of gross compensation made to employees out of any line item appropriation within the Senate appropriation account for "Salaries, Officers and Employees" (other than the line item appropriations, within such account for "Administrative, clerical, and legislative assistance to Senators" and for "Agency contributions") exceed twenty-five per centum of the total amount available for such line item appropriations for such fiscal year.

(Pub. L. 98-367, title I, § 4, July 17, 1984, 98 Stat. 475.)

CODIFICATION

Section is from the Congressional Operations Appropriation Act, 1985.

§ 61a-9a. Travel expenses of Secretary of Senate; advancement of travel funds to designated employees

For the purpose of carrying out his duties, the Secretary of the Senate is authorized to incur official travel expenses. The Secretary of the Senate is authorized to advance, in his discretion, to any designated employee under his jurisdiction, such sums as may be necessary, not exceeding $1,000, to defray official travel expenses in assisting the Secretary in carrying out his duties. Any such employee shall, as soon as practicable, furnish to the Secretary a detailed voucher for such expenses incurred and make settlement with respect to any amount so advanced. Payments to carry out the provisions of this section shall be made from funds included in the appropriation "Miscellaneous Items" under the heading "Contingent Expenses of the Senate" upon vouchers approved by the Secretary of the Senate.

(As amended Pub. L. 98-367, title I, § 1, July 17, 1984, 98 Stat. 474.)

AMENDMENTS

1984—Pub. L. 98-367 struck out provision that travel expenses could not exceed $10,000 during any fiscal year.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1 of Pub. L. 98-367 provided in part that the amendment by Pub. L. 98-367 is effective with respect to fiscal years beginning on or after Oct. 1, 1983.

§ 61a-11. Abolition of statutory positions in Office of Secretary of Senate; Secretary's authority to establish and fix compensation for positions

INCREASES IN COMPENSATION

Increases in compensation for Senate officers and employees under authority of Federal Pay Comparability Act of 1970 (Pub. L. 91-656), see Salary Directives of President pro tempore of the Senate, set out as notes under section 60a-1 of this title.

§ 61e-4. Designation by Sergeant at Arms and Doorkeeper of Senate of persons to approve vouchers for payment of moneys

The Sergeant at Arms and Doorkeeper of the Senate (hereinafter in this section referred to as the "Sergeant at Arms") may designate one or more employees in the Office of the Sergeant at Arms and Doorkeeper of the Senate to approve, on his behalf, all vouchers, for payment of moneys, which the Sergeant at Arms is authorized to approve. Whenever the Sergeant at Arms makes a designation under the authority of the preceding sentence, he shall immediately notify the Committee on Rules and Administration in writing of the designation, and thereafter any approval of any voucher, for payment of moneys, by an employee so designated shall (until such designation is revoked and the Sergeant at Arms notifies the Committee on Rules and Administration in writing of the revocation) be deemed and held to be approved by the Sergeant at Arms for all intents and purposes.

(Pub. L. 98-181, title I, § 1201, Nov. 30, 1983, 97 Stat. 1289.)

CODIFICATION

Section is from the Supplemental Appropriations Act, 1984.

§ 61f-7. Abolition of statutory positions in Office of Sergeant at Arms and Doorkeeper of Senate; authority to establish and fix compensation for positions

INCREASES IN COMPENSATION

Increases in compensation for Senate officers and employees under authority of the Federal Pay Comparability Act of 1970 (Pub. L. 91-656), see Salary Directives of President pro tempore of the Senate, set out as notes under section 60a-1 of this title.

§ 61f-8. Use by Sergeant at Arms and Doorkeeper of Senate of individual consultants or organizations, and department and agency personnel

For each fiscal year (beginning with the fiscal year which ends September 30, 1982), the Sergeant at Arms and Doorkeeper of the Senate is hereby authorized to expend from the contingent fund of the Senate an amount not to exceed $210,000 for:

[See main edition for text of (1) and (2)]

Payments made under this section shall be made upon vouchers approved by the Sergeant at Arms and Doorkeeper of the Senate.

(As amended Pub. L. 98-367, title I, § 7, July 17, 1984, 98 Stat. 475.)

AMENDMENTS

1984—Pub. L. 98-367 substituted "$210,000" for "$60,000".

§ 61f-9. Employment of personnel by Sergeant at Arms and Doorkeeper of Senate at daily rates of compensation; authorization; limitation on amount of compensation

The Sergeant at Arms and Doorkeeper of the Senate, in carrying out the duties of his office,

is authorized to employ personnel at daily rates of compensation; no individual so employed shall be paid at a daily rate of compensation which is in excess of the per diem equivalent of the highest gross rate of annual compensation which may be paid to employees of a standing committee of the Senate; and payments under authority of this section shall be made from the account, within the contingent fund of the Senate, for the "Sergeant at Arms and Doorkeeper of the Senate", upon vouchers approved by the Sergeant at Arms and Doorkeeper of the Senate.

(Pub. L. 98-367, title I, § 6, July 17, 1984, 98 Stat. 475.)

CODIFICATION

Section is from the Congressional Operations Appropriation Act, 1985.

§ 61g-6. Payment of expenses of Conference of Majority and Conference of Minority from Senate contingent fund

For each fiscal year (beginning with the fiscal year which ends September 30, 1982) there is authorized to be expended from the contingent fund of the Senate an amount, not in excess of $40,000, for the Conference of the Majority and an equal amount for the Conference of the Minority. Payments under this section shall be made only for expenses actually incurred by such a Conference in carrying out its functions, and shall be made upon certification and documentation of the expenses involved, by the Chairman of the Conference claiming payment hereunder and upon vouchers approved by such Chairman and by the Committee on Rules and Administration, except that vouchers shall not be required for payment of long-distance telephone calls.

(As amended Pub. L. 99-151, title I, § 1, Nov. 13, 1985, 99 Stat. 794.)

AMENDMENTS

1985—Pub. L. 99-151 added ", except that vouchers shall not be required for payment of long-distance telephone calls".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 61g-7 of this title.

§ 61g-7. Services of consultants to Majority or Minority Conference Committee of Senate

(a) Authorization of expenditure with approval of Committee on Rules and Administration

Funds authorized to be expended under section 61g-6 of this title may be used by the Majority or Minority Conference Committee of the Senate, with the approval of the Committee on Rules and Administration, to procure the temporary services (not in excess of one year) or intermittent services of individual consultants, or organizations thereof, to make studies or advise the committee with respect to any matter within its jurisdiction.

(b) Procurement by contract or employment

Such services in the case of individuals or organizations may be procured by contract as independent contractors, or in the case of individuals, by employment at daily rates of compensation not in excess of the per diem equivalent of the highest gross rate of compensation which may be paid to a regular employee of such committee. Such contracts shall not be subject to the provisions of section 5 of title 41 or any other provision of law requiring advertising.

(c) Selection of consultant or organization by Conference Committee chairman

Any such consultant or organization shall be selected for the Majority or Minority Conference Committee of the Senate by the chairman thereof.

(Pub. L. 99-88, title I, § 195, Aug. 15, 1985, 99 Stat. 349.)

CODIFICATION

Section is from the Supplemental Appropriations Act, 1985.

§ 61h-5. Assistants to Senate Majority and Minority Leaders for Floor Operations; establishment of positions; appointment; compensation

Effective October 1, 1983, there is established within the Offices of the Majority and Minority Leaders the positions of Assistant to the Majority Leader for Floor Operations and Assistant to the Minority Leader for Floor Operations, respectively. Individuals appointed to such positions by the Majority Leader and Minority Leader, respectively, shall receive compensation at a rate fixed by the appropriate Leader not to exceed the maximum annual rate of gross compensation of the Assistant Secretary of the Senate.

(Pub. L. 98-51, title I, § 101(a), July 14, 1983, 97 Stat. 265.)

CODIFICATION

Section is from the Congressional Operations Appropriation Act, 1984.

PRIOR PROVISIONS

A prior section 61h-5, Pub. L. 95-26, title I, § 100, May 4, 1977, 91 Stat. 80, authorizing the Majority Leader and the Minority Leader to appoint, respectively, an Assistant to the Majority Leader for Floor Operations and an Assistant to the Minority Leader for Floor Operations, was omitted in view of section 101(b) of Pub. L. 98-51, which provided that: "Effective October 1, 1983, the positions of Assistant to the Majority Leader for Floor Operations and Assistant to the Minority Leader for Floor Operations established by the Supplemental Appropriations Act, 1977 (2 U.S.C. 61h-5), are abolished."

§ 64a. Death, resignation, or disability of Secretary and Assistant Secretary of Senate; Financial Clerk deemed successor as disbursing officer

For any period during which both the Secretary and the Assistant Secretary of the Senate are unable (because of death, resignation, or disability) to discharge such Secretary's duties as disbursing officer of the Senate, the Financial Clerk of the Senate shall be deemed to be the successor of such Secretary as disbursing officer.

(As amended July 17, 1984, Pub. L. 98-367, title I, § 2(a), 98 Stat. 474.)

AMENDMENTS

1984—Pub. L. 98-367 substituted "For any period during which both the Secretary and the Assistant Secretary of the Senate are unable (because of death, resignation, or disability) to discharge such Secretary's duties as disbursing officer of the Senate, the Financial Clerk of the Senate shall be deemed to be the successor of such Secretary as disbursing officer" for "In the event of the death, resignation, or disability of the Secretary of the Senate, the Financial Clerk of the Senate shall be deemed his successor as a disbursing officer and he shall serve as such disbursing officer until the end of the quarterly period during which a new Secretary shall have been elected and qualified, or such disability shall have been ended".

§ 64b. Death, resignation, or disability of Secretary of Senate; Assistant Secretary of Senate to act as Secretary; written designation of absent status

In the event of the death, resignation, or disability of the Secretary of the Senate, the Assistant Secretary of the Senate shall act as Secretary in carrying out the duties and responsibilities of that office in all matters until such time as a new Secretary shall have been elected and qualified or such disability shall have been ended. For purposes of this section and section 64a of this title, the Secretary of the Senate shall be considered as disabled only during such period of time as the Majority and Minority Leaders and the President pro tempore of the Senate certify jointly to the Senate that the Secretary is unable to perform his duties. In the event that the Secretary of the Senate is absent or is to be absent for reasons other than disability (as provided in this paragraph), and makes a written designation that he is or will be so absent, the Assistant Secretary shall act during such absence as the Secretary in carrying out the duties and responsibilities of the office in all matters. The designation may be revoked in writing at any time by the Secretary, and is revoked whenever the Secretary making the designation dies, resigns, or is considered disabled in accordance with this paragraph.

(As amended Pub. L. 98-367, title I, § 2(b), July 17, 1984, 98 Stat. 474.)

AMENDMENTS

1984—Pub. L. 98-367 struck out provisions relating to exception for duties of the Secretary as disbursing officer of the Senate.

§ 65c. Expense allowance for Secretary of Senate, Sergeant at Arms and Doorkeeper of Senate, and Secretaries for Senate Majority and Minority

(a) Notwithstanding any other provision of law, there is hereby established an account, within the Senate, to be known as the "Expense Allowance for the Secretary of the Senate, Sergeant at Arms and Doorkeeper of the Senate and Secretaries for the Majority and for the Minority, of the Senate" (hereinafter in this section referred to as the "Expense Allowance"). For each fiscal year (commencing with the fiscal year ending September 30, 1981) there shall be available from the Expense Allowance an expense allotment not to exceed $3,000 for each of the above specified officers. Amounts paid from the expense allotment of any such officer shall be paid to him only as reimbursement for actual expenses incurred by him and upon certification and documentation by him of such expenses. Amounts paid to any such officer pursuant to this section shall not be reported as income and shall not be allowed as a deduction under title 26.

[*See main edition for text of* (b)]

(As amended Pub. L. 98-63, title I, § 101, July 30, 1983, 97 Stat. 334.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-63 which directed that "$3,000" be substituted for "$2,000" in first sentence of subsec. (a) was executed by making the substitution in second sentence as the probable intent of Congress.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 101 of Pub. L. 98-63 provided in part that the amendment of this section by Pub. L. 98-63 is effective for fiscal years beginning on or after Oct. 1, 1982.

§ 65d. Funds advanced by Secretary of Senate to Sergeant at Arms and Doorkeeper of Senate to defray office expenses; accountability; maximum amount; vouchers

From funds available for any fiscal year (commencing with the fiscal year ending September 30, 1984), the Secretary of the Senate shall advance to the Sergeant at Arms and Doorkeeper of the Senate for the purpose of defraying office expenses such sums (for which the Sergeant at Arms and Doorkeeper shall be accountable) not in excess of $1,000 at any one time, as such Sergeant at Arms shall from time to time request; except that the aggregate of the sums so advanced during the fiscal year shall not exceed $10,000.

In accordance with the provisions of this section, a detailed voucher shall be submitted to the Secretary of the Senate by such Sergeant at Arms whenever necessary, in order to replenish funds expended.

(Pub. L. 98-51, title I, § 104, July 14, 1983, 97 Stat. 266.)

CODIFICATION

Section is from the Congressional Operations Appropriation Act, 1984.

§ 65e. Transferred

CODIFICATION

Section, Pub. L. 98-63, title I, § 101, July 30, 1983, 97 Stat. 333, which provided that effective with fiscal year 1983 and each fiscal year thereafter, the expense allowance of the Majority and Minority Whips of the Senate could not exceed $5,000 each fiscal year for each Whip was transferred and executed to section 31a-1 of this title.

§ 68-1. Committee on Rules and Administration; designation of employees to approve vouchers for payments from Senate contingent fund

The Committee on Rules and Administration may authorize its chairman to designate any employee or employees of such Committee to

approve in his behalf, all vouchers making payments from the contingent fund of the Senate, such approval to be deemed and held to be approval by the Committee on Rules and Administration for all intents and purposes.

(As amended Pub. L. 98–473, title I, § 123A(c), Oct. 12, 1984, 98 Stat. 1970.)

AMENDMENTS

1984—Pub. L. 98–473 substituted "any employee or employees of such Committee" for "the committee Auditor and the committee Assistant Auditor".

§ 68–3. Separate accounts for "Secretary of the Senate" and for "Sergeant at Arms and Doorkeeper of the Senate"; establishment within Senate contingent fund; inclusion of funds in existing accounts

(a) Effective October 1, 1983—

(1) there shall be, within the contingent fund of the Senate, a separate account for the "Secretary of the Senate", and a separate account for the "Sergeant at Arms and Doorkeeper of the Senate";

(2) the account for "Automobiles and Maintenance", within the contingent fund of the Senate, is abolished, and funds for the purchase, lease, exchange, maintenance, and operation of vehicles for the Senate shall be included in the separate account, established by paragraph (1), for the "Sergeant at Arms and Doorkeeper of the Senate"; and

(3) the account for "Postage Stamps", within the contingent fund of the Senate, is abolished; and funds for special delivery postage of the Office of the Secretary of the Senate shall be included in the separate account, established by paragraph (1), for the "Secretary of the Senate"; funds for special delivery postage of the Sergeant at Arms and Doorkeeper of the Senate shall be included in the separate account, established by paragraph (1), for the "Sergeant at Arms and Doorkeeper of the Senate"; and postage stamps for the Secretaries for the Majority and the Minority and other offices and officers of the Senate, as authorized by law, shall be included in the account for "Miscellaneous Items", within the contingent fund of the Senate.

(b) Any provision of law which was enacted, or any Senate resolution which was agreed to, prior to October 1, 1983, and which authorizes moneys in the contingent fund of the Senate to be expended by or for the use of the Secretary of the Senate, or his office (whether generally or from a specified account within such fund) may on and after October 1, 1983, be construed to authorize such moneys to be expended from the separate account, within such fund, established by subsection (a)(1) of this section for the "Secretary of the Senate"; and any provision of law which was enacted prior to October 1, 1983, and which authorizes moneys in the contingent fund of the Senate to be expended by or for the use of the Sergeant at Arms and Doorkeeper of the Senate, or his office (whether generally or from a specified account within such fund) may on and after October 1, 1983, be construed to authorize such moneys to be expended from the separate account, within such fund, established by subsection (a)(1) of this section for the "Sergeant at Arms and Doorkeeper of the Senate".

(Pub. L. 98–51, title I, § 103, July 14, 1983, 97 Stat. 266.)

CODIFICATION

Section is from the Congressional Operations Appropriation Act, 1984.

§ 68–4. Deposit of moneys for credit to account within Senate contingent fund for "Sergeant at Arms and Doorkeeper of the Senate"

Any provision of law which is enacted prior to October 1, 1983, and which directs the Sergeant at Arms and Doorkeeper of the Senate to deposit any moneys in the United States Treasury for credit to the account, within the contingent fund of the Senate, for "Miscellaneous Items", or for "Automobiles and Maintenance" shall, on and after October 1, 1983, be deemed to direct him to deposit such moneys in the United States Treasury for credit to the account, within the contingent fund of the Senate, for the "Sergeant at Arms and Doorkeeper of the Senate".

(Pub. L. 98–181, title I, § 1202, Nov. 30, 1983, 97 Stat. 1289.)

CODIFICATION

Section is from the Supplemental Appropriations Act, 1984.

§ 68–5. Purchase, lease, exchange, maintenance, and operation of vehicles out of account for Sergeant at Arms and Doorkeeper of Senate within contingent fund of Senate; authorization of appropriations

For each fiscal year (commencing with the fiscal year ending September 30, 1985) there is authorized to be appropriated to the account, within the contingent fund of the Senate, for the Sergeant at Arms and Doorkeeper of the Senate, such funds (which shall be in addition to funds authorized to be so appropriated for other purposes) as may be necessary for the purchase, lease, exchange, maintenance, and operation of vehicles as follows: one for the Vice President, one for the President pro tempore of the Senate, one for the Majority Leader of the Senate, one for the Minority Leader of the Senate, one for the Majority Whip of the Senate, one for the Minority Whip of the Senate, and such number as is needed for carrying mails, and for official use of the offices of the Secretary of the Senate, the Sergeant at Arms and Doorkeeper of the Senate, the Secretary for the Majority, and the Secretary for the Minority.

(Pub. L. 99–88, title I, § 192, Aug. 15, 1985, 99 Stat. 349.)

CODIFICATION

Section is from the Supplemental Appropriations Act, 1985.

§ 69a. Orientation seminars, etc., for new Senators, Senate officials, or members of staffs of Senators or Senate officials; payment of expenses

Effective July 1, 1979, there is authorized an expense allowance for the Office of the Secretary of the Senate and the Office of Sergeant at Arms and Doorkeeper of the Senate which shall not exceed $2,000 each fiscal year for each such office. Payments made under this section shall be reimbursements only for actual expenses (including meals and food-related expenses) incurred in the course of conducting orientation seminars for Senators, Senate officials, or members of the staffs of Senators or Senate officials and other similar meetings, in the Capitol Building or the Senate Office Buildings. Such payments shall be made upon certification and documentation of such expenses by the Secretary and Sergeant at Arms, respectively, and shall be made out of the contingent fund of the Senate upon vouchers signed by the Secretary and the Sergeant at Arms, respectively. Amounts received as reimbursement of such expenses shall not be reported as income, and the expenses so reimbursed shall not be allowed as a deduction, under title 26.

(As amended Pub. L. 99-88, title I, § 193, Aug. 15, 1985, 99 Stat. 349.)

AMENDMENTS

1985—Pub. L. 99-88 substituted "Senators, Senate officials, or members of the staffs of Senators or Senate officials" for "Senators and members of their staffs,".

§ 72a-1f. Designation by Senator who is Chairman or Vice Chairman of Senate Select Committee on Ethics of employee in office of that Senator to perform part-time service for Committee; amount reimbursable; procedure applicable

Notwithstanding any other provisions of law, a Senator who is the Chairman or Vice Chairman of the Senate Select Committee on Ethics may designate one employee employed in his Senate office to perform part-time service for such Committee, and such Committee shall reimburse such Senator for such employee's services for the Committee by transferring from the contingent fund of the Senate, upon vouchers approved by the Chairman of such Committee, to such Senator's Administrative, Clerical, and Legislative Assistance Allowance, with respect to each pay period of such employee, an amount which bears the same ratio to such employee's salary (but not more than one-half of such salary) for such period, as the portion of the time spent (or to be spent) by such employee in performing services for such Committee during such period bears to the total time for which such employee worked (or will work) during such period (as determined by the Chairman of such Committee) for such Committee and in such Senator's office. Any funds transferred under authority of the preceding sentence to a Senator's Administrative, Clerical, and Legislative Assistance [2] shall be available for the same purposes and in like manner as funds therein which were not transferred thereto under such authority. For purposes of any law of the United States, a State, a territory, or a political subdivision thereof, an employee designated by a Senator pursuant to this section shall be considered to be an employee of such Senator's Senate office and not an employee of the Senate Select Committee on Ethics.

(Pub. L. 98-367, title I, § 10, July 17, 1984, 98 Stat. 476.)

CODIFICATION

Section is from the Congressional Operations Appropriation Act, 1985.

§ 74a-4. Additional amounts for personnel and equipment for House Majority and Minority Leaders and Majority and Minority Whips

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 74a-5 of this title.

§ 74a-5. Limits on uses of funds provided under section 74a-4

The funds provided under the provisions of section 74a-4 of this title [3] shall be limited to use for the compensation of additional personnel and other necessary official expenses.

(Pub. L. 98-51, title I, § 112, July 14, 1983, 97 Stat. 270.)

CODIFICATION

Reference to section 74a-4 of this title was substituted in text for reference to section 74(a)-4 of title 2, United States Code, as the probable intent of Congress, because there is no section 74(a)-4 in this title.

Section is from the Congressional Operations Appropriation Act, 1984.

Section, as it applies to funds provided under section 333 of this title, is classified to section 333a of this title.

§ 84-1. Compensation of Postmaster of House

Until otherwise provided by law, the compensation of the Postmaster of the House of Representatives shall be at a gross per annum rate which is equal to the gross per annum rate of compensation of the Clerk, of the Sergeant at Arms, and of the Doorkeeper, of the House of Representatives.

(Pub. L. 98-51, title I, § 110, July 14, 1983, 97 Stat. 269.)

REFERENCES IN TEXT

For compensation of Clerk, Sergeant at Arms, and Doorkeeper, referred to in text, see sections 75-1, 76-1, and 77a of this title.

CODIFICATION

Section is based on House Resolution No. 6, Ninety-eighth Congress, Jan. 3, 1983, which was enacted into permanent law by Pub. L. 98-51.

[2] So in original. Probably should be "Assistance Allowance".

[3] See Codification note below.

PRIOR PROVISIONS

A prior section 84-1, which was based on section 3 of House Resolution No. 393, Ninety-fifth Congress, Mar. 31, 1977, as enacted into permanent law by Pub. L. 95-94, title I, § 115, Aug. 5, 1977, 91 Stat. 668, provided that the per annum gross rate of compensation of the Postmaster was to equal the amount for level 13, step 5, of the House Employees Schedule.

Another prior section 84-1, acts Aug. 5, 1955, ch. 568, § 5, 69 Stat. 508; Dec. 16, 1967, Pub. L. 90-206, title II, § 214(b), 81 Stat. 635, set forth the compensation of the Postmaster.

§ 84-2. Compensation of Chaplain of House

COMPENSATION OF INDIVIDUAL HOLDING POSITION OF CHAPLAIN OF HOUSE OF REPRESENTATIVES ON JULY 14, 1983

House Resolution No. 7, Ninety-sixth Congress, Jan. 15, 1979, which was enacted into permanent law by Pub. L. 98-51, title I, § 111(1), July 14, 1983, 97 Stat. 269, to be effective during the period in which the position of Chaplain of the House of Representatives is held by the individual holding the position on July 14, 1983, provided that: "The compensation of the Chaplain of the House of Representatives shall be equivalent to the highest rate of basic pay as in effect from time to time of level IV of the Executive Schedule in Section 5315 of Title V [5], United States Code."

§ 88b. Education of other minors who are Congressional employees

The facilities provided for the education of Congressional and Supreme Court pages shall be available from and after January 2, 1947, also for the education of such other minors who are congressional employees as may be certified by the Secretary of the Senate and the Clerk of the House of Representatives to receive such education.

This section shall not apply to any minor who is an employee of the House of Representatives or to any educational facility under the House of Representatives Page Board.

(Mar. 22, 1947, ch. 20, title I, § 101, 61 Stat. 16; July 17, 1984, Pub. L. 98-367, title I, § 103, 98 Stat. 479.)

CODIFICATION

The first paragraph of this section is based on act Mar. 22, 1947.

The second paragraph is based on House Resolution No. 279, Ninety-eighth Congress, July 21, 1983, which was enacted into permanent law by Pub. L. 98-367.

§ 88b-5. Page residence hall and page meal plan

(a) Revolving fund; establishment within House contingent fund

Effective at the beginning of the Ninety-eighth Congress and until otherwise provided by law, there is established a revolving fund within the contingent fund of the House of Representatives for the page residence hall and the page meal plan.

(b) Deposits in revolving fund; disbursements by Clerk of House

There shall be deposited in the revolving fund such amounts as may be received by the Clerk with respect to lodging, meals, and related services furnished for congressional pages. Amounts so deposited shall be available for disbursement by the Clerk for expenses relating to the page residence hall and the page meal plan.

(c) "Clerk" defined

As used in this section, the term "Clerk" means the Clerk of the House of Representatives.

(d) Regulations

The House of Representatives Page Board shall prescribe such regulations as may be necessary to carry out this section.

(Pub. L. 98-51, title I, § 110, July 14, 1983, 97 Stat. 269.)

REFERENCES IN TEXT

The Ninety-eighth Congress, referred to in subsec. (a), convened on Jan. 3, 1983.

CODIFICATION

Sections 1 to 4 of House Resolution No. 64 have been redesignated subsecs. (a) to (d) of this section, respectively, for purposes of codification.

Section is based on House Resolution No. 64, Ninety-eighth Congress, Feb. 8, 1983, which was enacted into permanent law by Pub. L. 98-51.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 88b-6 of this title.

§ 88b-6. Charges for lodging, meals, and related services furnished Senate pages in page residence hall; withholding from salary

The Secretary of the Senate is authorized to withhold from the salary of each Senate page who resides in the page residence hall an amount equal to the charge imposed for lodging, meals, and related services, furnished to such page in such hall. The amounts so withheld shall be transferred by the Secretary of the Senate to the Clerk of the House of Representatives for deposit by such Clerk in the revolving fund, within the contingent fund of the House of Representatives, for the page residence hall and page meal plan, as established by section 88b-5 of this title.

(Pub. L. 98-63, title I, § 902, July 30, 1983, 97 Stat. 336.)

CODIFICATION

Section is from the Supplemental Appropriations Act, 1983.

§ 88c-1. Educational services and related items for pages; payment authority pursuant to contract, etc., by Page Board

Notwithstanding any provision of law, and until otherwise provided by law, there shall be paid out of the contingent fund of the House of Representatives such amounts as may be necessary to enable the House of Representatives Page Board to furnish, by contract or otherwise, educational services and related items for pages in accordance with sections 88c-1 to 88c-4 of this title.

(Pub. L. 98-367, title I, § 103, July 17, 1984, 98 Stat. 479.)

CODIFICATION

Section is based on section 1 of House Resolution No. 234, Ninety-eighth Congress, June 29, 1983, which was enacted into permanent law by Pub. L. 98-367.

EFFECTIVE DATE

Section 5 of House Resolution No. 234, Ninety-eighth Congress, June 29, 1983, as enacted into permanent law by Pub. L. 98-367, provided that: "This resolution [enacting sections 88c-1 to 88c-4 of this title] shall take effect on the date on which this resolution is agreed to [June 29, 1983], except that section 3(a)(1)(A) and section 3(b)(2) [section 88c-3(a)(1)(A), (b)(2) of this title] shall apply to terms beginning after November 30, 1983."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 88c-4 of this title.

§ 88c-2. Academic year and summer term for page program

The page program shall consist of the two terms of the academic year plus a summer term.

(Pub. L. 98-367, title I, § 103, July 17, 1984, 98 Stat. 479.)

CODIFICATION

Section is based on section 2 of House Resolution No. 234, Ninety-eighth Congress, June 29, 1983, which was enacted into permanent law by Pub. L. 98-367.

EFFECTIVE DATE

Section effective June 29, 1983, see note set out under section 88c-1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 88c-1, 88c-4 of this title.

§ 88c-3. Service of page during academic year and summer term; filling of vacancies; eligibility

(a)(1) Except as provided in subsection (b) of this section, a page serving during an academic year—

(A) shall be in the eleventh grade; and

(B) shall serve for one full term or two full terms.

(2) Except as provided in subsection (b) of this section, a page serving during the summer term—

(A) shall have completed the tenth grade; and

(B) shall not have begun the twelfth grade.

(b)(1) An unforeseen vacancy occurring in a page position during an academic year may be filled, but no appointment to fill that vacancy shall be for a period of less than two months.

(2) An individual who has served as a congressional page at any time during each of any three terms shall not be eligible to serve as a page.

(Pub. L. 98-367, title I, § 103, July 17, 1984, 98 Stat. 479.)

CODIFICATION

Section is based on section 3 of House Resolution No. 234, Ninety-eighth Congress, June 29, 1983, which was enacted into permanent law by Pub. L. 98-367.

EFFECTIVE DATE

Section effective June 29, 1983, except that subsecs. (a)(1)(A) and (b)(2) of this section applicable to terms beginning after Nov. 30, 1983, see note set out under section 88c-1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 88c-1, 88c-4 of this title.

§ 88c-4. Definitions

As used in sections 88c-1 to 88c-4 of this title, the term—

(1) "academic year" means a regular school year, consisting of two terms;

(2) "page" means a page of the House of Representatives, but such term does not include a full time, permanent employee of the House of Representatives with supervisory responsibility for pages; and

(3) "congressional page" means a page of the House of Representatives or the Senate.

(Pub. L. 98-367, title I, § 103, July 17, 1984, 98 Stat. 479.)

CODIFICATION

Section is based on section 4 of House Resolution No. 234, Ninety-eighth Congress, June 29, 1983, which was enacted into permanent law by Pub. L. 98-367.

EFFECTIVE DATE

Section effective June 29, 1983, see note set out under section 88c-1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 88c-1 of this title.

§ 92a. Pay of clerical assistants as affected by death of Senator or Representative

EMPLOYEES OF THE SENATE

Pub. L. 98-473, title I, § 123A(a), Oct. 12, 1984, 98 Stat. 1969, provided that this section shall not apply to any employee of the Senate.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 92b of this title.

§ 92e. Repealed. Pub. L. 98-473, title I, § 123A(b), Oct. 12, 1984, 98 Stat. 1969

Section, acts June 28, 1943, ch. 173, title I, § 101, 57 Stat. 223; June 26, 1944, ch. 277, title I, § 1, 58 Stat. 337; June 13, 1945, ch. 189, § 1, 59 Stat. 241; July 1, 1946, ch. 530, § 101, 60 Stat. 390, provided for the continuation of salaries of clerical assistants to Senators upon the death of that Senator in office.

§ 111b. Contracts to furnish property, supplies, or services to Congress; terms varying from those offered other entities of Federal Government

Notwithstanding any provision to the contrary in any contract which is entered into by any person and either the Administrator of General Services or a contracting officer of any executive agency and under which such person agrees to sell or lease to the Federal Government (or any one or more entities thereof) any unit of property, supplies, or services at a specified price or under specified terms and conditions (or both), such person may sell or lease to the Congress the same type of such property, supplies, or services at a unit price or under terms and conditions (or both) which are different from those specified in such contract; and

any such sale or lease of any unit or units of such property, supplies, or services to the Congress shall not be taken into account for the purpose of determining the price at which, or the terms and conditions under which, such person is obligated under such contract to sell or lease any unit of such property, supplies, or services to any entity of the Federal Government other than the Congress. For purposes of the preceding sentence, any sale or lease of property, supplies, or services to the Senate (or any office or instrumentality thereof) or to the House of Representatives (or any office or instrumentality thereof) shall be deemed to be a sale or lease of such property, supplies, or services to the Congress.

(Pub. L. 98-63, title I, § 903(a), July 30, 1983, 97 Stat. 336.)

CODIFICATION

Section is from the Supplemental Appropriations Act, 1983.

EFFECTIVE DATE

Section 903(b) of Pub. L. 98-63 provided that: "The provisions of this section [enacting this section] shall take effect with respect to sales or leases of property, supplies, or services to the Congress after the date of enactment of this section [July 30, 1983]."

SALE OR LEASE OF PROPERTY, SUPPLIES, OR SERVICES TO CONGRESSIONAL BUDGET OFFICE DEEMED SALE OR LEASE TO CONGRESS

Sale or lease of property, supplies, or services to the Congressional Budget Office deemed a sale or lease of such property, supplies, or services to the Congress, see section 605 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 605 of this title.

§ 117d. Reimbursements to Sergeant at Arms and Doorkeeper of Senate for equipment provided to Senators, etc., which has been lost, stolen, damaged, or otherwise unaccounted for; deposit of receipts

The Sergeant at Arms and Doorkeeper of the Senate shall deposit in the United States Treasury for credit to the appropriation account, within the contingent fund of the Senate, for the "Sergeant at Arms and Doorkeeper of the Senate", all moneys received by him as reimbursement for equipment provided to Senators, committee chairmen, and other officers and employees of the Senate, which has been lost, stolen, damaged, or otherwise unaccounted for.

(Pub. L. 98-367, title I, § 5, July 17, 1984, 98 Stat. 475.)

CODIFICATION

Section is from the Congressional Operations Appropriation Act, 1985.

CHAPTER 5—LIBRARY OF CONGRESS

Sec.
136a, 136a-1. Omitted.
136a-2. Librarian of Congress and Deputy Librarian of Congress; compensation.
136c. Authorized additional expenses and services for which Library of Congress salary appropriations are available.
142g. Copyright Royalty Tribunal; computation and disbursement of pay of Tribunal personnel by Library of Congress.
176. Mass Book Deacidification Facility; operation by Librarian of Congress.
177. Poet Laureate Consultant in Poetry.
(a) Recognition.
(b) Position established.
(c) Poetry program.

§§ 136a, 136a-1. Omitted

CODIFICATION

Sections were superseded by section 136a-2 of this title.

Section 136a, Pub. L. 88-426, title II, § 203(c), Aug. 14, 1964, 78 Stat. 415; Pub. L. 90-206, title II, §§ 219(2), 225(h), Dec. 16, 1967, 81 Stat. 639, 644; Pub. L. 94-82, title II, § 204(b), Aug. 9, 1975, 89 Stat. 421, set compensation of Librarian of Congress at an annual rate equal to rate for positions at level IV of Executive Schedule.

A prior section 136a, acts Mar. 6, 1928, ch. 134, 45 Stat. 197; Oct. 15, 1949, ch. 695, § 5(a), 63 Stat. 890, which contained similar provisions, was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 647, 655.

Section 136a-1, Pub. L. 88-426, title II, § 203(d), Aug. 14, 1964, 78 Stat. 415; Pub. L. 90-206, title II §§ 219(3), 225(h), Dec. 16, 1967, 81 Stat. 639, 644; Pub. L. 94-82, title II, § 204(b), Aug. 9, 1975, 89 Stat. 421, set compensation of Deputy Librarian of Congress at an annual rate equal to rate for positions at level V of Executive Schedule.

§ 136a-2. Librarian of Congress and Deputy Librarian of Congress; compensation

(a) Subject to subsection (b) of this section and notwithstanding any other provision of law—

(1) the compensation of the Librarian of Congress shall be at an annual rate which is equal to the annual rate of basic pay payable for positions at level III of the Executive Schedule under section 5314 of title 5, and

(2) the compensation of the Deputy Librarian of Congress shall be at an annual rate which is equal to the annual rate of basic pay payable for positions at level IV of the Executive Schedule under section 5315 of title 5.

(b) The limitations contained in section 306 of S. 2939, Ninety-seventh Congress, as made applicable by section 101(e) of Public Law 97-276 (as amended by section 128(a) [1] of Public Law 97-377) shall, after application of section 128(b) [2] of Public law 97-377, be applicable to the compensation of the Librarian of Congress and the Deputy Librarian of Congress, as fixed by subsection (a) of this section.

(Pub. L. 98-63, title I, § 904(a), (b), July 30, 1983, 97 Stat. 336.)

REFERENCES IN TEXT

Section 306 of S. 2939, Ninety-seventh Congress, as made applicable by section 101(e) of Public Law 97-276 (as amended by section 128(a) [129(a)] of Public Law 97-377), referred to in subsec. (b), is set out as notes under sections 5318 and 5384 of Title 5, Government Organization and Employees.

[1] So in original. Probably should be "section 129(a)".
[2] So in original. Probably should be "section 129(b)".

Section 128(b) [129(b)] of Public Law 97-377, referred to in subsec. (b), is set out as a note under section 5318 of Title 5.

EFFECTIVE DATE

Section 904(c) of Pub. L. 98-63 provided that: "The provisions of subsection (a) [enacting subsec. (a) of this section] shall take effect on the first day of the first applicable pay period commencing on or after the date of the enactment of this Act [July 30, 1983]."

§ 136c. Authorized additional expenses and services for which Library of Congress salary appropriations are available

From and after October 1, 1983, appropriations in this Act available to the Library of Congress for salaries shall be available for expenses of personnel security and suitability investigations of Library employees; special and temporary services (including employees engaged by day or hour or in piecework); and services as authorized by section 3109 of title 5.

(Pub. L. 98-51, title II, § 201, July 14, 1983, 97 Stat. 276.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 98-51, July 14, 1983, 97 Stat. 263, known as the Legislative Branch Appropriations Act, 1984. For complete classification of this Act to the Code, see Tables.

§ 142g. Copyright Royalty Tribunal; computation and disbursement of pay of Tribunal personnel by Library of Congress

From and after October 1, 1983, the Library of Congress is authorized to compute and disburse basic pay of all personnel of the Copyright Royalty Tribunal pursuant to the provisions of section 5504 of title 5.

(Pub. L. 98-51, title II, § 204, July 14, 1983, 97 Stat. 277.)

PRIOR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:
Pub. L. 97-276, § 101(e), Oct. 2, 1982, 96 Stat. 1189.
Pub. L. 97-51, § 101(c), Oct. 1, 1981, 95 Stat. 959.
Pub. L. 96-536, § 101(c), Dec. 16, 1980, 94 Stat. 3167.
Pub. L. 95-391, title II, § 208, Sept. 30, 1978, 92 Stat. 786.
Pub. L. 95-94, title II, § 208, Aug. 5, 1977, 91 Stat. 678.

CROSS REFERENCES

Staff of Tribunal, see section 805 of Title 17, Copyrights.

§ 166. Congressional Research Service

[*See main edition for text of* (a) *and* (b)]

(c) Appointment and compensation of Director, Deputy Director, and other necessary personnel; minimum grade for Senior Specialists; placement in grades GS-16, 17, and 18 of Specialists and Senior Specialists; appointment without regard to civil service laws and political affiliation and on basis of fitness to perform duties

(1) After consultation with the Joint Committee on the Library, the Librarian of Congress shall appoint the Director of the Congressional Research Service. The compensation of the Director of the Congressional Research Service, Library of Congress, shall be at an annual rate which is equal to the annual rate of basic pay for positions at level IV of the Executive Schedule under section 5315 of title 5.

[*See main edition for text of* (2) *and* (3); (d) *to* (f)]

(g) Budget estimates

The Director of the Congressional Research Service will submit to the Librarian of Congress for review, consideration, evaluation, and approval, the budget estimates of the Congressional Research Service for inclusion in the Budget of the United States Government.

[*See main edition for text of* (h) *to* (j)]

(As amended July 17, 1984, Pub. L. 98-367, title I, § 100, 98 Stat. 484; Nov. 13, 1985, Pub. L. 99-151, title I, § 100, 99 Stat. 802; Dec. 19, 1985, Pub. L. 99-190, § 133, 99 Stat. 1322.)

AMENDMENTS

1985—Subsec. (c)(1). Pub. L. 99-151, which authorized the Director to be compensated at an annual rate which is equal to the annual rate of basic pay for positions at level IV of the Executive Schedule under section 5315 of title 5, was identical to the amendment by Pub. L. 98-367, and did not involve any change in text.

Subsec. (g). Pub. L. 99-190 amended subsec. (g) generally. Prior to amendment subsec. (g) read as follows: "In order to facilitate the study, consideration, evaluation, and determination by the Congress of the budget requirements of the Congressional Research Service for each fiscal year, the Librarian of Congress shall receive from the Director and submit, for inclusion in the Budget of the United States Government, the budget estimates of the Congressional Research Service which shall be prepared separately by the Director in detail for each fiscal year as a separate item of the budget estimates of the Library of Congress for such fiscal year."

1984—Subsec. (c)(1). Pub. L. 98-367 substituted provisions setting the compensation of the Director at an annual rate equal to the annual rate of basic pay for positions at level IV of the Executive Schedule for provisions setting the basic pay of the Director at a per annum rate equal to the rate of basic pay provided for level V of the Executive Schedule.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 100 of Pub. L. 98-367 provided in part that the amendment by Pub. L. 98-367 shall take effect on the first day of the first applicable pay period commencing on or after July 17, 1984.

§ 169. Positions in Library of Congress exempt from citizenship requirement

From and after October 1, 1983, not to exceed fifteen positions in the Library of Congress may be exempt from the provisions of appropriation Acts concerning the employment of aliens during the current fiscal year, but the Librarian shall not make any appointment to any such position until he has ascertained that he cannot secure for such appointments a person in any of the categories specified in such provisions who possesses the special qualifications for the particular position and also otherwise meets the general requirements for employment in the Library of Congress.

(Pub. L. 98-51, title II, § 202, July 14, 1983, 97 Stat. 276.)

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:
Oct. 2, 1982, Pub. L. 97-276, § 101(e), 96 Stat. 1189.

§ 176. Mass Book Deacidification Facility; operation by Librarian of Congress

Notwithstanding any other provision of law, the Librarian of Congress shall equip, furnish, operate, and maintain the Library of Congress Mass Book Deacidification Facility.

(Pub. L. 98-427, § 2, Sept. 28, 1984, 98 Stat. 1656.)

AUTHORIZATION TO CONSTRUCT FACILITY

Section 1 of Pub. L. 98-427 provided: "That the Librarian of Congress is authorized and directed, subject to the supervision and construction authority of a Federal civilian or military agency, to construct the Library of Congress Mass Book Deacidification Facility in accordance with the general design developed by the Library of Congress and reviewed by the Architect of the Capitol, as set forth in the document entitled 'Library of Congress Mass Book Deacidification Facility, Engineering, Design, and Cost Estimate and Drawings', dated December 1983. Such facility shall be constructed on Federal property within seventy-five miles of the United States Capitol Building."

AUTHORIZATION OF APPROPRIATION

Section 3 of Pub. L. 98-427 provided that: "There are authorized to be appropriated for fiscal years beginning after September 30, 1983, sums not to exceed $11,500,000 to carry out the provisions of this Act [enacting this section and a provision set out as a note under this section]."

§ 177. Poet Laureate Consultant in Poetry

(a) Recognition

The Congress recognizes that the Consultant in Poetry to the Library of Congress has for some time occupied a position of prominence in the life of the Nation, has spoken effectively for literary causes, and has occasionally performed duties and functions sometimes associated with the position of poet laureate in other nations and societies. Individuals are appointed to the position of Consultant in Poetry by the Librarian of Congress for one- or two-year terms solely on the basis of literary merit, and are compensated from endowment funds administered by the Library of Congress Trust Fund Board. The Congress further recognizes this position is equivalent to that of Poet Laureate of the United States.

(b) Position established

(1) There is established in the Library of Congress the position of Poet Laureate Consultant in Poetry. The Poet Laureate Consultant in Poetry shall be appointed by the Librarian of Congress pursuant to the same procedures of appointment as established on December 20, 1985, for the Consultant in Poetry to the Library of Congress.

(2) Each department and office of the Federal Government is encouraged to make use of the services of the Poet Laureate Consultant in Poetry for ceremonial and other occasions of celebration under such procedures as the Librarian of Congress shall approve designed to assure that participation under this paragraph does not impair the continuation of the work of the individual chosen to fill the position of Poet Laureate Consultant in Poetry.

(c) Poetry program

(1) The Chairperson of the National Endowment for the Arts, with the advice of the National Council on the Arts, shall annually sponsor a program at which the Poet Laureate Consultant in Poetry will present a major work or the work of other distinguished poets.

(2) There are authorized to be appropriated to the National Endowment for the Arts $10,000 for the fiscal year 1987 and for each succeeding fiscal year ending prior to October 1, 1990, for the purpose of carrying out this subsection.

(Pub. L. 99-194, title VI, § 601, Dec. 20, 1985, 99 Stat. 1347.)

CHAPTER 9—OFFICE OF LEGISLATIVE COUNSEL

SUBCHAPTER I—SENATE

Sec.
276a. Expenditures.
276b. Travel and related expenses.

SUBCHAPTER I—SENATE

§ 276a. Expenditures

With the approval of the President Pro Tempore of the Senate, the Legislative Counsel of the Senate may make such expenditures as may be necessary or appropriate for the functioning of the Office of the Legislative Counsel of the Senate.

(Pub. L. 98-51, title I, § 105, July 14, 1983, 97 Stat. 267.)

CODIFICATION

Section was enacted as part of the Congressional Operations Appropriation Act, 1984, and not as part of section 1303 of act Feb. 24, 1919 which comprises this subchapter.

§ 276b. Travel and related expenses

Funds expended by the Legislative Counsel of the Senate for travel and related expenses shall be subject to the same regulations and limitations (insofar as they are applicable) as those which the Senate Committee on Rules and Administration prescribes for application to travel and related expenses for which payment is authorized to be made from the contingent fund of the Senate.

(Pub. L. 98-51, title I, § 106, July 14, 1983, 97 Stat. 267.)

CODIFICATION

Section was enacted as part of the Congressional Operations Appropriation Act, 1984, and not as part of section 1303 of act Feb. 24, 1919 which comprises this subchapter.

Section, as it relates to funds expended by the Senate Legal Counsel, is classified to section 288n of this title.

CHAPTER 9D—OFFICE OF SENATE LEGAL COUNSEL

Sec.
288n. Travel and related expenses.

§ 288. Office of Senate Legal Counsel

INCREASES IN COMPENSATION

Increases in compensation for Senate officers and employees under authority of Federal Pay Comparability Act of 1970 (Pub. L. 91-656), see Salary Directives of President pro tempore of the Senate, set out as notes under section 60a-1 of this title.

§ 288n. Travel and related expenses

Funds expended by the Senate Legal Counsel for travel and related expenses shall be subject to the same regulations and limitations (insofar as they are applicable) as those which the Senate Committee on Rules and Administration prescribes for application to travel and related expenses for which payment is authorized to be made from the contingent fund of the Senate.

(Pub. L. 98-51, title I, § 106, July 14, 1983, 97 Stat. 267.)

CODIFICATION

Section was enacted as part of the Congressional Operations Appropriation Act, 1984, and not as part of title VII of Pub. L. 95-521 which in part comprises this chapter.

Section, as it relates to funds expended by the Legislative Counsel of the Senate, is classified to section 276b of this title.

CHAPTER 10A—PAYROLL ADMINISTRATION IN HOUSE OF REPRESENTATIVES

Sec.
333a. Limits on uses of funds provided under section 333.

§ 333. Single per annum gross rates of allowances for personal services in offices of Speaker, Leaders, and Whips

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 333a of this title.

§ 333a. Limits on uses of funds provided under section 333

The funds provided under the provisions of section 333 of this title shall be limited to use for the compensation of additional personnel and other necessary official expenses.

(Pub. L. 98-51, title I, § 112, July 14, 1983, 97 Stat. 270.)

CODIFICATION

Section was enacted as part of the Congressional Operations Appropriation Act, 1984, and not as part of part 6 (§§ 471-477) of title IV of Pub. L. 91-510 which in part comprises this chapter.

Section, as it applies to funds provided under section 74a-4 of this title, is classified to section 74a-5 of this title.

CHAPTER 11—COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 31 of this title; title 3 section 104; title 5 sections 5312 to 5316; title 26 section 7456; title 28 sections 5, 44, 135, 153, 172, 252, 634.

§ 352. Membership of Commission; appointment; Chairman; term of office; vacancies; compensation; expenses; allowances

[*See main edition for text of (1) and (2)*]

(3) After the close of the 1969 fiscal year of the Federal Government, persons shall be appointed as members of the Commission with respect to every fourth fiscal year following the 1969 fiscal year. The terms of office of persons so appointed shall be for the period of the fiscal year with respect to which the appointment is made, except that, if any appointment is made after the beginning and before the close of any such fiscal year, the term of office based on such appointment shall be for the remainder of such fiscal year and with respect to fiscal year 1987.

[*See main edition for text of (4) and (5)*]

(As amended Pub. L. 99-190, § 135(a), Dec. 19, 1985, 99 Stat. 1322.)

AMENDMENTS

1985—Par. (3). Pub. L. 99-190 added applicability to fiscal year 1987.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 353, 356 of this title.

§ 356. Functions of Commission

The Commission shall conduct, in each of the respective fiscal years referred to in section 352(2) and (3) of this title, a review of the rates of pay of—

[*See main edition for text of (A) to (E)*]

Such review by the Commission shall be made for the purpose of determining and providing—

[*See main edition for text of (i) and (ii)*]

In reviewing the rates of pay of the offices or positions referred to in subparagraph (D) of this section, the Commission shall determine and consider the appropriateness of the executive levels of such offices and positions.

(As amended Pub. L. 99-190, § 135(b), Dec. 19, 1985, 99 Stat. 1322.)

AMENDMENTS

1985—Pub. L. 99-190 added last sentence relating to review of rates of pay of offices or positions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 357, 358 of this title.

§ 357. Report to President

The Commission shall submit to the President a report of the results of each review conducted by the Commission of the offices and positions within the purview of subparagraphs (A), (B), (C), and (D) of section 356 of this title, together with its recommendations. Each such report shall be submitted on such date as the President may designate but not later than December 15 of the fiscal year in which the review is conducted by the Commission.

(As amended Pub. L. 99-190, § 135(c), Dec. 19, 1985, 99 Stat. 1322.)

AMENDMENTS

1985—Pub. L. 99-190 substituted "December 15" for "January 1 next following the close".

1985 FISCAL YEAR RECOMMENDATIONS ON PAY RATES OF OFFICES AND POSITIONS

Section 135(g) of Pub. L. 99-190 provided that: "Notwithstanding section 225(g) of such Act (2 U.S.C. 357), the Commission on Executive, Legislative, and Judicial Salaries shall not make recommendations on the rates of pay of offices and positions within the purview of subparagraphs (A), (B), (C), and (D) of section 225(f) of such Act (2 U.S.C. 356) in connection with the review of rates of pay of such offices and positions conducted by the Commission in fiscal year 1985."

§ 358. Recommendations of President to Congress

The President shall include, in the budget next transmitted under section 1105(a) of title 31 by him to the Congress after the date of the submission of the report and recommendations of the Commission under section 357 of this title, his recommendations with respect to the exact rates of pay which he deems advisable, for those offices and positions within the purview of subparagraphs (A), (B), (C), and (D) of section 356 of this title.

(As amended Pub. L. 99-190, § 135(d), Dec. 19, 1985, 99 Stat. 1322.)

AMENDMENTS

1985—Pub. L. 99-190 added reference to section 1105(a) of title 31, and struck out last sentence defining the term "budget".

COMMISSION'S FIRST REPORT AFTER JULY 30, 1983, TO INCLUDE RECOMMENDATION FOR APPROPRIATE SALARY FOR MEMBERS OF CONGRESS; PROHIBITION ON RECEIPT OF HONORARIA

Pub. L. 98-63, title I, § 908(e), July 30, 1983, 97 Stat. 338, provided that: "The Commission on Executive, Legislative, and Judicial Salaries shall include in the first report required to be submitted by it after the date of the enactment of this Act [July 30, 1983] a recommendation for an appropriate salary for Members, which recommendation shall assume a prohibition on the receipt of honoraria by Members."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 359 of this title.

§ 359. Effective date of recommendations

(1) The recommendations of the President which are transmitted to the Congress pursuant to section 358 of this title shall be effective as provided in paragraph (2) of this section unless any such recommendation is disapproved by a joint resolution agreed to by the Congress not later than the last day of the 30-day period which begins on the date of which such recommendations are transmitted to the Congress.

(2) The effective date of the rate or rates of pay which take effect for an office or position under paragraph (1) of this section shall be the first day of the first pay period which begins for such office or position after the end of the 30-day period described in such paragraph.

(As amended Pub. L. 99-190, § 135(e), Dec. 19, 1985, 99 Stat. 1322.)

AMENDMENTS

1985—Par. (1). Pub. L. 99-190 amended par. (1) generally, substituting provisions relating to the effective date of Presidential recommendations transmitted to Congress pursuant to section 358 of this title, for provisions relating to voting requirements and procedures for Presidential recommendations to Congress.

Par. (2). Pub. L. 99-190 amended par. (2) generally, substituting provisions relating to effective date of rates of pay for offices or positions under par. (1), for provisions relating to later operative dates of Presidential recommendations.

§ 360. Effect of recommendations on existing law and prior recommendations

The recommendations of the President taking effect as provided in section 359 of this title shall be held and considered to modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(A) all provisions of law enacted prior to the effective date or dates of all or part (as the case may be) of such recommendations (other than any provision of law enacted in the period specified [1] section 359 of this title with respect to such recommendations), and

(B) any prior recommendations of the President which take effect under this chapter.

(As amended Pub. L. 99-190, § 135(f), Dec. 19, 1985, 99 Stat. 1322.)

AMENDMENTS

1985—Pub. L. 99-190 substituted "taking effect as provided in section 359 of this title shall" for "transmitted to the Congress immediately following a review conducted by the Commission in one of the fiscal years referred to in section 352(2) and (3) of this title shall, if approved by the Congress as provided in section 359 of this title,", and in cl. (A) struck out "in paragraph (1) of" before "section 359 of this title".

CHAPTER 14—FEDERAL ELECTION CAMPAIGNS

SUBCHAPTER I—DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

§ 437g. Enforcement

(a) Administrative and judicial practice and procedure

[See main edition for text of (1) to (9)]

(10) Repealed. Pub. L. 98-620, title IV, § 402(1)(A), Nov. 8, 1984, 98 Stat. 3357.

[1] So in original. Probably should be "specified in".

[*See main edition for text of (11) and (12); (b) to (d)*]

(As amended Pub. L. 98-620, title IV, § 402(1)(A), Nov. 8, 1984, 98 Stat. 3357.)

AMENDMENTS

1984—Subsec. (a)(10). Pub. L. 98-620 struck out par. (10) which provided that any action brought under subsec. (a) be advanced on the docket of the court in which filed and put ahead of all other actions (other than other actions brought under this subsec. or under section 437h of this title).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 437h. Judicial review

[*See main edition for text of (a) and (b)*]

(c) Repealed. Pub. L. 98-620, title IV, § 402(1)(B), Nov. 8, 1984, 98 Stat. 3357

(As amended Pub. L. 98-620, title IV, § 402(1)(B), Nov. 8, 1984, 98 Stat. 3357.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-620 struck out subsec. (c) which provided for advancement on the appellate docket and expedited disposition of any matter certified under subsec. (a) of this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 441i. Acceptance of excessive honorariums

[*See main edition for text of (a)*]

(b) Payment of honorarium to charitable organization

Any honorarium, or any part thereof, paid by or on behalf of an elected or appointed officer or employee of any branch of the Federal Government to a charitable organization shall be deemed not to be accepted for the purposes of this section.

[*See main edition for text of (c) and (d)*]

(As amended Pub. L. 98-63, title I, § 908(g), July 30, 1983, 97 Stat. 338.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-63 substituted: "Any honorarium, or any part thereof, paid by or on behalf of an elected or appointed officer or employee of any branch of the Federal Government to a charitable organization shall be deemed not to be accepted for the purposes of this section" for "If an honorarium payable to a person is paid instead at his request to a charitable organization selected by payor from a list of 5 or more charitable organizations provided by that person, that person shall not be treated, for purposes of subsection (a) of this section, as accepting that honorarium. For purposes of this subsection, the term 'charitable organization' means an organization described in section 170(c) of title 26".

SUBCHAPTER II—GENERAL PROVISIONS

§ 451. Extension of credit by regulated industries; regulations

The Secretary of Transportation, the Federal Communications Commission, and the Interstate Commerce Commission shall each promulgate, within ninety days after February 7, 1972, its own regulations with respect to the extension of credit, without security, by any person regulated by such Secretary or Commission to any candidate for Federal office, or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office.

(As amended Pub. L. 98-443, §§ 4(a)(7), 12(f), Oct. 4, 1984, 98 Stat. 1704, 1710.)

TRANSFER OF FUNCTIONS

"Secretary of Transportation" and "Secretary" were substituted for "Civil Aeronautics Board" and "Board", respectively, pursuant to sections 4(a)(7) and 12(f) of Pub. L. 98-443, which are classified to sections 1553(a)(7) and 1556(f) of Title 49, Appendix, Transportation, and which transferred all functions, powers, and duties of the Civil Aeronautics Board under this section to the Secretary of Transportation, effective Jan. 1, 1985.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 App. section 1553.

§ 452. Prohibition against use of certain Federal funds for election activities

No part of any funds appropriated to carry out the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or any voter registration activity, or to pay the salary of any officer or employee of the Office of Economic Opportunity who, in his official capacity as such an officer or employee, engages in any such activity.

(Pub. L. 92-225, title IV, § 402, Feb. 7, 1972, 86 Stat. 19; Pub. L. 93-443, title II, § 201(b)(2), Oct. 15, 1974, 88 Stat. 1275.)

OFFICE OF ECONOMIC OPPORTUNITY

Pub. L. 93-644, § 9(a), Jan. 4, 1975, 88 Stat. 2310 [42 U.S.C. 2941], amended the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] to create the Community Services Administration, an independent agency in the executive branch, as the successor authority to the Office of Economic Opportunity, and provided that references to the Office of Economic Opportunity or to its Director were deemed to refer to the Community Services Administration or to its Director. The Community Services Administration was terminated when the Economic Opportunity Act of 1964, except for titles VIII and X, was repealed, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97-35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub. L. 97-35, which is classified to 42 U.S.C. 9905.

CHAPTER 15—OFFICE OF TECHNOLOGY ASSESSMENT

§ 476. Technology Assessment Advisory Council

[*See main edition for text of (a) to (d)*]

(e) Payment to Comptroller General and Director of Congressional Research Service of travel and other necessary expenses; payment to members appointed from public of compensation and reimbursement for travel, subsistence, and other necessary expenses

(1) The members of the Council other than those appointed under subsection (a)(1) of this section shall receive no pay for their services as members of the Council, but shall be allowed necessary travel expenses (or, in the alternative, mileage for use of privately owned vehicles and payments when traveling on official business at not to exceed the payment prescribed in regulations implementing section 5702 and in [1] 5704 of title 5), and other necessary expenses incurred by them in the performance of duties vested in the Council, without regard to the provisions of subchapter 1 of chapter 57 and section 5731 of title 5, and regulations promulgated thereunder.

[*See main edition for text of (2)*]

(As amended Pub. L. 99-234, title I, § 107(a), Jan. 2, 1986, 99 Stat. 1759.)

AMENDMENTS

1986—Subsec. (e)(1). Pub. L. 99-234 substituted "payments when traveling on official business at not to exceed the payment prescribed in regulations implementing section 5702 and in" for "a per diem in lieu of subsistence at not to exceed the rate prescribed in sections 5702 and".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-234 effective on the effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99-234, set out as a note under section 5701 of Title 5, Government Organization and Employees.

CHAPTER 17—CONGRESSIONAL BUDGET OFFICE

Sec.
605. Sale or lease of property, supplies, or services.

§ 602. Duties and functions

[*See main edition for text of (a) to (e)*]

(f) Reports to budget committees

(1) On or before February 15 of each year, the Director shall submit to the Committees on the Budget of the House of Representatives and the Senate a report, for the fiscal year commencing on October 1 of that year, with respect to fiscal policy, including (A) alternative levels of total revenues, total new budget authority, and total outlays (including related surpluses and deficits), and (B) the levels of tax expenditures under existing law, taking into account projected economic factors and any changes in such levels based on proposals in the budget submitted by the President for such fiscal year. Such report shall also include a discussion of national budget priorities, including alternative ways of allocating budget authority and budget outlays for such fiscal year among major programs or functional categories, taking into account how such alternative allocations will meet major national needs and affect balanced growth and development of the United States.

[*See main edition for text of (2)*]

(3) On or before January 15 of each year, the Director, after consultation with the appropriate committees of the House of Representatives and Senate, shall submit to the Congress a report listing (A) all programs and activities funded during the fiscal year ending September 30 of that calendar year for which authorizations for appropriations have not been enacted for that fiscal year, and (B) all programs and activities for which authorizations for appropriations have been enacted for the fiscal year ending September 30 of that calendar year, but for which no authorizations for appropriations have been enacted for the fiscal year beginning October 1 of that calendar year.

[*See main edition for text of (g)*]

(h) Studies

The Director shall conduct continuing studies to enhance comparisons of budget outlays, credit authority, and tax expenditures.

(As amended Pub. L. 99-177, title II, § 221, Dec. 12, 1985, 99 Stat. 1060.)

AMENDMENTS

1985—Subsec. (f)(1). Pub. L. 99-177, § 221(a), substituted "February 15" for "April 1".

Subsec. (f)(3). Pub. L. 99-177, § 221(b), added par. (3).

Subsec. (h). Pub. L. 99-177, § 221(c), added subsec. (h).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

§ 604. Omitted

CODIFICATION

Section, Pub. L. 94-440, title V, § 500, Oct. 1, 1976, 90 Stat. 1452, the Legislative Appropriation Act, 1977, which authorized the Congressional Budget Office to contract without regard to section 5 of Title 41, Public Contracts, applied to fiscal year 1977 and was not repeated in subsequent appropriation acts.

§ 605. Sale or lease of property, supplies, or services

Any sale or lease of property, supplies, or services to the Congressional Budget Office shall be deemed to be a sale or lease of such property, supplies, or services to the Congress subject to section 111b of this title.

(Pub. L. 99-151, title I, § 100, Nov. 13, 1985, 99 Stat. 800.)

[1] So in original. Probably should be followed by "section".

REFERENCES IN TEXT

Section 111b of this title, referred to in text, was in the original a reference to section 903 of Pub. L. 98-63, title I, July 30, 1983, 97 Stat. 336, which is classified to section 111b of this title and in part as a note set out under section 111b of this title.

CODIFICATION

Section was enacted as part of the appropriation act cited as the credit to this section, and not as part of title II of the Congressional Budget and Impoundment Control Act of 1974 which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation act:

Pub. L. 98-367, title I, § 100, July 17, 1984, 98 Stat. 482.

CHAPTER 17A—CONGRESSIONAL BUDGET AND FISCAL OPERATIONS

SUBCHAPTER I—CONGRESSIONAL BUDGET PROCESS

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653. Analysis by Congressional Budget Office.
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SUBCHAPTER III—MISCELLANEOUS

661. Repealed.

§ 621. Congressional declaration of purpose

EXERCISE OF CONGRESSIONAL RULEMAKING POWER

Section 904 of Pub. L. 93-344, as amended by Pub. L. 99-177, title II, § 271(a), Dec. 12, 1985, 99 Stat. 1094, provided that:

[*See main edition for text of* (a) *and* (b)]

"(c) Sections 305(b)(2) and 306 of this Act [sections 636(b)(2) and 637 of this title] may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

"(d) Appeals in the Senate from the decisions of the Chair relating to any provision of title III or IV [enacting subchapters I and II of this chapter] or section

1017 [enacting section 688 of this title] shall, except as otherwise provided therein, be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, concurrent resolution, reconciliation bill, or rescission bill, as the case may be."

ACT REFERRED TO IN OTHER SECTIONS

The Congressional Budget and Impoundment Control Act of 1974 is referred to in sections 904, 921 of this title; title 7 section 1446c-1; title 16 sections 1606, 3506.

§ 622. Definitions

For purposes of this Act—

[*See main edition for text of (1)*]

(2) The term "budget authority" means authority provided by law to enter into obligations which will result in immediate or future outlays involving Government funds or to collect offsetting receipts.,[1] except that such term does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government.

[*See main edition for text of (3)*]

(4) The term "concurrent resolution on the budget" means—

(A) a concurrent resolution setting forth the congressional budget for the United States Government for a fiscal year as provided in section 632 of this title; and

(B) any other concurrent resolution revising the congressional budget for the United States Government for a fiscal year as described in section 635 of this title.

(5) The term "appropriation Act" means an Act referred to in section 105 of title 1.

(6) The term "deficit" means, with respect to any fiscal year, the amount by which total budget outlays for such fiscal year exceed total revenues for such fiscal year. In calculating the deficit for purposes of comparison with the maximum deficit amount under the Balanced Budget and Emergency Deficit Control Act of 1985 and in calculating the excess deficit for purposes of sections 251 and 252 of such Act [2 U.S.C. 901, 902] (notwithstanding section 911(a) of title 42, for any fiscal year, the receipts of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund for such fiscal year and the taxes payable under sections 1401(a), 3101(a), and 3111(a) of title 26 during such fiscal year shall be included in total revenues for such fiscal year, and the disbursements of each such Trust Fund for such fiscal year shall be included in total budget outlays for such fiscal year. Notwithstanding any other provision of law except to the extent provided by section 911(a) of title 42, the receipts, revenues, disbursements, budget authority, and outlays of each off-budget Federal entity for a fiscal year shall be included in total budget authority, total budget outlays, and total revenues and the amounts of budget authority and outlays set forth for each major functional category, for such fiscal year. Amounts paid by the Federal Financing Bank for the purchase of loans made or guaranteed by a department, agency, or instrumentality of the Government of the United States shall be treated as outlays of such department, agency, or instrumentality.

(7) The term "maximum deficit amount" means—

(A) with respect to the fiscal year beginning October 1, 1985, $171,900,000,000;

(B) with respect to the fiscal year beginning October 1, 1986, $144,000,000,000;

(C) with respect to the fiscal year beginning October 1, 1987, $108,000,000,000;

(D) with respect to the fiscal year beginning October 1, 1988, $72,000,000,000;

(E) with respect to the fiscal year beginning October 1, 1989, $36,000,000,000; and

(F) with respect to the fiscal year beginning October 1, 1990, zero.

(8) The term "off-budget Federal entity" means any entity (other than a privately-owned Government-sponsored entity)—

(A) which is established by Federal law, and

(B) the receipts and disbursements of which are required by law to be excluded from the totals of—

(i) the budget of the United States Government submitted by the President pursuant to section 1105 of title 31, or

(ii) the budget adopted by the Congress pursuant to subchapter I of this chapter.

(9) The term "entitlement authority" means spending authority described by section 651(c)(2)(C) of this title.

(10) The term "credit authority" means authority to incur direct loan obligations or to incur primary loan guarantee commitments.

(As amended Pub. L. 99-177, title II, §§ 201(a), 232(b), Dec. 12, 1985, 99 Stat. 1039, 1062.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 93-344, July 12, 1974, 88 Stat. 297, as amended, known as the Congressional Budget and Impoundment Control Act of 1974, which enacted chapters 17, 17A and 17B, and section 190a-3 of this title and sections 11a, 11c, 11d, 1020a of former Title 31, amended sections 11, 665, 701, 1020, 1151, 1152, 1153, and 1154 of former Title 31, section 105 of Title 1, General Provisions, sections 190b and 190d of this title, repealed sections 571 and 581c-1 of former Title 31, and sections 66 and 81 of this title, and enacted provisions set out as notes under sections 190a-1, 621, 632 and 682 of this title, section 105 of Title 1, and section 1020 of former Title 31. For complete classification of this Act to the Code, see Short Title note set out under section 621 of this title and Tables.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in par. (6), is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, which enacted chapter 20 (§ 901 et seq.) and sections 654 to 656 of this title, amended sections 602, 622, 631 to 642, and 651 to 653 of this title, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of this title, enacted provisions set out as notes under section 901 of this title and section 911 of Title 42, and amended provisions set out as a note under section 621 of this title. For complete classifica-

[1] So in original.

tion of this Act to the Code, see Short Title note set out under section 901 of this title and Tables.

AMENDMENTS

1985—Par. (2). Pub. L. 99-177, § 201(a)(2), added reference to the collection of offsetting receipts, effective Apr. 15, 1986.

Par. (4). Pub. L. 99-177, § 232(b), struck out subpar. (B) relating to concurrent resolutions as provided in section 641 of this title, and redesignated subpar. (C) as (B).

Pars. (6) to (10). Pub. L. 99-177, § 201(a)(1), added par. (6) to (10).

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Amendment by sections 201(a)(1) and 232(b) of Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

Amendment by section 201(a)(2) of Pub. L. 99-177 effective Apr. 15, 1986, see section 275(a)(2)(A) of Pub. L. 99-177.

Par. (7) and the second sentence of par. (6), as added by section 201(a)(1) of Pub. L. 99-177, to expire Sept. 30, 1991, see section 275(b)(2)(A) of Pub. L. 99-177.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 632, 642, 652, 904, 907 of this title; title 31 section 1105.

SUBCHAPTER I—CONGRESSIONAL BUDGET PROCESS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 622 of this title; title 42 section 6247.

§ 631. Timetable

The timetable with respect to the congressional budget process for any fiscal year is as follows:

On or before:	Action to be completed:
First Monday after January 3.	President submits his budget.
February 15	Congressional Budget Office submits report to Budget Committees.
February 25	Committees submit views and estimates to Budget Committees.
April 1	Senate Budget Committee reports concurrent resolution on the budget.
April 15	Congress completes action on concurrent resolution on the budget.
May 15	Annual appropriation bills may be considered in the House.
June 10	House Appropriations Committee reports last annual appropriation bill.
June 15	Congress completes action on reconciliation legislation.
June 30	House completes action on annual appropriation bills.
October 1	Fiscal year begins.

(As amended Pub. L. 99-177, title II, § 201(b), Dec. 12, 1985, 99 Stat. 1040.)

AMENDMENTS

1985—Pub. L. 99-177 amended section generally. Prior to the amendment the timetable was on or before: November 10—President submits current services budget; 15th day after Congress meets—President submits his budget; March 15—Committees and joint committees submit reports to Budget Committees; April 1—Congressional Budget Office submits reports to Budget Committees; April 15—Budget Committees report first concurrent resolution on the budget to their Houses; May 15—Committees report bills and resolutions authorizing new budget authority; May 15—Congress completes action on first concurrent resolution on the budget; 7th day after Labor Day—Congress completes action on bills and resolutions providing new budget authority and new spending authority; September 15—Congress completes action on second required concurrent resolution on the budget; September 25—Congress completes action on reconciliation bill or resolution, or both, implementing second required concurrent resolution; October 1—Fiscal year begins.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

§ 632. Annual adoption of concurrent resolution on the budget

(a) Content of concurrent resolution on the budget

On or before April 15 of each year, the Congress shall complete action on a concurrent resolution on the budget for the fiscal year beginning on October 1 of such year. The concurrent resolution shall set forth appropriate levels for the fiscal year beginning on October 1 of such year, and planning levels for each of the two ensuing fiscal years, for the following—

(1) totals of new budget authority, budget outlays, direct loan obligations, and primary loan guarantee commitments;

(2) total Federal revenues and the amount, if any, by which the aggregate level of Federal revenues should be increased or decreased by bills and resolutions to be reported by the appropriate committees;

(3) the surplus or deficit in the budget;

(4) new budget authority, budget outlays, direct loan obligations, and primary loan guarantee commitments for each major functional category, based on allocations of the total levels set forth pursuant to paragraph (1); and

(5) the public debt.

(b) Additional matters in concurrent resolution

The concurrent resolution on the budget may—

(1) set forth, if required by subsection (f) of this section, the calendar year in which, in the opinion of the Congress, the goals for reducing unemployment set forth in section 4(b) of the Employment Act of 1946 [15 U.S.C. 1022a(b)] should be achieved;

(2) include reconciliation directives described in section 641 of this title;

(3) require a procedure under which all or certain bills or resolutions providing new budget authority or new entitlement author-

ity for such fiscal year shall not be enrolled until the Congress has completed action on any reconciliation bill or reconciliation resolution or both required by such concurrent resolution to be reported in accordance with section 641(b) of this title; and

(4) set forth such other matters, and require such other procedures, relating to the budget, as may be appropriate to carry out the purposes of this Act.

(c) Consideration of procedures or matters which have effect of changing any rule of House

If the Committee on the Budget of the House of Representatives reports any concurrent resolution on the budget which includes any procedure or matter which has the effect of changing any rule of the House of Representatives, such concurrent resolution shall then be referred to the Committee on Rules with instructions to report it within five calendar days (not counting any day on which the House is not in session). The Committee on Rules shall have jurisdiction to report any concurrent resolution referred to it under this paragraph with an amendment or amendments changing or striking out any such procedure or matter.

(d) Views and estimates of other committees

On or before February 25 of each year, each committee of the House of Representatives having legislative jurisdiction shall submit to the Committee on the Budget of the House and each committee of the Senate having legislative jurisdiction shall submit to the Committee on the Budget of the Senate its views and estimates (as determined by the committee making such submission) with respect to all matters set forth in subsections (a) and (b) of this section which relate to matters within the jurisdiction or functions of such committee. The Joint Economic Committee shall submit to the Committees on the Budget of both Houses its recommendations as to the fiscal policy appropriate to the goals of the Employment Act of 1946 [15 U.S.C. 1021 et seq.]. Any other committee of the House of Representatives or the Senate may submit to the Committee on the Budget of its House, and any joint committee of the Congress may submit to the Committees on the Budget of both Houses, its views and estimates with respect to all matters set forth in subsections (a) and (b) of this section which relate to matters within its jurisdiction or functions.

(e) Hearings and report

In developing the concurrent resolution on the budget referred to in subsection (a) of this section for each fiscal year, the Committee on the Budget of each House shall hold hearings and shall receive testimony from Members of Congress and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as the committee deems desirable. Each of the recommendations as to short-term and medium-term goals set forth in the report submitted by the members of the Joint Economic Committee under subsection (d) of this section may be considered by the Committee on the Budget of each House as part of its consideration of such concurrent resolution, and its report may reflect its views thereon, including its views on how the estimates of revenues and levels of budget authority and outlays set forth in such concurrent resolution are designed to achieve any goals it is recommending. The report accompanying such concurrent resolution shall include, but not be limited to—

(1) a comparison of revenues estimated by the committee with those estimated in the budget submitted by the President;

(2) a comparison of the appropriate levels of total budget outlays and total new budget authority, total direct loan obligations, total primary loan guarantee commitments, as set forth in such concurrent resolution, with those estimated or requested in the budget submitted by the President;

(3) with respect to each major functional category, an estimate of budget outlays and an appropriate level of new budget authority for all proposed programs and for all existing programs (including renewals thereof), with the estimate and level for existing programs being divided between permanent authority and funds provided in appropriation Acts, and with each such division being subdivided between controllable amounts and all other amounts;

(4) an allocation of the level of Federal revenues recommended in the concurrent resolution among the major sources of such revenues;

(5) the economic assumptions and objectives which underlie each of the matters set forth in such concurrent resolution and any alternative economic assumptions and objectives which the committee considered;

(6) projections (not limited to the following), for the period of five fiscal years beginning with such fiscal year, of the estimated levels of total budget outlays and total new budget authority, the estimated revenues to be received, and the estimated surplus or deficit, if any, for each fiscal year in such period, and the estimated levels of tax expenditures (the tax expenditures budget) by major functional categories;

(7) a statement of any significant changes in the proposed levels of Federal assistance to State and local governments;

(8) information, data, and comparisons indicating the manner in which, and the basis on which, the committee determined each of the matters set forth in the concurrent resolution; and

(9) allocations described in section 633(a) of this title.

(f) Achievement of goals for reducing unemployment

(1) If, pursuant to section 4(c) of the Employment Act of 1946 [15 U.S.C. 1022a(c)], the President recommends in the Economic Report that the goals for reducing unemployment set forth in section 4(b) of such Act [15 U.S.C. 1022a(b)] be achieved in a year after the close of the five-year period prescribed by such subsection, the concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the

year in which, in the opinion of the Congress, such goals can be achieved.

(2) After the Congress has expressed its opinion pursuant to paragraph (1) as to the year in which the goals for reducing unemployment set forth in section 4(b) of the Employment Act of 1946 [15 U.S.C. 1022a(b)] can be achieved, if, pursuant to section 4(e) of such Act [15 U.S.C. 1022a(e)], the President recommends in the Economic Report that such goals be achieved in a year which is different from the year in which the Congress has expressed its opinion that such goals should be achieved, either in its action pursuant to paragraph (1) or in its most recent action pursuant to this paragraph, the concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the year in which, in the opinion of the Congress, such goals can be achieved.

(3) It shall be in order to amend the provision of such resolution setting forth such year only if the amendment thereto also proposes to alter the estimates, amounts, and levels (as described in subsection (a) of this section) set forth in such resolution in germane fashion in order to be consistent with the economic goals (as described in sections 3(a)(2) and 4(b) of the Employment Act of 1946 [15 U.S.C. 1022(a)(2), 1022a(b)]) which such amendment proposes can be achieved by the year specified in such amendment.

(g) Common economic assumptions

The joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall set forth the common economic assumptions upon which such joint statement and conference report are based, or upon which any amendment contained in the joint explanatory statement to be proposed by the conferees in the case of technical disagreement is based.

(h) Budget Committee's consultation with committees

The Committee on the Budget of the House of Representatives shall consult with the committees of its House having legislative jurisdiction during the preparation, consideration, and enforcement of the concurrent resolution on the budget with respect to all matters which relate to the jurisdiction or functions of such committees.

(i) Maximum deficit amount may not be exceeded

(1)(A) Except as provided in paragraph (2), it shall not be in order in either the House of Representatives or the Senate to consider any concurrent resolution on the budget for a fiscal year under this section, or to consider any amendment to such a concurrent resolution, or to consider a conference report on such a concurrent resolution, if the level of total budget outlays for such fiscal year that is set forth in such concurrent resolution or conference report exceeds the recommended level of Federal revenues set forth for that year by an amount that is greater than the maximum deficit amount for such fiscal year as determined under section 622(7) of this title, or if the adoption of such amendment would result in a level of total budget outlays for that fiscal year which exceeds the recommended level of Federal revenues for that fiscal year, by an amount that is greater than the maximum deficit amount for such fiscal year as determined under section 622(7) of this title.

(B) In the House of Representatives the point of order established under subparagraph (A) with respect to the consideration of a conference report or with respect to the consideration of a motion to concur, with or without an amendment or amendments, in a Senate amendment, the stage of disagreement having been reached, may be waived only by a vote of three-fifths of the Members present and voting, a quorum being present.

(2) Paragraph (1) of this subsection shall not apply if a declaration of war by the Congress is in effect.

(As amended Pub. L. 99-177, title II, § 201(b), Dec. 12, 1985, 99 Stat. 1040.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(4), means Pub. L. 93-344, July 12, 1974, 88 Stat. 297, as amended, known as the Congressional Budget and Impoundment Control Act of 1974, which enacted chapters 17, 17A and 17B, and section 190a-3 of this title and sections 11a, 11c, 11d, 1020a of former Title 31, amended sections 11, 665, 701, 1020, 1151, 1152, 1153 and 1154 of former Title 31, section 105 of Title 1, General Provisions, sections 190b and 190d of this title, repealed sections 571 and 581c-1 of former Title 31 and sections 66 and 81 of this title, and enacted provisions set out as notes under sections 190a-1, 621, 632, and 682 of this title, section 105 of Title 1, and section 1020 of former Title 31. For complete classification of this Act to the Code, see Short Title note set out under section 621 of this title and Tables.

The Employment Act of 1946, referred to in subsec. (d), is act Feb. 20, 1946, ch. 33, 60 Stat. 23, as amended, which is classified generally to chapter 21 (§ 1021 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1021 of Title 15 and Tables.

AMENDMENTS

1985—Pub. L. 99-177 substituted "Adoption of concurrent resolution on the budget" for "Adoption of first concurrent resolution" in section catchline.

Subsec. (a). Pub. L. 99-177 amended subsec. (a) generally, substituting provisions relating to content of concurrent resolution on the budget, for provisions relating to action required to be completed by May 15 of each year.

Subsec. (b). Pub. L. 99-177 amended subsec. (b) generally, adding provisions relating to achievement of goals for reducing unemployment and provisions relating to reconciliation directives described in section 641 of this title.

Subsec. (c). Pub. L. 99-177 amended subsec. (c) generally, substituting provisions relating to consideration of procedures or matters which have the effect of changing any rule of the House of Representatives, for provisions relating to submission on or before March 15 of each year of the views and estimates of other committees.

Subsec. (d). Pub. L. 99-177 amended subsec. (d) generally, substituting provisions relating to views and estimates of other committees, for provisions relating to hearings and report in developing the first concurrent resolution on the budget.

Subsec. (e). Pub. L. 99-177 amended subsec. (e) generally, substituting provisions relating to hearings and report in developing the concurrent resolution on the budget, for provisions relating to achievement of goals for reducing unemployment.

Subsecs. (f) to (i). Pub. L. 99-177, in amending section generally, added subsecs. (f) to (i).

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, but with subsec. (i) of this section to expire Sept. 30, 1991, see section 275(a)(1), (b)(2)(B) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

SENATE WAIVER OF MAXIMUM DEFICIT AMOUNT PROVISION

Waiver or suspension of subsec. (i) of this section only by affirmative vote of three-fifths of the Senate, except with regard to joint resolutions reported or discharged pursuant to section 904(a) of this title, see section 271(b) of Pub. L. 99-177, set out as a Waivers and Suspensions in the Senate note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 622, 633, 634, 635, 636, 641, 642, 655, 904 of this title; title 31 section 1105.

§ 633. Committee allocations

(a) Allocation of totals

(1) For the House of Representatives, the joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an estimated allocation, based upon such concurrent resolution as recommended in such conference report, of the appropriate levels of total budget outlays, total new budget authority, total entitlement authority, and total credit authority among each committee of the House of Representatives which has jurisdiction over laws, bills and resolutions providing such new budget authority, such entitlement authority, or such credit authority. The allocation shall, for each committee, divide new budget authority, entitlement authority, and credit authority between amounts provided or required by law on the date of such conference report (mandatory or uncontrollable amounts), and amounts not so provided or required (discretionary or controllable amounts), and shall make the same division for estimated outlays that would result from such new budget authority.

(2) For the Senate, the joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an estimated allocation, based upon such concurrent resolution as recommended in such conference report, of the appropriate levels of total budget outlays, total new budget authority and new credit authority among each committee of the House of Representatives and the Senate which has jurisdiction over bills and resolutions providing such new budget authority.

(b) Reports by committees

As soon as practicable after a concurrent resolution on the budget is agreed to—

(1) the Committee on Appropriations of each House shall, after consulting with the Committee on Appropriations of the other House, (A) subdivide among its subcommittees the allocation of budget outlays, new budget authority, and new credit authority allocated to it in the joint explanatory statement accompanying the conference report on such concurrent resolution, and (B) further subdivide the amount with respect to each such subcommittee between controllable amounts and all other amounts; and

(2) every other committee of the House and Senate to which an allocation was made in such joint explanatory statement shall, after consulting with the committee or committees of the other House to which all or part of its allocation was made, (A) subdivide such allocation among its subcommittees or among programs over which it has jurisdiction, and (B) further subdivide the amount with respect to each subcommittee or program between controllable amounts and all other amounts.

Each such committee shall promptly report to its House the subdivisions made by it pursuant to this subsection.

(c) Point of order

It shall not be in order in the House of Representatives or the Senate to consider any bill or resolution, or amendment thereto, providing—

(1) new budget authority for a fiscal year;

(2) new spending authority as described in section 651(c)(2) of this title for a fiscal year; or

(3) new credit authority for a fiscal year;

within the jurisdiction of any committee which has received an appropriate allocation of such authority pursuant to subsection (a) of this section for such fiscal year, unless and until such committee makes the allocation or subdivisions required by subsection (b) of this section, in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year.

(d) Subsequent concurrent resolutions

In the case of a concurrent resolution on the budget referred to in section 635 of this title, the allocations under subsection (a) of this section and the subdivisions under subsection (b) of this section shall be required only to the extent necessary to take into account revisions made in the most recently agreed to concurrent resolution on the budget.

(e) Alteration of allocations

At any time after a committee reports the allocations required to be made under subsection (b) of this section, such committee may report to its House an alteration of such allocations. Any alteration of such allocations must be consistent with any actions already taken by its House on legislation within the committee's jurisdiction.

(f) Legislation subject to point of order

(1) In the House of Representatives

After the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in the House of Representatives to consider any bill, resolution, or amendment providing new budget authority for such fiscal year, new entitlement authority effective during such fiscal year, or new credit authority for such fiscal year, or any conference report on any such bill or resolution, if—

(A) the enactment of such bill or resolution as reported;

(B) the adoption and enactment of such amendment; or

(C) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the appropriate allocation made pursuant to subsection (b) of this section for such fiscal year of new discretionary budget authority, new entitlement authority, or new credit authority to be exceeded.

(2) In the Senate

At any time after the Congress has completed action on the concurrent resolution on the budget required to be reported under section 632(a) of this title for a fiscal year, it shall not be in order in the Senate to consider any bill or resolution (including a conference report thereon), or any amendment to a bill or resolution, that provides for budget outlays or new budget authority in excess of the appropriate allocation of such outlays or authority reported under subsection (b) of this section in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year.

(g) Determinations by Budget Committees

For purposes of this section, the levels of new budget authority, spending authority as described in section 651(c)(2) of this title, outlays, and new credit authority for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as the case may be.

(As amended Pub. L. 99-177, title II, § 201(b), Dec. 12, 1985, 99 Stat. 1044.)

AMENDMENTS

1985—Pub. L. 99-177 substituted "Committee allocations" for "Matters to be included in joint statement of managers; reports by committees" in section catchline.

Subsec. (a). Pub. L. 99-177 amended subsec. (a) generally, providing for separate provisions relating to allocations of totals for the House of Representatives and for the Senate, with respect to the joint explanatory statement accompanying the conference report on a concurrent resolution on the budget.

Subsec. (b). Pub. L. 99-177 amended subsec. (b) generally, adding applicability to new credit authority.

Subsec. (c). Pub. L. 99-177 amended subsec. (c) generally, substituting provisions relating to point of order, for provisions relating to subsequent concurrent resolutions.

Subsecs. (d) to (g). Pub. L. 99-177, in amending section generally, added subsecs. (d) to (g).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, except that such amendment, insofar as it relates to subsecs. (c), (f), and (g) of this section, to become effective Apr. 15, 1986, see section 275(a)(1), (2)(A) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

SENATE WAIVER OF POINT OF ORDER PROVISION

Waiver or suspension of subsec. (f) of this section only by affirmative vote of three-fifths of the Senate, except with regard to joint resolutions reported or discharged pursuant to section 904(a) of this title, see section 271(b) of Pub. L. 99-177, set out as a Waivers and Suspensions in the Senate note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 632, 639, 642, 651, 904 of this title.

§ 634. Concurrent resolution on the budget must be adopted before legislation providing new budget authority, new spending authority, new credit authority, or changes in revenues or the public debt limit is considered

(a) In general

It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution (or amendment thereto) as reported to the House or Senate which provides—

(1) new budget authority for a fiscal year;

(2) an increase or decrease in revenues to become effective during a fiscal year;

(3) an increase or decrease in the public debt limit to become effective during a fiscal year;

(4) new entitlement authority to become effective during a fiscal year; or

(5) new credit authority for a fiscal year,

until the concurrent resolution on the budget for such fiscal year has been agreed to pursuant to section 632 of this title.

(b) Exceptions

Subsection (a) of this section does not apply to any bill or resolution—

(1) providing new budget authority which first becomes available in a fiscal year following the fiscal year to which the concurrent resolution applies; or

(2) increasing or decreasing revenues which first become effective in a fiscal year following the fiscal year to which the concurrent resolution applies.

After May 15 of any calendar year, subsection (a) of this section does not apply in the House of Representatives to any general appropriation bill, or amendment thereto, which provides new budget authority for the fiscal year beginning in such calendar year.

(c) Waiver in Senate

(1) The committee of the Senate which reports any bill or resolution (or amendment thereto) to which subsection (a) of this section applies may at or after the time it reports such bill or resolution (or amendment), report a resolution to the Senate (A) provid-

ing for the waiver of subsection (a) of this section with respect to such bill or resolution (or amendment), and (B) stating the reasons why the waiver is necessary. The resolution shall then be referred to the Committee on the Budget of the Senate. That committee shall report the resolution to the Senate within 10 days after the resolution is referred to it (not counting any day on which the Senate is not in session) beginning with the day following the day on which it is so referred, accompanied by that committee's recommendations and reasons for such recommendations with respect to the resolution. If the committee does not report the resolution within such 10-day period, it shall automatically be discharged from further consideration of the resolution and the resolution shall be placed on the calendar.

(2) During the consideration of any such resolution, debate shall be limited to one hour, to be equally divided between, and controlled by, the majority leader and minority leader or their designees, and the time on any debatable motion or appeal shall be limited to twenty minutes, to be equally divided between, and controlled by, the mover and the manager of the resolution. In the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage of such resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal. No amendment to the resolution is in order.

(3) If, after the Committee on the Budget has reported (or been discharged from further consideration of) the resolution, the Senate agrees to the resolution, then subsection (a) of this section shall not apply with respect to the bill or resolution (or amendment thereto) to which the resolution so agreed to applies.

(As amended Pub. L. 99-177, title II, § 201(b), Dec. 12, 1985, 99 Stat. 1046.)

AMENDMENTS

1985—Pub. L. 99-177 added reference to new credit authority in section catchline.

Subsec. (a). Pub. L. 99-177 amended subsec. (a) generally, substituting provisions respecting new entitlement authority or new credit authority, for provisions respecting new spending authority.

Subsec. (b). Pub. L. 99-177 amended subsec. (b) generally, adding provisions relating to applicability of subsec. (a) after May 15 of any calendar year.

Subsec. (c). Pub. L. 99-177 amended subsec. (c) generally, adding references to amendments of bills or resolutions wherever appearing.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

§ 635. Permissible revisions of concurrent resolutions on the budget

(a) In general

At any time after the concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 632 of this title, and before the end of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises or reaffirms the concurrent resolution on the budget for such fiscal year most recently agreed to.

(b) Maximum deficit amount may not be exceeded

The provisions of section 632(i) of this title shall apply with respect to concurrent resolutions on the budget under this section (and amendments thereto and conference reports thereon) in the same way they apply to concurrent resolutions on the budget under such section 632(i) of this title (and amendments thereto and conference reports thereon).

(As amended Pub. L. 99-177, title II, § 201(b), Dec. 12, 1985, 99 Stat. 1047.)

AMENDMENTS

1985—Pub. L. 99-177, in amending section generally, added "Permissible" before "revisions" in section catchline, designated existing provisions as subsec. (a) and, as so designated, struck out "first" after "after the", and added subsec. (b).

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, but with subsec. (b) of this section to expire Sept. 30, 1991, see section 275(a)(1), (b)(2)(B) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

SENATE WAIVER OF MAXIMUM DEFICIT AMOUNT PROVISION

Waiver or suspension of subsec. (b) of this section only by affirmative vote of three-fifths of the Senate, except with regard to joint resolutions reported or discharged pursuant to section 904(a) of this title, see section 271(b) of Pub. L. 99-177, set out as a Waivers and Suspensions in the Senate note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 622, 633, 636, 641, 642, 655, 904 of this title.

§ 636. Provisions relating to consideration of concurrent resolutions on the budget

(a) Procedure in House after report of Committee; debate

(1) When the Committee on the Budget of the House of Representatives has reported any concurrent resolution on the budget, it is in order at any time after the fifth day (excluding Saturdays, Sundays, and legal holidays) following the day on which the report upon such resolution by the Committee on the Budget has been available to Members of the House and, if applicable, after the first day (excluding Saturdays, Sundays, and legal holidays) following the day on which a report upon such resolution by the Committee on Rules pursuant to section 632(c) of this title

has been available to Members of the House (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the concurrent resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) General debate on any concurrent resolution on the budget in the House of Representatives shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority parties, plus such additional hours of debate as are consumed pursuant to paragraph (3). A motion further to limit debate is not debatable. A motion to recommit the concurrent resolution is not in order, and it is not in order to move to reconsider the vote by which the concurrent resolution is agreed to or disagreed to.

(3) Following the presentation of opening statements on the concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the House, there shall be a period of up to four hours for debate on economic goals and policies.

(4) Only if a concurrent resolution on the budget reported by the Committee on the Budget of the House sets forth the economic goals (as described in sections 1022(a)(2) and 1022a(b) of title 15) which the estimates, amounts, and levels (as described in section 632(a) of this title) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.

(5) Consideration of any concurrent resolution on the budget by the House of Representatives shall be in the Committee of the Whole, and the resolution shall be considered for amendment under the five-minute rule in accordance with the applicable provisions of rule XXIII of the Rules of the House of Representatives. After the Committee rises and reports the resolution back to the House, the previous question shall be considered as ordered on the resolution and any amendments thereto to final passage without intervening motion; except that it shall be in order at any time prior to final passage (notwithstanding any other rule or provision of law) to adopt an amendment (or a series of amendments) changing any figure or figures in the resolution as so reported to the extent necessary to achieve mathematical consistency.

(6) Debate in the House of Representatives on the conference report on any concurrent resolution on the budget shall be limited to not more than 5 hours, which shall be divided equally between the majority and minority parties. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

(7) Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any concurrent resolution on the budget shall be decided without debate.

(b) Procedure in Senate after report of Committee; debate; amendments

(1) Debate in the Senate on any concurrent resolution on the budget, and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 50 hours, except that with respect to any concurrent resolution referred to in section 635(a) of this title all such debate shall be limited to not more than 15 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(2) Debate in the Senate on any amendment to a concurrent resolution on the budget shall be limited to 2 hours, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution, and debate on any amendment to an amendment, debatable motion, or appeal shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution, except that in the event the manager of the concurrent resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. No amendment that is not germane to the provisions of such concurrent resolution shall be received. Such leaders, or either of them, may, from the time under their control on the passage of the concurrent resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(3) Following the presentation of opening statements on the concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the Senate, there shall be a period of up to four hours for debate on economic goals and policies.

(4) Subject to the other limitations of this Act, only if a concurrent resolution on the budget reported by the Committee on the Budget of the Senate sets forth the economic goals (as described in sections 1022(a)(2) and 1022a(b) of title 15) which the estimates, amounts, and levels (as described in section 632(a) of this title) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.

(5) A motion to further limit debate is not debatable. A motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not

in order. Debate on any such motion to recommit shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution.

(6) Notwithstanding any other rule, an amendment or series of amendments to a concurrent resolution on the budget proposed in the Senate shall always be in order if such amendment or series of amendments proposes to change any figure or figures then contained in such concurrent resolution so as to make such concurrent resolution mathematically consistent or so as to maintain such consistency.

(c) Action on conference reports in Senate

(1) The conference report on any concurrent resolution on the budget shall be in order in the Senate at any time after the third day (excluding Saturdays, Sundays, and legal holidays) following the day on which such conference report is reported and is available to Members of the Senate. A motion to proceed to the consideration of the conference report may be made even though a previous motion to the same effect has been disagreed to.

(2) During the consideration in the Senate of the conference report on any concurrent resolution on the budget, debate shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the conference report.

(3) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to 1 hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to one-half hour, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be equally divided between and controlled by the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

(4) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment that is not germane to the provisions of such amendments shall be received.

(d) Required action by conference committee

If at the end of 7 days (excluding Saturdays, Sundays, and legal holidays) after the conferees of both Houses have been appointed to a committee of conference on a concurrent resolution on the budget, the conferees are unable to reach agreement with respect to all matters in disagreement between the two Houses, then the conferees shall submit to their respective Houses, on the first day thereafter on which their House is in session—

(1) a conference report recommending those matters on which they have agreed and reporting in disagreement those matters on which they have not agreed; or

(2) a conference report in disagreement, if the matter in disagreement is an amendment which strikes out the entire text of the concurrent resolution and inserts a substitute text.

(e) Concurrent resolution must be consistent in Senate

It shall not be in order in the Senate to vote on the question of agreeing to—

(1) a concurrent resolution on the budget unless the figures then contained in such resolution are mathematically consistent; or

(2) a conference report on a concurrent resolution on the budget unless the figures contained in such resolution, as recommended in such conference report, are mathematically consistent.

(As amended Pub. L. 99-177, title II, § 201(b), Dec. 12, 1985, 99 Stat. 1047.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(4), means Pub. L. 93-344, July 12, 1974, 88 Stat. 297, as amended, known as the Congressional Budget and Impoundment Control Act of 1974, which enacted chapters 17, 17A and 17B, and section 190a-3 of this title and sections 11a, 11c, 11d, 1020a of former Title 31, amended sections 11, 665, 701, 1020, 1151, 1152, 1153, and 1154 of former Title 31, section 105 of Title 1, General Provisions, sections 190b and 190d of this title, repealed sections 571 and 581c-1 of former Title 31 and sections 66 and 81 of this title, and enacted provisions set out as notes under sections 190a-1, 621, 632, and 682 of this title, section 105 of Title 1, and section 1020 of former Title 31. For complete classification of this Act to the Code, see Short Title note set out under section 621 of this title and Tables.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-177, in amending subsec. (a) generally, in par. (1) added provisions relating to applicability of report after first day and substituted "fifth day" for "tenth day", in par. (3) struck out "first" before "concurrent", in par. (5) substituted "considered for" for "read for", struck out par. (7) relating to motions to postpone, and redesignated par. (8) as (7).

Subsec. (b). Pub. L. 99-177, in amending subsec. (b) generally, in par. (1) substituted "any concurrent" for "the second required concurrent" and "635(a)" for "641(a)", in par. (3) struck out "first" before "concurrent", and in par. (4) added provisions relating to applicability of other limitations of this Act.

Subsecs. (c) to (e). Pub. L. 99-177, in amending section generally, reenacted subsecs. (c) to (e) without change.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub.

L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

EXERCISE OF CONGRESSIONAL RULEMAKING POWER

Subsec. (b)(2) of this section may be waived or suspended only by the affirmative vote of three-fifths of the Senate, see section 904(c) of Pub. L. 93-344, set out as a note under section 621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 641, 904 of this title.

§ 637. Legislation dealing with Congressional budget must be handled by Budget Committees

No bill or resolution, and no amendment to any bill or resolution, dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or resolution.

(As amended Pub. L. 99-177, title II, § 201(b), Dec. 12, 1985, 99 Stat. 1050.)

AMENDMENTS

1985—Pub. L. 99-177 reenacted section without change.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

EXERCISE OF CONGRESSIONAL RULEMAKING POWER

This section may be waived or suspended in the Senate only by affirmative vote of three-fifths of the Senate, see section 904(c) of Pub. L. 93-344, set out as a note under section 621 of this title.

§ 638. House committee action on all appropriation bills to be completed by June 10

On or before June 10 of each year, the Committee on Appropriations of the House of Representatives shall report annual appropriation bills providing new budget authority under the jurisdiction of all of its subcommittees for the fiscal year which begins on October 1 of that year.

(As amended Pub. L. 99-177, title II, § 201(b), Dec. 12, 1985, 99 Stat. 1051.)

AMENDMENTS

1985—Pub. L. 99-177 substituted "by June 10" for "before first appropriation bill is reported" in section catchline, and amended section generally. Prior to amendment, section read as follows: "Prior to reporting the first regular appropriation bill for each fiscal year, the Committee on Appropriations of the House of Representatives shall, to the extent practicable, complete subcommittee markup and full committee action on all regular appropriation bills for that year and submit to the House a summary report comparing the committee's recommendations with the appropriate levels of budget outlays and new budget authority as set forth in the most recently agreed to concurrent resolution on the budget for that year."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

§ 639. Reports, summaries, and projections of Congressional budget actions

(a) Reports on legislation providing new budget authority, new spending authority, or new credit authority, or providing increase or decrease in revenues or tax expenditures

(1) Whenever a committee of either House reports to its House a bill or resolution, or committee amendment thereto, providing new budget authority (other than continuing appropriations), new spending authority described in section 651(c)(2) of this title, or new credit authority, or providing an increase or decrease in revenues or tax expenditures for a fiscal year, the report accompanying that bill or resolution shall contain a statement, or the committee shall make available such a statement in the case of an approved committee amendment which is not reported to its House, prepared after consultation with the Director of the Congressional Budget Office—

(A) comparing the levels in such measure to the appropriate allocations in the reports submitted under section 633(b) of this title for the most recently agreed to concurrent resolution on the budget for such fiscal year;

(B) including an identification of any new spending authority described in section 651(c)(2) of this title which is contained in such measure and a justification for the use of such financing method instead of annual appropriations;

(C) containing a projection by the Congressional Budget Office of how such measure will affect the levels of such budget authority, budget outlays, spending authority, revenues, tax expenditures, direct loan obligations, or primary loan guarantee commitments under existing law for such fiscal year and each of the four ensuing fiscal years, if timely submitted before such report is filed; and

(D) containing an estimate by the Congressional Budget Office of the level of new budget authority for assistance to State and local governments provided by such measure, if timely submitted before such report is filed.

(2) Whenever a conference report is filed in either House and such conference report or any amendment reported in disagreement or any amendment contained in the joint statement of managers to be proposed by the conferees in the case of technical disagreement on such bill or resolution provides new budget authority (other than continuing appropriations), new spending authority described in section 651(c)(2) of this title, or new credit authority, or provides an increase or decrease in revenues for a fiscal year, the statement of

managers accompanying such conference report shall contain the information described in paragraph (1), if available on a timely basis. If such information is not available when the conference report is filed, the committee shall make such information available to Members as soon as practicable prior to the consideration of such conference report.

(b) Up-to-date tabulations of Congressional budget action

(1) The Director of the Congressional Budget Office shall issue to the committees of the House of Representatives and the Senate reports on at least a monthly basis detailing and tabulating the progress of congressional action on bills and resolutions providing new budget authority, new spending authority described in section 651(c)(2) of this title, or new credit authority, or providing an increase or decrease in revenues or tax expenditures for a fiscal year. Such reports shall include but are not limited to an up-to-date tabulation comparing the appropriate aggregate and functional levels (including outlays) included in the most recently adopted concurrent resolution on the budget with the levels provided in bills and resolutions reported by committees or adopted by either House or by the Congress, and with the levels provided by law for the fiscal year preceding such fiscal year.

(2) The Committee on the Budget of each House shall make available to Members of its House summary budget scorekeeping reports. Such reports—

(A) shall be made available on at least a monthly basis, but in any case frequently enough to provide Members of each House an accurate representation of the current status of congressional consideration of the budget;

(B) shall include, but are not limited to, summaries of tabulations provided under subsection (b)(1) of this section; and

(C) shall be based on information provided under subsection (b)(1) of this section without substantive revision.

The chairman of the Committee on the Budget of the House of Representatives shall submit such reports to the Speaker.

(c) Five-year projection of Congressional budget action

As soon as practicable after the beginning of each fiscal year, the Director of the Congressional Budget Office shall issue a report projecting for the period of 5 fiscal years beginning with such fiscal year—

(1) total new budget authority and total budget outlays for each fiscal year in such period;

(2) revenues to be received and the major sources thereof, and the surplus or deficit, if any, for each fiscal year in such period;

(3) tax expenditures for each fiscal year in such period;

(4) entitlement authority for each fiscal year in such period; and

(5) credit authority for each fiscal year in such period.

(As amended Pub. L. 99-177, title II, § 201(b), Dec. 12, 1985, 99 Stat. 1051.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-177, in amending subsec. (a) generally, designated existing provisions as par. (1) and, as so designated, substituted provisions relating to reports on legislation providing new budget authority, new spending authority, or new credit authority, or providing an increase or decrease in revenues or tax expenditures, for provisions relating to reports on legislation providing new budget authority or tax expenditures, and added par. (2).

Subsec. (b). Pub. L. 99-177, in amending subsec. (b) generally, designated existing provisions as par. (1) and, as so designated, substituted provisions relating to issuance of reports on a monthly basis and contents of such reports, for provisions relating to issuance of reports on a periodic basis and contents of such reports, and added par. (2).

Subsec. (c). Pub. L. 99-177 amended subsec. (c) generally, adding pars. (4) and (5).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

§ 640. House approval of regular appropriation bills

It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has approved annual appropriation bills providing new budget authority under the jurisdiction of all the subcommittees of the Committee on Appropriations for the fiscal year beginning on October 1 of such year. For purposes of this section, the chairman of the Committee on Appropriations of the House of Representatives shall periodically advise the Speaker as to changes in jurisdiction among its various subcommittees.

(As amended Pub. L. 99-177, title II, § 201(b), Dec. 12, 1985, 99 Stat. 1052.)

AMENDMENTS

1985—Pub. L. 99-177 substituted "House approval of regular appropriation bills" for "Completion of action on bills providing new budget authority and certain new spending authority" in section catchline, and amended section generally. Prior to amendment, section read as follows: "Except as otherwise provided pursuant to this subchapter, not later than the seventh day after Labor Day of each year, the Congress shall complete action on all bills and resolutions—

"(1) providing new budget authority for the fiscal year beginning on October 1 of such year, other than supplemental, deficiency, and continuing appropriation bills and resolutions, and other than the reconciliation bill for such year, if required to be reported under section 641(c) of this title; and

"(2) providing new spending authority described in section 651(c)(2)(C) of this title which is to become effective during such fiscal year.

Paragraph (1) shall not apply to any bill or resolution if legislation authorizing the enactment of new budget authority to be provided in such bill or resolution has not been timely enacted."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years begin-

ning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

§ 641. Reconciliation

(a) Inclusion of reconciliation directives in concurrent resolutions on the budget

A concurrent resolution on the budget for any fiscal year, to the extent necessary to effectuate the provisions and requirements of such resolution, shall—

(1) specify the total amount by which—

(A) new budget authority for such fiscal year;

(B) budget authority initially provided for prior fiscal years;

(C) new entitlement authority which is to become effective during such fiscal year; and

(D) credit authority for such fiscal year,

contained in laws, bills, and resolutions within the jurisdiction of a committee, is to be changed and direct that committee to determine and recommend changes to accomplish a change of such total amount;

(2) specify the total amount by which revenues are to be changed and direct that the committees having jurisdiction to determine and recommend changes in the revenue laws, bills, and resolutions to accomplish a change of such total amount;

(3) specify the amounts by which the statutory limit on the public debt is to be changed and direct the committee having jurisdiction to recommend such change; or

(4) specify and direct any combination of the matters described in paragraphs (1), (2), and (3).

(b) Legislative procedure

If a concurrent resolution containing directives to one or more committees to determine and recommend changes in laws, bills, or resolutions is agreed to in accordance with subsection (a) of this section, and—

(1) only one committee of the House or the Senate is directed to determine and recommend changes, that committee shall promptly make such determination and recommendations and report to its House reconciliation legislation containing such recommendations; or

(2) more than one committee of the House or the Senate is directed to determine and recommend changes, each such committee so directed shall promptly make such determination and recommendations and submit such recommendations to the Committee on the Budget of its House, which, upon receiving all such recommendations, shall report to its House reconciliation legislation carrying out all such recommendations without any substantive revision.

For purposes of this subsection, a reconciliation resolution is a concurrent resolution directing the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be, to make specified changes in bills and resolutions which have not been enrolled.

(c) Compliance with reconciliation directions

Any committee of the House of Representatives or the Senate that is directed, pursuant to a concurrent resolution on the budget, to determine and recommend changes of the type described in paragraphs (1) and (2) of subsection (a) of this section with respect to laws within its jurisdiction, shall be deemed to have complied with such directions—

(1) if—

(A) the amount of the changes of the type described in paragraph (1) of such subsection recommended by such committee do not exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under such paragraph by more than 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection, and

(B) the amount of the changes of the type described in paragraph (2) of such subsection recommended by such committee do not exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under that paragraph by more than 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection; and

(2) if the total amount of the changes recommended by such committee is not less than the total of the amounts of the changes such committee was directed to make under paragraphs (1) and (2) of such subsection.

(d) Limitation on amendments to reconciliation bills and resolutions

(1) It shall not be in order in the House of Representatives to consider any amendment to a reconciliation bill or reconciliation resolution if such amendment would have the effect of increasing any specific budget outlays above the level of such outlays provided in the bill or resolution (for the fiscal years covered by the reconciliation instructions set forth in the most recently agreed to concurrent resolution on the budget), or would have the effect of reducing any specific Federal revenues below the level of such revenues provided in the bill or resolution (for such fiscal years), unless such amendment makes at least an equivalent reduction in other specific budget outlays, an equivalent increase in other specific Federal revenues, or an equivalent combination thereof (for such fiscal years), except that a motion to strike a provision providing new budget authority or new entitlement authority may be in order.

(2) It shall not be in order in the Senate to consider any amendment to a reconciliation bill or reconciliation resolution if such amendment would have the effect of decreasing any specific budget outlay reductions below the level of such outlay reductions provided (for the fiscal years covered) in the reconciliation instructions which relate to such bill or resolution set forth in a resolution pro-

viding for reconciliation, or would have the effect of reducing Federal revenue increases below the level of such revenue increases provided (for such fiscal years) in such instructions relating to such bill or resolution, unless such amendment makes a reduction in other specific budget outlays, an increase in other specific Federal revenues, or a combination thereof (for such fiscal years) at least equivalent to any increase in outlays or decrease in revenues provided by such amendment, except that a motion to strike a provision shall always be in order.

(3) Paragraphs (1) and (2) shall not apply if a declaration of war by the Congress is in effect.

(4) For purposes of this section, the levels of budget outlays and Federal revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or of the Senate, as the case may be.

(5) The Committee on Rules of the House of Representatives may make in order amendments to achieve changes specified by reconciliation directives contained in a concurrent resolution on the budget if a committee or committees of the House fail to submit recommended changes to its Committee on the Budget pursuant to its instruction.

(e) Procedure in Senate

(1) Except as provided in paragraph (2), the provisions of section 636 of this title for the consideration in the Senate of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration in the Senate of reconciliation bills reported under subsection (b) of this section and conference reports thereon.

(2) Debate in the Senate on any reconciliation bill reported under subsection (b) of this section, and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours.

(f) Completion of reconciliation process

(1) In general

Congress shall complete action on any reconciliation bill or reconciliation resolution reported under subsection (b) of this section not later than June 15 of each year.

(2) Point of order in the House of Representatives

It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has completed action on the reconciliation legislation for the fiscal year beginning on October 1 of the calendar year to which the adjournment resolution pertains, if reconciliation legislation is required to be reported by the concurrent resolution on the budget for such fiscal year.

(g) Limitation on changes to Social Security Act

Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider any reconciliation bill or reconciliation resolution reported pursuant to a concurrent resolution on the budget agreed to under section 632 or 635 of this title, or a resolution pursuant to section 904(b) of this title, or any amendment thereto or conference report thereon, that contains recommendations with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act [42 U.S.C. 401 et seq.].

(As amended Pub. L. 99-177, title II, § 201(b), Dec. 12, 1985, 99 Stat. 1053.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (g), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1985—Pub. L. 99-177 substituted "Reconciliation" for "Second required concurrent resolution and reconciliation process" in section catchline.

Subsec. (a). Pub. L. 99-177 amended subsec. (a) generally, adding provisions relating to new entitlement authority and credit authority, and deleting provision that any such concurrent resolution could be reported, and the report accompanying it could be filed, in either House notwithstanding that that House was not in session on the day on which such concurrent resolution is reported.

Subsec. (b). Pub. L. 99-177 amended subsec. (b) generally, substituting provisions relating to legislative procedure respecting concurrent resolutions with directives to committees to determine and recommend changes in laws, etc., for provisions relating to completion of action on concurrent resolutions.

Subsec. (c). Pub. L. 99-177 amended subsec. (c) generally, substituting provisions relating to compliance with reconciliation directives, for provisions relating to the reconciliation process.

Subsec. (d). Pub. L. 99-177 amended subsec. (d) generally, substituting provisions relating to limitations on amendments to reconciliation bills and resolutions, for provisions relating to completion of the reconciliation process.

Subsec. (e). Pub. L. 99-177 amended subsec. (e) generally, substituting references to subsec. (b) for references to subsec. (c) wherever appearing, and deleting references to reconciliation resolutions.

Subsec. (f). Pub. L. 99-177 amended subsec. (f) generally, adding provision that Congress complete action on reconciliation bills or resolutions reported under subsec. (b) not later than June 15 of each year and revising provisions relating to adjournment periods of the House of Representatives with respect to completion of action on fiscal year reconciliation legislation.

Subsec. (g). Pub. L. 99-177, in amending section generally, added subsec. (g).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, except that such amendment, insofar as it relates to subsecs. (c), (d), and (g) of this section, to become effective Apr. 15, 1986, see section 275(a)(1), (2)(A) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

SENATE WAIVER OF LIMITATION ON AMENDMENTS TO RECONCILIATION BILLS AND RESOLUTIONS

Waiver or suspension of subsecs. (d) and (g) of this section only by affirmative vote of three-fifths of the Senate, except with regard to joint resolutions reported or discharged pursuant to section 904(a) of this title, see section 271(b) of Pub. L. 99-177, set out as a Waivers and Suspensions in the Senate note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 632, 904 of this title.

§ 642. New budget authority, new spending authority, and revenue legislation to be within appropriate levels

(a) Legislation subject to point of order

Except as provided by subsection (b) of this section, after the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in either the House of Representatives or the Senate to consider any bill, resolution, or amendment providing new budget authority for such fiscal year, providing new entitlement authority effective during such fiscal year, or reducing revenues for such fiscal year, or any conference report on any such bill or resolution, if—

(1) the enactment of such bill or resolution as reported;

(2) the adoption and enactment of such amendment; or

(3) the enactment of such bill or resolution in the form recommended in such conference report;

would cause the appropriate level of total new budget authority or total budget outlays set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year to be exceeded, or would cause revenues to be less than the appropriate level of total revenues set forth in such concurrent resolution or, in the Senate, would otherwise result in a deficit for such fiscal year that exceeds the maximum deficit amount specified for such fiscal year in section 622(7) of this title (except to the extent that paragraph (1) of section 632(i) of this title or section 635(b) of this title, as the case may be, does not apply by reason of paragraph (2) of such subsection).

(b) Exception in House

Subsection (a) of this section shall not apply in the House of Representatives to any bill, resolution, or amendment which provides new budget authority or new entitlement authority effective during such fiscal year, or to any conference report on any such bill or resolution, if—

(1) the enactment of such bill or resolution as reported;

(2) the adoption and enactment of such amendment; or

(3) the enactment of such bill or resolution in the form recommended in such conference report,

would not cause the appropriate allocation of new discretionary budget authority or new entitlement authority made pursuant to section 633(a) of this title for such fiscal year, for the committee within whose jurisdiction such bill, resolution, or amendment falls, to be exceeded.

(c) Determination of budget levels

For purposes of this section, the levels of new budget authority, budget outlays, new entitlement authority, and revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or of the Senate, as the case may be.

(As amended Pub. L. 99-177, title II, § 201(b), Dec. 12, 1985, 99 Stat. 1055.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-177 amended subsec. (a) generally, deleting references to sections 641 and 651 of this title, and adding provisions relating to nonconsideration in Senate of any bill, resolution, etc., resulting in a fiscal year deficit exceeding maximum deficit amount specified in section 622(7) of this title, with certain exceptions.

Subsec. (b). Pub. L. 99-177 amended subsec. (b) generally, substituting provisions setting forth exceptions in the House of Representatives for certain bills, etc., under subsec. (a) of this section, for provisions relating to determination of outlays and revenues.

Subsec. (c). Pub. L. 99-177, in amending section generally, added subsec. (c).

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, but with the portion following par. (3) of subsec. (a) of this section which reads "or, in the Senate, would otherwise result in a deficit for such fiscal year that exceeds the maximum deficit amount specified for such fiscal year in section 622(7) of this title (except to the extent that paragraph (1) of section 632(i) of this title or section 635(b) of this title, as the case may be, does not apply by reason of paragraph (2) of such subsection)" to expire Sept. 30, 1991, see section 275(a)(1), (b)(2)(B) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 904 of this title.

SUBCHAPTER II—FISCAL PROCEDURES

§ 651. Bills providing new spending authority

(a) Controls on legislation providing spending authority

It shall not be in order in either the House of Representatives or the Senate to consider any bill, resolution, or conference report, as reported to its House which provides new spending authority described in subsection (c)(2)(A) or (B) of this section (or any amendment which provides such new spending authority), unless that bill, resolution, conference report, or amendment also provides that such new spending authority as described in subsection (c)(2)(A) or (B) of this section is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(b) Legislation providing entitlement authority

(1) It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(C) of this section (or any amendment which provides such new spending authority) which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.

(2) If any committee of the House of Representatives or the Senate reports any bill or resolution which provides new spending authority described in subsection (c)(2)(C) of this section which is to become effective during a fiscal year and the amount of new budget authority which will be required for such fiscal year if such bill or resolution is enacted as so reported exceeds the appropriate allocation of new budget authority reported under section 633(b) of this title in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year, such bill or resolution shall then be referred to the Committee on Appropriations of that House with instructions to report it, with the committee's recommendations, within 15 calendar days (not counting any day on which that House is not in session) beginning with the day following the day on which it is so referred. If the Committee on Appropriations of either House fails to report a bill or resolution referred to it under this paragraph within such 15-day period, the committee shall automatically be discharged from further consideration of such bill or resolution and such bill or resolution shall be placed on the appropriate calendar.

(3) The Committee on Appropriations of each House shall have jurisdiction to report any bill or resolution referred to it under paragraph (2) with an amendment which limits the total amount of new spending authority provided in such bill or resolution.

(c) Definitions

(1) For purposes of this section, the term "new spending authority" means spending authority not provided by law on the effective date of this Act, including any increase in or addition to spending authority provided by law on such date.

(2) For purposes of paragraph (1), the term "spending authority" means authority (whether temporary or permanent)—

(A) to enter into contracts under which the United States is obligated to make outlays, the budget authority for which is not provided in advance by appropriation Acts;

(B) to incur indebtedness (other than indebtedness incurred under chapter 31 of title 31) for the repayment of which the United States is liable, the budget authority for which is not provided in advance by appropriation Acts;

(C) to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law;

(D) to forego the collection by the United States of proprietary offsetting receipts, the budget authority for which is not provided in advance by appropriation Acts to offset such foregone receipts; and

(E) to make payments by the United States (including loans, grants, and payments from revolving funds) other than those covered by subparagraph (A), (B), (C), or (D), the budget authority for which is not provided in advance by appropriation Acts.

Such term does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government.

(d) Exceptions

(1) Subsections (a) and (b) of this section shall not apply to new spending authority if the budget authority for outlays which will result from such new spending authority is derived—

(A) from a trust fund established by the Social Security Act (as in effect on July 12, 1974) [42 U.S.C. 301 et seq.]; or

(B) from any other trust fund, 90 percent or more of the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays are or will be made) received in the Treasury under specified provisions of the Internal Revenue Code of 1954 [26 U.S.C. 1 et seq.].

(2) Subsections (a) and (b) of this section shall not apply to new spending authority which is an amendment to or extension of chapter 67 of title 31, or a continuation of the program of fiscal assistance to State and local governments provided by that chapter, to the extent so provided in the bill or resolution providing such authority.

(3) Subsections (a) and (b) of this section shall not apply to new spending authority to the extent that—

(A) the outlays resulting therefrom are made by an organization which is (i) a mixed-ownership Government corporation (as defined in section 9101(2) of title 31), or (ii) a wholly owned Government corporation (as defined in section 9101(3) of title 31) which is specifically exempted by law from compliance with any or all of the provisions of chapter 91 of title 31, as of December 12, 1985; or

(B) the outlays resulting therefrom consist exclusively of the proceeds of gifts or bequests made to the United States for a specific purpose.

(As amended Pub. L. 99-177, title II, § 211, Dec. 12, 1985, 99 Stat. 1056.)

REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (c)(1), is the effective date of Pub. L. 93-344, see section 905 of Pub. L. 93-344, set out as an Effective Date note under section 621 of this title.

The Social Security Act, referred to in subsec. (d)(1)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Internal Revenue Code of 1954, referred to in subsec. (d)(1)(B), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

In subsec. (c)(2), (3)(A), "chapter 67 of title 31" and "that chapter" were substituted for "the State and Local Fiscal Assistance Act of 1972 [31 U.S.C. 1221 et seq.]" and "that Act", and "section 9101(2) of title 31", "section 9101(3) of title 31", and "chapter 91 of title 31" were substituted for "section 201 of the Government Corporation Control Act [31 U.S.C. 856]", "section 101 of such Act [31 U.S.C. 846]", and "that Act", respectively, on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-177 amended subsec. (a) generally, adding provisions relating to applicability to conference reports.

Subsec. (b). Pub. L. 99-177, in amending section generally, reenacted subsec. (b) without change.

Subsec. (c). Pub. L. 99-177, in amending subsec. (c) generally, added pars. (2)(D) and (E).

Subsec. (d). Pub. L. 99-177, in amending subsec. (d) generally, reenacted pars. (1) and (2) without change, and added reference to December 12, 1985, in par. (3).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 622, 633, 639, 654, 901, 902, 906, 907 of this title; title 15 section 4110; title 16 section 543h; title 22 section 3671; title 42 sections 1962d-19, 10309; title 43 section 390g-7; title 45 section 829; title 46 App. section 1720.

§ 652. Legislation providing new credit authority

(a) Controls on legislation providing new credit authority

It shall not be in order in either the House of Representatives or the Senate to consider any bill, resolution, or conference report, as reported to its House, or any amendment which provides new credit authority described in subsection (b)(1) of this section, unless that bill, resolution, conference report, or amendment also provides that such new credit authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(b) "New credit authority" defined

For purposes of this Act, the term "new credit authority" means credit authority (as defined in section 622(10) of this title) not provided by law on the effective date of this section, including any increase in or addition to credit authority provided by law on such date.

(As amended Pub. L. 99-177, title II, § 212, Dec. 12, 1985, 99 Stat. 1058.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), means Pub. L. 93-344, July 12, 1974, 88 Stat. 297, as amended, known as the Congressional Budget and Impoundment Control Act of 1974, which enacted chapters 17, 17A, and 17B, and section 190a-3 of this title and sections 11a, 11c, 11d, 1020a of former Title 31, amended sections 11, 665, 701, 1020, 1151, 1152, 1153, and 1154 of former Title 31, section 105 of Title 1, General Provisions, sections 190b and 190d of this title, repealed sections 571 and 581c-1 of former Title 31 and sections 66 and 81 of this title, and enacted provisions set out as notes under sections 190a-1, 621, 632, and 682 of this title, section 105 of Title 1, and section 1020 of former Title 31. For complete classification of this Act to the Code, see Short Title note set out under section 621 of this title and Tables.

The effective date of this section, referred to in subsec. (b), probably refers to Feb. 1, 1986, the date on which the amendment of this section by section 212 of Pub. L. 99-177 became effective. See section 275(a)(2)(B) of Pub. L. 99-177, set out as a note under section 631 of this title.

AMENDMENTS

1985—Pub. L. 99-177 substituted "Legislation providing new credit authority" for "Reporting of authorizing legislation" in section catchline.

Subsec. (a). Pub. L. 99-177 substituted provisions relating to controls on legislation providing new credit authority, for provisions relating to the required reporting date for legislation authorizing new budget authority.

Subsec. (b). Pub. L. 99-177 substituted provisions defining "new credit authority", for provisions relating to emergency waiver in the House of reporting requirements under subsec. (a).

Subsec. (c). Pub. L. 99-177 struck out subsec. (c) which related to waiver of reporting requirements in the Senate.

Subsec. (d). Pub. L. 99-177 struck out subsec. (d) which related to consideration of certain bills and resolutions received from other House.

Subsec. (e). Pub. L. 99-177 struck out subsec. (e) which related to inapplicability of subsec. (a) to new spending or budget authority.

Subsec. (f). Pub. L. 99-177 struck out subsec. (f) which related to study of existing spending authority and permanent appropriations.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Feb. 1, 1986, see section 275(a)(2)(B) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

§ 653. Analysis by Congressional Budget Office

(a) The Director of the Congressional Budget Office shall, to the extent practicable, prepare for each bill or resolution of a public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee—

[*See main edition for text of (1)*]

(2) an estimate of the cost which would be incurred by State and local governments in carrying out or complying with any significant bill or resolution in the fiscal year in which it is to become effective and in each of the four fiscal years following such fiscal

year, together with the basis for each such estimate;

(3) a comparison of the estimates of costs described in paragraph (1) and (2) with any available estimates of costs made by such committee or by any Federal agency; and

(4) a description of each method for establishing a Federal financial commitment contained in such bill or resolution.

The estimates, comparison, and description so submitted shall be included in the report accompanying such bill or resolution if timely submitted to such committee before such report is filed.

(b) For purposes of subsection (a)(2) of this section, the term "local government" has the same meaning as in section 6501 of title 31.

[*See main edition for text of* (c)]

(As amended Pub. L. 99-177, title II, § 213, Dec. 12, 1985, 99 Stat. 1059.)

CODIFICATION

In subsec. (b), "section 6501 of title 31" was substituted for "section 103 of the Intergovernmental Cooperation Act of 1968 [42 U.S.C. 4201]" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-177 added par. (4) and substituted "estimates, comparison, and description" for "estimates and comparison" in last sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-177 effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

§ 654. Study by General Accounting Office of forms of Federal financial commitment not reviewed annually by Congress

The General Accounting Office shall study those provisions of law which provide spending authority as described by section 651(c)(2) of this title and which provide permanent appropriations, and report to the Congress its recommendations for the appropriate form of financing for activities or programs financed by such provisions not later than eighteen months after December 12, 1985. Such report shall be revised from time to time.

(Pub. L. 93-344, title IV, § 405, as added Pub. L. 99-177, title II, § 214, Dec. 12, 1985, 99 Stat. 1059.)

EFFECTIVE DATE

Section effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

§ 655. Off-budget agencies, programs, and activities

(a) Notwithstanding any other provision of law, budget authority, credit authority, and estimates of outlays and receipts for activities of the Federal budget which are off-budget immediately prior to December 12, 1985, not including activities of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, shall be included in a budget submitted pursuant to section 1105 of title 31 and in a concurrent resolution on the budget reported pursuant to section 632 or section 635 of this title and shall be considered, for purposes of this Act, budget authority, outlays, and spending authority in accordance with definitions set forth in this Act.

(b) All receipts and disbursements of the Federal Financing Bank with respect to any obligations which are issued, sold, or guaranteed by a Federal agency shall be treated as a means of financing such agency for purposes of section 1105 of title 31 and for purposes of this Act.

(Pub. L. 93-344, title IV, § 406, as added Pub. L. 99-177, title II, § 214, Dec. 12, 1985, 99 Stat. 1059.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 93-344, July 12, 1974, 88 Stat. 297, as amended, known as the Congressional Budget and Impoundment Control Act of 1974, which enacted chapters 17, 17A, and 17B, and section 190a-3 of this title and sections 11a, 11c, 11d, 1020a of former Title 31, amended sections 11, 665, 701, 1020, 1151, 1152, 1153, and 1154 of former Title 31, section 105 of Title 1, General Provisions, sections 190b and 190d of this title, repealed sections 571 and 581c-1 of former Title 31, and sections 66 and 81 of this title, and enacted provisions set out as notes under sections 190a-1, 621, 632, and 682 of this title, section 105 of Title 1, and section 1020 of former Title 31. For complete classification of this Act to the Code, see Short Title note set out under section 621 of this title and Tables.

EFFECTIVE DATE

Section effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

§ 656. Member User Group

The Speaker of the House of Representatives, after consulting with the Minority Leader of the House, may appoint a Member User Group for the purpose of reviewing budgetary scorekeeping rules and practices of the House and advising the Speaker from time to time on the effect and impact of such rules and practices.

(Pub. L. 93-344, title IV, § 407, as added Pub. L. 99-177, title II, § 214, Dec. 12, 1985, 99 Stat. 1060.)

EFFECTIVE DATE

Section effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

SUBCHAPTER III—MISCELLANEOUS

§ 661. Repealed. Pub. L. 99-177, title II, § 223, Dec. 12, 1985, 99 Stat. 1060

Section, Pub. L. 93-344, title VI, § 606, July 12, 1974, 88 Stat. 325, directed that Budget Committees of House and Senate study, on a continuing basis, any

provisions of law which exempt agencies or programs from inclusion in the budget and make recommendations from time to time with regard to terminating or modifying such provisions. See section 655 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, set out as an Effective and Termination Dates note under section 901 of this title.

CHAPTER 17B—IMPOUNDMENT CONTROL

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 902 of this title; title 16 section 539d; title 22 section 3224a; title 31 section 1512; title 42 section 6240.

§ 684. Disapproval of proposed deferrals of budget authority

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 682, 685, 686, 687, 901 of this title.

§ 687. Suits by Comptroller General

If, under section 683(b) or 684(b) of this title, budget authority is required to be made available for obligation and such budget authority is not made available for obligation, the Comptroller General is hereby expressly empowered, through attorneys of his own selection, to bring a civil action in the United States District Court for the District of Columbia to require such budget authority to be made available for obligation, and such court is hereby expressly empowered to enter in such civil action, against any department, agency, officer, or employee of the United States, any decree, judgment, or order which may be necessary or appropriate to make such budget authority available for obligation. No civil action shall be brought by the Comptroller General under this section until the expiration of 25 calendar days of continuous session of the Congress following the date on which an explanatory statement by the Comptroller General of the circumstances giving rise to the action contemplated has been filed with the Speaker of the House of Representatives and the President of the Senate.

(As amended Pub. L. 98-620, title IV, § 402(35), Nov. 8, 1984, 98 Stat. 3360.)

AMENDMENTS

1984—Pub. L. 98-620 struck out provision requiring that the courts give precedence to civil actions brought under this section, and to appeals and writs from decisions in such actions, over all other civil actions, appeals, and writs.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 18—LEGISLATIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

§ 701. Legislative personnel financial disclosure

ACT REFERRED TO IN OTHER SECTIONS

The Ethics in Government Act of 1978 is referred to in title 12 section 2245; title 22 section 3622; title 42 section 8714.

§ 702. Contents of reports

[See main edition for text of (a) to (d)]

(e) Trusts or other financial arrangements; qualified blind trust

[See main edition for text of (1) to (4)]

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (c)(1) of this section.

This paragraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7) of this subsection.

[See main edition for text of (B) to (E), (6)]

(7) Any trust may be considered to be a qualified blind trust if—

(A) the trust instrument is amended to comply with the requirements of paragraph (3) or, in the case of a trust instrument which does not by its terms permit amendment, the trustee, the reporting individual, and any other interested party agree in writing that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); except that in the case of any interested party who is a dependent child, a parent or guardian of such child may execute the agreement referred to in this subparagraph;

(B) a copy of the trust instrument (except testamentary provisions) and a copy of the agreement referred to in subparagraph (A), and a list of the assets held by the trust at the time of approval by the supervising ethics office, including the category of value of each asset as determined under subsection (d) of this section, are filed with such office and made available to the public as provided under paragraph (5)(D) of this subsection; and

(C) the supervising ethics office determines that approval of the trust arrangement as a qualified blind trust is in the particular case appropriate to assure compliance with applicable laws and regulations.

[See main edition for text of (f) and (g)]

(As amended Pub. L. 98-150, § 10, Nov. 11, 1983, 97 Stat. 962.)

AMENDMENTS

1983—Subsec. (e)(5)(A). Pub. L. 98-150, § 10(b), added provision that this subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7) of this subsection.

Subsec. (e)(7). Pub. L. 98-150, § 10(a), amended par. (7) generally. Prior to amendment par. (7) read: "Any trust which is in existence prior to October 26, 1978, shall be considered a qualified blind trust if—

"(A) the supervising ethics office determines that the trust was a good faith effort to establish a blind trust;

"(B) the previous trust instrument is amended or, if such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of paragraph (3)(C) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and

"(C) a copy of the trust instrument (except testamentary provisions), a list of the assets previously transferred to the trust by an interested party and the category of value of each such asset at the time it was placed in the trust, and a list of assets previously placed in the trust by an interested party which have been sold are filed and made available to the public as provided under paragraph (5) of this subsection."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-150 effective Oct. 1, 1983, see section 13 of Pub. L. 98-150, set out as a note under section 201 of Pub. L. 95-521 [Executive Personnel Financial Disclosure Requirements] in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 19—CONGRESSIONAL AWARD PROGRAM

§ 801. Establishment, etc., of Congressional Award Board

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99-161, § 1, Nov. 25, 1985, 99 Stat. 934, provided that: "This Act [amending sections 802, 803, 806 to 808 of this title and repealing provisions set out as a note under section 803 of this title] may be cited as the 'Congressional Award Amendments of 1985'."

§ 802. Program

[*See main edition for text of* (a)]

(b) Implementation requirements for Board

In carrying out the Congressional Award Program, the Board shall—

[*See main edition for text of* (1) *to* (5)]

No salary established by the Board under paragraph (3) shall exceed $75,000 per annum, except that for calendar years after 1986, such limit shall be increased in proportion to increases in the Consumer Price Index.

[*See main edition for text of* (c)]

(d) Scholarships for recipients of Congressional Award Gold, Silver, and Bronze Medals

The Board may award scholarships in such amounts as the Board determines to be appropriate to any recipient of the Congressional Award Gold, Silver, and Bronze Medals.

(e) Annual reporting requirements

The Board shall prepare and submit an annual report to the Congress before March 1 of each year summarizing the activities of the Congressional Award Program during the previous year and making appropriate recommendations. Any minority views and recommendations of members of the Board shall be included in such reports. The annual report shall contain the following items:

[*See main edition for text of* (1) *to* (3)]

(4) A detailed list of the administrative expenditures made by the Board, including the amounts expended for salaries, travel expenses, and reimbursed expenses for each member, officer, employee, and consultant of the Board (or of the Corporation established pursuant to section 806(g)(1) of this title).

[*See main edition for text of* (5) *and* (6)]

(As amended Pub. L. 99-161, § 4(a)-(c), Nov. 25, 1985, 99 Stat. 934.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-161, § 4(a), added provision limiting salaries established by the Board under par. (3) to $75,000 per annum, such limit after 1986 being increased in proportion to the Consumer Price Index.

Subsec. (d). Pub. L. 99-161, § 4(b), added reference to the Silver and Bronze Medals.

Subsec. (e)(4). Pub. L. 99-161, § 4(c), added "for each member, officer, employee, and consultant of the Board (or of the Corporation established pursuant to section 806(g)(1) of this title)".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 801, 807 of this title.

§ 803. Board organization

(a) Membership; composition; appointment criteria

(1) The Board shall consist of thirty-three members, as follows:

(A) Eight members appointed by the majority leader of the Senate.

(B) Eight members appointed by the minority leader of the Senate.

(C) Eight members appointed by the Speaker of the House of Representatives.

(D) Eight members appointed by the minority leader of the House of Representatives.

(E) The Director of the Board, who shall serve as a nonvoting member.

(2) In making appointments to the Board, the congressional leadership shall consider recommendations submitted by any interested party, including any member of the Board. One of the members appointed under each of subparagraphs (A) through (D) of paragraph (1) shall be a member of the Congress.

[*See main edition for text of* (3)]

(b) Terms of appointed members

Appointed members of the Board shall continue to serve at the pleasure of the officer by whom they are appointed, but (unless reappointed) shall not serve for more than four years.

(c) Vacancies in membership

(1) Any vacancy in the Board shall be filled in the same manner in which the original appointment was made.

(2) Any appointed member of the Board may continue to serve after the expiration of his term until his successor has taken office.

(3) Vacancies in the membership of the Board shall not affect its power to function if there remain sufficient members to constitute a quorum under subsection (d) of this section.

[See main edition for text of (d) and (e)]

(f) Meetings

The Board shall meet at least twice a year at the call of the Chairman (with at least one meeting in the District of Columbia) and at such other times as the Chairman may determine to be appropriate. The Chairman shall call a meeting of the Board whenever one-third of the members of the Board submit written requests for such a meeting.

[See main edition for text of (g) and (h)]

(i) Bylaws and regulations; contents; transmittal to Congress

The Board shall establish such bylaws and other regulations as may be appropriate to enable the Board to carry out its functions under this chapter. Such bylaws and other regulations shall include provisions to prevent any conflict of interest, or the appearance of any conflict of interest, in the procurement and employment actions taken by the Board or by any officer or employee of the Board. Such bylaws shall include appropriate fiscal control, funds accountability, and operating principles to ensure compliance with the provisions of section 806 of this title. A copy of such bylaws shall be transmitted to each House of Congress not later than 90 days after November 25, 1985, and not later than 10 days after any subsequent amendment or revision of such bylaws.

(As amended Pub. L. 98-33, § 1, May 25, 1983, 97 Stat. 194; Pub. L. 99-161, §§ 2, 4(d), (e), Nov. 25, 1985, 99 Stat. 934, 935.)

AMENDMENTS

1985—Subsec. (a)(2). Pub. L. 99-161, § 2(1), added "One of the members appointed under each of subparagraphs (A) through (D) of paragraph (1) shall be a member of the Congress."

Subsec. (b). Pub. L. 99-161, § 2(2), amended subsec. (b) generally, substituting provisions for the continuance of service of appointed members at the pleasure of the appointing officer, but unless reappointed, for not more than four years, for provisions limiting the term of service to six years with exceptions for first appointed members and individuals appointed to the Board after March 31, 1983, whose terms were limited.

Subsec. (c)(2) to (4). Pub. L. 99-161, § 2(3), struck out par. (2) limiting the term of service of any member appointed to fill out an unexpired term to the remainder of that term and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (f). Pub. L. 99-161, § 4(d), substituted "meet at least twice a year at the call of the Chairman (with at least one meeting in the District of Columbia)" for "meet annually at the call of the Chairman".

Subsec. (i). Pub. L. 99-161, § 4(e), added requirement that bylaws and other regulations include provisions preventing conflict of interest, and include appropriate fiscal control, funds accountability, etc., to comply with section 806 of this title, and added provisions requiring transmittal of a copy of such bylaws to each House of Congress within specified periods of time.

1983—Subsec. (a)(1). Pub. L. 98-33, § 1(a)(1), (2), substituted "thirty-three" for "seventeen" in the matter preceding subpar. (A), and substituted "Eight" for "Four" in each of subpars. (A) through (D).

Subsec. (a)(2). Pub. L. 98-33, § 1(a)(3), struck out "or the Committee for the Establishment and Promotion of the Congressional Award" after "member of the Board".

Subsec. (b). Pub. L. 98-33, § 1(b), designated existing provisions as par. (1); in par. (1), as so designated, redesignated pars. (1) to (3) as subpars. (A) to (C), respectively, and substituted "Except as provided in paragraph (2), appointed" for "Appointed"; and added par. (2).

EXCEPTIONAL TERMS FOR CERTAIN BOARD MEMBERS

Section 2 of Pub. L. 98-33, relating to exceptional terms for certain individuals appointed to the Congressional Award Board, was repealed by Pub. L. 99-161, § 5, Nov. 25, 1985, 99 Stat. 936.

§ 806. Powers and limitations of Board

[See main edition for text of (a) and (b)]

(c) Obtaining and acceptance of non-Federal funds and resources

The Board may seek and accept, from sources other than the Federal Government, funds and other resources to carry out its activities. The Board may not accept any funds or other resources which are—

[See main edition for text of (1) and (2)]

The Board may permit donors to use the name of the Board or the name "Congressional Award Program" in advertising.

[See main edition for text of (d) to (g)]

(As amended Pub. L. 99-161, § 4(f), Nov. 25, 1985, 99 Stat. 935.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-161 added "The Board may permit donors to use the name of the Board or the name 'Congressional Award Program' in advertising."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 803, 807, 808 of this title.

§ 807. Audits and evaluation

(a) Biennial audits by Comptroller General; access to books, documents, papers, and records

The financial records of the Board and of any corporation established under section 806(g) of this title shall be audited at least biennially by the Comptroller General of the United States (hereinafter in this section referred to as the "Comptroller General"). The Comptroller General, or any duly authorized representative of

the Comptroller General, shall have access for the purpose of audit to any books, documents, papers, and records of the Board or such corporation (or any agent of the Board or such corporation) which, in the opinion of the Comptroller General, may be pertinent to the Congressional Award Program.

(b) Assessment; adequacy of fiscal control and funds accountability procedures; propriety of expenses

The audit performed pursuant to subsection (a) of this section shall at a minimum—

(1) assess the adequacy of fiscal control and funds accountability procedures of the Board and such corporation; and

(2) assess the propriety of expenses allowed to the Director and other employees of the Board and such corporation.

(c) Report and evaluation of programs and activities; contents

In the report on the first audit performed under subsection (a) of this section after November 25, 1985, the Comptroller General shall include an evaluation of the programs and activities under this chapter. Such evaluation shall include an examination of—

(1) the extent to which the Congressional Award Program and activities under this chapter are achieving the purposes stated in section 802(a) of this title;

(2) the standards of achievement and procedures for verifying that individuals satisfy such standards established by the Board;

(3) the Board's fundraising efforts under this chapter;

(4) the organizational structure of the Board, particularly the use of Regional Directors; and

(5) such additional areas as the Comptroller General determines deserve or require evaluation.

(d) Date of submission of report on first audit

The report on the first audit performed under subsection (a) of this section after November 25, 1985, shall be submitted on or before May 15, 1988.

(As amended Pub. L. 99-161, § 4(g), Nov. 25, 1985, 99 Stat. 935.)

AMENDMENTS

1985—Pub. L. 99-161, § 4(g)(1), added "and evaluation" after "Audits" in section catchline.

Subsec. (a). Pub. L. 99-161, § 4(g)(2)-(4), designated existing provisions as subsec. (a), and in subsec. (a) as so designated, substituted "shall be audited at least biennially" for "may be audited", and struck out "at such times as the Comptroller General may determine to be appropriate" after "referred to as the 'Comptroller General')".

Subsecs. (b) to (d). Pub. L. 99-161, § 4(g)(5), added subsecs. (b) to (d).

§ 808. Termination of Board

The Board shall terminate on November 16, 1988. Upon termination of the Board, the Board shall take such actions as may be required to provide for the dissolution of any corporation established by the Board under section 806(g) of this title. The Board shall set forth, in its bylaws, the procedures for dissolution to be followed by the Board.

(As amended Pub. L. 99-161, § 3, Nov. 25, 1985, 99 Stat. 934.)

AMENDMENTS

1985—Pub. L. 99-161 substituted "on November 16, 1988" for "six years after November 16, 1979".

CHAPTER 20—EMERGENCY POWERS TO ELIMINATE BUDGET DEFICITS

SUBCHAPTER I—ELIMINATION OF DEFICITS IN EXCESS OF MAXIMUM DEFICIT AMOUNT

Sec.

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- (d) Sequestration of defense programs.
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SUBCHAPTER I—ELIMINATION OF DEFICITS IN EXCESS OF MAXIMUM DEFICIT AMOUNT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 922 of this title.

§ 901. Reporting of excess deficits

(a) Initial estimates, determinations, and report by OMB and CBO

(1) Estimates and determinations

The Director of the Office of Management and Budget and the Director of the Congressional Budget Office (in this subchapter referred to as the "Directors") shall with respect to each fiscal year—

(A) estimate the budget base levels of total revenues and budget outlays that may be anticipated for such fiscal year as of August 15 of the calendar year in which such fiscal year begins (or as of January 10, 1986, in the case of the fiscal year 1986),

(B) determine whether the projected deficit for such fiscal year will exceed the maximum deficit amount for such fiscal year and whether such deficit excess will be greater than $10,000,000,000 (zero in the case of fiscal years 1986 and 1991), and

(C) estimate the rate of real economic growth that will occur during such fiscal year, the rate of real economic growth that will occur during each quarter of such fiscal year, and the rate of real economic growth that will have occurred during each of the last two quarters of the preceding fiscal year.

(2) Report

The Directors jointly shall report to the Comptroller General on August 20 of the calendar year in which such fiscal year begins (or on January 15, 1986, in the case of the fiscal year 1986), estimating the budget base levels of total revenues and total budget outlays for such fiscal year, identifying the amount of any deficit excess for such fiscal year, stating whether such excess is greater than $10,000,000,000 (zero in the case of fiscal years 1986 and 1991), specifying the estimated rate of real economic growth for such fiscal year, for each quarter of such fiscal year, and for each of the last two quarters of the preceding fiscal year, indicating whether the estimate includes two or more consecutive quarters of negative real economic growth, and specifying (if the excess is greater than $10,000,000,000, or zero in the case of fiscal years 1986 and 1991), by account, for non-defense programs, and by account and programs, projects, and activities within each account, for defense programs, the base from which reductions are taken and the amounts and percentages by which such accounts must be reduced during such fiscal year, in accordance with the succeeding provisions of this subchapter, in order to eliminate such excess.

(3) Determination of reductions

The amounts and percentages by which such accounts must be reduced during a fiscal year shall be determined as follows:

(A)(i) If the deficit excess for the fiscal year is greater than $10,000,000,000 (zero in the case of fiscal years 1986 and 1991), such deficit excess shall be divided into halves.

(ii) In the case of fiscal year 1986, the amount of such excess—

(I) shall be multiplied by seven twelfths before being divided into halves in accordance with clause (i), and

(II) shall not exceed $11,700,000,000.

(B) Subject to the exemptions, exceptions, limitations, special rules, and definitions set forth in this section and in sections 905, 906, and 907 of this title, the reductions necessary to eliminate one-half of the deficit excess for the fiscal year (as adjusted under subparagraph (A)(ii) in the case of fiscal year 1986) shall be made in outlays under accounts within major functional category 050 (in this subchapter referred to as outlays under "defense programs"), and the reductions necessary to eliminate the other half of the deficit excess (or the adjusted deficit excess, in the case of fiscal year 1986) shall be made in outlays under other accounts of the Federal Government (in this subchapter referred to as outlays under "non-defense programs").

(C)(i) The total amount by which outlays for automatic spending increases scheduled to take effect during the fiscal year are to be reduced shall be determined in accordance with clause (ii) of this subparagraph.

(ii) Each such automatic spending increase shall be reduced—

(I) to zero (a uniform percentage reduction of 100 percent), or

(II) by a uniform percentage reduction of less than 100 percent calculated in a manner to reduce total outlays for the fiscal year by one-half of the deficit excess (or the adjusted deficit excess, in the case of fiscal year 1986), if the elimination of all such increases would reduce total outlays for the fiscal year by more than one-half of the deficit excess (or the adjusted deficit excess, in the case of fiscal year 1986) for the fiscal year.

(D) The total amount of the outlay reductions determined under subparagraph (C) shall be divided into two amounts:

(i) an amount equal to the outlay reductions attributable to programs specified in

subparagraph (A) of section 907(1) of this title; and

(ii) an amount equal to the outlay reductions attributable to programs specified in subparagraph (B) of section 907(1) of this title.

(E)(i) For purposes of subparagraph (B), one-half of the amount of the reductions determined under clause (i) of subparagraph (D) shall be credited as reductions in outlays under defense programs, and the total amount of reductions in outlays under defense programs required under subparagraph (B) shall be reduced accordingly.

(ii) Sequestration of new budget authority and unobligated balances to achieve the remaining reductions in outlays under defense programs required under subparagraph (B) shall be determined as provided in subsection (d) of this section.

(F)(i) For purposes of subparagraph (B)—

(I) one-half of the amount of the reductions determined under clause (i) of subparagraph (D), and

(II) the amount of the reductions determined under clause (ii) of subparagraph (D),

shall be credited as reductions in outlays under non-defense programs, and the total amount of reductions in outlays under non-defense programs required under subparagraph (B) shall be reduced accordingly.

(ii) The maximum reduction permissible for each program to which an exception, limitation, or special rule set forth in subsection (c) or (f) of section 906 of this title applies shall be determined, and the total amount of reductions in outlays under non-defense programs required under subparagraph (B) shall be reduced by the amount of the reduction determined with respect to each such program.

(iii)(I) Except as provided in subclause (II), the maximum reduction permissible for each of the programs to which the special rules set forth in sections 906(d) and 906(k) of this title apply shall be determined, and the total amount of outlays under non-defense programs required under subparagraph (B) shall be reduced by the amount of the maximum reductions so determined.

(II) If the maximum reduction determined in accordance with subclause (I) with respect to the programs to which that subclause relates would reduce outlays for such programs by an amount in excess of the remaining amount of the reduction in outlays in non-defense programs required under subparagraph (B), outlays for such programs shall instead be reduced proportionately by such lesser percentage as will achieve such remaining required reductions.

(iv)(I) Sequestrations and reductions under the remaining non-defense programs shall be applied on a uniform percentage basis so as to reduce new budget authority, new loan guarantee commitments, new direct loan obligations, obligation limitations, and spending authority as defined in section 651(c)(2) of this title to the extent necessary to achieve any remaining required outlay reductions.

(II) For purposes of determining reductions under subclause (I), any reduction in outlays of the Commodity Credit Corporation under an order issued by the President under section 902 of this title for a fiscal year, with respect to contracts entered into during that fiscal year, that will occur during the succeeding fiscal year, shall be credited as reductions in outlays for the fiscal year in which the order is issued.

The determination of which accounts are within major functional category 050 and which are not, for purposes of subparagraph (B), shall be made by the Directors in a manner consistent with the budget submitted by the President for the fiscal year 1986; except that for such purposes no part of the accounts entitled "Federal Emergency Management Agency, Salaries and expenses (58-0100-0-1-999)" and "Federal Emergency Management Agency, Emergency management planning and assistance (58-0101-0-1-999)" shall be treated as being within functional category 050.

(4) Additional specifications

The report submitted under paragraph (2) must also specify (with respect to the fiscal year involved)—

(A) the amount of the automatic spending increase (if any) which is scheduled to take effect in the case of each program providing for such increases, the amount and percentage by which such increase is to be reduced, the amount by which the deficit excess (as adjusted under paragraph (3)(A)(ii), in the case of fiscal year 1986) will be reduced as a result of the elimination or reduction of automatic spending increases (stated separately for increases under programs listed in subparagraph (A) of section 907(1) of this title and increases under programs listed in subparagraph (B) of that section), and the amount (if any) of each such increase, stated in terms of percentage points, which will take effect after reduction under this subchapter;

(B) the amount of the savings (if any) to be achieved in the application of each of the special rules set forth in subsections (c) through (*l*) of section 906 of this title, along with a statement of (i) the new Federal matching rate resulting from the application of subsection (e) of that section, and (ii) the amount of the percentage reduction in payments to the States under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970; and

(C)(i) for defense programs, by account and by program, project, and activity within each account, the reduction (stated in terms of both percentage and amount) in new budget authority and unobligated balances, together with the estimated outlay reductions resulting therefrom; and

(ii) for non-defense programs, by account, the reduction, stated in terms of both per-

centage and amount, in new budget authority, new loan guarantee commitments, new direct loan obligations, obligation limitations, and spending authority as defined in section 651(c)(2) of this title, together with the estimated outlay reductions resulting therefrom.

(5) Basis for Directors' estimates, determinations, and specifications

The estimates, determinations, and specifications of the Directors under the preceding provisions of this subsection and under subsection (c)(1) of this section shall utilize the budget base, criteria, and guidelines set forth in paragraph (6) and in sections 905, 906, and 907 of this title. In the event that the Directors are unable to agree on any items required to be set forth in the report, they shall average their differences to the extent necessary to produce a single, consistent set of data that achieves the required deficit reduction. The report of the Directors shall also indicate the amount initially proposed for each averaged item by each Director.

(6) Budget base

In computing the amounts and percentages by which accounts must be reduced during a fiscal year as set forth in any report required under this subsection for such fiscal year, the budget base shall be determined by—

(A) assuming (subject to subparagraph (C)) the continuation of current law in the case of revenues and spending authority as defined in section 651(c)(2) of this title;

(B) assuming, in the case of all accounts to which subparagraph (A) does not apply, appropriations equal to the prior year's appropriations except to the extent that annual appropriations or continuing appropriations for the entire fiscal year have been enacted;

(C) assuming that expiring provisions of law providing revenues and spending authority as defined in section 651(c)(2) of this title do expire, except that excise taxes dedicated to a trust fund and agricultural price support programs administered through the Commodity Credit Corporation are extended at current rates; and

(D) assuming (i) that Federal pay adjustments for statutory pay systems (I) will be as recommended by the President, but (II) will in no case result in a reduction in the levels of pay in effect immediately before such adjustments; and (ii) that medicare spending levels for inpatient hospital services will be based upon the regulations most recently issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1395ww(b)(3)(B), 1395ww(d)(3)(A), and 1395ww(e)(4) of title 42.

Deferrals proposed under section 684 of this title during the period beginning October 1 of such fiscal year (or December 12, 1985, in the case of fiscal year 1986) and ending with the date on which the final order is issued under section 902(b) of this title for such fiscal year (or February 1, 1986, in the case of fiscal year 1986) shall not be taken into account in determining such budget base.

(b) Report to President and Congress by Comptroller General

(1) Report to be based on OMB-CBO report

The Comptroller General shall review and consider the report issued by the Directors for the fiscal year and, with due regard for the data, assumptions, and methodologies used in reaching the conclusions set forth therein, shall issue a report to the President and the Congress on August 25 of the calendar year in which such fiscal year begins (or on January 20, 1986, in the case of the fiscal year 1986), estimating the budget base levels of total revenues and total budget outlays for such fiscal year, identifying the amount of any deficit excess for such fiscal year (adjusted in accordance with subsection (a)(3)(A)(ii) of this section, in the case of fiscal year 1986), stating whether such deficit excess (or adjusted deficit excess, in the case of fiscal year 1986) will be greater than $10,000,000,000 (zero in the case of fiscal years 1986 and 1991), specifying the estimated rate of real economic growth for such fiscal year, for each quarter of such fiscal year, and for each of the last two quarters of the preceding fiscal year, indicating whether the estimate includes two or more consecutive quarters of negative economic growth, and specifying (if the excess is greater than $10,000,000,000, or zero in the case of fiscal years 1986 and 1991), by account, for non-defense programs, and by account and programs, projects, and activities within each account, for defense programs, the base from which reductions are taken and the amounts and percentages by which such accounts must be reduced during such fiscal year in order to eliminate such deficit excess (or adjusted deficit excess, in the case of fiscal year 1986). Such report shall be based on the estimates, determinations, and specifications of the Directors and shall utilize the budget base, criteria, and guidelines set forth in subsection (a)(6) of this section and in sections 905, 906, and 907 of this title.

(2) Contents of report

The report of the Comptroller General under this subsection shall—

(A) provide for the determination of reductions in the manner specified in subsection (a)(3) of this section; and

(B) contain estimates, determinations, and specifications for all of the items contained in the report submitted by the Directors under subsection (a) of this section.

Such report shall explain fully any differences between the contents of such report and the report of the Directors.

(c) Revised estimates, determinations, and reports

(1) Report by OMB and CBO

On October 5 of the fiscal year (except in the case of the fiscal year 1986), the Directors shall submit to the Comptroller General a revised report—

(A) indicating whether and to what extent, as a result of laws enacted and regulations promulgated after the submission of their initial report under subsection (a) of this section, the excess deficit (adjusted in accordance with subsection (a)(3)(A)(ii) of this section, in the case of fiscal year 1986) identified in the report submitted under such subsection has been eliminated, reduced, or increased, and

(B) adjusting the determinations made under subsection (a) of this section to the extent necessary.

The revised report submitted under this paragraph shall contain estimates, determinations, and specifications for all of the items contained in the initial report and authorized under subsection (d)(3)(D)(i) of this section and shall be based on the same economic and technical assumptions, employ the same methodologies, and utilize the same definition of the budget base and the same criteria and guidelines as those used in the report submitted by the Directors under subsection (a) of this section (except that subdivision (II) of paragraph (6)(D)(i) of such subsection shall not apply), and shall provide for the determination of reductions in the manner specified in subsection (a)(3) of this section.

(2) Report by Comptroller General

(A) On October 10 of the fiscal year (except in the case of the fiscal year 1986), the Comptroller General shall submit to the President and the Congress a report revising the report submitted by the Comptroller General under subsection (b) of this section, adjusting the estimates, determinations, and specifications contained in that report to the extent necessary in the light of the revised report submitted to him by the Directors under paragraph (1) of this subsection.

(B) The revised report of the Comptroller General under this paragraph shall provide for the determination of reductions as specified in subsection (a)(3) of this section and shall contain all of the estimates, determinations, and specifications required (in the case of the report submitted under subsection (b) of this section) pursuant to subsection (b)(2)(B) of this section.

(d) Sequestration of defense programs

(1) Determination of uniform percentage

The total amount of reductions in outlays under defense programs required for a fiscal year under subsection (a)(3)(B) of this section after the reduction under subsection (a)(3)(E)(i) of this section shall be calculated as a percentage of the total amount of outlays for the fiscal year estimated to result from new budget authority and unobligated balances for defense programs.

(2) Sequestration of new budget authority and unobligated balances

(A) Sequestration to achieve the remaining reduction in outlays under defense programs shall be made by reducing new budget authority and unobligated balances (if any) in each program, project, or activity under accounts within defense programs by the percentage determined under paragraph (1), computed on the basis of the combined outlay rate for new budget authority and unobligated balances for such program, project, or activity determined under subparagraph (B).

(B)(i) The combined outlay rate for new budget authority and unobligated balances for a program, project, or activity shall be determined by the Directors from data then available to them as supplemented by additional data from the heads of the appropriate departments or agencies of the executive branch. If the outlay rate for unobligated balances is not available for any program, project, or activity, the outlay rate used shall be the outlay rate for new budget authority.

(ii) The weighted average (by budget authority) for the combined outlay rates so determined for all the programs, projects, and activities within an account shall be compared to the historical outlay rates for that account previously estimated by the Directors. If the Directors determine that it is necessary to make the combined outlay rate for a program, project, or activity as determined under the first sentence of this subparagraph consistent with the historical rates for such account, they may adjust the outlay rate for such program, project, or activity.

(C) For purposes of this paragraph:

(i) The term "outlay rate", with respect to any program, project, or activity, means—

(I) the ratio of outlays resulting in the fiscal year involved from new budget authority for such program, project, or activity to such new budget authority; or

(II) the ratio of outlays resulting in the fiscal year involved from unobligated balances for such program, project, or activity to such unobligated balances.

(ii) The term "combined outlay rate", with respect to any program, project, or activity, means the weighted average (by budget authority) of the ratios determined under subclauses (I) and (II) of clause (i) for such program, project, or activity.

(3) Sequestration from national defense accounts through termination or modification of existing contracts

(A)(i) Subject to the provisions of this paragraph, the President, with respect to any fiscal year, may provide for—

(I) the termination or modification of an existing contract within any program, project, or activity within a [1] account within major functional category 050; and

[1] So in original. Probably should be "an".

(II) the crediting, to the amount of new budget authority and unobligated balances otherwise required to be reduced from such program, project, or activity, of the net reduction achieved for the appropriate fiscal year by such termination or modification, based upon the combined outlay rate for such program, project, or activity determined under paragraph (2)(B).

(ii) The remaining required outlay reductions in such program, project, or activity shall be achieved by sequestering new budget authority and unobligated balances based upon the combined outlay rate for such program, project, or activity determined under paragraph (2)(B).

(B) Not later than September 5 of the calendar year in which the fiscal year begins (January 15 in the case of fiscal year 1986), the President shall transmit to the Comptroller General and the Committees on Armed Services and on Appropriations of the Senate and House of Representatives and make available to the Directors a report concerning the contracts proposed to be terminated or modified under this paragraph for such fiscal year. The report shall—

(i) identify the contracts proposed to be terminated or modified and the proposed date of termination or modification of each such contract;

(ii) identify the anticipated outlay savings for the fiscal year involved and the anticipated reduction in obligated balances with respect to each such proposed termination or modification, together with an explanation of the relationship between the obligated balances that could be cancelled and the estimated outlay savings resulting therefrom;

(iii) provide documentation of the anticipated savings in outlays and obligated balances; and

(iv) provide a complete rationale for the effect of each proposed termination or modification on the contract concerned and on the program, project, or activity involved.

(C) Not later than September 30 of the calendar year in which the fiscal year begins (February 15 in the case of fiscal year 1986), the Comptroller General shall certify to the President and the Congress, with respect to each contract which is proposed to be terminated or modified—

(i) whether the Comptroller General is able to verify that the estimated outlay savings for the fiscal year involved are achievable and would be achieved in that year; and

(ii) whether the ratio between the projected outlay savings and the anticipated reduction in obligated balances is reasonable.

(D)(i) In the case of a fiscal year other than fiscal year 1986, each proposed contract termination or modification described in subparagraph (A) with respect to which the certification by the Comptroller General under subparagraph (C) is affirmative (with respect to both clause (i) and clause (ii) of such subparagraph) shall be included in the report of the Directors under subsection (c)(1) of this section. The report shall include the information about each such contract described in subparagraph (B)(ii).

(ii) In the case of fiscal year 1986, each proposed contract termination or modification described in subparagraph (A) with respect to which the certification by the Comptroller General under subparagraph (C) is affirmative (with respect to both clause (i) and (ii) of such subparagraph) shall be included in the modification authorized by section 902(a)(6)(D)(iii) of this title in the order issued by the President under section 902(a)(1) of this title with respect to fiscal year 1986.

(iii) The authority of the President described in subparagraph (A) is not effective in the case of any proposed contract termination or modification with respect to which the certification by the Comptroller General under subparagraph (C) is not affirmative (with respect to both clause (i) and clause (ii) of such subparagraph).

(E) For any contract termination or modification proposed pursuant to this paragraph, the President shall certify to Congress, within thirty days after the effective date of the contract termination or modification, that the amounts proposed for deobligation under such contract have in fact been deobligated and cancelled.

(e) Dates for submission of reports and issuance of orders

If the date specified for the submission of a report by the Directors or the Comptroller General under this section or for the issuance of an order by the President under section 902 of this title falls on a Sunday or legal holiday, such report shall be submitted or such order issued on the following day.

(f) Printing of reports

Each report submitted under this section shall be printed in the Federal Register on the date it is issued; and the reports of the Comptroller General submitted to the Congress under subsections (b) and (c)(2) of this section shall be printed as documents of the House of Representatives and the Senate.

(g) Exception

The preceding provisions of this section shall not apply if a declaration of war by the Congress is in effect.

(Pub. L. 99-177, title II, § 251, Dec. 12, 1985, 99 Stat. 1063.)

References in Text

Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (a)(4)(B), is section 204 of Pub. L. 91-373, title II, Aug. 10, 1970, 84 Stat. 711, which is set out as a note under section 3304 of Title 26, Internal Revenue Code.

EFFECTIVE AND TERMINATION DATES

Section 275 of title II of Pub. L. 99-177 provided that:

"(a) IN GENERAL.—

"(1) Except as provided in paragraph (2) and in subsections (b) and (c), this title and the amendments made by this title [see Short Title note below] shall become effective on the date of the enactment of this title [Dec. 12, 1985] and shall apply with respect to fiscal years beginning after September 30, 1985.

"(2)(A) The amendment made by section 201(a)(2) [amending section 622(2) of this title], and the amendment made by section 201(b) [ ]insofar as it relates to subsections (c), (f), and (g) of section 302 of the Congressional Budget Act of 1974 [section 633(c), (f), and (g) of this title] and to subsections (c), (d), and (g) of section 310 of that Act [section 641(c), (d), and (g) of this title]), shall become effective April 15, 1986.

"(B) The amendment made by section 212 [amending section 652 of this title] shall become effective February 1, 1986.

"(b) EXPIRATION.—

"(1) Part C of this title [enacting this subchapter], and the other provisions contained in or added by this title which are listed in paragraph (2), shall expire September 30, 1991.

"(2) The other provisions referred to in paragraph (1) are as follows:

"(A) section 3(7) of the Congressional Budget and Impoundment Control Act of 1974 and the second sentence of section 3(6) of such Act [section 622(6), (7) of this title] (as added by section 201(a)(1) of this joint resolution);

"(B) sections 301(i) and 304(b) of the Congressional Budget Act of 1974 [sections 632(i) and 635(b) of this title] and the portion of section 311(a) of such Act [section 642(a) of this title] which begins with 'or, in the Senate' and ends with 'paragraph (2) of such subsection)' (as added by section 201(b) of this joint resolution);

"(C) sections 1105(f) and 1106(c) of title 31, United States Code (as added by sections 241(b) and 242(b) of this joint resolution); and

"(D) section 271(b) of this joint resolution [set out as a Waivers and Suspensions in the Senate note below].

"(c) OASDI TRUST FUNDS.—The amendments made by part D [amending section 911 of Title 42, The Public Health and Welfare, and enacting provisions set out as a note under section 911 of Title 42] shall apply as provided in such part."

SHORT TITLE

Section 200(a) of title II of Pub. L. 99-177 provided that: "This title [enacting this chapter and sections 654 to 656 of this title, amending sections 602, 622, 631 to 642, and 651 to 653 of this title, sections 1104 to 1106 and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealing section 661 of this title, enacting provisions set out as notes under this section and section 911 of Title 42, and amending provisions set out as a note under section 621 of this title] may be cited as the 'Balanced Budget and Emergency Deficit Control Act of 1985'."

WAIVERS AND SUSPENSIONS IN THE SENATE

Section 271(b) of Pub. L. 99-177 provided that: "Sections 301(i), 302(f), 304(b), 310(d), 310(g), and 311(a) of the Congressional Budget Act of 1974 [sections 632(i), 633(f), 635(b), 641(d), 641(g), and 642(a) of this title] may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. This subsection shall not apply to any joint resolution reported or discharged pursuant to section 254(a) of this joint resolution [section 904(a) of this title]."

[For effective and termination dates of section 271(b) of Pub. L. 99-177, see section 275(a)(1), (b)(2)(D) of Pub. L. 99-177, set out as a note above.]

EXERCISE OF CONGRESSIONAL RULEMAKING POWER

Section 271(c) of Pub. L. 99-177 provided that: "The provisions of this title [see Short Title note above], other than those relating to the activities of the executive and judicial branches of the Government, are enacted by the Congress—

"(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

"(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner and to the same extent as in the case of any other rule of such House."

RESTORATION OF TRUST FUND INVESTMENTS

Section 272 of Pub. L. 99-177 provided that:

"(a) RESTORATION OF SOCIAL SECURITY TRUST FUNDS AND CERTAIN OTHER FUNDS.—

"(1) REISSUANCE OF OBLIGATIONS.—The Secretary of the Treasury shall immediately reissue to each fund listed in paragraph (3) obligations under chapter 31 of title 31, United States Code, which are identical, with respect to interest rate and maturity, to public debt obligations held by such fund which—

"(A) were redeemed during the period beginning with September 1, 1985, and ending with September 29, 1985, and

"(B) as determined by such Secretary on the basis of standard investment procedures for such fund in effect on September 1, 1985, would not have been redeemed if H.J. Res. 372 (99th Congress, 1st Session) [enacted as Pub. L. 99-177], as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985.

Such obligations shall be substituted for obligations which are held by such fund on the date of the enactment of this joint resolution [Dec. 12, 1985] in a manner which will ensure that, after such substitution, the holdings of such fund will replicate to the maximum extent practicable the holdings which would have been held by such fund on such date if H.J. Res. 372 (99th Congress, 1st Session) [enacted as Pub. L. 99-177], as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985.

"(2) APPROPRIATION TO FUNDS OF INTEREST LOST ON OR AFTER SEPTEMBER 1, 1985.—The Secretary of the Treasury shall pay on the normal interest payment date to each fund listed in paragraph (3), from amounts in the general fund of the Treasury not otherwise appropriated, an amount determined by such Secretary to be equal to the excess of—

"(A) the net amount of interest which would have been earned by such fund, during the period beginning with September 1, 1985, and ending with the date of the enactment of this joint resolution, if all noninvestments, redemptions, and disinvestments with respect to such fund which—

"(i) occurred during such period, and

"(ii) would not have occurred if H.J. Res. 372 (99th Congress, 1st Session) [enacted as Pub. L. 99-177], as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985,

had not occurred, over

"(B) the net amount of interest actually earned by such fund during such period.

"(3) FUNDS AFFECTED.—The funds referred to in paragraphs (1) and (2) are the following:

"(A) the Federal Old-Age and Survivors Insurance Trust Fund,

"(B) the Federal Disability Insurance Trust Fund,

"(C) the Federal Hospital Insurance Trust Fund,

"(D) the Federal Supplementary Medical Insurance Trust Fund,

"(E) the Railroad Retirement Account,

"(F) the Civil Service Retirement and Disability Fund, and

"(G) all other funds (other than the funds referred to in subsection (b) or (c)) listed in Table III of the Monthly Statement of the Public Debt issued by the Department of the Treasury for November 30, 1985.

"(b) RESTORATION OF DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND.—

"(1) ISSUANCE OF OBLIGATIONS.—The Secretary of the Treasury shall immediately issue to the Department of Defense Military Retirement Fund obligations under chapter 31 of title 31, United States Code, which such Secretary, in consultation with the Secretary of Defense, determines would have been issued to such fund on October 1, 1985, if H.J. Res. 372 (99th Congress, 1st Session) [enacted as Pub. L. 99-177], as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985. Such obligations shall be market-based special obligations issued at prices, including accrued interest, prevailing for such obligations on October 1, 1985. Such obligations shall be substituted for all obligations which were purchased by such fund during the period beginning with October 1, 1985, and ending with November 14, 1985, with amounts which were transferred to such fund on October 1, 1985.

"(2) APPROPRIATION TO FUND OF INTEREST LOST ON OR AFTER OCTOBER 1, 1985.—

"(A) IN GENERAL.—The Secretary of the Treasury shall immediately pay to the Department of Defense Military Retirement Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount determined by such Secretary, in consultation with the Secretary of Defense, to be equal to the excess of—

"(i) the interest which would have been earned by such fund during the period beginning with October 1, 1985, and ending with November 14, 1985, if the obligations issued pursuant to paragraph (1) had been issued on October 1, 1985, over

"(ii) the amount of interest actually collected by such fund during such period on obligations purchased by such fund with amounts which were transferred to such fund on October 1, 1985.

"(B) INVESTMENT OF INTEREST RECEIPTS.—The Secretary of the Treasury shall immediately invest the amount paid to the Department of Defense Military Retirement Fund pursuant to subparagraph (A) in obligations designated by the Secretary of Defense. Such obligations shall be market-based special obligations issued with an issue date of November 15, 1985, and at prices, including accrued interest, prevailing for such obligations on November 15, 1985.

"(c) APPROPRIATION TO CERTAIN FUNDS WITH RESPECT TO UNINVESTED BALANCES AFTER DECEMBER 6, 1985.—

"(1) IN GENERAL.—The Secretary of the Treasury shall immediately pay, from amounts in the general fund not otherwise appropriated, to each fund which is listed in Table III of the Monthly Statement of the Public Debt issued by the Department of the Treasury for November 30, 1985, and which invests in market-based special obligations under chapter 31 of title 31, United States Code, an amount equal to the interest which would have been earned by such fund during the period beginning with December 7, 1985, and ending with the date of the enactment of this joint resolution [Dec. 12, 1985], if the daily balance in such fund which the Secretary of the Treasury was requested to invest during such period but was unable to invest, because of the expiration of the temporary debt limit, had been invested each day during such period, overnight, in obligations under such chapter 31 earning interest at a rate determined by the Secretary of the Treasury in accordance with the standard practice of the Department of the Treasury.

"(2) EXPIRATION OF TEMPORARY DEBT LIMIT DEFINED.—For purposes of paragraph (1), the term 'expiration of the temporary debt limit' means the expiration of the period described in section 1 of the Act entitled 'An Act to temporarily increase the limit on the public debt and to restore the investments of the Social Security Trust Funds and other trust funds', approved November 14, 1985 (Public Law 99-155) [set out as a note under section 3101 of Title 31, Money and Finance].

"(d) ADDITIONAL APPROPRIATION TO OASDI TRUST FUNDS OF INTEREST LOST FROM ACTIONS TAKEN IN SEPTEMBER AND OCTOBER 1984.—

"(1) IN GENERAL.—On December 31, 1985, the Secretary of the Treasury shall pay to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, amounts determined under this subsection.

"(2) AMOUNT PAID TO EACH TRUST FUND.—The amount paid to each such Trust Fund pursuant to paragraph (1) shall be an amount determined jointly by the Secretary of the Treasury and the Secretary of Health and Human Services to be sufficient to fully compensate such Trust Fund for interest losses arising from the premature redemption, during the period beginning with September 1, 1984, and ending with October 31, 1984, of securities maturing during the period beginning with calendar year 1987 and ending with calendar year 1991.

"(3) LIMITATION.—The total amount paid from the general fund of the Treasury pursuant to paragraph (1) shall not exceed $550,000,000.

"(4) ADJUSTMENTS.—

"(A) DETERMINATION OF SHORTFALLS AND EXCESSES IN PAYMENTS TO TRUST FUNDS.—As soon as practicable after May 31, 1986, the Secretary of the Treasury and the Secretary of Health and Human Services shall jointly determine any shortfall or excess in the amount paid to each Trust Fund pursuant to paragraph (1) caused by—

"(i) the difference between actual interest rates and interest rates assumed for purposes of paragraph (1), and

"(ii) the difference between the actual amount of securities redeemed in January 1986 for purposes of compliance with section 201(*l*)(3)(B) of the Social Security Act [42 U.S.C. 401 (*l*)(3)(B)] and the amount of securities assumed for purposes of paragraph (1) to be redeemed in such month for purposes of compliance with such section.

"(B) PAYMENT OF SHORTFALLS AND EXCESSES.—On June 30, 1986, the Secretary of the Treasury shall—

"(i) in the case of a shortfall in the amount paid to either Trust Fund determined pursuant to subparagraph (A), pay to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, the amount of such shortfall, or

"(ii) in the case of an excess in the amount paid to either Trust Fund determined pursuant to subparagraph (A), pay to the general fund of the Treasury, from such Trust Fund, the amount of such excess (but not to exceed the amount

paid to such Trust Fund pursuant to paragraph (1)).''

ACT REFERRED TO IN OTHER SECTIONS

The Balanced Budget and Emergency Deficit Control Act of 1985 (see Short Title note above) is referred to in section 622 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 622, 902, 904, 905, 906, 922 of this title.

§ 902. Presidential order

(a) Issuance of initial order

(1) In general

On September 1 following the submission of a report by the Comptroller General under section 901(b) of this title which identifies an amount greater than $10,000,000,000 (zero in the case of fiscal years 1986 and 1991) by which the deficit for a fiscal year will exceed the maximum deficit amount for such fiscal year (or on February 1, 1986, in the case of the fiscal year 1986), the President, in strict accordance with the requirements of paragraph (3) and section 901(a)(3) and (4) of this title and subject to the exemptions, exceptions, limitations, special rules, and definitions set forth in sections 905, 906, and 907 of this title, shall eliminate the full amount of the deficit excess (as adjusted by the Comptroller General in such report in accordance with section 901(a)(3)(A)(ii) of this title, in the case of fiscal year 1986) by issuing an order that (notwithstanding the Impoundment Control Act of 1974 [2 U.S.C. 681 et seq.])—

(A) modifies or suspends the operation of each provision of Federal law that would (but for such order) require an automatic spending increase to take effect during such fiscal year, in such a manner as to prevent such increase from taking effect, or reduce such increase, in accordance with such report; and

(B) eliminates the remainder of such deficit excess (or adjusted deficit excess, in the case of fiscal year 1986) by sequestering new budget authority, unobligated balances, new loan guarantee commitments, new direct loan obligations, and spending authority as defined in section 651(c)(2) of this title, and reducing obligation limitations, in accordance with such report—

(i) for funds provided in annual appropriation Acts, from each affected program, project, and activity (as set forth in the most recently enacted applicable appropriation Acts and accompanying committee reports for the program, project, or activity involved, including joint resolutions providing continuing appropriations and committee reports accompanying Acts referred to in such resolutions), applying the same reduction percentage as the percentage by which the account involved is reduced in the report submitted under section 901(b) of this title, or from each affected budget account if the program, project, or activity is not so set forth, and

(ii) for funds not provided in annual appropriation Acts, from each budget account activity as identified in the program and financing schedules contained in the appendix to the Budget of the United States Government for that fiscal year, applying the same reduction percentage as the percentage by which the account is reduced in such report.

(2) Special sequestration procedures for national defense for fiscal year 1986

(A) In general

Notwithstanding subparagraph (B)(i) of paragraph (1), the order issued by the President under paragraph (1) with respect to fiscal year 1986 shall sequester, from each program, project, or activity within an account within major functional category 050, such amounts of new budget authority and unobligated balances as are specified (in accordance with section 901(a)(3)(E)(ii) of this title) in the report submitted by the Comptroller General under section 901(b) of this title.

(B) Flexibility with respect to military personnel accounts

(i) Notwithstanding subparagraph (B)(i) of paragraph (1), the order issued by the President under paragraph (1) with respect to fiscal year 1986 may, with respect to any military personnel account—

(I) exempt any program, project, or activity within such account from the order;

(II) provide for a lower uniform percentage to be applied to reduce any program, project, or activity within such account than would otherwise apply; or

(III) take actions described in both subclauses (I) and (II).

(ii) If the President uses the authority under clause (i), the total amount by which outlays are not reduced for fiscal year 1986 in military personnel accounts by reason of the use of such authority shall be determined. Reductions in outlays under defense programs in such total amount shall be achieved by a uniform percentage sequestration of new budget authority and unobligated balances in each program, project, and activity within each account within major functional category 050 other than those military personnel accounts for which the authority provided under clause (i) has been exercised, computed on the basis of the outlay rate for each such program, project, and activity determined under section 901(d) of this title.

(iii) The President may not use the authority provided by clause (i) unless he notifies the Comptroller General and the Congress on or before January 10, 1986, of the manner in which such authority will be exercised.

(C) Flexibility among programs, projects, and activities within accounts

(i) New budget authority and unobligated balances for any program, project, or activity within an account within major functional category 050 may be reduced under an order issued by the President under paragraph (1) for fiscal year 1986, subject to clauses (ii) and (iii) of this subparagraph, by up to two times the percentage otherwise applicable to the program, project, or activity (determined after any reduction under subparagraph (B)). To the extent such reductions are made under such an order, the President may provide in the order for an increase in new budget authority and unobligated balances for another program, project, or activity within the same account within major functional category 050 for fiscal year 1986, but such program, project, or activity may not be increased above the level in the base set forth in such order.

(ii) No order issued by the President under paragraph (1) for fiscal year 1986 may result in a base closure or realignment that would otherwise be subject to section 2687 of title 10.

(iii) New budget authority and unobligated balances for any program, project, or activity within major functional category 050 for fiscal year 1986 which is 10 percent (or more) greater than the amount requested in the budget submitted by the President under section 1105 of title 31 for fiscal year 1986 may not be reduced by more than the percentage applicable to the program, project, or activity (determined after any reduction under subparagraph (B)).

(3) Order to be based on Comptroller General's report

The order must provide for reductions in the manner specified in section 901(a)(3) of this title, must incorporate the provisions of the report submitted under section 901(b) of this title, and must be consistent with such report in all respects. The President may not modify or recalculate any of the estimates, determinations, specifications, bases, amounts, or percentages set forth in the report submitted under section 901(b) of this title in determining the reductions to be specified in the order with respect to programs, projects, and activities, or with respect to budget activities, within an account, with the exception of the authority granted to the President for fiscal year 1986 with respect to defense programs pursuant to paragraph (2)(C).

(4) Effect of sequestration under initial order

Notwithstanding section 907(7) of this title, amounts sequestered under an order issued by the President under paragraph (1) for fiscal year 1987 or any subsequent fiscal year shall be withheld from obligation pending the issuance of a final order under subsection (b) of this section and shall be permanently cancelled in accordance with such final order upon the issuance of such order.

(5) Accompanying message

At the time the actions described in the preceding provisions of this subsection with respect to any fiscal year are taken, the President shall transmit to both Houses of the Congress a message containing all the information required by section 901(a)(4) of this title and further specifying in strict accordance with paragraph (3)—

(A) within each account, for each program, project, and activity, or budget account activity, the base from which each sequestration or reduction is taken and the amounts which are to be sequestered or reduced for each such program, project, and activity or budget account activity; and

(B) such other supporting details as the President may determine to be appropriate.

Upon receipt in the Senate and the House of Representatives, the message (and any accompanying proposals made under subsection (c) of this section) shall be referred to all committees with jurisdiction over programs, projects, and activities affected by the order.

(6) Effective date of initial order

(A) Fiscal year 1986

The order issued by the President under paragraph (1) with respect to the fiscal year 1986 shall be effective as of March 1, 1986.

(B) Fiscal years 1987–1991

The order issued by the President under paragraph (1) with respect to the fiscal year 1987 or any subsequent fiscal year shall be effective as of October 1 of such fiscal year (and the President shall withhold from obligation as provided in paragraph (4), pending the issuance of his final order under subsection (b) of this section, any amounts that are to be sequestered or reduced under such order).

(C) Treatment of automatic spending increases

(i) Fiscal year 1986

Notwithstanding any other provision of law, any automatic spending increase that would (but for this clause) be first paid during the period beginning with December 12, 1985, and ending with the effective date of an order issued by the President under paragraph (1) for the fiscal year 1986 shall be suspended until such order becomes effective, and the amounts that would otherwise be expended during such period with respect to such increases shall be withheld. If such order provides that automatic spending increases shall be reduced to zero during such fiscal year, the increases suspended pursuant to the preceding sentence and any legal rights thereto shall be permanently cancelled. If such order provides for the payment of automatic spending increases during such fiscal year in amounts that are less than would have been paid but for such order, or provides for the payment of the full amount of such increases, the increases suspended pursuant to such sentence shall be restored to the extent necessary

to pay such reduced or full increases, and lump-sum payments in the amounts necessary to pay such reduced or full increases shall be made, for the period for which such increases were suspended pursuant to this clause.

(ii) Fiscal years 1987–1991

Notwithstanding any other provision of law, any automatic spending increase that would (but for this clause) be first paid during the period beginning with the first day of such fiscal year and ending with the date on which a final order is issued pursuant to subsection (b) of this section shall be suspended until such final order becomes effective, and the amounts that would otherwise be expended during such period with respect to such increases shall be withheld. If such final order provides that automatic spending increases shall be reduced to zero during such fiscal year, the increases suspended pursuant to the preceding sentence and any legal rights thereto shall be permanently cancelled. If such final order provides for the payment of automatic spending increases during such fiscal year in amounts that are less than would have been paid but for such final order, or provides for the payment of the full amount of such increases, the increases suspended pursuant to such sentence shall be restored to the extent necessary to pay such reduced or full increases, and lump-sum payments in the amounts necessary to pay such reduced or full increases shall be made, for the period for which such increases were suspended pursuant to this clause.

(iii) Prohibition against recoupment

Notwithstanding clauses (i) and (ii), if an amount required by either such clause to be withheld is paid, no recoupment shall be made against an individual to whom payment was made.

(iv) Effect of lump-sum payments on needs-related programs

Lump-sum payments made under the last sentence of clause (i) or clause (ii) shall not be considered as income or resources or otherwise taken into account in determining the eligibility of any individual for aid, assistance, or benefits under any Federal or federally-assisted program which conditions such eligibility to any extent upon the income or resources of such individual or his or her family or household, or in determining the amount or duration of such aid, assistance, or benefits.

(D) Special rules for fiscal year 1986

(i) For purposes of applying this section and section 901 of this section with respect to the fiscal year 1986—

(I) the order issued by the President under paragraph (1) of this subsection shall be considered the final order of the President under this section; and

(II) the Committees on Appropriations of the House of Representatives and the Senate may, after consultation with each other, define the term "program, project, and activity", and report to their respective Houses, with respect to matters within their jurisdiction, and the order issued by the President shall sequester funds in accordance with such definition.

(ii) If the Comptroller General declares in the report issued under section 901(b) of this title for fiscal year 1986 that as a result of laws enacted and regulations promulgated after December 12, 1985, and prior to the issuance of such report the excess deficit for the fiscal year (adjusted in accordance with section 901(a)(3)(A)(ii) of this title has been eliminated, the order issued under this subsection for the fiscal year shall so state (and shall make available for obligation and expenditure any amounts withheld pursuant to subparagraph (C)(i) of this paragraph).

(iii) The order issued by the President under paragraph (1) with respect to fiscal year 1986 shall be modified before the effective date for such order prescribed under subparagraph (A) to include in the order the changes in budget authority and unobligated balances, and related changes in outlay reductions, authorized for such fiscal year under section 901(d)(3)(D)(ii) of this title.

(b) Issuance of final order

(1) In general

On October 15 of the fiscal year (except in the case of the fiscal year 1986), after the submission of the revised report submitted by the Comptroller General under section 901(c)(2) of this title, the President shall issue a final order under this section to eliminate the full amount of the deficit excess as identified by the Comptroller General in the revised report submitted under section 901(c)(2) of this title but only to the extent and in the manner provided in such report. The order issued under this subsection—

(A) shall include the same reductions and sequestrations as the initial order issued under subsection (a) of this section, adjusted to the extent necessary to take account of any changes in relevant amounts or percentages determined by the Comptroller General in the revised report submitted under section 901(c)(2) of this title,

(B) shall make such reductions and sequestrations in strict accordance with the requirements of section 901(a)(3) and (4) of this title, and

(C) shall utilize the same criteria and guidelines as those which were used in the issuance of such initial order under subsection (a) of this section.

The provisions of subsection (a)(3) of this section shall apply to the revised report submitted under section 901(c)(2) of this title and to the order issued under this subsection in the same manner as such provisions apply to the initial report issued under section 901(b) of

this title and to the order issued under subsection (a) of this section.

(2) Order required if excess deficit is eliminated

If the Comptroller General issues a revised report under section 901(c)(2) of this title stating that as a result of laws enacted and regulations promulgated after the submission of the initial report of the Comptroller General under section 901(b) of this title the excess deficit for a fiscal year (adjusted in accordance with section 901(a)(3)(A)(ii) of this title, in the case of fiscal year 1986) has been eliminated, the order issued under this subsection shall so state and shall make available for obligation and expenditure any amounts withheld pursuant to subsection (a)(4) or (a)(6)(C) of this section.

(3) Effective date of final order

(A) Except as provided in subsection (a)(6)(A) of this section, the final order issued by the President under paragraph (1) shall become effective on the date of its issuance, and shall supersede the order issued under subsection (a)(1) of this section.

(B) Any modification or suspension by such order of the operation of a provision of law that would (but for such order) require an automatic spending increase to take effect during the fiscal year shall apply for the one-year period beginning with the date on which such automatic increase would have taken effect during such fiscal year (but for such order).

(c) Proposal of alternatives by President

A message transmitted pursuant to subsection (a)(5) of this section with respect to a fiscal year may be accompanied by a proposal setting forth in full detail alternative ways to reduce the deficit for such fiscal year to an amount not greater than the maximum deficit amount for such fiscal year.

(d) Existing programs, projects, and activities not to be eliminated

No action taken by the President under subsection (a) or (b) of this section shall have the effect of eliminating any program, project, or activity of the Federal Government.

(e) Relative budget priorities not to be altered

Nothing in the preceding provisions of this section shall be construed to give the President new authority to alter the relative priorities in the Federal budget that are established by law, and no person who is or becomes eligible for benefits under any provision of law shall be denied eligibility by reason of any order issued under this subchapter.

(Pub. L. 99-177, title II, § 252, Dec. 12, 1985, 99 Stat. 1072.)

REFERENCES IN TEXT

The Impoundment Control Act of 1974, referred to in subsec. (a)(1), is title X of Pub.L. 93-344, July 12, 1974, 88 Stat. 332, as amended, which is classified principally to chapter 17B (§ 681 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 681 of this title and Tables.

EMERGENCY DEFICIT CONTROL MEASURES FOR FISCAL YEAR 1986

Order of the President of the United States, Feb. 1, 1986, 51 F.R. 4291, provided:

By the authority vested in me as President by the statutes of the United States of America, including section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 902] (hereafter referred to as "the Act" [Pub. L. 99-177, see Short Title note set out under section 901 of this title]), I hereby order that the following actions be taken immediately to implement the required sequestration or reduction determined by the Comptroller General in his report dated January 21, 1986, under section 251 of the Act [2 U.S.C. 901]:

(1) Each automatic spending increase which, but for the passage of the Act, would be first paid on or after the enactment of the Act [Dec. 12, 1985] during fiscal year 1986 is suspended as provided in section 252(a)(6) and subject to provisions set forth in sections 255, 256, and 257 of the Act [2 U.S.C. 905, 906, and 907]. The programs with such 1986 automatic spending increases subject to reduction in this manner, specified by account title, are: Central Intelligence Agency retirement and disability system fund; Civil service retirement and disability fund; Comptrollers general retirement system; Foreign service retirement and disability fund; Military retirement fund; National Oceanic and Atmospheric Administration retirement; Railroad Retirement Tier II; Retired pay, Coast Guard; Retirement pay and medical benefits for commissioned Public Health Service officers; Special benefits, Federal Employees' Compensation Act; National Wool Act; Special milk program; and Vocational rehabilitation.

(2) New budget authority and unobligated balances amounts for major National Defense functional category (050) are sequestered according to the procedures set forth in section 252(a)(2) of the Act.

(3) For non-defense accounts in the Federal budget, the following are sequestered: new budget authority, new loan guarantee commitments, new direct loan obligations, and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, as amended [2 U.S.C. 651(c)(2)], and the reduction of obligation limitations, for each account and for each program, project, and activity, as defined pursuant to section 252(a)(1)(B)(i) of the Act, or each budget account activity as defined pursuant to section 252(a)(1)(B)(ii) of the Act.

(4) For accounts making payments otherwise required by substantive law, the head of each Department or agency is directed to modify the calculation of each such payment to the extent necessary to reduce the estimate of total required payments for the remainder of the fiscal year (a) where payments are not made from spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, as amended, to the level of remaining budgetary resources or (b) where payments are made from spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, as amended, to the estimated level of payments included in the Comptroller General determination on Janauary 21, 1986, of required sequestration or reduction action.

(5) For accounts making commitments for guaranteed loans and obligations for direct loans subject to limitation otherwise required by substantive law, the head of each Department or agency is directed to modify the calculation of such commitments or obligations to the extent necessary to conform to the limitations established by the Act and specified in the Comptroller General determination of January 21, 1986.

(6) Each Department or agency head may, to the extent not otherwise prohibited by law, use existing authority to deobligate balances of budgetary resources as necessary to apply the required reduction or sequestration in as uniform a manner as possible

for any person or other recipient entitled to payments under any formula-driven calculations specified in the substantive law. Deobligations may include budgetary resources obligations for which checks have not been issued or funds not otherwise disbursed (funds obligated but unexpended).

Also, the head of each Department or agency shall report the programs, projects, and activities information required by section 252(a)(5)(A) and (B) to the President of the Senate, the Speaker of the House, the Director of the Office of Management and Budget, and the Comptroller General, as instructed by the Director of the Office of Management and Budget in Bulletin No. 86-7. For those programs in the National Defense function that have already been reported by program, project, and activity, no additional report is necessary. The reports of the Departments and agencies are hereby incorporated in this Order.

I further direct the Director of Central Intelligence to report the programs, projects, and activities information requird by section 252(a)(5)(A) and (B) on a classified basis to the appropriate committees of the Congress for the National Foreign Intelligence Program consistent with paragraphs 1 through 3 of this Order and to so advise the President of the Senate, the Speaker of the House, the Director of the Office of Management and Budget, and the Comptroller General, as instructed by the Director of the Office of Management and Budget.

In accordance with section 252(a)(6)(A), amounts suspended, sequestered or reduced under this Order shall be withheld from obligation and amounts suspended or sequestered shall be permanently cancelled as of March 1, 1986, unless alternative legislation is enacted prior to that date.

This Order shall be reported to the Congress and shall be published in the Federal Register.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 622, 901, 903, 904, 906, 907, 922 of this title.

§ 903. Compliance report by Comptroller General

On or before November 15 of each fiscal year (or on or before April 1, 1986, in the case of the fiscal year 1986), the Comptroller General shall submit to the Congress and the President a report on the extent to which the President's order issued under section 902(b) of this title for such fiscal year complies with all of the requirements contained in section 902 of this title, either certifying that the order fully and accurately complies with such requirements or indicating the respects in which it does not.

(Pub. L. 99-177, title II, § 253, Dec. 12, 1985, 99 Stat. 1078.)

§ 904. Congressional action

(a) Special procedures in event of recession

(1) In general

The Director of the Congressional Budget Office shall notify the Congress at any time if—

(A) during the period consisting of the quarter during which such notification is given, the quarter preceding such notification, and the four quarters following such notification, such Office or the Office of Management and Budget has determined that real economic growth is projected or estimated to be less than zero with respect to each of any two consecutive quarters within such period, or

(B) the Department of Commerce preliminary reports of actual real economic growth (or any subsequent revision thereof) indicate that the rate of real economic growth for each of the most recent reported quarter and the immediately preceding quarter is less than one percent.

Upon such notification the Majority Leader of each House shall introduce a joint resolution (in the form set forth in paragraph (2)) declaring that the conditions specified in this paragraph are met and suspending the relevant provisions of this title [2] for the remainder of the current fiscal year or for the following fiscal year or both.

(2) Form of joint resolution

(A) The matter after the resolving clause in any joint resolution introduced pursuant to paragraph (1) shall be as follows: "That the Congress declares that the conditions specified in section 254(a)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 are met; and—

"(1) the provisions of sections 3(7), 301(i), 302(f), 304(b), and 311(a) of the Congressional Budget and Impoundment Control Act of 1974, section 1106(c) of title 31, United States Code, and part C of the Balanced Budget and Emergency Deficit Control Act of 1985 are suspended for the remainder of the current fiscal year, and

"(2) the provisions of sections 3(7), 301(i), 304(b), and 311(a) (insofar as it relates to section 3(7)) of the Congressional Budget and Impoundment Control Act of 1974, sections 302(f) and 311(a) (except insofar as it relates to section 3(7)) of that Act (but only if a concurrent resolution on the budget under section 301 of that Act, for the fiscal year following the current fiscal year, has been agreed to prior to the introduction of this joint resolution), sections 1105(f) and 1106(c) of title 31, United States Code, and part C of the Balanced Budget and Emergency Deficit Control Act of 1985 are suspended for the fiscal year following the current fiscal year.

This joint resolution shall not have the effect of suspending any final order which was issued for the current fiscal year under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 if such order was issued before the date of the enactment of this joint resolution.".

(B) The title of the joint resolution shall be "Joint resolution suspending certain provisions of law pursuant to section 254(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985."; and the joint resolution shall not contain any preamble.

(3) Committee action

Each joint resolution introduced pursuant to paragraph (1) shall be referred to the Com-

[2] See References in Text note below.

mittee on the Budget of the House involved; and such Committee shall report the joint resolution to its House without amendment on or before the fifth day on which such House is in session after the date on which the joint resolution is introduced. If the Committee fails to report the joint resolution within the five-day period referred to in the preceding sentence, it shall be automatically discharged from further consideration of the joint resolution, and the joint resolution shall be placed on the appropriate calendar.

(4) Consideration of joint resolution

(A) A vote on final passage of a joint resolution reported to a House of the Congress or discharged pursuant to paragraph (3) shall be taken on or before the close of the fifth calendar day of session of such House after the date on which the joint resolution is reported to such House or after the Committee has been discharged from further consideration of the joint resolution. If prior to the passage by one House of a joint resolution of that House, that House receives the same joint resolution from the other House, then—

(i) the procedure in that House shall be the same as if no such joint resolution had been received from the other House, but

(ii) the vote on final passage shall be on the joint resolution of the other House.

When the joint resolution is agreed to, the Clerk of the House of Representatives (in the case of a House joint resolution agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a Senate joint resolution agreed to in the Senate) shall cause the joint resolution to be engrossed, certified, and transmitted to the other House of the Congress as soon as practicable.

(B)(i) A motion in the House of Representatives to proceed to the consideration of a joint resolution under this paragraph shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(ii) Debate in the House of Representatives on a joint resolution under this paragraph shall be limited to not more than five hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to postpone, made in the House of Representatives with respect to the consideration of a joint resolution under this paragraph, and a motion to proceed to the consideration of other business, shall not be in order. A motion further to limit debate shall not be debatable. It shall not be in order to move to table or to recommit a joint resolution under this paragraph or to move to reconsider the vote by which the joint resolution is agreed to or disagreed to.

(iii) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a joint resolution under this paragraph shall be decided without debate.

(iv) Except to the extent specifically provided in the preceding provisions of this subsection or in subparagraph (D), consideration of a joint resolution under this subparagraph shall be governed by the Rules of the House of Representatives.

(C)(i) A motion in the Senate to proceed to the consideration of a joint resolution under this paragraph shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(ii) Debate in the Senate on a joint resolution under this paragraph, and all debatable motions and appeals in connection therewith, shall be limited to not more than five hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(iii) Debate in the Senate on any debatable motion or appeal in connection with a joint resolution under this paragraph shall be limited to not more than one hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee.

(iv) A motion in the Senate to further limit debate on a joint resolution under this paragraph is not debatable. A motion to table or to recommit a joint resolution under this paragraph is not in order.

(D) No amendment to a joint resolution considered under this paragraph shall be in order in either the House of Representatives or the Senate.

(b) Congressional response to Presidential order

(1) Reporting of resolutions, and reconciliation bills and resolutions, in Senate

(A) Committee alternatives to Presidential order

Within two days after the submission of a report by the Comptroller General under section 901(c)(2) of this title, each standing committee of the Senate may submit to the Committee on the Budget of the Senate information of the type described in section 301(d) of the Congressional Budget Act of 1974 [2 U.S.C. 632(d)] with respect to alternatives to the order envisioned by such report insofar as such order affects laws within the jurisdiction of the committee.

(B) Initial Budget Committee action

Not later than two days after issuance of a final order by the President under section 902(b) of this title with respect to a fiscal year, the Committee on the Budget of the Senate may report to the Senate a resolution. The resolution may affirm the impact of the order issued under such section, in

whole or in part. To the extent that any part of the order is not affirmed, the resolution shall state which parts are not affirmed and shall contain instructions to committees of the Senate of the type referred to in section 310(a) of the Congressional Budget Act of 1974 [2 U.S.C. 641(a)], sufficient to achieve at least the total level of deficit reduction contained in those sections which are not affirmed.

(C) Response of committees

Committees instructed pursuant to subparagraph (B), or affected thereby, shall submit their responses to the Budget Committee no later than 10 days after the resolution referred to in subparagraph (B) is agreed to, except that if only one such Committee is so instructed such Committee shall, by the same date, report to the Senate a reconciliation bill or reconciliation resolution containing its recommendations in response to such instructions. A committee shall be considered to have complied with all instructions to it pursuant to a resolution adopted under subparagraph (B) if it has made recommendations with respect to matters within its jurisdiction which would result in a reduction in the deficit at least equal to the total reduction directed by such instructions.

(D) Budget Committee action

Upon receipt of the recommendations received in response to a resolution referred to in subparagraph (B), the Budget Committee shall report to the Senate a reconciliation bill or reconciliation resolution, or both, carrying out all such recommendations without any substantive revisions. In the event that a committee instructed in a resolution referred to in subparagraph (B) fails to submit any recommendation (or, when only one committee is instructed, fails to report a reconciliation bill or resolution) in response to such instructions, the Budget Committee shall include in the reconciliation bill or reconciliation resolution reported pursuant to this subparagraph legislative language within the jurisdiction of the noncomplying committee to achieve the amount of deficit reduction directed in such instructions.

(E) Point of order

It shall not be in order in the Senate to consider any reconciliation bill or reconciliation resolution reported under subparagraph (D) with respect to a fiscal year, any amendment thereto, or any conference report thereon if—

(i) the enactment of such bill or resolution as reported;

(ii) the adoption and enactment of such amendment; or

(iii) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the amount of the deficit for such fiscal year to exceed the maximum deficit amount for such fiscal year, unless the report submitted under section 901(c)(1) of this title projects negative real economic growth for such fiscal year, or for each of any two consecutive quarters during such fiscal year.

(F) Treatment of certain amendments

In the Senate, an amendment which adds to a resolution reported under subparagraph (B) an instruction of the type referred to in such subparagraph shall be in order during the consideration of such resolution if such amendment would be in order but for the fact that it would be held to be non-germane on the basis that the instruction constitutes new matter.

(G) "Day" defined

For purposes of subparagraphs (A), (B), and (C), the term "day" shall mean any calendar day on which the Senate is in session.

(2) Procedures

(A) In general

Except as provided in subparagraph (B), in the Senate the provisions of sections 305 and 310 of the Congressional Budget Act of 1974 [2 U.S.C. 636, 641] for the consideration of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration of resolutions, and reconciliation bills and reconciliation resolutions reported under this paragraph and conference reports thereon.

(B) Limit on debate

Debate in the Senate on any resolution reported pursuant to paragraph (1)(B), and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to 10 hours.

(C) Limitation on amendments

Section 310(d)(2) of the Congressional Budget Act [2 U.S.C. 641(d)(2)] shall apply to reconciliation bills and reconciliation resolutions reported under this subsection.

(D) Bills and resolutions received from the House

Any bill or resolution received in the Senate from the House, which is a companion to a reconciliation bill or reconciliation resolution of the Senate for the purposes of this subsection, shall be considered in the Senate pursuant to the provisions of this subsection.

(E) "Resolution" defined

For purposes of this subsection, the term "resolution" means a simple, joint, or concurrent resolution.

(c) Certain resolutions treated as reconciliation bills

Resolutions described in subsection (b) of this section and bills reported as a result thereof shall be considered in the Senate to be reconciliation bills or resolutions for purposes of the Congressional Budget Act of 1974.

(Pub. L. 99-177, title II, § 254, Dec. 12, 1985, 99 Stat. 1078.)

REFERENCES IN TEXT

This title, referred to in subsec. (a)(1), means title II (§ 200 et seq.) of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, known as the Balanced Budget and Emergency Deficit Control Act of 1985. For complete classification of this Act to the Code, see Short Title note set out under section 901 of this title and Tables.

Part C of the Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (a)(2)(A), is classified generally to this subchapter. Sections 254 and 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 are classified to sections 904 and 902, respectively, of this title.

Sections 3(7), 301(i), 302(f), 304(b), and 311(a) of the Congressional Budget and Impoundment Control Act of 1974, referred to in subsec. (a)(2)(A), are classified to sections 622(7), 632(i), 633(f), 635(b), and 642(a), respectively, of this title.

The Congressional Budget Act of 1974, referred to in subsec. (c), is titles I through IX of Pub. L. 93-344, July 12, 1974, 88 Stat. 298, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 621 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 641, 922 of this title.

§ 905. Exempt programs and activities

(a) Social security benefits and tier I railroad retirement benefits

Increases in benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act [42 U.S.C. 401 et seq.], or in benefits payable under section 231b(a), 231b(f)(3), 231c(a), or 231c(f) of title 45, shall not be considered "automatic spending increases" for purposes of this title; [1] and no reduction in any such increase or in any of the benefits involved shall be made under any order issued under this subchapter.

(b) Veterans programs

The following programs shall be exempt from reduction under any order issued under this subchapter:

Veterans' compensation (36-0153-0-1-701); and

Veterans' pensions (36-0154-0-1-701).

(c) Net interest

No reduction of payments for net interest (all of major functional category 900) shall be made under any order issued under this subchapter.

(d) Earned income tax credit

Payments to individuals made pursuant to section 32 of title 26 shall be exempt from reduction under any order issued under this subchapter.

(e) Offsetting receipts and collections

Offsetting receipts and collections shall not be reduced under any order issued under this subchapter.

(f) Certain program bases

Outlays for programs specified in paragraph (1) of section 907 of this title shall be subject to reduction only in accordance with the procedures established in section 901(a)(3)(C) and 906(b) of this title.

(g) Other programs and activities

(1) The following budget accounts and activities shall be exempt from reduction under any order issued under this subchapter:

Activities resulting from private donations, bequests, or voluntary contributions to the Government;

Alaska Power Administration, Operations and maintenance (89-0304-0-1-271);

Appropriations for the District of Columbia (to the extent they are appropriations of locally raised funds);

Bonneville Power Administration fund and borrowing authority established pursuant to section 13 of Public Law 93-454 (1974), as amended [16 U.S.C. 838k] (89-4045-0-3-271);

Bureau of Indian Affairs miscellaneous trust funds, tribal trust funds (14-9973-0-7-999);

Claims, defense (97-0102-0-1-051);

Claims, judgments, and relief acts (20-1895-0-1-806);

Coinage profit fund (20-5811-0-2-803);

Compensation of the President (11-0001-0-1-802);

Eastern Indian land claims settlement fund (14-2202-0-1-806);

Exchange stabilization fund (20-4444-0-3-155);

Federal payment to the railroad retirement account (60-0113-0-1-601);

Foreign military sales trust fund (11-8242-0-7-155);

Health professions graduate student loan insurance fund (Health Education Assistance Loan Program) (75-4305-0-3-553);

Intragovernmental funds, including those from which the outlays are derived primarily from resources paid in from other government accounts, except to the extent such funds are augmented by direct appropriations for the fiscal year during which an order is in effect;

Payment of Vietnam and USS Pueblo prisoner-of-war claims (15-0104-0-1-153);

Payment to civil service retirement and disability fund (24-0200-0-1-805);

Payments to copyright owners (03-5175-0-2-376);

Payments to health care trust funds (75-0580-0-1-572);

Payments to military retirement fund (97-0040-0-1-054);

Payments to social security trust funds (75-0404-0-1-571);

Payments to state and local government fiscal assistance trust fund (20-2111-0-1-851);

Payments to the foreign service retirement and disability fund (11-1036-0-1-153 and 19-0540-0-1-153);

Payments to trust funds from excise taxes or other receipts properly creditable to such trust funds;

Postal service fund (18-4020-0-3-372);

Salaries of Article III judges;

Soldiers and Airmen's Home, payment of claims (84-8930-0-7-705);

[1] See References in Text note below.

Southeastern Power Administration, Operations and maintenance (89-0302-0-1-271);

Southwestern Power Administration, Operations and maintenance (89-0303-0-1-271);

Tennessee Valley Authority fund, except non-power programs and activities (64-4110-0-3-999);

Western Area Power Administration, Construction, rehabilitation, operations, and maintenance (89-5068-0-2-271); and

Western Area Power Administration, Colorado River basins power marketing fund (89-4452-0-3-271).

(2) Prior legal obligations of the Government in the following budget accounts and activities shall be exempt from any order issued under this subchapter:

Agency for International Development, Housing, and other credit guarantee programs (72-4340-0-3-151);

Agricultural credit insurance fund (12-4140-0-3-351);

Biomass energy development (20-0114-0-1-271);

Check forgery insurance fund (20-4109-0-3-803);

Community development grant loan guarantees (86-0162-0-1-451);

Credit union share insurance fund (25-4468-0-3-371);

Economic development revolving fund (13-4406-0-3-452);

Employees life insurance fund (24-8424-0-8-602);

Energy security reserve (Synthetic Fuels Corporation) (20-0112-0-1-271);

Export-Import Bank of the United States, Limitation of program activity (83-4027-0-3-155);

Federal Aviation Administration, Aviation insurance revolving fund (69-4120-0-3-402);

Federal Crop Insurance Corporation fund (12-4085-0-3-351);

Federal Deposit Insurance Corporation (51-8419-0-8-371);

Federal Emergency Management Agency, National flood insurance fund (58-4236-0-3-453);

Federal Emergency Management Agency, National insurance development fund (58-4235-0-3-451);

Federal Housing Administration fund (86-4070-0-3-371);

Federal Savings and Loan Insurance Corporation fund (82-4037-0-3-371);

Federal ship financing fund (69-4301-0-3-403);

Federal ship financing fund, fishing vessels (13-4417-0-3-376);

Geothermal resources development fund (89-0206-0-1-271);

Government National Mortgage Association, Guarantees of mortgage-backed securities (86-4238-0-3-371);

Health education loans (75-4307-0-3-553);

Homeowners assistance fund, Defense (97-4090-0-3-051);

Indian loan guarantee and insurance fund (14-4410-0-3-452);

International Trade Administration, Operations and administration (13-1250-0-1-376);

Low-rent public housing, Loans and other expenses (86-4098-0-3-604);

Maritime Administration, War-risk insurance revolving fund (69-4302-0-3-403);

Overseas Private Investment Corporation (71-4030-0-3-151);

Pension Benefit Guaranty Corporation fund (16-4204-0-3-601);

Rail service assistance (69-0122-0-1-401);

Railroad rehabilitation and improvement financing fund (69-4411-0-3-401);

Rural development insurance fund (12-4155-0-3-452);

Rural electric and telephone revolving fund (12-4230-8-3-271);

Rural housing insurance fund (12-4141-0-3-371);

Small Business Administration, Business loan and investment fund (73-4154-0-3-376);

Small Business Administration, Lease guarantees revolving fund (73-4157-0-3-376);

Small Business Administration, Pollution control equipment contract guarantee revolving fund (73-4147-0-3-376);

Small Business Administration, Surety bond guarantees revolving fund (73-4156-0-3-376);

Veterans Administration, Loan guaranty revolving fund (36-4025-0-3-704);

Veterans Administration, National service life insurance fund (36-8132-0-7-701);

Veterans Administration, Service-disabled veterans insurance fund (36-4012-0-3-701);

Veterans Administration, Servicemen's group life insurance fund (36-4009-0-3-701);

Veterans Administration, United States Government life insurance fund (36-8150-0-7-701);

Veterans Administration, Veterans insurance and indemnities (36-0120-0-1-701);

Veterans Administration, Veterans reopened insurance fund (36-4010-0-3-701); and

Veterans Administration, Veterans special life insurance fund (36-8455-0-8-701).

(h) Low-income programs

The following programs shall be exempt from reduction under any order issued under this subchapter:

Aid to families with dependent children (75-0412-0-1-609);

Child nutrition (12-3539-0-1-605);

Food stamp programs (12-3505-0-1-605 and 12-3550-0-1-605);

Grants to States for Medicaid (75-0512-0-1-551);

Supplemental Security Income Program (75-0406-0-1-609); and

Women, infants, and children program (12-3510-0-1-605).

(i) Identification of programs

For purposes of subsections (g) and (h) of this section, programs are identified by the designated budget account identification code num-

bers set forth in the Budget of the United States Government, 1986—Appendix.

(Pub. L. 99-177, title II, § 255, Dec. 12, 1985, 99 Stat. 1082.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

This title, referred to in subsec. (a), means title II (§ 200 et seq.) of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, known as the Balanced Budget and Emergency Deficit Control Act of 1985. For complete classification of this Act to the Code, see Short Title note set out under section 901 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 901, 902, 907 of this title.

§ 906. Exceptions, limitations, and special rules

(a) Effect of reductions and sequestrations

(1) Reductions in automatic spending increases

Notwithstanding any other provision of law, any change in the Consumer Price Index or any other index measuring costs, prices, or wages (or in any component of any such index), under a program listed in section 907(1) of this title, that is not taken into account for purposes of determining the amount of an automatic spending increase (if any) under such program for a fiscal year for which an order is issued under section 902 of this title shall not be taken into account for purposes of determining any automatic spending increase during any fiscal year thereafter.

(2) Sequestrations

Any amount of new budget authority, unobligated balances, obligated balances, new loan guarantee commitments, new direct loan obligations, spending authority (as defined in section 651(c)(2) of this title), or obligation limitations which is sequestered or reduced pursuant to an order issued under section 902 of this title is permanently cancelled, with the exception of amounts sequestered in special or trust funds, which shall remain in such funds and be available in accordance with and to the extent permitted by law, including the provisions of this Act.

(b) Treatment of Federal administrative expenses

(1) Notwithstanding any other provision of this title, * administrative expenses incurred by the departments and agencies, including independent agencies, of the Federal Government in connection with any program, project, activity, or account shall be subject to reduction pursuant to an order issued under section 902 of this title, without regard to any exemption, exception, limitation, or special rule which is otherwise applicable with respect to such program, project, activity, or account under this subchapter.

(2) Notwithstanding any other provision of law, administrative expenses of any program, project, activity, or account which is self-supporting and does not receive appropriations shall be subject to reduction under a sequester order, unless specifically exempted in this joint resolution.

(3) Payments made by the Federal Government to reimburse or match administrative costs incurred by a State or political subdivision under or in connection with any program, project, activity, or account shall not be considered administrative expenses of the Federal Government for purposes of this section, and shall be subject to reduction or sequestration under this subchapter to the extent (and only to the extent) that other payments made by the Federal Government under or in connection with that program, project, activity, or account are subject to such reduction or sequestration; except that Federal payments made to a State as reimbursement of administrative costs incurred by such State under or in connection with the unemployment compensation programs specified in subsection (h)(1) of this section shall be subject to reduction or sequestration under this subchapter notwithstanding the exemption otherwise granted to such programs under that subsection.

(c) Effect of orders on guaranteed student loan program

(1) Any reductions which are required to be achieved from the student loan programs operated pursuant to part B of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.], as a consequence of an order issued pursuant to section 902 of this title, shall be achieved only from loans described in paragraphs (2) and (3) by the application of the measures described in such paragraphs.

(2) For any loan made during the period beginning on the date that an order issued under section 902 of this title takes effect with respect to a fiscal year and ending at the close of such fiscal year, the rate used in computing the special allowance payment pursuant to section 438(b)(2)(A)(iii) of such Act [20 U.S.C. 1087-1(b)(2)(A)(iii)] for each of the first four special allowance payments for such loan shall be adjusted by reducing such rate by the lesser of—

(A) 0.40 percent, or

(B) the percentage by which the rate specified in such section exceeds 3 percent.

(3) For any loan made during the period beginning on the date that an order issued under section 902 of this title takes effect with respect to a fiscal year and ending at the close of such fiscal year, the origination fee which is authorized to be collected pursuant to section 438(c)(2) of such Act [20 U.S.C. 1087-1(c)(2)] shall be increased by 0.50 percent.

*See References in Text note below.

(d) Special rules for Medicare program

(1) Maximum percentage reduction in individual payment amounts

The maximum permissible reduction for the health insurance programs under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] for any fiscal year, pursuant to an order issued under section 902 of this title, consists only of a reduction of—

(A) 1 percent in the case of fiscal year 1986, and

(B) 2 percent in the case of any subsequent fiscal year,

in each separate payment amount otherwise made for a covered service under those programs without regard to this subchapter.

(2) Timing of application of reductions

(A) In general

Except as provided in subparagraph (B), if a reduction is made under paragraph (1) in payment amounts pursuant to a sequestration order, the reduction shall be applied to payment for services furnished during the effective period of the order. For purposes of the previous sentence, in the case of inpatient services furnished for an individual, the services shall be considered to be furnished on the date of the individual's discharge from the inpatient facility.

(B) Payment on the basis of cost reporting periods

In the case in which payment for services of a provider of services is made under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, if a reduction is made under paragraph (1) in payment amounts pursuant to a sequestration order, the reduction shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the effective period of the order, but only (for each such cost reporting period) in the same proportion as the fraction of the cost reporting period that occurs during the effective period of the order.

(C) Effective period of order for fiscal year 1986

For purposes of this paragraph, the effective period of a sequestration order for fiscal year 1986 is the period beginning on March 1, 1986, and ending on September 30, 1986.

(3) No increase in beneficiary charges in assignment-related cases

If a reduction in payment amounts is made under paragraph (1) for services for which payment under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] is made on the basis of an assignment described in section 1842(b)(3)(B)(ii) [42 U.S.C. 1395u(b)(3)(B)(ii)], in accordance with section 1842(b)(6)(B) [42 U.S.C. 1395u(b)(6)(B)], or under the procedure described in section 1870(f)(1) [42 U.S.C. 1395gg(f)(1)], of such Act, the person furnishing the services shall be considered to have accepted payment of the reasonable charge for the services, less any reduction in payment amount made pursuant to a sequestration order, as payment in full.

(4) No effect on computation of AAPCC

In computing the adjusted average per capita cost for purposes of section 1876(a)(4) of the Social Security Act [42 U.S.C. 1395mm(a)(4)], the Secretary of Health and Human Services shall not take into account any reductions in payment amounts which have been or may be effected under this subchapter.

(e) Treatment of child support enforcement program

Any order issued by the President under section 902 of this title shall accomplish the full amount of any required reduction in expenditures under sections 455 and 458 of the Social Security Act [42 U.S.C. 655, 658] by reducing the Federal matching rate for State administrative costs under such program, as specified (for the fiscal year involved) in section 455(a) of such Act, to the extent necessary to reduce such expenditures by that amount.

(f) Treatment of foster care and adoption assistance programs

Any order issued by the President under section 902 of this title shall make the reduction which is otherwise required under the foster care and adoption assistance programs (established by part E of title IV of the Social Security Act [42 U.S.C. 670 et seq.]) only with respect to payments and expenditures made by States in which increases in foster care maintenance payment rates or adoption assistance payment rates (or both) are to take effect during the fiscal year involved, and only to the extent that the required reduction can be accomplished by applying a uniform percentage reduction to the Federal matching payments that each such State would otherwise receive under section 474 of that Act [42 U.S.C. 674] (for such fiscal year) for that portion of the State's payments which is attributable to the increases taking effect during that year. No State may, after December 12, 1985, make any change in the timetable for making payments under a State plan approved under part E of title IV of the Social Security Act which has the effect of changing the fiscal year in which expenditures under such part are made.

(g) Federal pay

(1) In general

For purposes of any order issued under section 902 of this title—

(A) Federal pay under a statutory pay system, and

(B) elements of military pay,

shall be subject to reduction under an order in the same manner as other administrative expense components of the Federal budget; except that no such order may reduce or have the effect of reducing the rate of pay to which any individual is entitled under any such statutory pay system or the rate of any

element of military pay to which any individual is entitled under title 37, or any increase in rates of pay which is scheduled to take effect under section 5305 of title 5, section 1009 of title 37, or any other provision of law.

(2) Definitions

For purposes of this subsection:

(A) The term "statutory pay system" shall have the meaning given that term in section 5301(c) of title 5.

(B) The term "elements of military pay" means—

(i) the elements of compensation of members of the uniformed services specified in section 1009 of title 37,

(ii) allowances provided members of the uniformed services under sections 403a and 405 of such title, and

(iii) cadet pay and midshipman pay under section 203(c) of such title.

(C) The term "uniformed services" shall have the meaning given that term in section 101(3) of title 37.

(h) Treatment of payments and advances made with respect to unemployment compensation programs

(1) For purposes of section 902 of this title—

(A) any amount paid as regular unemployment compensation by a State from its account in the Unemployment Trust Fund (established by section 904(a) of the Social Security Act [42 U.S.C. 1104(a)]),

(B) any advance made to a State from the Federal unemployment account (established by section 904(g) of such Act [42 U.S.C. 1104(g)]) under title XII of such Act [42 U.S.C. 1321 et seq.] and any advance appropriated to the Federal unemployment account pursuant to section 1203 of such Act [42 U.S.C. 1323], and

(C) any payment made from the Federal Employees Compensation Account (as established under section 909 of such Act [42 U.S.C. 1109]) for the purpose of carrying out chapter 85 of title 5 and funds appropriated or transferred to or otherwise deposited in such Account,

shall not be subject to reduction.

(2)(A) A State may reduce each weekly benefit payment made under the Federal-State Extended Unemployment Compensation Act of 1970 for any week of unemployment occurring during any period with respect to which payments are reduced under an order issued under section 902 of this title by a percentage not to exceed the percentage by which the Federal payment to the State under section 204 of such Act is to be reduced for such week as a result of such order.

(B) A reduction by a State in accordance with subparagraph (A) shall not be considered as a failure to fulfill the requirements of section 3304(a)(11) of title 26.

(i) Treatment of mine worker disability compensation increases as automatic spending increases

An order issued by the President under section 902 of this title may not result in eliminating or reducing an increase in disability benefits under the Federal Mine Safety and Health Act [30 U.S.C. 801 et seq.] except in the manner provided for automatic spending increases under section 902(a)(1)(A) of this title, and no such increase may, pursuant to such section, be reduced below zero.

(j) Commodity Credit Corporation

(1) Powers and authorities of the Commodity Credit Corporation

This title [a] shall not restrict the Commodity Credit Corporation in the discharge of its authority and responsibility as a corporation to buy and sell commodities in world trade, to use the proceeds as a revolving fund to meet other obligations and otherwise operate as a corporation, the purpose for which it was created.

(2) Reduction in payments made under contracts

(A) Payments and loan eligibility under any contract entered into with a person by the Commodity Credit Corporation prior to the time an order has been issued under section 902 of this title shall not be reduced by an order subsequently issued. Subject to subparagraph (B), after an order is issued under such section for a fiscal year, any cash payments made by the Commodity Credit Corporation—

(i) under the terms of any one-year contract entered into in such fiscal year and after the issuance of the order; and

(ii) out of an entitlement account,

to any person (including any producer, lender, or guarantee entity) shall be subject to reduction under the order.

(B) Each contract entered into with producers or producer cooperatives with respect to a particular crop of a commodity and subject to reduction under subparagraph (A) shall be reduced in accordance with the same terms and conditions. If some, but not all, contracts applicable to a crop of a commodity have been entered into prior to the issuance of an order under section 902 of this title, the order shall provide that the necessary reduction in payments under contracts applicable to the commodity be uniformly applied to all contracts for the next succeeding crop of the commodity, under the authority provided in paragraph (3).

(3) Delayed reduction in outlays permissible

Notwithstanding any other provision of this joint resolution, if an order under section 902 of this title is issued with respect to a fiscal year, any reduction under the order applicable to contracts described in paragraph (1) may provide for reductions in outlays for the account involved to occur in the fiscal year following the fiscal year to which the order applies. No other account, or other program, project, or activity, shall bear an increased reduction for the fiscal year to which the order applies as a result of the operation of the preceding sentence.

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[a] See References in Text note below.

(4) Uniform percentage rate of reduction and other limitations

All reductions described in paragraph (2) which are required to be made in connection with an order issued under section 902 of this title with respect to a fiscal year—

(A) shall be made so as to ensure that outlays for each program, project, activity, or account involved are reduced by a percentage rate that is uniform for all such programs, projects, activities, and accounts, and may not be made so as to achieve a percentage rate of reduction in any such item exceeding the rate specified in the order; and

(B) with respect to commodity price support and income protection programs, shall be made in such manner and under such procedures as will attempt to ensure that—

(i) uncertainty as to the scope of benefits under any such program is minimized;

(ii) any instability in market prices for agricultural commodities resulting from the reduction is minimized; and

(iii) normal production and marketing relationships among agricultural commodities (including both contract and noncontract commodities) are not distorted.

In meeting the criterion set out in clause (iii) of subparagraph (B) of the preceding sentence, the President shall take into consideration that reductions under an order may apply to programs for two or more agricultural commodities that use the same type of production or marketing resources or that are alternative commodities among which a producer could choose in making annual production decisions.

(5) No double reduction

No agricultural price support or income protection program that is subject to reduction under an order issued under section 902 of this title for a fiscal year may be subject, as well, to modification or suspension under such order as an automatic spending increase.

(6) Certain authority not to be limited

Nothing in this joint resolution shall limit or reduce, in any way, any appropriation that provides the Commodity Credit Corporation with budget authority to cover the Corporation's net realized losses.

(k) Community and migrant health centers, Indian health services and facilities, and veterans' medical care

(1) The maximum permissible reduction in budget authority for any account listed in paragraph (2) for any fiscal year, pursuant to an order issued under section 902 of this title, shall be—

(A) 1 percent in the case of the fiscal year 1986, and

(B) 2 percent in the case of any subsequent fiscal year.

(2) The accounts referred to in paragraph (1) are as follows:

(A) Community health centers (75-0350-0-1-550).

(B) Migrant health centers (75-0350-0-1-550).

(C) Indian health facilities (75-0391-0-1-551).

(D) Indian health services (75-0390-0-1-551).

(E) Veterans' medical care (36-0160-0-1-703).

For purposes of the preceding provisions of this paragraph, programs are identified by the designated budget account identification code numbers set forth in the Budget of the United States Government—Appendix.

(*l*) Treatment of obligated balances

(1) In general

Except as provided in paragraph (2), obligated balances shall not be subject to reduction under an order issued under section 902 of this title.

(2) Exception

Existing contracts in major functional category 050 (other than (A) those contracts which include a specified penalty for cancellation or modification by the Government and which if so cancelled or modified would result (due to such penalty) in a net loss to the Government for the fiscal year, and (B) those contracts the reduction of which would violate the legal obligations of the Government) shall be subject to reduction, in accordance with section 901(d)(3) of this title, under an order issued under section 902 of this title.

(3) "Existing contracts" defined

For purposes of this subsection, the term "existing contracts" shall include all military and civilian contracts in major functional category 050 which exist at the time the order involved is issued under section 902 of this title.

(Pub. L. 99-177, title II, § 256, Dec. 12, 1985, 99 Stat. 1086.)

REFERENCES IN TEXT

This Act, and this joint resolution, referred to in subsecs. (a)(2), (b)(2), and (j)(3), (6), mean Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1037, which enacted this chapter and sections 654 to 656 of this title, amended sections 602, 622, 631 to 642, and 651 to 653 of this title, sections 1104 to 1106, 1109, and 3101 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of this title, and enacted provisions set out as notes under section 901 of this title and section 911 of Title 42. For complete classification of this Act to the Code, see Tables.

This title, referred to in subsecs. (b)(1) and (j)(1), means title II (§ 200 et seq.) of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, known as the Balanced Budget and Emergency Deficit Control Act of 1985. For complete classification of this Act to the Code, see Short Title note set out under section 901 of this title and Tables.

The Higher Education Act of 1965, referred to in subsec. (c)(1), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Part B of title IV of such Act is classified generally to part B (§ 1071 et seq.) of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Social Security Act, referred to in subsecs. (d)(1), (2)(B), (3), (f), and (h)(1)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part E of title IV of the Social Security Act is classified generally to

part E (§ 670 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Titles XII and XVIII of the Social Security Act are classified generally to subchapters XII (§ 1321 et seq.) and XVIII (§ 1395 et seq.), respectively, of chapter 7 of Title 42. Part B of title XVIII of the Social Security Act is classified generally to part B (§ 1395j et seq.) of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (h)(2)(A), is title II of Pub. L. 91-373, Aug. 10, 1970, 84 Stat. 708, as amended, which is classified generally as a note under section 3304 of Title 26, Internal Revenue Code. Section 204 of such Act is set out in the note under section 3304 of Title 26. For complete classification of this Act to the Code, see Tables.

The Federal Mine Safety and Health Act, referred to in subsec. (i), probably means the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173, Dec. 30, 1969, 83 Stat. 742, as amended by Pub. L. 95-164, title I, § 101, Nov. 9, 1977, 91 Stat. 1290, which is classified principally to chapter 22 (§ 801 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 30 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 901, 902, 905, 907 of this title.

§ 907. Definitions

For purposes of this title: [1]

(1) The term "automatic spending increase" (except as otherwise provided in sections 905 and 906 of this title) means—

(A) increases in budget outlays due to changes in indexes in the following Federal programs:

Black lung benefits (20-8144-0-7-601);

Central Intelligence Agency retirement and disability system fund (56-3400-0-1-054);

Civil service retirement and disability fund (24-8135-0-7-602);

Comptrollers general retirement system (05-0107-0-1-801);

Foreign service retirement and disability fund (19-8186-0-7-602);

Judicial survivors' annuities fund (10-8110-0-7-602);

Longshoremen's and harborworkers' compensation benefits (16-9971-0-7-601);

Military retirement fund (97-8097-0-7-602);

National Oceanic and Atmospheric Administration retirement (13-1450-0-1-306);

Pensions for former Presidents (47-0105-0-1-802);

Railroad retirement tier II (60-8011-0-7-601);

Retired pay, Coast Guard (69-0241-0-1-403);

Retirement pay and medical benefits for commissioned officers, Public Health Service (75-0379-0-1-551);

Special benefits, Federal Employees' Compensation Act (16-1521-0-1-600);

Special benefits for disabled coal miners (75-0409-0-1-601); and

Tax Court judges survivors annuity fund (23-8115-0-7-602); and

(B) increases in budget outlays due to changes in indexes in the following Federal programs:

National Wool Act (12-4336-0-3-351);

Special milk program (12-3502-0-1-605); and

Vocational rehabilitation (91-0301-0-1-506).

For purposes of the preceding provisions of this paragraph, programs are identified by the designated budget account identification code numbers set forth in the Budget of the United States Government, 1986—Appendix.

(2) The terms "budget outlays" and "budget authority" have the meaning given to such terms in sections 622(1) and 622(2), respectively, of this title.

(3) The term "concurrent resolution on the budget" has the meaning given to such term in section 622(4) of this title.

(4) The term "deficit" has the meaning given to such term in section 622(6) of this title.

(5) The term "maximum deficit amount", with respect to any fiscal year, means the maximum deficit amount for such fiscal year determined under section 622(7) of this title.

(6) The term "real economic growth", with respect to any fiscal year, means the growth in the gross national product during such fiscal year, adjusted for inflation, consistent with Department of Commerce definitions.

(7) The terms "sequester" and "sequestration" (subject to section 902(a)(4) of this title) refer to or mean the cancellation of new budget authority, unobligated balances, obligated balances, new loan guarantee commitments, new direct loan obligations, and spending authority as defined in section 651(c)(2) of this title, and the reduction of obligation limitations.

(8) The term "account" means an item for which appropriations are made in any appropriation Act used to determine the budget base, and, for items not provided for in appropriation Acts, such term means an item for which there is a designated budget account identification code number in the Appendix to the President's budget.

(Pub. L. 99-177, title II, § 257, Dec. 12, 1985, 99 Stat. 1092.)

REFERENCES IN TEXT

This title, referred to in text, means title II (§ 200 et seq.) of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, known as the Balanced Budget and Emergency Deficit Control Act of 1985. For complete classification of this Act to the Code, see Short Title note set out under section 901 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 901, 902, 905, 906, 922 of this title.

[1] See References in Text note below.

SUBCHAPTER II—OPERATION AND REVIEW

§ 921. Revenue estimates

For the purposes of revenue legislation which is income, estate and gift, excise, and payroll taxes (i.e., Social Security), considered or enacted in any session of Congress, the Congressional Budget Office shall use exclusively during that session of Congress revenue estimates provided to it by the Joint Committee on Taxation. During that session of Congress such revenue estimates shall be transmitted by the Congressional Budget Office to any committee of the House of Representatives or the Senate requesting such estimates, and shall be used by such Committees in determining such estimates. The Budget Committees of the Senate and House shall determine all estimates with respect to scoring points of order and with respect to the execution of the purposes of this title [1] and the Congressional Budget and Impoundment Control Act of 1974.

(Pub. L. 99-177, title II, § 273, Dec. 12, 1985, 99 Stat. 1098.)

REFERENCES IN TEXT

This title, referred to in text, means title II (§ 200 et seq.) of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, known as the Balanced Budget and Emergency Deficit Control Act of 1985. For complete classification of this Act to the Code, see Short Title note set out under section 901 of this title and Tables.

The Congressional Budget and Impoundment Control Act of 1974, referred to in text, is Pub. L. 93-344, July 12, 1974, 88 Stat. 297, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 621 of this title and Tables.

§ 922. Judicial review

(a) Expedited review

(1) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that any order that might be issued pursuant to section 902 of this title violates the Constitution.

(2) Any Member of Congress, or any other person adversely affected by any action taken under this title,[1] may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief concerning the constitutionality of this title.[1]

(3) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory and injunctive relief on the ground that the terms of an order issued under section 902 of this title do not comply with the requirements of this title.[1]

(4) A copy of any complaint in an action brought under paragraph (1), (2), or (3) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(5) Any action brought under paragraph (1), (2), or (3) shall be heard and determined by a three-judge court in accordance with section 2284 of title 28.

Nothing in this section or in any other law shall infringe upon the right of the House of Representatives to intervene in an action brought under paragraph (1), (2), or (3) without the necessity of adopting a resolution to authorize such intervention.

(b) Appeal to Supreme Court

Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under paragraph (1), (2), or (3) of subsection (a) of this section shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1), (2), or (3) of subsection (a) of this section shall be issued by a single Justice of the Supreme Court.

(c) Expedited consideration

It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a) of this section.

(d) Noncompliance with sequestration procedures

(1) If it is finally determined by a court of competent jurisdiction that an order issued by the President under section 902(b) of this title for any fiscal year—

(A) does not reduce automatic spending increases under any program specified in section 907(1) of this title to the extent that such increases are required to be reduced by subchapter I of this chapter (or reduces such increases by a greater extent than is so required),

(B) does not sequester the amount of new budget authority, new loan guarantee commitments, new direct loan obligations, or spending authority which is required to be sequestered by subchapter I of this chapter (or sequesters more than that amount) with respect to any program, project, activity, or account, or

(C) does not reduce obligation limitations by the amount by which such limitations are required to be reduced under subchapter I of this chapter (or reduces such limitations by more than that amount) with respect to any program, project, activity, or account,

the President shall, within 20 days after such determination is made, revise the order in accordance with such determination.

(2) If the order issued by the President under section 902(b) of this title for any fiscal year—

[1] See References in Text note below.

(A) does not reduce any automatic spending increase to the extent that such increase is required to be reduced by subchapter I of this chapter,

(B) does not sequester any amount of new budget authority, new loan guarantee commitments, new direct loan obligations, or spending authority which is required to be sequestered by subchapter I of this chapter, or

(C) does not reduce any obligation limitation by the amount by which such limitation is required to be reduced under subchapter I of this chapter,

on the claim or defense that the constitutional powers of the President prevent such sequestration or reduction or permit the avoidance of such sequestration or reduction, and such claim or defense is finally determined by the Supreme Court of the United States to be valid, then the entire order issued pursuant to section 902(b) of this title for such fiscal year shall be null and void.

(e) Timing of relief

No order of any court granting declaratory or injunctive relief from the order of the President issued under section 902 of this title, including but not limited to relief permitting or requiring the expenditure of funds sequestered by such order, shall take effect during the pendency of the action before such court, during the time appeal may be taken, or, if appeal is taken, during the period before the court to which such appeal is taken has entered its final order disposing of such action.

(f) Alternative procedures for joint reports of Directors

(1) In the event that any of the reporting procedures described in section 901 of this title are invalidated, then any report of the Directors referred to in section 901(a) or (c)(1) of this title shall be transmitted to the joint committee established under this subsection.

(2) Upon the invalidation of any such procedure there is established a Temporary Joint Committee on Deficit Reduction, composed of the entire membership of the Budget Committees of the House of Representatives and the Senate. The Chairman of these two committees shall act as Co-Chairmen of the Joint Committee. Actions taken by the Joint Committee shall be determined by the majority vote of the members representing each House. The purposes of the Joint Committee are to receive the reports of the Directors as described in paragraph (1), and to report (with respect to each such report of the Directors) a joint resolution as described in paragraph (3).

(3) No later than 5 days after the receipt of a report of the Directors in accordance with paragraph (1), the Joint Committee shall report to the House of Representatives and the Senate a joint resolution setting forth the contents of the report of the Directors.

(4) The provisions relating to the consideration of a joint resolution under section 904(a)(4) of this title shall apply to the consideration of a joint resolution reported pursuant to this subsection in the House of Representatives and the Senate, except that debate in each House shall be limited to two hours.

(5) Upon its enactment, the joint resolution shall be deemed to be the report received by the President under section 901(b) or (c)(2) of this title (whichever is applicable).

(g) Preservation of other rights

The rights created by this section are in addition to the rights of any person under law, subject to subsection (e) of this section.

(h) Economic data, assumptions, and methodologies

The economic data, assumptions, and methodologies used by the Comptroller General in computing the base levels of total revenues and total budget outlays, as specified in any report issued by the Comptroller General under section 901(b) or (c)(2) of this title, shall not be subject to review in any judicial or administrative proceeding.

(Pub. L. 99-177, title II, § 274, Dec. 12, 1985, 99 Stat. 1098.)

REFERENCES IN TEXT

This title, referred to in subsec. (a)(2) and (3), means title II (§ 200 et seq.) of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, known as the Balanced Budget and Emergency Deficit Control Act of 1985. For complete classification of this Act to the code, see Short Title note set out under section 901 of this title and Tables.

TITLE 3—THE PRESIDENT

This title was enacted by act June 25, 1948, ch. 644, § 1, 62 Stat. 672

CHAPTER 1—PRESIDENTIAL ELECTIONS AND VACANCIES

Sec.
6. Credentials of electors; transmission to Archivist of the United States and to Congress; public inspection.
12. Failure of certificates of electors to reach President of Senate or Archivist of the United States; demand on State for certificate.[1]

AMENDMENTS

1984—Pub. L. 98-497, title I, § 107(e)(3), Oct. 19, 1984, 98 Stat. 2292, substituted "Archivist of the United States" for "Administrator of General Services" in items 6 and 12.

§ 6. Credentials of electors; transmission to Archivist of the United States and to Congress; public inspection

It shall be the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of the electors in such State by the final ascertainment, under and in pursuance of the laws of such State providing for such ascertainment, to communicate by registered mail under the seal of the State to the Archivist of the United States a certificate of such ascertainment of the electors appointed, setting forth the names of such electors and the canvass or other ascertainment under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast; and it shall also thereupon be the duty of the executive of each State to deliver to the electors of such State, on or before the day on which they are required by section 7 of this title to meet, six duplicate-originals of the same certificate under the seal of the State; and if there shall have been any final determination in a State in the manner provided for by law of a controversy or contest concerning the appointment of all or any of the electors of such State, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate under the seal of the State to the Archivist of the United States a certificate of such determination in form and manner as the same shall have been made; and the certificate or certificates so received by the Archivist of the United States shall be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection; and the Archivist of the United States at the first meeting of Congress thereafter shall transmit to the two Houses of Congress copies in full of each and every such certificate so received at the National Archives and Records Administration.

(As amended Oct. 19, 1984, Pub. L. 98-497, title I, § 107(e)(1), (2)(A), 98 Stat. 2291.)

AMENDMENTS

1984—Pub. L. 98-497 substituted "Archivist of the United States" for "Administrator of General Services" in the section catchline and wherever appearing in text and "National Archives and Records Administration" for "General Services Administration".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

§ 11. Disposition of certificates

The electors shall dispose of the certificates so made by them and the lists attached thereto in the following manner:

[*See main edition for text of pars. First and Second*]

Third. On the day thereafter they shall forward by registered mail two of such certificates and lists to the Archivist of the United States at the seat of government, one of which shall be held subject to the order of the President of the Senate. The other shall be preserved by the Archivist of the United States for one year and shall be a part of the public records of his office and shall be open to public inspection.

[*See main edition for text of par. Fourth*]

(As amended Oct. 19, 1984, Pub. L. 98-497, title I, § 107(e)(1), 98 Stat. 2291.)

AMENDMENTS

1984—Pub. L. 98-497 substituted "Archivist of the United States" for "Administrator of General Services" two times in par. "Third".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

[1] So in original. Does not conform to section catchline.

§ 12. Failure of certificates of electors to reach President of the Senate or Archivist of the United States; demand on State for certificate

When no certificate of vote and list mentioned in sections 9 and 11 of this title from any State shall have been received by the President of the Senate or by the Archivist of the United States by the fourth Wednesday in December, after the meeting of the electors shall have been held, the President of the Senate or, if he be absent from the seat of government, the Archivist of the United States shall request, by the most expeditious method available, the secretary of state of the State to send up the certificate and list lodged with him by the electors of such State; and it shall be his duty upon receipt of such request immediately to transmit same by registered mail to the President of the Senate at the seat of government.

(As amended Oct. 19, 1984, Pub. L. 98-497, title I, § 107(e)(1), (2)(B), 98 Stat. 2291.)

AMENDMENTS

1984—Pub. L. 98-497 substituted "Archivist of the United States" for "Administrator of General Services" in the section catchline and two times in text.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

§ 13. Same; demand on district judge for certificate

When no certificates of votes from any State shall have been received at the seat of government on the fourth Wednesday in December, after the meeting of the electors shall have been held, the President of the Senate or, if he be absent from the seat of government, the Archivist of the United States shall send a special messenger to the district judge in whose custody one certificate of votes from that State has been lodged, and such judge shall forthwith transmit that list by the hand of such messenger to the seat of government.

(As amended Oct. 19, 1984, Pub. L. 98-497, title I, § 107(e)(1), 98 Stat. 2291.)

AMENDMENTS

1984—Pub. L. 98-497 substituted "Archivist of the United States" for "Administrator of General Services".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

§ 15. Counting electoral votes in Congress

COUNTING OF ELECTORAL VOTES IN 1985

Pub. L. 98-456, Oct. 9, 1984, 98 Stat. 1748, provided: "That, in carrying out the procedure set forth in section 15 of title 3, United States Code, for 1985, 'the seventh day of January' shall be substituted for 'the sixth day of January' in the first sentence of such section."

CHAPTER 2—OFFICE AND COMPENSATION OF PRESIDENT

§ 104. Salary of the Vice President

SALARY INCREASES

1985—Pursuant to the authority vested in him by Pub. L. 94-82, the President under Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of Title 5, Government Organization and Employees, adjusted the annual rate of pay for the Vice President, effective on the first day of the first applicable pay period beginning on or after Jan. 1, 1985, to $97,900.

1984—Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, which provided for the adjustment of pay rates effective Jan. 1, 1984, was superseded by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of Title 5.

1982—Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, which provided for the adjustment of pay rates effective Oct. 1, 1982, was superseded by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1983, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

§ 105. Assistance and services for the President

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1751; title 26 section 3121; title 31 section 3524; title 42 section 410.

§ 106. Assistance and services for the Vice President

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 114 of this title; title 18 section 1751; title 26 section 3121; title 31 section 3524; title 42 section 410.

§ 107. Domestic Policy Staff and Office of Administration; personnel

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 3121; title 42 section 410.

§ 110. Furniture for the Executive Residence at the White House

EXTENSION OF TERM OF COMMITTEE FOR THE PRESERVATION OF THE WHITE HOUSE

Term of the Committee for the Preservation of the White House extended until Sept. 30, 1985, see Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the Committee for the Preservation of the White House extended until Sept. 30, 1987, see Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

CHAPTER 3—PROTECTION OF THE PRESIDENT; UNITED STATES SECRET SERVICE UNIFORMED DIVISION

§ 202. United States Secret Service Uniformed Division; establishment, control, and supervision; privileges, powers, and duties

CROSS REFERENCES

Secret Service uniforms to display U.S. flag emblem or colors, see section 210a of Title 40, Public Buildings, Property, and Works.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 208, 209 of this title; title 12 section 3414; title 22 sections 2709, 4304, 4314.

§ 208. Reimbursement of State and local governments

(a) In carrying out the functions pursuant to section 202(7), the Secretary of Treasury may utilize, with their consent, on a reimbursable basis, the services, personnel, equipment, and facilities of State and local governments, and is authorized to reimburse such State and local governments for the utilization of such services, personnel, equipment, and facilities. The Secretary of Treasury may carry out the functions pursuant to section 202(7) by contract. The authority of this subsection may be transferred by the President to the Secretary of State.

[See main edition for text of (b)]

(As amended Pub. L. 99-93, title I, § 126(c), Aug. 16, 1985, 99 Stat. 418.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-93 added sentence authorizing the Secretary of Treasury to carry out the functions pursuant to section 202(7) by contract.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-93 effective Oct. 1, 1985, see section 126(e) of Pub. L. 99-93, set out as an Effective Date note under section 4314 of Title 22, Foreign Relations and Intercourse.

EX. ORD. NO. 12478. TRANSFER OF AUTHORITY TO THE SECRETARY OF STATE TO MAKE REIMBURSEMENTS FOR PROTECTION OF FOREIGN MISSIONS TO INTERNATIONAL ORGANIZATIONS

Ex. Ord. No. 12478, May 23, 1984, 49 F.R. 22053, provided:

By authority vested in me as President by the Constitution and statutes of the United States of America, and in accordance with the provisions of the Act of December 31, 1975, Public Law 94-196 (89 Stat. 1109), codified as sections 202(7) and 208(a) of Title 3, United States Code, as amended, it is hereby ordered as follows:

SECTION 1. There is transferred to the Secretary of State authority to determine the need for and to approve terms and conditions of the provision of reimbursable extraordinary protective activities for foreign diplomatic missions pursuant to section 202(7), and the authority to make reimbursements to State and local governments for services, personnel, equipment, and facilities pursuant to section 208(a) of Title 3, United States Code;

SEC. 2. There are transferred to the Secretary of State such unexpended moneys as may have been appropriated to the Department of the Treasury for the purpose of permitting reimbursements to be made under the provisions of section 208(a) of Title 3, United States Code;

SEC. 3. The authority transferred pursuant to this Order shall be exercised in coordination with protective security programs administered by the Secretary of State under the Foreign Missions Act of 1982 [22 U.S.C. 4301 et seq.]; authority available under that Act may also be applied to any foreign mission to which section 202(7) applies; and

SEC. 4. This Order shall be effective on October 1, 1984.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 209 of this title; title 22 section 4314.

CHAPTER 4—DELEGATION OF FUNCTIONS

§ 301. General authorization to delegate functions; publication of delegations

EX. ORD. NO. 10530. DELEGATION OF MISCELLANEOUS FUNCTIONS

Ex. Ord. No. 10530, May 10, 1954, 19 F.R. 2709, as amended by Ex. Ord. No. 10573, Oct. 26, 1954, 19 F.R. 6899; Ex. Ord. No. 10682, Oct. 22, 1956, 21 F.R. 8129; Ex. Ord. No. 10759, March 17, 1958, 23 F.R. 1803; Ex. Ord. No. 10790, Nov. 20, 1958, 23 F.R. 9051; Ex. Ord. No. 10836, Sept. 8, 1959, 24 F.R. 7269; Ex. Ord. No. 10852, Nov. 27, 1959, 24 F.R. 9565; Ex. Ord. No. 10889, Oct. 5, 1960, 25 F.R. 9633; Ex. Ord. No. 10903, Jan. 9, 1961, 26 F.R. 217; Ex. Ord. No. 10960, Aug. 21, 1961, 26 F.R. 7823; Ex. Ord. No. 10970, Oct. 27, 1961, 26 F.R. 10149; Ex. Ord. No. 11012, Mar. 27, 1962, 27 F.R. 2983; Ex. Ord. No. 11116, Aug. 5, 1963, 28 F.R. 8075; Ex. Ord. No. 11164, Aug. 1, 1964, 29 F.R. 11257; Ex. Ord. No. 11184, Oct. 13, 1964, 29 F.R. 14155; Ex. Ord. No. 11196, Feb. 2, 1965, 30 F.R. 1171; Ex. Ord. No. 11222, May 8, 1965, 30 F.R. 6469; Ex. Ord. No. 11228, June 14, 1965, 30 F.R. 7739; Ex. Ord. No. 11230, § 2(1), (3), (5) to (14), June 28, 1965, 30 F.R. 8447; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Pub. L. 98-497, title I, § 103(b)(1), Oct. 19, 1984, 98 Stat. 2283, provided:

[See main edition for text of Parts I to IV]

PART V

THE ATTORNEY GENERAL AND THE ARCHIVIST OF THE UNITED STATES

SEC. 6. The Attorney General and the Archivist of the United States are hereby designated and empowered jointly to perform the following-described functions without the approval, ratification, or other action of the President:

[See main edition for text of (a) and (b); Part VI]

EX. ORD. NO. 11609. DELEGATION OF CERTAIN FUNCTIONS VESTED IN THE PRESIDENT TO OTHER OFFICERS OF THE GOVERNMENT

Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, as amended by Ex. Ord. No. 11713, Apr. 21, 1973, 38 F.R. 10069; Ex. Ord. No. 11779, Apr. 19, 1974, 39 F.R. 14185; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36043; Ex. Ord. No. 12486, Feb. 27, 1984, 49 F.R. 7349, eff. Nov. 14, 1983; Ex. Ord. No. 12522, June 24, 1985, 50 F.R. 26337, eff. Oct. 12, 1984, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. *General Services Administration.* The Administrator of General Services is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

[See main edition for text of (1) to (6)]

(7)(a) The authority of the President under 5 U.S.C. 5724(a) to prescribe the regulations provided for therein, relating to (i) the availability of appropriations or other funds of agencies for the reimbursement of described expenses of employees for whom the Government pays expenses of travel and transportation under 5 U.S.C. 5724(a), (ii) the entitlement of employees to amounts related to their basic pay, and (iii) the allowance, payment, and receipt of expenses and benefits to former employees who are reemployed by nontemporary appointments.

(b) In consultation with the Secretary of the Treasury, the authority of the President under 5 U.S.C. 5724b to prescribe the regulations provided for therein relating to reimbursement of Federal, State, and city income taxes for travel, transportation, and relocation expenses of employees, transferred at Government expense, furnished in kind or for which reimbursement or an allowance is provided.

(c) The authority of the President under 5 U.S.C. 5724c to prescribe the regulations provided for therein pursuant to which each agency shall carry out its responsibilities under 5 U.S.C. 5724c; *provided*, that the Director of Central Intelligence, after consultation with the Administrator of General Services, shall prescribe such regulations for the Central Intelligence Agency.

[See main edition for text of (8) to (22); Secs. 2 to 12]

TITLE 4—FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES

This title was enacted by act July 30, 1947, ch. 389, § 1, 61 Stat. 641

CHAPTER 1—THE FLAG

§ 1. Flag; stripes and stars on

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 36 section 173.

§ 2. Same; additional stars

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 36 section 173.

§ 3. Use of flag for advertising purposes; mutilation of flag

CROSS REFERENCES

Police uniforms to display U.S. flag emblem or colors, see section 210a of Title 40, Public Buildings, Property, and Works.

CHAPTER 3—SEAT OF THE GOVERNMENT

§ 73. Same; removal from seat of Government

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 97.

CHAPTER 4—THE STATES

§ 105. State, and so forth, taxation affecting Federal areas; sales or use tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 107, 108, 109, 110 of this title; title 36 section 1219.

CHAPTER 5—OFFICIAL TERRITORIAL PAPERS

§ 141. Collection, preparation and publication

The Archivist of the United States, hereinafter referred to in this chapter as the "Archivist", shall continue to completion the work of collecting, editing, copying, and suitably arranging for issuance as a Government publication, the official papers relating to the Territories from which States of the United States were formed, in the national archives, as listed in Parker's "Calendar of Papers in Washington" Archives Relating to the Territories of the United States (to 1873)", being publication numbered 148 of the Carnegie Institution of Washington, together with such additional papers of like character which may be found.

(As amended Oct. 19, 1984, Pub. L. 98-497, title I, § 107(f), 98 Stat. 2292.)

AMENDMENTS

1984—Pub. L. 98-497 substituted "Archivist of the United States" and "Archivist" for "Administrator of General Services" and "Administrator", respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

§ 142. Appointment of experts

For the purpose of carrying on the work prescribed by section 141 of this title, the Archivist, without regard to the Classification Act of 1949 and the civil service laws and regulations thereunder, may engage the services, either in or outside of the District of Columbia, of not to exceed five historical experts who are especially informed on the various phases of the territorial history of the United States and are especially qualified for the editorial work necessary in arranging such territorial papers for publication.

(As amended Oct. 19, 1984, Pub. L. 98-497, title I, § 107(f), 98 Stat. 2292.)

AMENDMENTS

1984—Pub. L. 98-497 substituted "Archivist" for "Administrator".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

§ 143. Employment and utilization of other personnel; cost of copy reading and indexing

(a) In carrying out his functions under this chapter, the Archivist may employ such clerical assistants as may be necessary.

(b) The work of copy reading and index making for the publication of the papers described in section 141 of this title shall be done by the regular editorial staff of the National Archives and Records Administration, and the cost of this particular phase of the work (prorated each month according to the number of hours spent and the annual salaries of the clerks employed) shall be charged against the annual appropriations made under section 146 of this title.

(As amended Oct. 19, 1984, Pub. L. 98-497, title I, § 107(f), 98 Stat. 2292.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-497 substituted "Archivist" for "Administrator".

Subsec. (b). Pub. L. 98-497 substituted "National Archives and Records Administration" for "General Services Administration".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

§ 144. Cooperation of departments and agencies

The heads of the several executive departments and independent agencies and establishments shall cooperate with the Archivist in the work prescribed by section 141 of this title by permitting access to any records deemed by him to be necessary to the completion of such work.

(As amended Oct. 19, 1984, Pub. L. 98-497, title I, § 107(f), 98 Stat. 2292.)

AMENDMENTS

1984—Pub. L. 98-497 substituted "Archivist" for "Administrator".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

§ 145. Printing and distribution

(a) The Public Printer shall print and bind each volume of the official papers relating to the Territories of the United States as provided for in this chapter, of which—

(1) four hundred and twenty copies shall be delivered to the Superintendent of Documents, Government Printing Office, for distribution, on the basis of one copy each, and as directed by the Archivist, to those historical associations, commissions, museums, or libraries and other nondepository libraries, not to exceed eight in number within each State, Territory, or Possession, which have been or may be designated by the Governor thereof to receive such copies;

(2) one hundred copies shall be delivered to the National Archives and Records Administration for the use of that Administration; and

[*See main edition for text of* (3)]

(b) The historical associations, commissions, museums, or libraries and other nondepository libraries within each State, Territory, or Possession which have been or may be designated by the Governor thereof to receive the publications referred to in subsection (a) of this section, shall, during their existence, receive the succeeding volumes, the distribution of which shall be made by the Superintendent of Documents in accordance with lists of designations transmitted to him by the Archivist. A new designation may be made to the Archivist by the Governor only when a designated association, commission, museum, or library shall cease to exist, or when authorized by law.

(As amended Oct. 19, 1984, Pub. L. 98-497, title I, § 107(f), 98 Stat. 2292.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-497 substituted "Archivist" for "Administrator".

Subsec. (a)(2). Pub. L. 98-497 substituted "National Archives and Records Administration" for "General Services Administration".

Subsec. (b). Pub. L. 98-497 substituted "Archivist" for "Administrator" in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

This title was enacted by Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 2 section 437c; title 7 sections 84, 1765a, 5005; title 10 sections 1408, 1601; title 12 sections 1795f, 3307; title 14 section 186; title 15 sections 634d, 648, 649a, 1942, 2206, 2451; title 16 sections 410cc-36, 469j, 742f, 1401, 3702; title 18 section 3006A; title 20 sections 80g, 80o, 964, 971, 1004, 1098, 1135a-2, 1221e, 1221e-1, 1233b, 1233d, 1417, 1505, 2852, 3413, 3461; title 22 sections 1622d, 2581, 2873, 2905, 3008, 3642, 3684, 4606; title 25 sections 640d-11, 2021, 2022; title 26 sections 7471, 9010, 9040; title 28 sections 625, 1877; title 29 sections 761a, 783, 1774; title 31 sections 301, 732, 733; title 36 section 1405; title 38 sections 106, 2003, 4114, 4119, 4202; title 40 sections 136, 873; title 42 sections 217a, 218, 292b, 295d-2, 300v-2, 907, 907a, 1314, 1320a-4, 1320c-2, 1395oo, 1395ww, 1863, 1975d, 2000e-4, 3015, 3525, 3788, 4025, 4372, 4768, 5149, 5404, 7231, 8104, 10704; title 43 section 1731; title 46 App. sections 41, 1295g; title 49 sections 325, 10363, 11161.

PART I—THE AGENCIES GENERALLY

CHAPTER 1—ORGANIZATION

§ 101. Executive departments

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 sections 115, 351, 6001; title 28 section 451; title 31 sections 1343, 1344; title 36 section 175; title 41 sections 403, 601; title 42 sections 10156, 10222.

§ 102. Military departments

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 638; title 18 section 6001; title 29 sections 203, 633a; title 35 section 201; title 36 section 175; title 41 sections 48b, 403, 601; title 42 sections 2000e-16, 10156, 10222.

§ 103. Government corporation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 6402; title 31 section 3720A.

§ 104. Independent establishment

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 41 sections 403, 601.

§ 105. Executive agency

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5948 of this title; title 7 section 2132; title 12 section 1749bbb-10b; title 15 sections 638, 3301; title 16 section 2602; title 22 sections 2685, 3641; title 29 sections 203, 633a; title 35 section 201; title 38 section 2011; title 41 section 48b; title 42 sections 2000e-16, 4071, 4902, 6361, 6964, 7911, 8241, 8802, 10101; title 43 section 2003; title 49 App. section 2603; title 50 section 1601.

CHAPTER 3—POWERS

§ 305. Systematic agency review of operations

(a) For the purpose of this section, "agency" means an Executive agency, but does not include—

(1) a Government controlled corporation;
(2) the Tennessee Valley Authority;
(3) the Virgin Islands Corporation;
(4) the Atomic Energy Commission;
(5) the Central Intelligence Agency;
(6) the Panama Canal Commission; or
(7) the National Security Agency, Department of Defense.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 97-468, title VI, § 615(b)(1)(A), Jan. 14, 1983, 96 Stat. 2578.)

AMENDMENTS

1983—Subsec. (a)(3) to (8). Pub. L. 97-468 struck out par. (3), which excluded The Alaska Railroad, and redesignated pars. (4) to (8) as (3) to (7), respectively.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-468 became effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97-468.

DISSOLUTION OF VIRGIN ISLANDS CORPORATION

The Virgin Islands Corporation was established to have succession until June 30, 1969, unless sooner dissolved by Act of Congress, by act June 30, 1949, ch. 285, 63 Stat. 350, as amended (48 U.S.C. 1407 et seq.). The Corporation terminated its program June 30, 1965, and dissolved July 1, 1966. Act June 30, 1949, was repealed by Pub. L. 97-357, title III, § 308(e), Oct. 19, 1982, 96 Stat. 1710.

CHAPTER 5—ADMINISTRATIVE PROCEDURE

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
504. Costs and fees of parties.

AMENDMENTS

1985—Pub. L. 99-80, § 6, Aug. 5, 1985, 99 Stat. 186, revived item 504 and repealed Pub. L. 96-481, title II, § 203(c), Oct. 21, 1980, 94 Stat. 2327, which had provided for the repeal, effective Oct. 1, 1984, of item 504.

1980—Pub. L. 96-481, title II, § 203(a)(2), (c), Oct. 21, 1980, 94 Stat. 2327, added item 504 "Costs and fees of parties", and repealed that item effective Oct. 1, 1984.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 2 section 437d; title 12 sections 1464, 1730, 1730a, 1786, 1818, 2266; title 15 sections 637, 687e, 1715, 2703, 3803; title 16 sec-

tion 460aa-3; title 18 section 4218; title 20 sections 240, 3474; title 21 section 343; title 25 section 954; title 29 sections 1579, 1861; title 30 section 811; title 39 sections 204, 410, 3001, 3603; title 43 section 1740; title 44 section 3507; title 45 sections 1116, 1212; title 46 App. section 1241p.

SUBCHAPTER I—GENERAL PROVISIONS

§ 504. Costs and fees of parties

(a)(1) An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(2) A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in the adversary adjudication, submit to the agency an application which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from any attorney, agent, or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the agency was not substantially justified. When the United States appeals the underlying merits of an adversary adjudication, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made under this section until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

(3) The adjudicative officer of the agency may reduce the amount to be awarded, or deny an award, to the extent that the party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy. The decision of the adjudicative officer of the agency under this section shall be made a part of the record containing the final decision of the agency and shall include written findings and conclusions and the reason or basis therefor. The decision of the agency on the application for fees and other expenses shall be the final administrative decision under this section.

(b)(1) For the purposes of this section—

(A) "fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees (The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the agency involved, and (ii) attorney or agent fees shall not be awarded in excess of $75 per hour unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee.);

(B) "party" means a party, as defined in section 551(3) of this title, who is (i) an individual whose net worth did not exceed $2,000,000 at the time the adversary adjudication was initiated, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the adversary adjudication was initiated, and which had not more than 500 employees at the time the adversary adjudication was initiated; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association;

(C) "adversary adjudication" means (i) an adjudication under section 554 of this title in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license, and (ii) any appeal of a decision made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of that Act (41 U.S.C. 607);

(D) "adjudicative officer" means the deciding official, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication; and

(E) "position of the agency" means, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based; except that fees and other expenses may not be awarded to a party for any portion of the adversary adjudication in which the party has unreasonably protracted the proceedings.

(2) Except as otherwise provided in paragraph (1), the definitions provided in section 551 of this title apply to this section.

(c)(1) After consultation with the Chairman of the Administrative Conference of the United States, each agency shall by rule establish uniform procedures for the submission and consideration of applications for an award of fees and other expenses. If a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made

only pursuant to section 2412(d)(3) of title 28, United States Code.

(2) If a party other than the United States is dissatisfied with a determination of fees and other expenses made under subsection (a), that party may, within 30 days after the determination is made, appeal the determination to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication. The court's determination on any appeal heard under this paragraph shall be based solely on the factual record made before the agency. The court may modify the determination of fees and other expenses only if the court finds that the failure to make an award of fees and other expenses, or the calculation of the amount of the award, was unsupported by substantial evidence.

(d) Fees and other expenses awarded under this subsection shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

(e) The Chairman of the Administrative Conference of the United States, after consultation with the Chief Counsel for Advocacy of the Small Business Administration, shall report annually to the Congress on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this section. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards. Each agency shall provide the Chairman with such information as is necessary for the Chairman to comply with the requirements of this subsection.

(Added Pub. L. 96-481, title II, § 203(a)(1), (c), Oct. 21, 1980, 94 Stat. 2325, 2327; revived and amended Pub. L. 99-80, §§ 1, 6, Aug. 5, 1985, 99 Stat. 183, 186.)

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-80, § 1(a)(1), (2), struck out "as a party to the proceeding" after "the position of the agency", and added "Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought."

Subsec. (a)(2). Pub. L. 99-80, § 1(b), added "When the United States appeals the underlying merits of an adversary adjudication, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made under this section until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal."

Subsec. (a)(3). Pub. L. 99-80, § 1(a)(3), added "The decision of the agency on the application for fees and other expenses shall be the final administrative decision under this section."

Subsec. (b)(1)(B). Pub. L. 99-80, § 1(c)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: " 'party' means a party, as defined in section 551(3) of this title, which is an individual, partnership, corporation, association, or public or private organization other than an agency, but excludes (i) any individual whose net worth exceeded $1,000,000 at the time the adversary adjudication was initiated, and any sole owner of an unincorporated business, or any partnership, corporation, association, or organization whose net worth exceeded $5,000,000 at the time the adversary adjudication was initiated, except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of the Code and a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association, and (ii) any sole owner of an unincorporated business, or any partnership, corporation, association, or organization, having more than 500 employees at the time the adversary adjudication was initiated;".

Subsec. (b)(1)(C). Pub. L. 99-80, § 1(c)(2), designated existing provisions of subpar. (C) as cl. (i) thereof by inserting "(i)" before "an adjudication under", added cl. (ii), and struck out "and" after the semicolon at the end.

Subsec. (b)(1)(D), (E). Pub. L. 99-80, § 1(c)(3), substituted "; and" for the period at end of subpar. (D), and added subpar. (E).

Subsec. (c)(2). Pub. L. 99-80, § 1(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "A party dissatisfied with the fee determination made under subsection (a) may petition for leave to appeal to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication. If the court denies the petition for leave to appeal, no appeal may be taken from the denial. If the court grants the petition, it may modify the determination only if it finds that the failure to make an award, or the calculation of the amount of the award, was an abuse of discretion."

Subsec. (d). Pub. L. 99-80, § 1(e), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

"(1) Fees and other expenses awarded under this section may be paid by any agency over which the party prevails from any funds made available to the agency, by appropriation or otherwise, for such purpose. If not paid by any agency, the fees and other expenses shall be paid in the same manner as the payment of final judgments is made pursuant to section 2414 of title 28, United States Code.

"(2) There is authorized to be appropriated to each agency for each of the fiscal years 1982, 1983, and 1984, such sums as may be necessary to pay fees and other expenses awarded under this section in such fiscal years."

1980—Pub. L. 96-481, § 203(c), which provided for the repeal of this section effective Oct. 1, 1984, was itself repealed and this section was revived by section 6 of Pub. L. 99-80, set out as a note below.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 7 of Pub. L. 99-80 provided that:

"(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this Act [reviving and amending this section and section 2412(d) of Title 28, Judiciary and Judicial Procedure, and amending and repealing provisions set out as notes under those sections] shall apply to cases pending on or commenced on or after the date of the enactment of this Act [Aug. 5, 1985].

"(b) APPLICABILITY OF AMENDMENTS TO CERTAIN PRIOR CASES.—The amendments made by this Act shall apply to any case commenced on or after October 1, 1984, and finally disposed of before the date of the enactment of this Act [Aug. 5, 1985], except that in any such case, the 30-day period referred to in section 504(a)(2) of title 5, United States Code, or section 2412(d)(1)(B) of title 28, United States Code, as the case may be, shall be deemed to commence on the date of the enactment of this Act.

"(c) APPLICABILITY OF AMENDMENTS TO PRIOR BOARD OF CONTRACTS APPEALS CASES.—Section 504(b)(1)(C)(ii) of title 5, United States Code, as added by section 1(c)(2) of this Act, and section 2412(d)(2)(E) of title 28, United States Code, as added by section 2(c)(2) of this Act, shall apply to any adversary adjudication pending on or commenced on or after October 1, 1981, in which applications for fees and other expenses were timely filed and were dismissed for lack of jurisdiction."

EFFECTIVE DATE

Section 208 of title II of Pub. L. 96-481, as amended by Pub. L. 99-80, § 5, Aug. 5, 1985, 99 Stat. 186, provided that: "This title and the amendments made by this title [see Short Title note below] shall take effect of [on] October 1, 1981, and shall apply to any adversary adjudication, as defined in section 504(b)(1)(C) of title 5, United States Code, and any civil action or adversary adjudication described in section 2412 of title 28, United States Code, which is pending on, or commenced on or after, such date. Awards may be made for fees and other expenses incurred before October 1, 1981, in any such adversary adjudication or civil action."

Section 203(c) of Pub. L. 96-481 which provided in part that effective Oct. 1, 1984, this section is repealed, except that the provisions of this section shall continue to apply through final disposition of any adversary adjudication initiated before the date of repeal, was itself repealed by Pub. L. 99-80, § 6(b)(1), Aug. 5, 1985, 99 Stat. 186.

SHORT TITLE

Section 201 of title II of Pub. L. 96-481 provided that: "This title [enacting this section, amending section 634(b) of Title 15, Commerce and Trade, section 2412 of Title 28, Judiciary and Judicial Procedure, Rule 37 of the Federal Rules of Civil Procedure, set out in Title 28 Appendix, and section 1988 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 2412 of Title 28] may be cited as the 'Equal Access to Justice Act'."

REVIVAL OF PREVIOUSLY REPEALED PROVISIONS

Section 6 of Pub. L. 99-80 provided that:

"(a) REVIVAL OF CERTAIN EXPIRED PROVISIONS.—Section 504 of title 5, United States Code, and the item relating to that section in the table of sections of chapter 5 of title 5, United States Code, and subsection (d) of section 2412 of title 28, United States Code, shall be effective on or after the date of the enactment of this Act [Aug. 5, 1985] as if they had not been repealed by sections 203(c) and 204(c) of the Equal Access to Justice Act [Pub. L. 96-481].

"(b) REPEALS.—

"(1) Section 203(c) of the Equal Access to Justice Act [which repealed this section] is hereby repealed.

"(2) Section 204(c) of the Equal Access to Justice Act [which repealed section 2412(d) of title 28] is hereby repealed."

CONGRESSIONAL FINDINGS AND PURPOSES

Section 202 of title II of Pub. L. 96-481 provided that:

"(a) The Congress finds that certain individuals, partnerships, corporations, and labor and other organizations may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights in civil actions and in administrative proceedings.

"(b) The Congress further finds that because of the greater resources and expertise of the United States the standard for an award of fees against the United States should be different from the standard governing an award against a private litigant, in certain situations.

"(c) It is the purpose of this title [see Short Title note above]—

"(1) to diminish the deterrent effect of seeking review of, or defending against, governmental action by providing in specified situations an award of attorney fees, expert witness fees, and other costs against the United States; and

"(2) to insure the applicability in actions by or against the United States of the common law and statutory exceptions to the 'American rule' respecting the award of attorney fees."

LIMITATION ON PAYMENTS

Section 207 of title II of Pub. L. 96-481 which provided that the payment of judgments, fees and other expenses in the same manner as the payment of final judgments as provided in this Act [probably should be "this title", see Short Title note above] would be effective only to the extent and in such amounts as are provided in advance in appropriation Acts, was repealed by Pub. L. 99-80, § 4, Aug. 5, 1985, 99 Stat. 186.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 634b; title 28 section 2412.

SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 572, 7118, 7134, 8902 of this title; title 2 sections 501, 502; title 7 sections 136d, 1642; title 10 sections 2397, 2397a; title 12 sections 1437, 1749bbb-17, 1959; title 15 sections 78ggg, 266, 1392, 1715, 3412; title 16 sections 460aa-3, 470q, 470hh; title 17 sections 701, 803; title 19 sections 1337, 1677c; title 20 sections 107d-2, 641; title 21 sections 811, 824, 875, 958; title 22 sections 277d-24, 1623, 1645n, 4116; title 25 sections 372-1, 954; title 28 section 509; title 29 sections 156, 164, 213, 481, 628, 792, 1137; title 30 section 184; title 31 section 321; title 33 sections 524, 597; title 39 section 3008; title 41 section 43a; title 42 sections 263f, 1975a, 2000e-12, 2231, 2236, 3789d, 6212, 6393, 7191, 7276, 7420; title 43 section 1624; title 45 sections 1116, 1212; title 46 sections 7702, 9303; title 47 sections 303, 305, 310, 409; title 49 sections 10530, 10705, 10724, 10925, 10928, 10929, 11123, 11124, 11125, 11127, 11349; title 49 App. sections 1348, 1355, 1481, 1655, 1672, 2002; title 50 sections 167h, 795, 835; title 50 App. sections 463, 2159.

§ 551. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 500, 504, 552, 572, 601, 701, 3344 of this title; title 2 sections 501, 502; title 15 sections 78d-1, 78w, 632, 637c, 766, 2053, 3412, 3416; title 16 section 470w; title 26 sections 6103, 9041; title 30 section 956; title 31 sections 3901, 6101, 7501; title 42 sections 2231, 6107, 6393, 7191; title 46 sections 7702, 9303; title 47 sections 155, 409; title 49 App. section 1557; title 50 App. sections 2168, 2412.

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

[See main edition for text of (1) to (3)]

(4) *[See main edition for text of (A) to (C)]*

[(D) Repealed. Pub. L. 98-620, title IV, § 402(2), Nov. 8, 1984, 98 Stat. 3357.]

[See main edition for text of (E) to (G), (5) and (6); (b) to (e)]

(As amended Pub. L. 98-620, title IV, § 402(2), Nov. 8, 1984, 98 Stat. 3357.)

AMENDMENTS

1984—Subsec. (a)(4)(D). Pub. L. 98-620 repealed subpar. (D) which provided for precedence on the docket and expeditious disposition of district court proceedings authorized by subsec. (a).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 551, 552a, 552b, 1206, 7133 of this title; title 2 sections 472, 501, 502; title 7 sections 608d, 1642; title 10 section 2304; title 15 sections 18a, 57b-2, 78m, 78w, 78x, 78ggg, 633, 719d, 773, 796, 1314, 1335a, 1418, 2029, 2032, 2055, 2217, 2613, 3364, 3705, 4019, 4104, 4107, 4305; title 16 section 1402; title 19 sections 1431, 2415; title 20 sections 2836, 2837; title 21 sections 360d, 360j, 379, 830; title 22 sections 2200a, 3902, 4415, 4604, 4607; title 25 section 1951; title 26 sections 6110, 7611; title 28 section 1657; title 30 section 1604; title 31 sections 716, 5319; title 33 sections 524, 941, 1513; title 35 sections 202, 209; title 39 section 410; title 41 section 253; title 42 sections 242k, 300v-2, 405, 1306, 1320c-9, 2167, 2168, 2996d, 3527, 4332, 5916, 5919, 6272-6274, 6346, 7135, 8103, 8717, 9122, 9208, 10704; title 44 sections 2201, 2204, 2206; title 45 section 546; title 46 sections 4309, 7702, 9303; title 46 App. sections 93, 1705; title 49 sections 10310, 10706, 11164, 11346; title 49 App. sections 1357, 1805, 1806, 1905, 2511, 2608; title 50 section 431; title 50 App. sections 463, 2158, 2158a, 2159, 2406, 2411.

§ 552a. Records maintained on individuals

[See main edition for text of (a)]

(b) Conditions of disclosure

No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

[See main edition for text of (1) to (5)]

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

[See main edition for text of (7) to (12); (c) to (k)]

(l) Archival records

(1) Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

[See main edition for text of (2) and (3); (m) to (p)]

(q) Effect of other laws

(1) No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(As amended Pub. L. 98-477, § 2(c), Oct. 15, 1984, 98 Stat. 2211; Pub. L. 98-497, title I, § 107(g), Oct. 19, 1984, 98 Stat. 2292.)

AMENDMENTS

1984—Subsec. (b)(6). Pub. L. 98-497, § 107(g)(1), substituted "National Archives and Records Administration" for "National Archives of the United States", and "Archivist of the United States or the designee of the Archivist" for "Administrator of General Services or his designee".

Subsec. (l)(1). Pub. L. 98-497, § 107(g)(2), substituted "Archivist of the United States" for "Administrator of General Services" in two places.

Subsec. (q). Pub. L. 98-477 designated existing provisions as par. (1), and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 552b, 3111, 7133 of this title; title 7 section 2204b; title 16 sections 410cc-35, 1536; title 20 section 1080; title 26 sections 6103, 7852; title 31 sections 3701, 3711, 3718; title 38 section 3301; title 39 section 410; title 42 sections 402, 405, 1306, 3525; title 44 sections 2906, 3501, 3504; title 46 sections 7702, 9303.

§ 552b. Open meetings

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 552 of this title; title 12 section 3502; title 19 section 2347; title 20 section 1047f; title 22 section 4605; title 39 section 410; title 42 sections 2996c, 7171, 7234, 8103, 8712, 10703; title 44 section 2204; title 45 sections 1116, 1212; title 46 sections 7702, 9303.

§ 553. Rule making

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 552a, 556, 601, 603, 604, 1103, 1105 of this title; title 2 sections 501, 502; title 7 sections 2013, 2014; title 12 section 1437; title 15 sections 18a, 57a, 78s, 78ggg, 789, 1193, 1203, 1262, 1410b, 1474, 1476, 1604, 1693b, 1912, 2058, 2079, 2082, 2309, 2603, 2604, 2605, 2618, 2703, 2823, 3412, 3803, 4017, 4244; title 16 sections 839b, 971d, 1379, 1381, 1463, 1533, 1535, 1604, 1821, 3341, 3604, 3636; title 18 sections 4201, 4218; title 19 section 2561; title 20 sections 1132b-1, 1221e-4, 1232; title 21 sections 358, 360d, 463; title 28 section 994; title 30 sections 811, 936, 1211, 1468, 1751; title 33 sections 1231, 1322, 1504; title 40 section 333; title 41 sections 43a, 47; title 42 sections 289d, 300g-1, 300h, 300k-1, 421, 1997e, 2210a, 3535, 4905, 5060, 5403, 5506, 5918, 5919, 6306, 6392, 7191, 7607, 8275, 8372, 8411, 9112, 9127, 9204, 10155, 10193;

title 43 section 1740; title 44 section 2206; title 45 sections 431, 502, 562; title 46 sections 7702, 9303; title 46 App. sections 1241f, 1716; title 49 sections 10326, 10328, 10362, 11350; title 49 App. sections 1348, 1387, 1804, 2505, 2612; title 50 App. sections 2158, 2158a, 2168, 2412.

§ 554. Adjudications

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 504, 552b, 556, 557, 8124 of this title; title 2 sections 501, 502; title 7 sections 86, 87e, 87f–1, 3804, 3805; title 12 sections 93, 504, 505, 1437, 1464, 1730, 1730a, 1786, 1817, 1818, 1828, 1847, 1972, 2268, 3413; title 15 sections 78d–1, 1274, 2064, 2066, 2605, 2615, 3412; title 16 sections 429b–1, 470ff, 773f, 796, 839f, 1030, 1174, 1536, 1540, 1856, 1858, 2407, 2437, 2602, 3142, 3373, 3636; title 18 sections 3625, 4218; title 20 section 1234; title 21 sections 321, 360e; title 29 sections 216, 659, 1813, 1853; title 30 sections 185, 804, 811, 815, 817, 818, 821, 938, 1264, 1268, 1275, 1293, 1426, 1462; title 33 sections 919, 1367, 1504; title 42 sections 2000e–17, 3783, 3789d, 4910, 6303, 6971, 7419, 7607, 7920, 8220, 8433, 9112, 9152, 9610; title 43 sections 1766, 1817; title 45 sections 432, 905; title 46 sections 7702, 9303; title 47 sections 409, 503; title 49 section 521; title 49 App. sections 1674b, 2611, 2618; title 50 App. sections 2168, 2410, 2412.

§ 555. Ancillary matters

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 16 sections 1536, 3636; title 18 sections 3625, 4218; title 42 sections 7607, 9612; title 43 section 1817; title 46 sections 7702, 9303; title 50 App. sections 2168, 2410, 2412.

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 553, 554, 557, 558, 706, 3105 of this title; title 2 sections 501, 502; title 7 sections 86, 87e, 87f–1, 3804, 3805; title 15 sections 57a, 2605, 3412; title 16 sections 796, 839f, 1536, 2602, 3636; title 18 section 4218; title 20 section 1234; title 21 sections 321, 376; title 22 sections 1037a, 4136; title 30 sections 811, 1415; title 33 section 907; title 39 sections 404, 3624, 3661; title 42 sections 2241, 7171, 7607, 9612; title 43 section 1817; title 46 sections 7702, 9303; title 47 section 155; title 49 App. section 2505; title 50 App. sections 2168, 2410, 2412.

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 553, 554, 556, 558, 706, 3105 of this title; title 2 sections 501, 502; title 7 sections 86, 87e, 87f–1; title 15 sections 57a, 2605, 3412; title 16 sections 796, 839f, 2602, 3636; title 18 section 4218; title 20 section 1234; title 21 section 321; title 30 sections 811, 823, 1415; title 39 sections 404, 3624, 3661; title 42 sections 2241, 7607; title 46 sections 7702, 9303; title 49 sections 10322, 10327; title 49 App. section 2505; title 50 App. sections 2168, 2410, 2412.

§ 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 42 section 2236; title 45 section 312; title 46 sections 7702, 9303; title 50 App. sections 2168, 2412.

§ 559. Effect on other laws; effect of subsequent statute

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 30 sections 823, 956; title 46 sections 7702, 9303; title 50 App. sections 2168, 2412.

CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 16 sections 1379, 1855.

§ 601. Definitions

EX. ORD. NO. 12498. REGULATORY PLANNING PROCESS

Ex. Ord. No. 12498, Jan. 4, 1985, 50 F.R. 1036, provided that:

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to create a coordinated process for developing on an annual basis the Administration's Regulatory Program, establish Administration regulatory priorities, increase the accountability of agency heads for the regulatory actions of their agencies, provide for Presidential oversight of the regulatory process, reduce the burdens of existing and future regulations, minimize duplication and conflict of regulations, and enhance public and Congressional understanding of the Administration's regulatory objectives, it is hereby ordered as follows:

SECTION 1. *General Requirements.* (a) There is hereby established a regulatory planning process by which the Administration will develop and publish a Regulatory Program for each year. To implement this process, each Executive agency subject to Executive Order No. 12291 [set out above] shall submit to the Director of the Office of Management and Budget (OMB) each year, starting in 1985, a statement of its regulatory policies, goals, and objectives for the coming year and information concerning all significant regulatory actions underway or planned; however, the Director may exempt from this Order such agencies or activities as the Director may deem appropriate in order to achieve the effective implementation of this Order.

(b) The head of each Executive agency subject to this Order shall ensure that all regulatory actions are consistent with the goals of the agency and of the Administration, and will be appropriately implemented.

(c) This program is intended to complement the existing regulatory planning and review procedures of agencies and the Executive branch, including the procedures established by Executive Order No. 12291.

(d) To assure consistency with the goals of the Administration, the head of each agency subject to this Order shall adhere to the regulatory principles stated in Section 2 of Executive Order No. 12291, including those elaborated by the regulatory policy guidelines set forth in the August 11, 1983, Report of the Presidential Task Force on Regulatory Relief, "Reagan Administration Regulatory Achievements."

SEC. 2. *Agency Submission of Draft Regulatory Program.* (a) The head of each agency shall submit to the Director an overview of the agency's regulatory policies, goals, and objectives for the program year and such information concerning all significant regulatory actions of the agency, planned or under way, including actions taken to consider whether to initiate rulemaking; requests for public comment; and the development of documents that may influence, anticipate, or could lead to the commencement of rulemaking proceedings at a later date, as the Director deems necessary to develop the Administration's Regulatory Program. This submission shall constitute the agency's draft regulatory program. The draft regulatory pro-

gram shall be submitted to the Director each year, on a date to be specified by the Director, and shall cover the period from April 1 through March 31 of the following year.

(b) The overview portion of the agency's submission should discuss the agency's broad regulatory purposes, explain how they are consistent with the Administration's regulatory principles, and include a discussion of the significant regulatory actions, as defined by the Director, that it will take. The overview should specifically discuss the significant regulatory actions of the agency to revise or rescind existing rules.

(c) Each agency head shall categorize and describe the regulatory actions described in subsection (a) in such format as the Director shall specify and provide such additional information as the Director may request; however, the Director shall, by Bulletin or Circular, exempt from the requirements of this Order any class or category of regulatory action that the Director determines is not necessary to review in order to achieve the effective implementation of the program.

SEC. 3. *Review, Compilation, and Publication of the Administration's Regulatory Program.* (a) In reviewing each agency's draft regulatory program, the Director shall (i) consider the consistency of the draft regulatory program with the Administration's policies and priorities and the draft regulatory programs submitted by other agencies; and (ii) identify such further regulatory or deregulatory actions as may, in his view, be necessary in order to achieve such consistency. In the event of disagreement over the content of the agency's draft regulatory program, the agency head or the Director may raise issues for further review by the President or by such appropriate Cabinet Council or other forum as the President may designate.

(b) Following the conclusion of the review process established by subsection (a), each agency head shall submit to the Director, by a date to be specified by the Director, the agency's final regulatory plan for compilation and publication as the Administration's Regulatory Program for that year. The Director shall circulate a draft of the Administration's Regulatory Program for agency comment, review, and interagency consideration, if necessary, before publication.

(c) After development of the Administration's Regulatory Program for the year, if the agency head proposes to take a regulatory action subject to the provisions of Section 2 and not previously submitted for review under this process, or if the agency head proposes to take a regulatory action that is materially different from the action described in the agency's final Regulatory Program, the agency head shall immediately advise the Director and submit the action to the Director for review in such format as the Director may specify. Except in the case of emergency situations, as defined by the Director, or statutory or judicial deadlines, the agency head shall refrain from taking the proposed regulatory action until the review of this submission by the Director is completed. As to those regulatory actions not also subject to Executive Order No. 12291 [set out above], the Director shall be deemed to have concluded that the proposal is consistent with the purposes of this Order, unless he notifies the agency head to the contrary within 10 days of its submission. As to those regulatory actions subject to Executive Order No. 12291, the Director's review shall be governed by the provisions of Section 3(e) of that Order.

(d) Absent unusual circumstances, such as new statutory or judicial requirements or unanticipated emergency situations, the Director may, to the extent permitted by law, return for reconsideration any rule submitted for review under Executive Order No. 12291 that would be subject to Section 2 but was not included in the agency's final Regulatory Program for that year; or any other significant regulatory action that is materially different from those described in the Administration's Regulatory Program for that year.

SEC. 4. *Office of Management and Budget.* The Director of the Office of Management and Budget is authorized, to the extent permitted by law, to take such actions as may be necessary to carry out the provisions of this Order.

SEC. 5. *Judicial Review.* This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person.

RONALD REAGAN.

CHAPTER 7—JUDICIAL REVIEW

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 559, 8902 of this title; title 2 sections 501, 502; title 10 sections 2397, 2397a; title 12 sections 1464, 1730, 1730a, 1749bbb–17, 1786, 1815, 1818, 1959, 2266; title 15 sections 57a, 266, 687e, 1193, 1392, 1394, 1715, 1913, 2004, 2008, 2060, 2603, 2618, 2622, 3416, 4243; title 16 sections 460aa–3, 470q, 1374, 1536, 1855, 2404, 3636; title 17 sections 701, 803, 810, 908; title 18 sections 843, 3625, 4218; title 19 section 1337; title 20 sections 107d–2, 240, 641, 1683; title 21 sections 360e, 360g; title 22 sections 277d–24, 1623, 1645n, 3794, 4140; title 25 sections 372–1, 954; title 26 section 9041; title 29 sections 721, 792, 1137; title 30 sections 1411, 1415, 1416; title 33 sections 524, 597; title 35 section 135; title 39 sections 404, 410, 3001, 3008, 3012, 3603; title 41 section 43a; title 42 sections 263f, 300j–9, 1395h, 1395*oo*, 2000d–2, 2022, 2231, 2236, 2239, 4104, 5405, 5851, 6105, 6303, 6306, 6973, 6976, 7276, 7525, 7622, 7920, 8220, 8412, 8433, 8441, 10132, 10155; title 44 section 2203; title 45 sections 431, 1116, 1212; title 47 sections 303, 305, 310, 409; title 49 App. sections 1355, 1481, 1655, 1675, 1903, 2005, 2302, 2305, 2505, 2507, 2611; title 50 sections 795, 835; title 50 App. sections 463, 2159.

§ 701. Application; definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2143; title 16 section 839f; title 18 sections 843, 3625, 4218; title 20 section 1683; title 25 section 954; title 30 section 956; title 42 sections 5405, 6105, 6976; title 50 App. sections 2168, 2412.

§ 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other stat-

ute that grants consent to suit expressly or impliedly forbids the relief which is sought.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94-574, § 1, Oct. 21, 1976, 90 Stat. 2721.)

CODIFICATION

Section is set out in this supplement to correct a typographical error appearing in the main edition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2143; title 16 section 839f; title 18 sections 843, 3625, 4218; title 19 section 1677c; title 25 section 954; title 28 section 2631; title 42 section 5405; title 43 section 1817; title 50 App. sections 2168, 2412.

§ 703. Form and venue of proceeding

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2143; title 16 section 839f; title 18 sections 843, 3625, 4218; title 25 section 954; title 42 section 5405; title 50 App. sections 2168, 2412.

§ 704. Actions reviewable

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2143; title 15 section 78ccc; title 16 section 839f; title 18 sections 843, 3625, 4218; title 25 section 954; title 42 sections 5405, 7174, 7194; title 50 App. sections 2168, 2412.

§ 705. Relief pending review

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2143; title 15 sections 78y, 1262, 1474, 3416; title 16 sections 839f, 1855, 3636; title 18 sections 843, 3625, 4218; title 25 section 954; title 42 sections 5405, 7172; title 50 App. sections 2168, 2412.

§ 706. Scope of review

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7123 of this title; title 2 sections 501, 502; title 7 section 2143; title 11 section 1172; title 12 sections 93, 504, 505, 1464, 1730, 1730a, 1786, 1818, 1828, 1972, 2268; title 15 sections 57a, 78y, 757, 760a, 1262, 1474, 2002, 2003, 2618; title 16 sections 773f, 839f, 1030, 1379, 1855, 1858, 2437, 3142, 3636; title 18 sections 843, 3625, 4218; title 19 section 1337; title 22 section 4140; title 25 section 954; title 28 section 2640; title 29 sections 721, 1813, 1853; title 30 sections 956, 1462; title 39 section 3628; title 42 sections 5405, 5919, 6976, 7607, 9152; title 45 sections 432, 726, 904, 915, 1105; title 47 section 402; title 50 App. sections 2168, 2412.

CHAPTER 9—EXECUTIVE REORGANIZATION

Sec.
912. Procedure after report or discharge of committee; debate; vote on final passage.

AMENDMENTS

1984—Pub. L. 98-614, § 3(e)(3), Nov. 8, 1984, 98 Stat. 3193, substituted "passage" for "disapproval" in item 912.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 20 section 3463; title 42 sections 2000e-6, 3534, 7176, 8401, 8715, 8819; title 49 sections 103, 104, 106.

§ 901. Purpose

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-614, § 1, Nov. 8, 1984, 98 Stat. 3192, provided: "That this Act [amending sections 903 to 906 and 908 to 912 of this title] may be cited as the 'Reorganization Act Amendments of 1984'."

§ 903. Reorganization plans

[See main edition for text of (a)]

(b) The President shall have a reorganization plan delivered to both Houses on the same day and to each House while it is in session, except that no more than three plans may be pending before the Congress at one time. In his message transmitting a reorganization plan, the President shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function. The message shall also estimate any reduction or increase in expenditures (itemized so far as practicable), and describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan. In addition, the President's message shall include an implementation section which shall (1) describe in detail (A) the actions necessary or planned to complete the reorganization, (B) the anticipated nature and substance of any orders, directives, and other administrative and operational actions which are expected to be required for completing or implementing the reorganization, and (C) any preliminary actions which have been taken in the implementation process, and (2) contain a projected timetable for completion of the implementation process. The President shall also submit such further background or other information as the Congress may require for its consideration of the plan.

(c) Any time during the period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution described in section 909 has been ordered reported in either House, the President may make amendments or modifications to the plan, consistent with sections 903-905 of this title, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this chapter. The President may withdraw the plan any time prior to the conclusion of 90 calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.

(As amended Pub. L. 98-614, §§ 3(b)(1), (2), 4, Nov. 8, 1984, 98 Stat. 3192, 3193.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-614, § 4, added "In addition, the President's message shall include an implementation section which shall (1) describe in detail (A) the actions necessary or planned to complete the reorganization, (B) the anticipated nature and substance of any orders, directives, and other administrative and operational actions which are expected to be required

for completing or implementing the reorganization, and (C) any preliminary actions which have been taken in the implementation process, and (2) contain a projected timetable for completion of the implementation process. The President shall also submit such further background or other information as the Congress may require for its consideration of the plan."

Subsec. (c). Pub. L. 98-614, § 3(b)(1), (2), substituted "60 calendar days" for "thirty calendar days", and "90 calendar days" for "sixty calendar days".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 902, 904, 905, 908, 909, 910 of this title.

§ 904. Additional contents of reorganization plan

A reorganization plan transmitted by the President under section 903 of this title—

(1) may, subject to section 905, change, in such cases as the President considers necessary, the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head;

[*See main edition for text of (2) to (5)*]

A reorganization plan transmitted by the President containing provisions authorized by paragraph (2) of this section may provide that the head of an agency be an individual or a commission or board with more than one member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than four years, the pay may not be at a rate in excess of that found by the President to be applicable to comparable officers in the executive branch, and if the appointment is not to a position in the competitive service, it shall be by the President, by and with the advice and consent of the Senate. Any reorganization plan transmitted by the President containing provisions required by paragraph (4) of this section shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made.

(As amended Pub. L. 98-614, § 5(b), Nov. 8, 1984, 98 Stat. 3194.)

AMENDMENTS

1984—Par. (1). Pub. L. 98-614 added ", subject to section 905,".

§ 905. Limitation on powers

(a) A reorganization plan may not provide for, and a reorganization under this chapter may not have the effect of—

(1) creating a new executive department or renaming an existing executive department, abolishing or transferring an executive department or independent regulatory agency, or all the functions thereof, or consolidating two or more executive departments or two or more independent regulatory agencies, or all the functions thereof;

[*See main edition for text of (2) to (4)*]

(5) creating a new agency which is not a component or part of an existing executive department or independent agency;

(6) increasing the term of an office beyond that provided by law for the office; or

(7) dealing with more than one logically consistent subject matter.

(b) A provision contained in a reorganization plan may take effect only if the plan is transmitted to Congress (in accordance with section 903(b)) on or before December 31, 1984.

(As amended Pub. L. 98-614, §§ 2(a), 5(a), Nov. 8, 1984, 98 Stat. 3192, 3193.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-614, § 5(a)(1), added "or renaming an existing executive department".

Subsec. (a)(5) to (7). Pub. L. 98-614, § 5(a)(2), added par. (5), and redesignated pars. (5) and (6) as (6) and (7), respectively.

Subsec. (b). Pub. L. 98-614, § 2(a), substituted "(in accordance with section 903(b)) on or before December 31, 1984" for "within four years of the date of enactment of the Reorganization Act of 1977".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 903, 904 of this title.

§ 906. Effective date and publication of reorganization plans

(a) Except as provided under subsection (c) of this section, a reorganization plan shall be effective upon approval by the President of a resolution (as defined in section 909) with respect to such plan, if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous session of Congress after the date on which the plan is transmitted to Congress. Failure of either House to act upon such resolution by the end of such period shall be the same as disapproval of the resolution.

[*See main edition for text of (b)*]

(c) Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.

[*See main edition for text of (d)*]

(As amended Pub. L. 98-614, § 3(a), Nov. 8, 1984, 98 Stat. 3192.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-614, § 3(a)(1), struck out "otherwise" before "provided under subsection (c)" substituted "shall be" for "is" before "effective" and further substituted "upon approval by the President of a resolution (as defined in section 909) with respect to such plan, if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous session of Congress after the date on which the plan is transmitted to Congress. Failure of either House to act upon such resolution by the end of such period shall be the same as disapproval of the resolution" for "at the end of the first period of sixty calendar days of continuous session of Congress after the date on which the plan is transmitted to it unless, between the date of transmittal and the end of the sixty-day period, either House passes a resolution stating in substance that the House does not favor the reorganization plan."

Subsec. (c). Pub. L. 98-614, § 3(a)(2), struck out at the end thereof "or, if both Houses of Congress have defeated a resolution of disapproval, may be effective at a time earlier than the expiration of the sixty-day period required by subsection (a)."

RATIFICATION AND AFFIRMATION OF PRIOR REORGANIZATION PLANS AS LAW; ACTIONS TAKEN PURSUANT TO SUCH PLANS

Pub. L. 98-532, Oct. 19, 1984, 98 Stat. 2705, provided that:

"SECTION 1. The Congress hereby ratifies and affirms as law each reorganization plan that has, prior to the date of enactment of this Act [Oct. 19, 1984], been implemented pursuant to the provisions of chapter 9 of title 5, United States Code, or any predecessor Federal reorganization statute.

"SEC. 2. Any actions taken prior to the date of enactment of this Act [Oct. 19, 1984] pursuant to a reorganization plan that is ratified and affirmed by section 1 shall be considered to have been taken pursuant to a reorganization expressly approved by Act of Congress."

§ 908. Rules of Senate and House of Representatives on reorganization plans

Sections 909 through 912 of this title are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions with respect to any reorganization plans transmitted to Congress (in accordance with section 903(b) of this chapter [1]) on or before December 31, 1984; and they supersede other rules only to the extent that they are inconsistent therewith; and

[See main edition for text of (2)]

(As amended Pub. L. 98-614, § 2(b), Nov. 8, 1984, 98 Stat. 3192.)

AMENDMENTS

1984—Par. (1). Pub. L. 98-614 substituted "with respect to any reorganization plans transmitted to Congress (in accordance with section 903(b) of this chapter) on or before December 31, 1984" for "described in section 909 of this title".

§ 909. Terms of resolution

For the purpose of sections 908 through 912 of this title, "resolution" means only a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That the Congress approves the reorganization plan numbered transmitted to the Congress by the President on , 19 .", and includes such modifications and revisions as are submitted by the President under section 903(c) of this chapter. The blank spaces therein are to be filled appropriately. The term does not include a resolution which specifies more than one reorganization plan.

(As amended Pub. L. 98-614, § 3(c), Nov. 8, 1984, 98 Stat. 3192.)

[1] So in original. Probably should be "title".

AMENDMENTS

1984—Pub. L. 98-614 substituted "a joint resolution of the Congress" for "a resolution of either House of Congress", and "the Congress approves" for "the does not favor".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 903, 906, 908, 910 of this title; title 22 section 2587.

§ 910. Introduction and reference of resolution

[See main edition for text of (a)]

(b) A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 75 calendar days of continuous session of Congress following the date of such resolution's introduction.

(As amended Pub. L. 98-614, § 3(b)(3), Nov. 8, 1984, 98 Stat. 3192.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-614 substituted "75 calendar days" for "45 calendar days".

§ 911. Discharge of committee considering resolution

If the committee to which is referred a resolution introduced pursuant to subsection (a) of section 910 (or, in the absence of such a resolution, the first resolution introduced with respect to the same reorganization plan) has not reported such resolution or identical resolution at the end of 75 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(As amended Pub. L. 98-614, § 3(b)(4), Nov. 8, 1984, 98 Stat. 3192.)

AMENDMENTS

1984—Pub. L. 98-614 substituted "75 calendar days" for "45 calendar days".

§ 912. Procedure after report or discharge of committee; debate; vote on final passage

[See main edition for text of (a)]

(b) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by

which the resolution is passed or rejected shall not be in order.

(c) Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

[*See main edition for text of (d)*]

(e) If, prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same reorganization plan from the other House, then—

(1) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(2) the vote on final passage shall be on the resolution of the other House.

(As amended Pub. L. 98-614, § 3(d), (e)(1), (2), Nov. 8, 1984, 98 Stat. 3193.)

AMENDMENTS

1984—Pub. L. 98-614, § 3(e)(2), substituted "passage" for "disapproval" in section catchline.

Subsec. (b). Pub. L. 98-614, § 3(d)(1), substituted "passed or rejected" for "agreed to or disagreed to".

Subsec. (c). Pub. L. 98-614, § 3(d)(2), substituted "final passage" for "final approval".

Subsec. (e). Pub. L. 98-614, § 3(e)(1), added subsec. (e).

PART II—CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES

CHAPTER 11—OFFICE OF PERSONNEL MANAGEMENT

§ 1101. Office of Personnel Management

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-224, § 1, Mar. 2, 1984, 98 Stat. 47, provided that: "This Act [amending sections 1304, 3323, 4108, 4109, 7104, and 7122 of this title] may be cited as the 'Civil Service Miscellaneous Amendments Act of 1983'."

CHAPTER 13—SPECIAL AUTHORITY

§ 1302. Regulations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1303 of this title; title 18 section 1917; title 20 section 241; title 22 section 1438.

§ 1304. Loyalty investigations; reports; revolving fund

[*See main edition for text of (a) to (d)*]

(e)(1) A revolving fund is available, to the Office without fiscal year limitation, for financing investigations, training, and such other functions as the Office is authorized or required to perform on a reimbursable basis. However, the functions which may be financed in any fiscal year by the fund are restricted to those functions which are covered by the budget estimates submitted to the Congress for that fiscal year. To the maximum extent feasible, each individual activity shall be conducted generally on an actual cost basis over a reasonable period of time.

[*See main edition for text of (2) to (6); (f) and (g)*]

(As amended Pub. L. 98-224, § 5(b)(1), Mar. 2, 1984, 98 Stat. 48.)

AMENDMENTS

1984—Subsec. (e)(1). Pub. L. 98-224 struck out cl. (i) designation and struck out cl. (ii), which provided that participation fees imposed by the President's Commission on Executive Exchange for private sector participation in its Executive Exchange Program be collected and credited to the fund, and be available for the costs of education and related travel of exchanged executives, for printing without regard to section 501 of title 44, and, in such amounts as specified in appropriations Acts, for entertainment expenses. See section 4109(d) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4109 of this title.

§ 1308. Annual reports

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3407, 4705 of this title.

CHAPTER 15—POLITICAL ACTIVITY OF CERTAIN STATE AND LOCAL EMPLOYEES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1206, 1207, 1302, 4703 of this title; title 23 section 142; title 42 sections 2996e, 3056, 4728, 9851, 9904; title 49 App. section 1604.

PART III—EMPLOYEES

Subpart D—Pay and Allowances

Chap.		Sec.
54.	Performance Management and Recognition System	5401

Subpart H—Access to Criminal History Record Information

91.	Access to Criminal History Records for National Security Purposes	9101

AMENDMENTS

1985—Pub. L. 99-169, title VIII, § 801(b), Dec. 4, 1985, 99 Stat. 1010, added items for subpart H and chapter 91.

1984—Pub. L. 98-615, title II, § 201(b), Nov. 8, 1984, 98 Stat. 3214, substituted "Performance Management and Recognition System" for "Merit Pay and Cash Awards" in item for chapter 54.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 28 section 996; title 29 section 795b; title 42 section 3056b; title 44 section 2105; title 45 section 719; title 47 sections 154, 332.

Subpart A—General Provisions

CHAPTER 21—DEFINITIONS

§ 2102. The competitive service

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3132 of this title; title 22 section 3641; title 28 section 576; title 36 section 121; title 42 section 2000e.

§ 2104. Officer

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 902 of this title; title 50 section 426.

§ 2105. Employee

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3551, 4501, 5342, 5506, 5515, 5537, 5551, 5552, 5581, 5595, 5751, 5945, 5946, 6103, 6104, 6121, 6301, 6322, 6323, 7103, 7119, 7342, 8171, 8172, 8173, 8311, 8331, 8701, 8901 of this title; title 10 sections 975, 1587; title 25 section 450i; title 50 section 426.

§ 2107. Congressional employee

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8331, 8701, 8901 of this title; title 2 section 31b-5; title 22 section 3008; title 26 section 7448; title 31 section 774.

§ 2108. Veteran; disabled veteran; preference eligible

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3305, 3309, 3312, 3318, 3502, 3504 of this title; title 20 section 241; title 22 sections 1438, 3941; title 32 section 709; title 38 sections 106, 3103A, 4202; title 39 section 1005; title 49 App. section 2214.

CHAPTER 23—MERIT SYSTEM PRINCIPLES

§ 2305. Coordination with certain other provisions of law

REFERENCES IN TEXT

The Central Intelligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following), referred to in text, is act June 20, 1949, ch. 227, 63 Stat. 208, as amended, which is classified generally to section 403a et seq. of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 403a of Title 50 and Tables.

Subpart B—Employment and Retention

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

SUBCHAPTER I—EMPLOYMENT AUTHORITIES

§ 3101. General authority to employ

CITIZENSHIP REQUIREMENT FOR EMPLOYEES COMPENSATED FROM APPROPRIATED FUNDS

Pub. L. 99-190, title I, § 101(h) [H.R. 3036, § 603], Dec. 19, 1985, 99 Stat. 1291, provided that: "Unless otherwise specified during the current fiscal year no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in the continental United States unless such person (1) is a citizen of the United States (2) is a person in the service of the United States on the date of enactment of this Act, who, being eligible for citizenship, has filed a declaration of intention to become a citizen of the United States prior to such date and is actually residing in the United States, (3) is a person who owes allegiance to the United States, (4) is an alien from Cuba, Poland, South Vietnam, or the Baltic countries lawfully admitted to the United States for permanent residence, or (5) South Vietnamese, Cambodian and Laotian refugees paroled into the United States after January 1, 1975: *Provided*, That for the purpose of this section, an affidavit signed by any such person shall be considered prima facia evidence that the requirements of this section with respect to his status have been complied with: *Provided further*, That any person making a false affidavit shall be guilty of a felony, and, upon conviction, shall be fined no more than $4,000 or imprisoned for not more than one year, or both: *Provided further*, That the above penal-clause shall be in addition to, and not in substitution for any other provisions of existing law: *Provided further*, That any payment made to any officer or employee contrary to the provisions of this section shall be recoverable in action by the Federal Government. This section shall not apply to citizens of Ireland, Israel, the Republic of the Philippines or to nationals of those countries allied with the United States in the current defense effort, or to temporary employment of translators, or to temporary employment in the field service (not to exceed sixty days) as a result of emergencies."

Similar provisions were contained in the following prior appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(j) [H.R. 5798, § 604], 98 Stat. 1963.

Nov. 14, 1983, Pub. L. 98-151, § 101(f) [H.R. 4139, § 603], 97 Stat. 973.

Dec. 21, 1982, Pub. L. 97-377, title I, § 101(a) [H.R. 7158, § 603], 96 Stat. 1830.

§ 3105. Appointment of administrative law judges

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 554, 556, 559, 1104, 1205, 1207, 1305, 3132, 3323, 3344, 4301, 5335, 5372, 7105, 7132, 7521, 7701 of this title; title 15 sections 327, 1715; title 19 section 1641; title 29 sections 661, 792; title 30 sections 804, 823, 932a; title 31 sections 6701, 6717, 6718; title 33 sections 873, 919; title 41 section 607; title 42 sections 2000e-4, 3608, 6303, 8220, 8433; title 43 section 1817; title 47 section 410; title 49 sections 10305, 10344, 11346; title 50 App. section 2412.

§ 3109. Employment of experts and consultants; temporary or intermittent

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 575, 5102, 5306, 7342 of this title; title 2 section 136c; title 3 sections 105, 106, 107, 108; title 7 section 16; title 12 section 2405; title 15 sections 205i, 634d, 636, 1942, 2206, 2218, 2451, 4105; title 16 sections 410cc-36, 469b, 469j, 470m, 825q-1, 1052, 1406; title 17 section 805; title 18 sections 3153, 3168, 4204, 4352; title 19 sections 1331, 2171; title 20 sections 959, 1004, 1098, 1233d, 1505, 2012, 2106, 2431, 3413, 3462, 3463, 3702; title 21 section 1203; title 22 sections 272a, 277d-3, 280b, 280i, 280k, 290b, 290f, 290h-5, 1469, 1474, 1622d, 2024, 2083, 2102, 2103, 2386, 2512, 2581, 2669, 2873, 2905, 3106, 4308; title 25 section 640d-11; title 28 sections 602, 625, 994; title 29 sections 656, 671, 676, 783, 1302, 1774; title 30 section 1807; title 31 sections 332, 731, 5112; title 36 section 1404; title 40 sections 71a, 822, 873; title 42 sections 242b, 242l, 282, 285a-2, 285b-3, 290aa, 300k-3, 300v-2, 1962a-4, 1975d, 2473, 3211, 3525, 3788, 4276, 4343, 5042, 5149, 5612, 5816, 6616, 7171, 7211, 7233, 10411, 10412; title 44 sections 2105, 3319; title 49 sections 323, 10384; title 49 App. sections 20, 26b, 1903, 2508; title 50 App. sections 2158, 2158a, 2169.

SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

§ 3131. The Senior Executive Service

CONGRESSIONAL FINDINGS RESPECTING CONTINUATION OF SENIOR EXECUTIVE SERVICE

Pub. L. 98-615, title III, § 301, Nov. 8, 1984, 98 Stat. 3217, provided that: "The Congress finds that the Senior Executive Service should be continued indefinitely."

§ 3132. Definitions and exclusions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2101a, 3104, 3133, 3135, 3372, 3391, 3591, 4311, 4507, 5311, 5381 of this title; title 10 section 1601; title 20 section 1402; title 31 section 733; title 44 section 2103.

§ 3135. Biennial report

(a) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted by the President to the Congress during each odd-numbered calendar year, a report on the Senior Executive Service. The report shall include—

[See main edition for text of (1) to (6)]

(7) for the preceding fiscal year, by agency—

(A) the number of performance awards, and the number of ranks, conferred, as well as the respective aggregate amounts paid for such awards and ranks;

(B) the percentage of career appointees in such agency who received any such award, and the percentage who received any such rank; and

(C) the name of each individual who received any such award or rank, the award or rank received, and a brief summary of the reasons why such individual was selected;

(8) the estimated number of career reserved positions which, during the two fiscal years following the then current fiscal year, will become general positions and the estimated number of general positions which during such two fiscal years, will become career reserved positions;

(9) the number of career appointees who have been placed in positions outside the Senior Executive Service under section 3594 of this title as a result of a removal under section 3595 of this title; and

(10) such other information regarding the Senior Executive Service as the Office considers appropriate.

[See main edition for text of (b)]

(As amended Pub. L. 98-168, title III, § 301(b), Nov. 29, 1983, 97 Stat. 1112; Pub. L. 98-615, title III, § 306(a), Nov. 8, 1984, 98 Stat. 3219.)

AMENDMENTS

1984—Subsec. (a)(9), (10). Pub. L. 98-615 added par. (9), and redesignated former par. (9) as (10).

1983—Subsec. (a)(7). Pub. L. 98-168 amended par. (7) generally, designating existing provisions as subpar. (A) and, as so designated, adding provisions relating to number of ranks conferred, and adding subpars. (B) and (C).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 307 of title III of Pub. L. 98-615 provided that: "The amendments made by this title [enacting section 3595a of this title, amending sections 3135, 3393, 3593 to 3595, 4312, 5383, and 5384 of this title, and enacting provisions set out as a note under section 3131 of this title] shall be effective following the expiration of the 90-day period beginning on the date of enactment of this Act [Nov. 8, 1984], except that the amendments made by section 304 [amending sections 3395, 3595, 7543, and 8336 of this title] shall be effective as of such date of enactment."

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

Sec.
3328. Selective Service registration.

AMENDMENTS

1985—Pub. L. 99-145, title XVI, § 1622(a)(2), Nov. 8, 1985, 99 Stat. 777, added item 3328.

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 38 section 4106; title 42 sections 7138, 7231.

§ 3301. Civil service; generally

EX. ORD. NO. 12505. CAREER APPOINTMENTS TO CERTAIN OFFICE OF MANAGEMENT AND BUDGET EMPLOYEES

Ex. Ord. No. 12505, Feb. 12, 1985, 50 F.R. 6151, provided:

By the authority vested in me as President by the laws of the United States of America, including Section 3301 and 3302 of Title 5, and Section 521 of Title 31 of the United States Code, it is hereby ordered as follows:

SECTION 1. No later than April 1, 1985, any employee of the Office of Management and Budget serving under an appointment under Schedule A in a position not limited to one year or less, concerned with implementation of the President's paperwork reduction and regulatory review and planning programs, may have his or her appointment converted to a career or career-conditional appointment if the Director of the Office of Management and Budget determines that:

(a) The employee has completed at least one year of full-time continuous service in a position concerned with the paperwork reduction and regulatory program;

(b) There is a continuing need for the position filled by the employee;

(c) The employee's past performance has been satisfactory and the employee possesses the qualifications necessary to continue in the position; and

(d) The employee meets the citizenship requirements and qualification standards appropriate for the position.

SEC. 2. If the Director determines not to convert an employee's appointment to career or career-conditional status under the preceding Section, the employee shall be separated not later than the date of expiration of the current appointment.

SEC. 3. Employees whose appointments are converted under this Order shall become career-conditional employees, or career employees if they have completed the service requirements for career tenure, and all converted employees shall acquire a competitive status.

RONALD REAGAN.

§ 3304. Competitive service; examinations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3302 of this title; title 22 section 3008; title 38 section 2023; title 40 section 42.

§ 3305. Competitive service; examinations; when held

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241; title 22 section 1438; title 40 section 42.

§ 3308. Competitive service; examinations; educational requirements prohibited; exceptions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3309. Preference eligibles; examinations; additional points for

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3313, 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3310. Preference eligibles; examinations; guards, elevator operators, messengers, and custodians

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3311. Preference eligibles; examinations; crediting experience

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3312. Preference eligibles; physical qualifications; waiver

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3313. Competitive service; registers of eligibles

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3314, 3315, 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3314. Registers; preference eligibles who resigned

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3315. Registers; preference eligibles furloughed or separated

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3316. Preference eligibles; reinstatement

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3317. Competitive service; certification from registers

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3110, 3318, 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3318. Competitive service; selection from certificates

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3320. Excepted service; government of the District of Columbia; selection

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241; title 22 section 1438.

§ 3323. Automatic separations; reappointment; reemployment of annuitants

[*See main edition for text of* (a)]

(b)(1) Notwithstanding other statutes, an annuitant as defined by section 8331 of this title receiving annuity from the Civil Service Retirement and Disability Fund is not barred by reason of his retired status from employment in an appointive position for which the annuitant is qualified. An annuitant so reemployed, other than an annuitant reappointed under paragraph (2) of this subsection, serves at the will of the appointing authority.

(2) Subject to such regulations as the Director of the Office of Personnel Management may prescribe, any annuitant to whom the first sentence of paragraph (1) of this subsection applies and who has served as an administrative law judge pursuant to an appointment under section 3105 of this title may be reappointed an administrative law judge under such section for a specified period or for such period as may be necessary for such administrative law judge to conduct and complete the hearing and disposition of one or more specified cases. The provisions of this title that apply to or with respect to administrative law judges appointed under section 3105 of this title shall apply to or with respect to administrative law judges reappointed under such section pursuant to the first sentence of this paragraph.

[*See main edition for text of* (c) *and* (d)]

(As amended Pub. L. 98-224, § 2, Mar. 2, 1984, 98 Stat. 47.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-224 designated existing provisions as par. (1), and in par. (1) as so designated, substituted "the annuitant" for "he" and inserted ", other than an annuitant reappointed under paragraph (2) of this subsection,", and added par. (2).

§ 3328. Selective Service registration

(a) An individual—

(1) who was born after December 31, 1959, and is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453); and

(2) who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual,

shall be ineligible for appointment to a position in an Executive agency.

(b) The Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations shall include provisions prescribing procedures for the adjudication within the Office of determinations of whether a failure to register was knowing and willful. Such procedures shall require that such a determination may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing nor willful.

(Added Pub. L. 99-145, title XVI, § 1622(a)(1), Nov. 8, 1985, 99 Stat. 777.)

SUBCHAPTER II—OATH OF OFFICE

§ 3331. Oath of office

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2903, 2904, 2905, 2906, 3332 of this title; title 2 section 64-1; title 10 sections 591, 603, 626; title 14 sections 273, 735; title 22 section 2504; title 33 section 854a-2; title 42 section 1971.

SUBCHAPTER III—DETAILS

§ 3343. Details; to international organizations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3582, 3584 of this title; title 26 section 3121; title 42 section 410.

§ 3344. Details; administrative law judges

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 559, 1305 of this title; title 15 section 1715; title 29 section 661; title 30 section 823; title 42 sections 2000e-4, 3608, 3787.

§ 3347. Details; Presidential authority

EXECUTIVE ORDER NO. 10820

Ex. Ord. No. 10820, May 18, 1959, 24 F.R. 4045, which related to the order of succession to positions in the Department of Defense, was revoked by Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, set out as a note under this section.

EX. ORD. NO. 12514. PRESCRIBING THE ORDER OF SUCCESSION OF OFFICERS TO ACT AS SECRETARY OF DEFENSE, SECRETARY OF THE ARMY, SECRETARY OF THE NAVY, AND SECRETARY OF THE AIR FORCE

Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 3347 of title 5, United States Code, it is hereby ordered as follows:

PART I. *Succession to the Position of Secretary of Defense*

In the event of the death, disability, or absence of the Secretary of Defense, the incumbents in the Department of Defense positions listed below shall succeed to the position of, and act as, Secretary of Defense in the order indicated:

1. Deputy Secretary of Defense.
2. Secretary of the Army.
3. Secretary of the Navy.
4. Secretary of the Air Force.
5. Under Secretary of Defense for Policy.
6. Under Secretary of Defense for Research and Engineering.
7. Assistant Secretaries of Defense and the General Counsel of the Department of Defense, in the order fixed by their length of service as such.
8. Under Secretaries of the Army, the Navy, and the Air Force, in the order fixed by their length of service as such.
9. Assistant Secretaries of the Army, the Navy, and the Air Force, in the order fixed by their length of service as such.

Precedence within a particular group between or among two or more officers having the same date of appointment shall be as determined by the Secretary of Defense at the time of appointment.

PART II. *Succession to the Position of Secretary of the Army*

In the event of the death, disability, or absence of the Secretary of the Army, the officers designated below shall succeed to the position of, and act as, Secretary of the Army in the order indicated:

1. Under Secretary of the Army.
2. Assistant Secretaries of the Army, in the order fixed by their length of service as such.
3. Chief of Staff, United States Army.
4. Vice Chief of Staff, United States Army.
5. Commanding General, U.S. Army Forces Command.

PART III. *Succession to the Position of Secretary of the Navy*

In the event of the death, disability, or absence of the Secretary of the Navy, the officers designated below shall succeed to the position of, and act as, Secretary of the Navy in the order indicated:

1. Under Secretary of the Navy.
2. Assistant Secretaries of the Navy, in the order prescribed by the Secretary of the Navy, or if no order is prescribed by the Secretary, then in the order fixed by their length of service as such.
3. Chief of Naval Operations.
4. Vice Chief of Naval Operations.

PART IV. *Succession to the Position of Secretary of the Air Force*

In the event of the death, disability, or absence of the Secretary of the Air Force, the officers designated below shall succeed to the position of, and act as, Secretary of the Air Force in the order indicated:

1. Under Secretary of the Air Force.
2. Assistant Secretaries of the Air Force, in the order fixed by their length of service as such.
3. Chief of Staff, United States Air Force.
4. Vice Chief of Staff, United States Air Force.
5. The senior Deputy Chief of Staff who is not absent or disabled.
6. The Commander, Air University.

PART V. *Variations in the Order of Succession*

Without regard to any other part of this Order, except Part VI, the President, or the person acting as President under section 19 of title 3, United States Code, may, in the event of the death, disability, or absence of the Secretary of Defense, appoint any officer designated in Part I of this Order to succeed to the position of, and act as, Secretary of Defense; and that person may, in the event of the death, disability, or absence of the Secretary of a Military Department, appoint any officer designated in the part of this order that relates to the order to succession in the Department concerned to succeed to the position of, and act as, the Secretary of that Department.

PART VI. *Temporary Nature of Succession/Acting Capacity*

Succession to office pursuant to this Order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory position held by the successor. An officer shall not succeed to any position under this Order if the position that he occupies entitling him so to succeed is held by him in an acting capacity only.

PART VII. *Revocation of Prior Executive Order*

Executive Order No. 10820 of May 18, 1959, is hereby revoked.

RONALD REAGAN.

SUBCHAPTER IV—TRANSFERS

§ 3351. Preference eligibles; transfer; physical qualifications; waiver

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241; title 22 section 1438.

SUBCHAPTER V—PROMOTION

§ 3363. Preference eligibles; promotion; physical qualifications; waiver

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241; title 22 section 1438.

SUBCHAPTER VI—ASSIGNMENTS TO AND FROM STATES

§ 3371. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3372 of this title.

§ 3372. General provisions

(a) On request from or with the concurrence of a State or local government, and with the consent of the employee concerned, the head of a Federal agency may arrange for the assignment of—

[*See main edition for text of* (1) *and* (2)]

for work of mutual concern to his agency and the State or local government that he determines will be beneficial to both. The period of an assignment under this subchapter may not exceed two years. However, the head of a Federal agency may extend the period of assignment for not more than two additional years. In the case of assignments made to Indian tribes or tribal organizations as defined in section 3371(2)(C) of this subchapter,[1] the head of an executive agency may extend the period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 98-146, title II, § 201, Nov. 4, 1983, 97 Stat. 946.)

[1] So in original. Probably should be "this title,".

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-146 added sentence providing that, in the case of assignments made to Indian tribes or tribal organizations as defined in section 3371(2)(C) of this title, the head of an executive agency may extend the period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization.

SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

§ 3393. Career appointments

[*See main edition for text of* (a)]

(b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees of the agency or commissioned officers of the uniformed services serving on active duty in such agency. The boards shall, in accordance with merit staffing requirements established by the Office, conduct the merit staffing process for career appointees, including—

[*See main edition for text of* (1) *and* (2); (c) *to* (g)]

(As amended Pub. L. 98-615, title III, § 306(b)(1), Nov. 8, 1984, 98 Stat. 3220.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-615 added provision referring to commissioned officers of the uniformed services serving on active duty in such agency in provisions preceding par. (1).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective following the expiration of the 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3135 of this title.

§ 3395. Reassignment and transfer within the Senior Executive Service

(a) [*See main edition for text of* (1)]

(2)(A) Except as provided in subparagraph (B) of this paragraph, a career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives written notice of the reassignment at least 15 days before the effective date of such reassignment.

(B)(i) A career appointee may not be reassigned to a Senior Executive Service position outside the career appointee's commuting area unless—

(I) before providing notice under subclause (II) of this clause (or seeking or obtaining the consent of the career appointee under clause (ii) of this subparagraph to waive such notice), the agency consults with the career appointee on the reasons for, and the appointee's preferences with respect to, the proposed reassignment; and

(II) the career appointee receives written notice of the reassignment, including a statement of the reasons for the reassignment, at

least 60 days before the effective date of the reassignment.

(ii) Notice of reassignment under clause (i)(II) of this subparagraph may be waived with the written consent of the career appointee involved.

[*See main edition for text of (b) to (e)*]

(As amended Pub. L. 98-615, title III, § 304(a), Nov. 8, 1984, 98 Stat. 3218.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-615 designated existing provisions as subpar. (A), in subpar. (A) as so designated, added exception relating to subpar. (B), and added subpar. (B).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3135 of this title.

CHAPTER 34—PART-TIME CAREER EMPLOYMENT OPPORTUNITIES

§ 3401. Definitions

For the purpose of this chapter—

(1) "agency" means—

[*See main edition for text of (A) to (E)*]

(F) the Office of the Architect of the Capitol; but does not include—

(i) a Government controlled corporation;

(ii) the Tennessee Valley Authority;

(iii) the Virgin Island [1] Corporation;

(iv) the Panama Canal Company;

(v) the Federal Bureau of Investigation, Department of Justice;

(vi) the Central Intelligence Agency; and

(vii) the National Security Agency, Department of Defense; and

[*See main edition for text of (2)*]

(As amended Pub. L. 97-468, title VI, § 615(b)(1)(B), Jan. 14, 1983, 96 Stat. 2578.)

REFERENCES IN TEXT

For definition of Panama Canal Company, referred to in par. (1)(iv), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1983—Par. (1)(iii) to (viii). Pub. L. 97-468 struck out cl. (iii), which excluded the Alaska Railroad, and redesignated cls. (iv) to (viii) as (iii) to (vii), respectively.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-468 became effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97-468.

TERMINATION DATE OF 1982 AMENDMENT

For repeal of section 5 of Pub. L. 97-221, as amended, which had provided that the amendment by Pub. L. 97-221 was not to be in effect after Dec. 31, 1985, see note set out under section 6101 of this title.

[1] So in original. Probably should be "Islands".

CHAPTER 35—RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT

SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

Sec.
3595a. Furlough in the Senior Executive Service.

AMENDMENTS

1984—Pub. L. 98-615, title III, § 306(c)(2), Nov. 8, 1984, 98 Stat. 3220, added item 3595a.

SUBCHAPTER I—RETENTION PREFERENCE

§ 3501. Definitions; application

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3502, 6303 of this title; title 10 section 1586; title 20 section 241; title 22 section 1438.

§ 3502. Order of retention

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7512, 7521 of this title; title 10 section 1586; title 20 section 241; title 22 section 1438; title 25 section 472a; title 32 section 709.

§ 3503. Transfer of functions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3595 of this title; title 10 section 1586; title 20 section 241; title 22 section 1438; title 24 section 225d.

§ 3504. Preference eligibles; retention; physical qualifications; waiver

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3501 of this title; title 20 section 241; title 22 section 1438.

SUBCHAPTER IV—REEMPLOYMENT AFTER SERVICE WITH AN INTERNATIONAL ORGANIZATION

§ 3581. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3343 of this title; title 26 section 3121; title 42 section 410.

SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

§ 3593. Reinstatement in the Senior Executive Service

[*See main edition for text of (a) and (b)*]

(c)(1) A former career appointee shall be reinstated, without regard to section 3393(b) and (c) of this title, to any vacant Senior Executive Service position in an agency for which the appointee is qualified if—

(A) the individual was a career appointee on May 31, 1981;

(B) the appointee was removed from the Senior Executive Service under section 3595 of this title before October 1, 1984, due to a reduction in force in that agency;

[*See main edition for text of (C) and (D), (2)*]

(As amended Pub. L. 98-615, title III, § 303(a), Nov. 8, 1984, 98 Stat. 3217.)

AMENDMENTS

1984—Subsec. (c)(1)(B). Pub. L. 98-615 inserted "before October 1, 1984,".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective following the expiration of the 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3135 of this title.

§ 3594. Guaranteed placement in other personnel systems

[*See main edition for text of (a)*]

(b) A career appointee who has completed the probationary period under section 3393(d) of this title, and who—

(1) is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title; or

(2) is removed from the Senior Executive Service under paragraph (4) or (5) of section 3595(b) of this title;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

[*See main edition for text of (c)*]

(As amended Pub. L. 98-615, title III, § 303(b), Nov. 8, 1984, 98 Stat. 3217.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-615 added provision relating to career appointees removed from the Senior Executive Service under section 3595(b)(4) or (5) of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective following the expiration of the 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3135 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3135 of this title.

§ 3595. Reduction in force in the Senior Executive Service

[*See main edition for text of (a)*]

(b) [*See main edition for text of (1) and (2)*]

(3) A career appointee who, but for this subsection, would be removed from the Senior Executive Service due to a reduction in force within an agency—

[*See main edition for text of (A)*]

(B) if the agency head certifies, in writing, to the Office of Personnel Management that no such position is available in the agency, shall be placed by the Office in any agency in any vacant Senior Executive Service position unless the head of that agency determines that the career appointee is not qualified for that position.

The Office of Personnel Management shall take all reasonable steps to place a career appointee under subparagraph (B) and may require any agency to take any action which the Office considers necessary to carry out any such placement.

(4) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee declines a reasonable offer for placement in a Senior Executive Service position under paragraph (3)(B).

(5) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee is not placed in another Senior Executive Service position under paragraph (3)(B) within 45 days after the Office receives certification regarding that appointee under paragraph (3)(B).

(c) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title whether the reduction in force complies with the competitive procedures required under subsection (a).

[*See main edition for text of (d)*]

(e) The Office shall prescribe regulations under which the rights accorded to a career appointee in the event of a transfer of function are comparable to the rights accorded to a competing employee under section 3503 of this title in the event of such a transfer.

(As amended Pub. L. 98-615, title III, §§ 303(c), (d), 304(b), Nov. 8, 1984, 98 Stat. 3218, 3219.)

AMENDMENTS

1984—Subsec. (b)(3)(B). Pub. L. 98-615, § 303(c)(1), struck out the designation "(i)" before provisions relating to placement in any agency in any vacant Executive Service position, and struck out former cl. (ii), which had related to detailing by the Office of Personnel Management to any vacant Senior Executive Service position for which the Office deemed the employee to be qualified in any agency for a period not to exceed 60 days, and placement in such position by the Office after the period of such detail, unless the head of the agency determined that the career appointee was not qualified for such position.

Subsec. (b)(4). Pub. L. 98-615, § 303(c)(2), struck out "and the civil service" after "removed from the Senior Executive Service", struck out the designation "(A)" before "the career appointee declines", and substituted a period for the semicolon and "or" at the end thereof. Former subpar. (B) redesignated par. (5).

Subsec. (b)(5). Pub. L. 98-615, § 303(c)(2), redesignated former par. (4)(B) as (5), in par. (5) as so redesignated substituted "A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if" for "subject to paragraph (5),", substituted "45 days" for "120 days", and struck out former par. (5), which had provided that persons who were career appointees as of May 31, 1981, could only be removed from the Senior Executive Service and the civil service due to a reduction in force after the 120-day period if the Director of the Office of Personnel Management certified to certain Congressional committees that the Office had taken all reasonable steps to place the appointee but had been unable to do so due to the appointee's highly specialized skills and experience.

Subsec. (c). Pub. L. 98-615, § 303(d), struck out the designation "(1)" before "whether the reduction", and

struck out pars. (2) and (3), which had provided, respectively, the right to appeal any removal under subsec. (b)(4)(A) and the right to appeal any nonappointment under subsec. (b)(3), and, in the event of such nonappointment, whether the Office of Personnel Management took all reasonable steps to achieve such placement and whether the agency correctly decided under subsec. (b)(3)(B) that the career appointee was not qualified for such placement.

Subsec. (e). Pub. L. 98–615, § 304(b), added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 303(c) and (d) of Pub. L. 98–615 effective following the expiration of the 90-day period beginning on Nov. 8, 1984, and amendment by section 304(b) of Pub. L. 98–615 effective Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3135 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3135, 3393, 3593, 3594, 7542 of this title.

§ 3595a. Furlough in the Senior Executive Service

(a) For the purposes of this section, "furlough" means the placement of a senior executive in a temporary status in which the senior executive has no duties and is not paid when the placement in such status is by reason of insufficient work or funds or for other nondisciplinary reasons.

(b) An agency may furlough a career appointee only in accordance with regulations issued by the Office of Personnel Management.

(c) A career appointee who is furloughed is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(Added Pub. L. 98–615, title III, § 306(c)(1), Nov. 8, 1984, 98 Stat. 3220.)

EFFECTIVE DATE

Section effective following the expiration of the 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as an Effective Date of 1984 Amendment note under section 3135 of this title.

Subpart C—Employee Performance

CHAPTER 41—TRAINING

§ 4103. Establishment of training programs

EXECUTIVE ORDER NO. 12136

Ex. Ord. No. 12136, May 15, 1979, 44 F.R. 28771, which continued the President's Commission on Personnel Interchange and renamed it the President's Commission on Executive Exchange, was revoked by Ex. Ord. No. 12493, Dec. 5, 1984, 49 F.R. 47819, set out as a note below.

EX. ORD. NO. 12493. PRESIDENT'S COMMISSION ON EXECUTIVE EXCHANGE

Ex. Ord. No. 12493, Dec. 5, 1984, 49 F.R. 47819, as amended by Ex. Ord. No. 12516, May 21, 1985, 50 F.R. 21417, provided that:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to amend the responsibilities of the President's Commission on Executive Exchange and to continue its work of benefiting both the Government and the private sector by enabling the most outstanding executives to work in the other sector, it is hereby ordered as follows:

SECTION 1. *Establishment of the Commission.* (a) The President's Commission on Executive Exchange is hereby continued.

(b) The Commission shall be composed of not more than thirty-six members who shall be appointed from time to time by the President from among leaders in the private sector and the Executive branch of the Government. The President shall seek, so far as he deems practicable or advisable, to appoint up to seventy-five percent of the Commission membership from the ranks of Chief Executive Officers, Chief Operating Officers, Chairmen, Senior Partners or other individuals of comparable rank and stature from the private sector. Executive branch members, to the extent the President deems practicable or advisable, may include Cabinet Secretaries, Agency Heads, and such other officials of comparable rank or position as deemed appropriate by the President.

The President shall designate a Chairman from among the members of the Commission. The Chairman and members shall serve at the pleasure of the President. Members of the Commission shall serve two-year terms or until a successor is appointed.

(c) Members of the Commission who are full-time officers or employees of the Federal government shall receive no additional compensation by reason of this Order, and members who are not such officers or employees shall serve without compensation, but each Commissioner shall be provided with travel expenses, including per diem in lieu of subsistence, as authorized by law.

SEC. 2. *Functions of the Commission.* (a) The Commission shall administer an Executive Exchange Program in which: (1) outstanding private sector executives, primarily those who have achieved senior level management positions, and also those exceptional managers who have unique qualifications and extremely high potential for policymaking positions, will be selected as Presidential Exchange Executives and assigned to positions in the Senior Executive Service or positions of comparable rank or stature, reporting, as appropriate, to Cabinet Officers, Ambassadors, Agency Heads, Under Secretaries, Assistant Secretaries or other high-ranking Government officials for not more than one year, with an extension of up to ninety days in extraordinary circumstances; and (2) career Federal Executives, who are members of the Senior Executive Service, or equivalent level, or are candidates for the Senior Executive Service, or are of outstanding qualification and are serving at an equivalent level to a Senior Executive Service candidate, provided that such level is not lower than level 15 of the General Schedule, will be selected as Presidential Exchange Executives and assigned for one year to positions in the private sector offering significant challenge, responsibility and regular and continuing contact with senior private sector officials.

(b) The Commission shall administer an Executive International Embassy Assignments Program in which exceptionally qualified private sector executives, primarily those who have achieved senior level management positions, and also exceptional managers who have unique qualifications and extremely high potential for policymaking positions, may be selected as Presidential Exchange Executives and, as appropriate, assigned for one year, with an extension of up to ninety days, to the Senior Foreign Service or other key positions in United States Embassies reporting to Ambassadors or othe[r] high-ranking Government officials.

(c) The Commission shall administer an education program which places the work experience of the Presidential Exchange Executives in the broader context of both Federal government and private sector operations and, to the extent desirable and appropriate, may include exposure to international economic and foreign affairs.

(d) The Commission shall supervise and review the operation of the Program, and may recommend to the President ways to promote and improve the Program.

(e) The Commission shall ensure that the Program operates in compliance with the merit principles set

forth in Section 2301 of Title 5 of the United States Code.

SEC. 3. *Responsibilities of Executive Agencies.* Each Executive agency shall, to the extent permitted by law, provide the Commission with such assistance as may be necessary for the effective performance of its functions.

SEC. 4. *Administrative Provisions.* (a) The Office of Personnel Management shall provide the Commission with administrative services, staff support and travel expenses, as authorized by law. The Office of Administration, Executive Office of the President, may provide services to the Commission on a reimbursable basis pursuant to interagency agreement, as may be authorized by the Economy Act of 1932, as amended, 31 U.S.C. 1535 *et seq.*

(b) The Executive Director's responsibilities shall be to carry out the activities of the Commission.

(c) Executive Order No. 12136 of May 15, 1979 is revoked.

RONALD REAGAN.

§ 4108. Employee agreements; service after training

[*See main edition for text of* (a) *to* (c)]

(d) For purposes of this section, "training" includes a private sector assignment of an employee participating in the Executive Exchange Program of the President's Commission on Executive Exchange.

(As amended Pub. L. 98-224, § 5(a), Mar. 2, 1984, 98 Stat. 48.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-224 added subsec. (d).

§ 4109. Expenses of training

[*See main edition for text of* (a) *and* (b)]

(c) Notwithstanding subsection (a)(1) of this section, the Administrator, Federal Aviation Administration, may pay an individual training to be an air traffic controller of such Administration, and the Secretary of Defense may pay an individual training to be an air traffic controller of the Department of Defense, during the period of such training, at the applicable rate of basic pay for the hours of training officially ordered or approved in excess of forty hours in an administrative workweek.

(d)(1) The revolving fund referred to in section 1304(e)(1) of this title shall be available to the Executive Exchange Program of the President's Commission on Executive Exchange without fiscal year limitation—

(A) for the costs of education and related travel of participants in such program; and

(B) for printing, without regard to section 501 of title 44; and

(C) in such amounts as may be specified in appropriations Acts, for entertainment expenses.

(2) Participation fees which the President's Commission on Executive Exchange may impose and collect for participation in its Executive Exchange Program (including the balance of any participation fees collected under former section 1304(e)(1)(ii) of this title as of the effective date of this subsection) shall be credited to the revolving fund.

(As amended Pub. L. 98-224, § 5(b)(2), Mar. 2, 1984, 98 Stat. 48; Pub. L. 98-525, title XV, § 1537(a), Oct. 19, 1984, 98 Stat. 2635.)

REFERENCES IN TEXT

The effective date of this subsection, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 98-224, which was approved Mar. 2, 1984.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-525 inserted "and the Secretary of Defense may pay an individual training to be an air traffic controller of the Department of Defense,".

Subsec. (d). Pub. L. 98-224 added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1537(f) of Pub. L. 98-525 provided that: "The amendments made by this section [amending sections 4109, 5532, 5546a, 5547, and 8344 of this title] shall take effect on October 1, 1984."

CHAPTER 43—PERFORMANCE APPRAISAL

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
4302a. Establishment of performance appraisal systems for performance management and recognition system employees.

AMENDMENTS

1984—Pub. L. 98-615, title II, § 202(b), Nov. 8, 1984, 98 Stat. 3216, added item 4302a.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2108, 2302, 3502 of this title; title 20 section 241; title 49 App. section 1555.

SUBCHAPTER I—GENERAL PROVISIONS

§ 4301. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 559, 1305 of this title; title 7 section 5005.

§ 4302. Establishment of performance appraisal systems

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 5005; title 31 section 732.

§ 4302a. Establishment of performance appraisal systems for performance management and recognition system employees

(a) Each agency shall develop one or more performance appraisal systems for employees covered by chapter 54 of this title which—

(1) provide for periodic appraisals of job performance of such employees;

(2) require the joint participation of the supervising official and the employee in developing performance standards with authority for establishing standards resting with the supervising official; and

(3) use the results of performance appraisals as a basis—

(A) for adjusting the base pay and making performance award decisions with respect to any such employee in accordance with the applicable provisions of such chapter 54; and

(B) for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing any such employee.

(b) Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system under this section shall provide for—

(1) five levels of summary performance ratings as follows:

(A) two levels which are above the fully successful level;

(B) a fully successful level; and

(C) two levels which are below the fully successful level;

(2) establishing, in writing, the critical elements of each employee's position and the performance standards for the fully successful level for each such element which will, to the maximum extent feasible, permit accurate evaluation of job performance on the basis of objective criteria related to the job in question;

(3) communicating, at the beginning of each appraisal period and in writing, to each employee who is covered by chapter 54 of this title the performance standards and critical elements of the employee's position;

(4) evaluating each such employee during the appraisal period on the basis of such standards;

(5) assisting any such employee in improving performance rated at a level below the fully successful level; and

(6) reassigning, reducing in grade, or removing any employee who continues to perform at the level which is 2 levels below the fully successful level, after such employee has been provided with written notice of such employee's rating and afforded reasonable opportunity to raise such employee's level of performance to the fully successful level or higher.

(c)(1) Appraisals of performance under this section—

(A) shall take into account individual performance and may take into account organizational accomplishment;

(B) shall be based on factors such as—

(i) any improvement in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

(ii) cost efficiency;

(iii) timeliness of performance;

(iv) other indications of the effectiveness, productivity, and quality of performance of the employees for whom the employee is responsible; and

(v) meeting affirmative action goals and achievement of equal employment opportunity requirements;

(C) may be reviewed by an employee of the agency in accordance with procedures established by the Office of Personnel Management;

(D) shall, on request of the employee whose performance is appraised, by [2] reconsidered by an employee of the agency in accordance with procedures established by the Office; and

(E) may not be appealed outside the agency.

(2) Reconsideration of an appraisal under paragraph (1)(D) of this subsection may be made only by an employee who is in a higher position in the agency than each employee who made, reviewed, or approved the appraisal.

(d)(1) In order to promote the purposes of this section, there shall be established within each agency a performance standards review board (hereinafter in this subsection referred to as the "board"), consisting of at least six members, all of whom shall be chosen by the agency head from individuals employed in or under such agency. Of the members, at least one-half shall be employees who are covered by chapter 54 of this title and who are in the competitive service. A board shall be chaired by the member of the board designated for that purpose by the agency head.

(2) It shall be the function of each board—

(A) to assess, by the use of representative sampling techniques, the appropriateness of performance standards developed and used by the agency under this section;

(B) to study the feasibility of an awards program based on the collective performance of units or other groups of employees who are covered by chapter 54 of this title, and to submit as part of its annual report under paragraph (3) of this subsection recommendations for any actions which the board considers appropriate with respect to any such program; and

(C) to provide technical assistance with respect to any demonstration projects which may relate to performance standards of the agency under this section.

(3) A board shall report to the head of the agency on its activities under this subsection annually.

(e) In carrying out this section, neither the Office nor any other agency may prescribe a distribution of levels of performance ratings for employees covered by chapter 54 of this title.

(f) The Office may not prescribe, or require an agency to prescribe, any specific performance standard or element for purposes of this section.

(g) This section and any regulations prescribed under this section shall cease to be effective as of the date on which chapter 54 of this title ceases to be effective.

(Added Pub. L. 98–615, title II, § 202(a), Nov. 8, 1984, 98 Stat. 3214.)

EFFECTIVE DATE

Section effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98–615, set out as an Effective Date of 1984 Amendment note under section 5401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5403, 5404, 5406 of this title; title 7 section 5005.

[2] So in original. Probably should be "be".

§ 4303. Actions based on unacceptable performance

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7121, 7512, 7701 of this title; title 7 section 5005; title 31 section 732.

§ 4304. Responsibilities of the Office of Personnel Management

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 5005.

§ 4305. Regulations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4304 of this title; title 7 section 5005.

SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

§ 4312. Senior Executive Service performance appraisal systems

[*See main edition for text of* (a)]

(b) Each performance appraisal system established by an agency under subsection (a) of this section shall provide—

[*See main edition for text of* (1) *and* (2)]

(3) that each senior executive in the agency is provided a copy of the appraisal and rating under section 4314 of this title and is given an opportunity to respond in writing and have the rating reviewed by an employee, or (with the consent of the senior executive) a commissioned officer in the uniformed services serving on active duty, in a higher level in the agency before the rating becomes final.

[*See main edition for text of* (c) *and* (d)]

(As amended Pub. L. 98–615, title III, § 306(b)(2), Nov. 8, 1984, 98 Stat. 3220.)

AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98–615 inserted ", or (with the consent of the senior executive) a commissioned officer in the uniformed services serving on active duty," and directed that "executive" be stricken which was executed by striking "executive" only where it appeared before "level in the agency".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective following the expiration of the 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3135 of this title.

CHAPTER 45—INCENTIVE AWARDS

SUBCHAPTER II—AWARDS FOR COST SAVINGS DISCLOSURES

Sec.
4514. Expiration of authority; reporting requirement.

AMENDMENTS

1985—Pub. L. 99–145, title XII, § 1225(b)(1)(B), Nov. 8, 1985, 99 Stat. 730, inserted "; reporting requirement" in item 4514.

SUBCHAPTER I—AWARDS FOR SUPERIOR ACCOMPLISHMENTS

§ 4501. Definitions

For the purpose of this subchapter—

[*See main edition for text of* (1)]

(2) "employee" means—

(A) an employee as defined by section 2105 of this title, but does not include an employee covered by the performance management and recognition system established under chapter 54 of this title; and

[*See main edition for text of* (B), (3)]

(As amended Pub. L. 98–615, title II, § 204(a)(1), Nov. 8, 1984, 98 Stat. 3216.)

AMENDMENTS

1984—Par. (2)(A). Pub. L. 98–615 substituted "the performance management and recognition system established under chapter 54" for "the merit pay system established under section 5402".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98–615, set out as a note under section 5401 of this title.

§ 4503. Agency awards

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4502, 4504 of this title; title 50 section 403e–1.

SUBCHAPTER II—AWARDS FOR COST SAVINGS DISCLOSURES

§ 4512. Agency awards for cost savings disclosures

[*See main edition for text of* (a) *and* (b)]

[(c) Repealed. Pub. L. 99–145, title XII, § 1225(b)(2), Nov. 8, 1985, 99 Stat. 730]

(As amended Pub. L. 99–145, title XII, § 1225(b)(2), Nov. 8, 1985, 99 Stat. 730.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99–145 struck out subsec. (c) which provided that the Inspector General, or other employee designated under subsection (b), shall submit to the Comptroller General documentation substantiating any award made under this section and that the Comptroller General shall, from time to time, review awards made under this section and procedures used in making such awards to verify the cost savings for which the awards were made.

§ 4514. Expiration of authority; reporting requirement

(a) No award may be made under this subchapter after September 30, 1988.

(b)(1) Not later than March 15, 1988, the Comptroller General shall submit to Congress a report on the effectiveness of the awards program under this subchapter.

(2) The report shall include the views of the Comptroller General as to whether the authority to make awards under this subchapter should be continued after September 30, 1988,

and, if so, whether any modification in such authority would be appropriate.

(As amended Pub. L. 99-145, title XII, § 1225(b)(1)(A), Nov. 8, 1985, 99 Stat. 730.)

AMENDMENTS

1985—Pub. L. 99-145 amended section generally, inserting "; reporting requirement" in section catchline, designating existing provisions as subsec. (a) and therein substituting "subchapter" and "1988" for "title" and "1984", respectively, and adding subsec. (b).

Subpart D—Pay and Allowances

CHAPTER 51—CLASSIFICATION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3101, 3102, 3109, 3374, 5304, 5331, 5334, 5342, 5348, 5361, 5363, 5372, 5541, 5544, 5545, 7204 of this title; title 2 sections 60e-2, 60e-2a, 60e-2b, 60e-6, 162a, 166, 197, 293, 353, 356, 437c; title 4 section 142; title 7 sections 511m, 610, 1507, 1642, 1765a, 1981, 5005; title 8 section 1103; title 10 sections 4540, 7212, 9540; title 12 sections 1701c, 2405, 3012; title 13 section 23; title 14 section 432; title 15 sections 78d, 78s, 79z-5, 80a-45, 80b-18, 205l, 278a, 327, 634d, 648, 714g, 714h, 715h, 717q, 1023, 1942, 2053, 2451; title 16 sections 81c, 410cc-36, 450jj-1, 460m, 469j, 470m, 590d, 793, 825l, 832i, 833h, 916l, 3702; title 18 section 4001; title 20 sections 74, 75f, 76dd, 80g, 80o, 241, 964, 1004, 1089, 1098, 1102, 1135a-2, 1145, 1221e, 1417, 2106, 3413, 3461; title 22 sections 272a, 277d-3, 277d-19, 280b, 280i, 280k, 287e, 287r, 289b, 290b, 2024, 2083, 2454, 2581, 2873, 3008, 3981, 4154, 4606; title 25 sections 2a, 305a, 633, 640d-11, 2011; title 26 sections 7471, 9010, 9040; title 28 sections 602, 625, 626; title 29 sections 172, 661, 676, 761a, 783, 1774; title 30 sections 556, 664, 823; title 33 sections 569a, 939, 940, 984, 1325, 1374; title 35 sections 3, 7; title 36 section 1405; title 38 sections 2003, 2014, 4107, 4202; title 40 sections 13b, 166b-1f, 166b-3, 174j-8, 609, 873; title 41 sections 38, 46, 104; title 42 sections 204, 217a, 282, 300v-2, 907a, 1320a-4, 1563, 1731, 1855f, 1863, 1873, 1962a-4, 2000e-4, 2000g, 2201, 2473, 3525, 4276, 4365, 4372, 5042, 5149, 7231; title 43 sections 316n, 1731; title 44 section 2503; title 45 sections 154, 362, 443; title 46 App. sections 1111, 1295e, 1295g; title 47 section 154; title 49 sections 10363, 10383, 11161; title 49 App. sections 231, 1441; title 50 sections 402, 404; title 50 App. sections 460, 2001, 2153, 2162, 2168, 2169, 2253.

§ 5102. Definitions; application

(a) For the purpose of this chapter—

(1) "agency" means—

[*See main edition for text of* (A) *to* (G)]

but does not include—

(i) a Government controlled corporation;

(ii) the Tennessee Valley Authority;

(iii) the Virgin Islands Corporation;

(iv) the Atomic Energy Commission;

(v) the Central Intelligence Agency;

(vi) the Panama Canal Commission;

(vii) the National Security Agency, Department of Defense;

(viii) the General Accounting Office;

(x) [1] the Defense Intelligence Agency, Department of Defense;

[*See main edition for text of* (2) *to* (5); (b)]

(c) This chapter does not apply to—

[*See main edition for text of* (1) *to* (25)]

(26) civilian members of the faculty of the Coast Guard Academy whose pay is fixed under section 186 of title 14;

(27) members of the special police force of the Library of Congress whose pay is fixed under section 167 of title 2; or

(28) civilian members of the faculty of the Air Force Institute of Technology whose pay is fixed under section 9314 of title 10.

[*See main edition for text of* (d)]

(As amended Pub. L. 97-468, title VI, § 615(b)(1)(C), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 98-618, title V, § 502(a), Nov. 8, 1984, 98 Stat. 3302; Pub. L. 99-145, title V, § 504(b), Nov. 8, 1985, 99 Stat. 622.)

AMENDMENTS

1985—Subsec. (c)(28). Pub. L. 99-145 added par. (28).

1984—Subsec. (a)(1)(x). Pub. L. 98-618 added cl. (x).

1983—Subsec. (a)(1)(iii) to (ix). Pub. L. 97-468 struck out cl. (iii) which excluded the Alaska Railroad, and redesignated cls. (iv) to (ix) as (iii) to (viii), respectively.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-468 became effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97-468.

DISSOLUTION OF VIRGIN ISLANDS CORPORATION

The Virgin Islands Corporation was established to have succession until June 30, 1969, unless sooner dissolved by Act of Congress, by act June 30, 1949, ch. 285, 63 Stat. 350, as amended (48 U.S.C. 1407 et seq.). The Corporation terminated its program June 30, 1965, and dissolved July 1, 1966. Act June 30, 1949, was repealed by Pub. L. 97-357, title III, § 308(e), Oct. 19, 1982, 96 Stat. 1710.

CIVILIAN MEMBERS OF FACULTY OF AIR FORCE INSTITUTE OF TECHNOLOGY ON NOVEMBER 8, 1985

Section 504(c) of Pub. L. 99-145 provided that: "Section 9314(b)(2) of title 10, United States Code (as added by subsection (a)(1)(B)), and section 5102(c)(28) of title 5, United States Code (as added by subsection (b)), shall not apply to any person who on the date of the enactment of this Act [Nov. 8, 1985]—

"(1) is a civilian member of the faculty of the United States Air Force Institute of Technology;

"(2) is paid a rate of basic pay under the General Schedule; and

"(3) elects, under procedures prescribed by the Secretary of the Air Force, to continue to be paid under the General Schedule."

§ 5103. Determination of applicability

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 903.

§ 5104. Basis for grading positions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5402, 7201 of this title; title 10 section 1586; title 20 section 1402.

[1] So in original. Subsec. (a)(1) does not contain a cl. (ix).

CHAPTER 53—PAY RATES AND SYSTEMS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 5363 of this title; title 10 section 9314; title 15 section 770; title 20 section 3502; title 22 sections 2385, 4606; title 42 sections 5872, 7292, 8714.

SUBCHAPTER I—PAY COMPARABILITY SYSTEM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8340 of this title; title 22 sections 3963, 4606; title 31 section 325; title 42 section 7211.

§ 5301. Policy

ACT REFERRED TO IN OTHER SECTIONS

The Federal Pay Comparability Act of 1970 is referred to in title 19 sections 2075, 2171.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5305, 5306 of this title; title 2 section 906; title 31 section 732.

§ 5303. Higher minimum rates; Presidential authority

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3326, 5363, 5405 of this title; title 31 section 325.

§ 5305. Annual pay reports and adjustments

FEDERAL EMPLOYEE PAY ADJUSTMENTS

1984—Pub. L. 98-270, title II, § 202(a), Apr. 18, 1984, 98 Stat. 158, provided that:

"(1) Notwithstanding any other provision of law, in the case of fiscal year 1984, the overall percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems, shall be an increase of 4 percent.

"(2) Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage, and shall take effect as of the first day of the first applicable pay period commencing on or after January 1 of such fiscal year."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5301, 5307, 5318, 5382, 5403 of this title; title 2 sections 31, 60a-1, 60a-2, 84a-1, 906; title 3 section 104; title 28 section 461; title 38 section 4142; title 42 sections 254l, 294z.

§ 5308. Pay limitation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5301, 5382 of this title; title 10 section 9314.

SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

§ 5312. Positions at level I

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Secretary of State.
Secretary of the Treasury.
Secretary of Defense.
Attorney General.
Secretary of the Interior.
Secretary of Agriculture.
Secretary of Commerce.
Secretary of Labor.
Secretary of Health and Human Services.
Secretary of Housing and Urban Development.
Secretary of Transportation.
United States Trade Representative.
Secretary of Energy.
Secretary of Education.
Special Assistant for Agricultural Trade and Food Aid.

(As amended Pub. L. 99-198, title XI, § 1113(d), Dec. 23, 1985, 99 Stat. 1480.)

AMENDMENTS

1985—Pub. L. 99-198 added item relating to Special Assistant for Agricultural Trade and Food Aid.

SALARY INCREASES

1985—Salaries of positions at level I increased to $86,200 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1985, as provided by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of this title.

1984—Salaries of positions at level I increased to $83,300 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1984, as provided by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 sections 973, 1603; title 12 section 1723a; title 22 sections 3965, 4606; title 26 section 3121; title 28 section 591; title 39 section 1003; title 42 sections 410, 7211, 7291, 8713; title 45 section 543; title 47 section 396.

§ 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Secretary of Defense.
Deputy Secretary of State.
Administrator, Agency for International Development.
Administrator of the National Aeronautics and Space Administration.
Administrator of Veterans' Affairs.
Deputy Secretary of the Treasury.
Deputy Secretary of Transportation.
Chairman, Nuclear Regulatory Commission.
Chairman, Council of Economic Advisers.
Chairman, Board of Governors of the Federal Reserve System.
Director of the Office of Management and Budget.
Director of the Office of Science and Technology.
Director of the United States Arms Control and Disarmament Agency.
Director of the United States Information Agency.
Director of Central Intelligence.
Secretary of the Air Force.
Secretary of the Army.

Secretary of the Navy.
Administrator, Federal Aviation Administration.
Director of the National Science Foundation.
Deputy Attorney General.
Deputy Secretary of Energy.
Deputy Secretary of Agriculture.
Director of the Office of Personnel Management.
Ambassadors at Large.
Administrator, Federal Highway Administration.
Administrator of the Environmental Protection Agency.

(As amended Pub. L. 98-80, § 2(a)(1), Aug. 23, 1983, 97 Stat. 485; Pub. L. 98-216, § 3(a)(1), Feb. 14, 1984, 98 Stat. 6.)

AMENDMENTS

1984—Pub. L. 98-216 substituted "Director of the Office of Management and Budget" for "Director of the Bureau of the Budget".

1983—Pub. L. 98-80 added item relating to Administrator of the Environmental Protection Agency.

SALARY INCREASES

1985—Salaries of positions at level II increased to $75,100 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1985, as provided by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of this title.

1984—Salaries of positions at level II increased to $72,600 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1984, as provided by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8701, 8714b of this title; title 3 sections 105, 106, 108; title 10 section 973; title 22 section 3961; title 26 section 3121; title 28 section 591; title 31 section 703; title 42 sections 210, 410, 1864, 4346, 5871, 5872, 6612, 7132, 7211, 7291, 7293.

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.
Under Secretary of Commerce, Under Secretary of Commerce for Economic Affairs, Under Secretary of Commerce for Export Administration, and Under Secretary of Commerce for Travel and Tourism.
Under Secretary of Education.
Under Secretary of Health and Human Services.
Under Secretary of the Interior.
Under Secretary of Labor.
Under Secretary of State for Political Affairs and Under Secretary of State for Economic and Agricultural Affairs and an Under Secretary of State for Coordinating Security Assistance Programs and Under Secretary of State for Management.
Counselor of the Department of State.
Under Secretary of the Treasury (or Counselor).
Under Secretary of the Treasury for Monetary Affairs.
Administrator of General Services.
Administrator of the Small Business Administration.
Deputy Administrator of Veterans' Affairs.
Deputy Administrator, Agency for International Development.
Chairman of the Merit Systems Protection Board.
Chairman, Federal Communications Commission.
Chairman, Board of Directors, Federal Deposit Insurance Corporation.
Chairman of the Federal Home Loan Bank Board.
Chairman, Federal Energy Regulatory Commission.
Chairman, Federal Trade Commission.
Chairman, Interstate Commerce Commission.
Chairman, National Labor Relations Board.
Chairman, Securities and Exchange Commission.
Chairman, Board of Directors of the Tennessee Valley Authority.
Chairman, National Mediation Board.
Chairman, Railroad Retirement Board.
Chairman, Federal Maritime Commission.
Comptroller of the Currency.
Commissioner of Internal Revenue.
Under Secretaries of Defense (2).
Deputy Administrator of the National Aeronautics and Space Administration.
Deputy Director of the Office of Management and Budget.
Deputy Director of Central Intelligence.
Director of the Office of Emergency Planning.
Director of the Peace Corps.
Deputy Director, National Science Foundation.
President of the Export-Import Bank of Washington.
Members, Nuclear Regulatory Commission.
Members, Board of Governors of the Federal Reserve System.
Director of the Federal Bureau of Investigation, Department of Justice.
Administrator of the National Highway Traffic Safety Administration.
Administrator, Federal Railroad Administration.
Chairman, National Transportation Safety Board.
Chairman of the National Endowment for the Arts the incumbent of which also serves as Chairman of the National Council on the Arts.
Chairman of the National Endowment for the Humanities.
Director of the Federal Mediation and Conciliation Service.
Under Secretary of Housing and Urban Development.
Urban Mass Transportation Administrator.
President, Overseas Private Investment Corporation.

Chairman, Postal Rate Commission.
Chairman, Occupational Safety and Health Review Commission.
Governor of the Farm Credit Administration.
Chairman, Equal Employment Opportunity Commission.
Chairman, Consumer Product Safety Commission.
Under Secretary, Department of Energy.
Chairman, Commodity Futures Trading Commission.
Deputy United States Trade Representatives (3).
Chairman, United States International Trade Commission.
Director of the Office of Drug Abuse Policy.
Administrator, National Oceanic and Atmospheric Administration.
Associate Attorney General.
Chairman, Federal Mine Safety and Health Review Commission.
Chairman, National Credit Union Administration Board.
Deputy Director of the Office of Personnel Management.
Under Secretary of Agriculture for International Affairs and Commodity Programs.
Director, Institute for Scientific and Technological Cooperation.
Under Secretary of Agriculture for Small Community and Rural Development.
Administrator, Maritime Administration.
Executive Director Property Review Board.
Deputy Administrator of the Environmental Protection Agency.
Archivist of the United States.
Deputy Director of the United States Arms Control and Disarmament Agency.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 460; Pub. L. 89-670, § 10(d)(3), (e), Oct. 15, 1966, 80 Stat. 948; Pub. L. 90-83, § 1(14), Sept. 11, 1967, 81 Stat. 198; Pub. L. 90-206, title II, § 215(a), Dec. 16, 1967, 81 Stat. 638; Pub. L. 90-351, title I, § 505, June 19, 1968, 82 Stat. 205, as amended by Pub. L. 91-644, title I, § 7(1), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 90-407, § 15(a)(2), July 18, 1968, 82 Stat. 367; Pub. L. 90-623, § 1(26), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 91-175, pt. V, § 503(1), Dec. 30, 1969, 83 Stat. 826; Pub. L. 91-375, § 6(c)(13), Aug. 12, 1970, 84 Stat. 776; Pub. L. 91-596, § 12(c)(1), Dec. 29, 1970, 84 Stat. 1604; Pub. L. 91-644, title I, §§ 7(1), 8(a), Jan. 2, 1971, 84 Stat. 1887, 1888; Pub. L. 92-181, title V, § 5.41(a), formerly § 5.27(a), Dec. 10, 1971, 85 Stat. 625, as renumbered Pub. L. 99-205, title II, § 205(a)(2), Dec. 23, 1985, 99 Stat. 1703; Pub. L. 92-226, pt. IV, § 403, Feb. 7, 1972, 86 Stat. 34; Pub. L. 92-261, § 9(a), Mar. 24, 1972, 86 Stat. 110; Pub. L. 92-302, § 2(b), May 18, 1972, 86 Stat. 149; Pub. L. 92-352, title I, § 104(2), July 13, 1972, 86 Stat. 490; Pub. L. 92-573, § 4(h)(1), Oct. 27, 1972, 86 Stat. 1211; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 93-438, title III, § 310(2), Oct. 11, 1974, 88 Stat. 1252; Pub. L. 93-463, title I, § 102(a), Oct. 23, 1974, 88 Stat. 1391; Pub. L. 93-618, title I, §§ 141(b)(3)(B), 172(c)(1), Jan. 3, 1975, 88 Stat. 1999, 2010; Pub. L. 94-82, title II, § 202(b)(3), Aug. 9, 1975, 89 Stat. 420; Pub. L. 94-123, § 2(c)(1), Oct. 22, 1975, 89 Stat. 670; Pub. L. 94-183, § 2(17), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 92-255, title II, § 209(a), as added Pub. L. 94-237, § 4(b), Mar. 19, 1976, 90 Stat. 243; Pub. L. 94-461, § 4(a), Oct. 8, 1976, 90 Stat. 1969; Pub. L. 94-561, § 1(b), Oct. 19, 1976, 90 Stat. 2463; Pub. L. 95-91, title VII, § 710(e), Aug. 4, 1977, 91 Stat. 609; Pub. L. 95-139, § 3, Oct. 19, 1977, 91 Stat. 1171; Pub. L. 95-140, § 3(d)(2), Oct. 21, 1977, 91 Stat. 1173; Pub. L. 95-164, title III, § 302(c)(1), Nov. 9, 1977, 91 Stat. 1320; Pub. L. 95-426, title I, § 114(b)(1), Oct. 7, 1978, 92 Stat. 969; Pub. L. 95-454, title II, §§ 201(b)(2), 202(c)(1), Oct. 13, 1978, 92 Stat. 1121, 1131; Pub. L. 95-501, title V, § 501(b), Oct. 21, 1978, 92 Stat. 1691; Pub. L. 95-630, title V, § 502(d), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 96-53, title IV, § 412(a), Aug. 14, 1979, 93 Stat. 377; Pub. L. 96-54, § 2(a)(25)(A), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96-88, title V, § 508(d), (g), Oct. 17, 1979, 93 Stat. 692; Pub. L. 90-351, title I, § 808, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1204; Pub. L. 96-355, § 3(b), Sept. 24, 1980, 94 Stat. 1173; Pub. L. 97-31, § 12(1)(A), Aug. 6, 1981, 95 Stat. 153; Pub. L. 97-63, § 4(a)(4), Oct. 16, 1981, 95 Stat. 1014; Pub. L. 97-195, § 1(b)(1), June 16, 1982, 96 Stat. 115; Pub. L. 97-377, title I, § 123, Dec. 21, 1982, 96 Stat. 1913; Pub. L. 97-449, § 3(2), Jan. 12, 1983, 96 Stat. 2441; Pub. L. 97-456, § 3(d)(1), (6), Jan. 12, 1983, 96 Stat. 2505, 2506; Pub. L. 98-80, § 2(b)(1), Aug. 23, 1983, 97 Stat. 485; Pub. L. 98-164, title I, § 125(b)(1), Nov. 22, 1983, 97 Stat. 1026; Pub. L. 98-216, § 3(a)(2), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98-443, § 9(e), Oct. 4, 1984, 98 Stat. 1707; Pub. L. 98-473, title II, § 609J(a), Oct. 12, 1984, 98 Stat. 2102; Pub. L. 98-497, title I, § 107(h), Oct. 19, 1984, 98 Stat. 2292; Pub. L. 99-64, title I, § 116(b), July 12, 1985, 99 Stat. 153; Pub. L. 99-93, title I, § 116(b), title VII, § 704(a)(1), Aug. 16, 1985, 99 Stat. 412, 445.)

Amendments

1985—Pub. L. 99-93, § 116(b), substituted "Under Secretary of State for Economic and Agricultural Affairs" for "Under Secretary of State for Economic Affairs".

Pub. L. 99-93, § 704(a)(1), added item relating to Deputy Director of the United States Arms Control and Disarmament Agency.

Pub. L. 99-64 added item relating to Under Secretary of Commerce for Export Administration.

1984—Pub. L. 98-497 added item relating to Archivist of the United States.

Pub. L. 98-473 struck out item relating to Director of the Office of Justice Assistance, Research, and Statistics.

Pub. L. 98-443 struck out item relating to Chairman of Civil Aeronautics Board.

Pub. L. 98-216 substituted "Deputy Director of the Office of Management and Budget" for "Deputy Director of the Bureau of the Budget".

1983—Pub. L. 98-164 added item relating to Counselor of the Department of State.

Pub. L. 98-80 added item relating to Deputy Administrator of the Environmental Protection Agency.

Effective Date of 1985 Amendment

Section 116(d) of Pub. L. 99-64 provided that: "The provisions of section 15(a) of the Export Administration Act of 1979 [50 App. U.S.C. 2414(a)], as amended by subsection (a) of this section, and the amendments made by subsections (b) and (c) of this section [amending sections 5314 and 5315 of this title] shall take effect on October 1, 1986."

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

Amendment by section 609J of Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA of Pub. L. 98-473, set out as an Effective Date note under section 3711 of Title 42, The Public Health and Welfare.

Section 9(v) of Pub. L. 98-443 provided that: "The amendments made by this section [amending sections 5314 and 5315 of this title, sections 1622 and 2145 of Title 7, Agriculture, sections 4746 and 9746 of Title 10, Armed Forces, sections 18, 21, 1607, 1681s, 1691c, and 1692*l* of Title 15, Commerce and Trade, section 18b of Title 16, Conservation, sections 47 and 7701 of Title 26, Internal Revenue Code, section 3726 of Title 31, Money and Finance, sections 3401, 5005, 5401, and 5402 of Title 39, Postal Service, section 3502 of Title 44, Public Printing and Documents, and sections 1159a, 1159b, 1301, 1305, 1377, 1382, 1388, 1389, and 1537 of Title 49, Appendix, Transportation] shall take effect on January 1, 1985."

SALARY INCREASES

1985—Salaries of positions at level III increased to $73,600 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1985, as provided by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of this title.

1984—Salaries of positions at level III increased to $71,100 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1984, as provided by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 60a-1, 136a-2, 282b, 288, 474, 601; title 3 sections 105, 106, 107; title 10 section 973; title 12 section 2242; title 15 section 205l; title 22 sections 3505, 3961; title 26 section 3121; title 28 section 591; title 31 section 703; title 38 section 4107; title 40 section 162a; title 42 sections 410, 1864a, 5041, 5871, 5872, 6612, 7132, 7134, 7211, 7291, 7293, 8718; title 44 section 2103; title 50 App. section 2169.

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

Associate Administrator of the National Aeronautics and Space Administration.

Assistant Administrators, Agency for International Development (6).

Regional Assistant Administrators, Agency for International Development (4).

Under Secretary of the Air Force.

Under Secretary of the Army.

Under Secretary of the Navy.

Assistant Secretaries of Agriculture (7).

Assistant Secretaries of Commerce (11).

Assistant Secretaries of Defense (11).

Assistant Secretaries of the Air Force (3).

Assistant Secretaries of the Army (5).

Assistant Secretaries of the Navy (4).

Assistant Secretaries of Health and Human Services (4).

Assistant Secretaries of the Interior (6).

Assistant Attorneys General (10).

Assistant Secretaries of Labor (5).

Assistant Secretaries of State (14).

Assistant Secretaries of the Treasury (7).

Members, United States International Trade Commission (5).

Assistant Secretaries of Education (6).

General Counsel, Department of Education.

Inspector General, Department of Education.

Director of Civil Defense, Department of the Army.

Deputy Director of the Office of Emergency Planning.

Deputy Director of the Office of Science and Technology.

Deputy Director of the Peace Corps.

Deputy Director of the United States Information Agency.

Assistant Directors of the Office of Management and Budget (3).

General Counsel of the Department of Agriculture.

General Counsel of the Department of Commerce.

General Counsel of the Department of Defense.

General Counsel of the Department of Health and Human Services.

Solicitor of the Department of the Interior.

Solicitor of the Department of Labor.

General Counsel of the National Labor Relations Board.

Legal Adviser of the Department of State.

General Counsel of the Department of the Treasury.

First Vice President of the Export-Import Bank of Washington.

Members, Council of Economic Advisers.

Members, Board of Directors of the Export-Import Bank of Washington.

Members, Federal Communications Commission.

Member, Board of Directors of the Federal Deposit Insurance Corporation.

Members, Federal Home Loan Bank Board.

Members, Federal Energy Regulatory Commission.

Members, Federal Trade Commission.

Members, Interstate Commerce Commission.

Members, National Labor Relations Board.

Members, Securities and Exchange Commission.

Members, Board of Directors of the Tennessee Valley Authority.

Members, Merit Systems Protection Board.

Members, Federal Maritime Commission.

Members, National Mediation Board.

Members, Railroad Retirement Board.

Director of Selective Service.

Associate Director of the Federal Bureau of Investigation, Department of Justice.

Members, Equal Employment Opportunity Commission (4).

Chief of Protocol, Department of State.

Director, Community Relations Service.

Members, National Transportation Safety Board.

General Counsel, Department of Transportation.

Deputy Administrator, Federal Aviation Administration.

Assistant Secretaries of Transportation (4).

Deputy Federal Highway Administrator.

Administrator of the St. Lawrence Seaway Development Corporation.

Assistant Secretary for Science, Smithsonian Institution.

Assistant Secretary for History and Art, Smithsonian Institution.

Deputy Administrator of the Small Business Administration.

Assistant Secretaries of Housing and Urban Development (8).

General Counsel of the Department of Housing and Urban Development.

Commissioner of Interama.

Federal Insurance Administrator, Federal Emergency Management Agency.

Executive Vice President, Overseas Private Investment Corporation.

Members, National Credit Union Administration Board (2).

Members, Postal Rate Commission (4).

Members, Occupational Safety and Health Review Commission.

Deputy Director of the Office of Drug Abuse Policy.

Deputy Under Secretaries of the Treasury (or Assistant Secretaries of the Treasury) (2).

Members, Consumer Product Safety Commission (4).

Commissioner of Social Security, Department of Health and Human Services.

Assistant Secretary for Oceans and International Environmental and Scientific Affairs, Department of State.

Administrator for Federal Procurement Policy.

Members, Commodity Futures Trading Commission.

Director of Nuclear Reactor Regulation, Nuclear Regulatory Commission.

Director of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission.

Director of Nuclear Regulatory Research, Nuclear Regulatory Commission.

Executive Director for Operations, Nuclear Regulatory Commission.

President, Government National Mortgage Association, Department of Housing and Urban Development.

Deputy Administrator, National Oceanic and Atmospheric Administration.

Commissioner of Immigration and Naturalization, Department of Justice.

Associate Administrator, National Oceanic and Atmospheric Administration.

Director, Bureau of Prisons, Department of Justice.

Assistant Secretaries of Energy (8).

General Counsel of the Department of Energy.

Administrator, Economic Regulatory Administration, Department of Energy.

Administrator, Energy Information Administration, Department of Energy.

Inspector General, Department of Energy.

Director, Office of Energy Research, Department of Energy.

Assistant Secretary of Labor for Mine Safety and Health.

Members, Federal Mine Safety and Health Review Commission.

President, National Consumer Cooperative Bank.

Assistant Secretary for International Narcotics Matters, Department of State.

Inspector General, Department of Health and Human Services.

Inspector General, Department of Agriculture.

Special Counsel of the Merit Systems Protection Board.

Inspector General, Department of Housing and Urban Development.

Chairman, Federal Labor Relations Authority.

Inspector General, Department of Labor.

Inspector General, Department of Transportation.

Inspector General, Veterans' Administration.

Deputy Director, Institute for Scientific and Technological Cooperation.

Director of the National Institute of Justice.

Director of the Bureau of Justice Statistics.

Chief Counsel for Advocacy, Small Business Administration.

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Inspector General, Department of Defense.

Assistant Administrator for Toxic Substances, Environmental Protection Agency.

Assistant Administrator, Office of Solid Waste, Environmental Protection Agency.

Assistant Administrators, Environmental Protection Agency (8).

Director of Operational Test and Evaluation, Department of Defense.

Special Representatives for Arms Control and Disarmament Negotiations, United States Arms Control and Disarmament Agency (2).

Administrator of the Health Care Financing Administration.

Director, National Bureau of Standards, Department of Commerce.

Assistant Directors, United States Arms Control and Disarmament Agency (4).

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 461; Pub. L. 89-670, § 10(d)(4), (e), Oct. 15, 1966, 80 Stat. 948; Pub. L. 89-734, § (1), Nov. 2, 1966, 80 Stat. 1163; Pub. L. 89-779, § 8(c)(1), Nov. 6, 1966, 80 Stat. 1364; Pub. L. 90-83, § 1(15), Sept. 11, 1967, 81 Stat. 198; Pub. L. 90-206, title II, § 215(b), Dec. 16, 1967, 81 Stat. 638; Pub. L. 90-351, title I, § 505, June 19, 1968, 82 Stat. 205; Pub. L. 90-448, title XI, § 1105(b), title XVII, § 1708(b), Aug. 1, 1968, 82 Stat. 567, 606; Pub. L. 90-623, § 1(4), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 91-121, title IV, § 404(b), Nov. 19, 1969, 83 Stat. 207; Pub. L. 91-175, pt. V, § 503(2), Dec. 30, 1969, 83 Stat. 826; Pub. L. 91-206, § 5(b), Mar. 10, 1970, 84 Stat. 51; Pub. L. 91-375, § 6(c)(14), Aug. 12, 1970, 84 Stat. 776; Pub. L. 91-469, § 42(b), Oct. 21, 1970, 84 Stat. 1038; Pub. L. 91-477, § 3(b), Oct. 21, 1970, 84 Stat. 1072; Pub. L. 91-596, §§ 12(c)(2), 29(b), Dec. 29, 1970, 84

Stat. 1604, 1619; Pub. L. 91-611, title II, § 211(b), Dec. 31, 1970, 84 Stat. 1829; Pub. L. 91-644, title I, § 7 (1), (2), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 92-22, § 2, June 1, 1971, 85 Stat. 76; Pub. L. 92-181, title V, § 5.41(a), formerly § 5.27(a), Dec. 10, 1971, 85 Stat. 625, renumbered Pub. L. 99-205, title II, § 205(a)(2), Dec. 23, 1985, 99 Stat. 1703; Pub. L. 92-215, § 2, Dec. 22, 1971, 85 Stat. 777; Pub. L. 92-255, title II, § 212(b), Mar. 21, 1972, 86 Stat. 69; Pub. L. 92-261, § 9(b), Mar. 24, 1972, 86 Stat. 110; Pub. L. 92-302, § 2(c), May 18, 1972, 86 Stat. 149; Pub. L. 92-352, title I, § 104(3), July 13, 1972, 86 Stat. 490; Pub. L. 92-419, title VI, § 604(b), Aug. 30, 1972, 86 Stat. 676; Pub. L. 92-573, § 4(h)(2), Oct. 27, 1972, 86 Stat. 1211; Pub. L. 92-603, title IV, § 404(b), Oct. 30, 1972, 86 Stat. 1488; Pub. L. 90-351, title I, § 506(a), as added Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 93-126, § 9(b), as added Pub. L. 93-312, § 9, June 8, 1974, 88 Stat. 238; Pub. L. 93-383, title VIII, § 818(c), Aug. 22, 1974, 88 Stat. 740; Pub. L. 93-400, § 13, Aug. 30, 1974, 88 Stat. 799; Pub. L. 93-438, title III, § 310(3), Oct. 11, 1974, 88 Stat. 1253; Pub. L. 93-463, title I, § 102(b), Oct. 23, 1974, 88 Stat. 1391; Pub. L. 93-618, title I, § 172(c)(2), Jan. 3, 1975, 88 Stat. 2010; Pub. L. 94-82, title II, § 202(b)(4), Aug. 9, 1975, 89 Stat. 420; Pub. L. 94-123, § 2(c)(2), Oct. 22, 1975, 89 Stat. 670; Pub. L. 94-183, § 2(18), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 92-255, title II, § 209(b), as added Pub. L. 94-237, § 4(b), Mar. 19, 1976, 90 Stat. 243; Pub. L. 94-375, § 17(c), Aug. 3, 1976, 90 Stat. 1077; Pub. L. 94-461, § 4(b), Oct. 8, 1976, 90 Stat. 1969; Pub. L. 94-503, title II, § 202(b), Oct. 15, 1976, 90 Stat. 2426; Pub. L. 94-561, § 3(a), Oct. 19, 1976, 90 Stat. 2643; Pub. L. 95-88, title I, § 124(b), Aug. 3, 1977, 91 Stat. 542; Pub. L. 95-91, title VII, § 710(f), Aug. 4, 1977, 91 Stat. 609; Pub. L. 95-105, title I, § 109(d), Aug. 17, 1977, 91 Stat. 847; Pub. L. 95-108, § 2(b), Aug. 17, 1977, 91 Stat. 871; Pub. L. 95-164, title III, § 302(b), Nov. 9, 1977, 91 Stat. 1319; Pub. L. 95-173, § 9(b), Nov. 12, 1977, 91 Stat. 1360; Pub. L. 95-351, title III, § 302, Aug. 20, 1978, 92 Stat. 514; Pub. L. 95-426, title I, §§ 114(b)(2), 115(b)(1), Oct. 7, 1978, 92 Stat. 969; Pub. L. 95-452, § 10(a), Oct. 12, 1978, 92 Stat. 1108; Pub. L. 95-454, title II, §§ 202(c)(2), (3), title VII, § 703(d), Oct. 13, 1978, 92 Stat. 1131, 1217; Pub. L. 95-630, title V, § 502(e), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 96-39, title XI, § 1106(c)(4), July 26, 1979, 93 Stat. 312; Pub. L. 96-53, title IV, § 412(b), Aug. 14, 1979, 93 Stat. 377; Pub. L. 96-54, § 2(a)(25)(A), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96-88, title V, § 508(e), (g), Oct. 17, 1979, 93 Stat. 692; Pub. L. 96-107, title VIII, § 820(e)(1), Nov. 9, 1979, 93 Stat. 819; Pub. L. 96-132, § 5, Nov. 30, 1979, 93 Stat. 1045; Pub. L. 96-153, title VI, § 603(b), Dec. 21, 1979, 93 Stat. 1138; Pub. L. 90-351, title I, § 809, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1204; Pub. L. 96-302, title IV, § 403, July 2, 1980, 94 Stat. 850; Pub. L. 96-511, § 4(d), Dec. 11, 1980, 94 Stat. 2826; Pub. L. 97-31, § 12(1)(B), Aug. 6, 1981, 95 Stat. 153; Pub. L. 97-35, title III, § 396(h)(4), Aug. 13, 1981, 95 Stat. 441; Pub. L. 97-98, title XIV, § 1414(b), Dec. 22, 1981, 95 Stat. 1303; Pub. L. 97-195, § 1(b)(2), June 16, 1982, 96 Stat. 115; Pub. L. 97-252, title XI, § 1117(d), Sept. 8, 1982, 96 Stat. 753; Pub. L. 97-325, § 8(b), Oct. 15, 1982, 96 Stat. 1605; Pub. L. 97-449, § 3(3), Jan. 12, 1983, 96 Stat. 2441; Pub. L. 98-80, § 2(c)(1), Aug. 23, 1983, 97 Stat. 485; Pub. L. 98-94, title XII, §§ 1211(b), 1212(d), Sept. 24, 1983, 97 Stat. 686, 687; Pub. L. 98-164, title I, § 125(b)(2), Nov. 22, 1983, 97 Stat. 1026; Pub. L. 98-202, § 6(b), Dec. 2, 1983, 97 Stat. 1382; Pub. L. 98-216, § 3(a)(3), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98-369, title III, § 2332(b), July 18, 1984, 98 Stat. 1089; Pub. L. 98-443, § 9(e), Oct. 4, 1984, 98 Stat. 1707; Pub. L. 98-473, title II, §§ 609J(b), 1701(b), Oct. 12, 1984, 98 Stat. 2102, 2185; Pub. L. 98-594, § 1(b), Oct. 30, 1984, 98 Stat. 3129; Pub. L. 99-64, title I, § 116(c), July 12, 1985, 99 Stat. 153; Pub. L. 99-73, § 6(b)(1), July 29, 1985, 99 Stat. 173; Pub. L. 99-93, title I, § 115(b), title VII, § 704(a)(2), Aug. 16, 1985, 99 Stat. 411, 445.)

AMENDMENTS

1985—Pub. L. 99-93, § 704(a)(2)(A), struck out item relating to Deputy Director of the United States Arms Control and Disarmament Agency.

Pub. L. 99-93, § 704(a)(2)(B), added item relating to Assistant Directors, United States Arms Control and Disarmament Agency (4).

Pub. L. 99-93, § 115(b)(1), struck out item relating to Director, Bureau of Intelligence and Research, Department of State.

Pub. L. 99-93, § 115(b)(2), substituted "(14)" for "(13)" in item relating to Assistant Secretaries of State.

Pub. L. 99-73 added item relating to Director, National Bureau of Standards, Department of Commerce.

Pub. L. 99-64 substituted "(11)" for "(8)" in item relating to Assistant Secretaries of Commerce.

1984—Pub. L. 98-594 substituted "(7)" for "(5)" in item relating to Assistant Secretaries of the Treasury.

Pub. L. 98-473, § 1701(b), struck out items relating to United States Attorney for the Southern District of New York, United States Attorney for the District of Columbia, United States Attorney for the Northern District of Illinois, and United States Attorney for the Central District of California.

Pub. L. 98-473, § 609J(b), struck out item relating to Administrator of Law Enforcement Assistance.

Pub. L. 98-443 struck out item relating to members of the Civil Aeronautics Board.

Pub. L. 98-369 added item relating to Administrator of the Health Care Financing Administration.

Pub. L. 98-216 substituted "Assistant Directors of the Office of Management and Budget (3)" for "Assistant Directors of the Bureau of the Budget (3)".

1983—Pub. L. 98-202, § 6(b)(1), added item relating to two Special Representatives for Arms Control and Disarmament Negotiations, United States Arms Control and Disarmament Agency.

Pub. L. 98-202, § 6(b)(2), struck out item relating to Special Representative for Arms Control and Disarmament Negotiations, United States Arms Control and Disarmament Agency.

Pub. L. 98-164 struck out item relating to Counselor of the Department of State.

Pub. L. 98-94, § 1212(d)(1), substituted "(11)" for "(7)" in item relating to Assistant Secretaries of Defense.

Pub. L. 98-94, § 1212(d)(2), substituted "(5)" for "(4)" in item relating to Assistant Secretaries of the Army.

Pub. L. 98-94, § 1212(d)(3), substituted "(4)" for "(3)" in item relating to Assistant Secretaries of the Navy.

Pub. L. 98-94, § 1211(b), added item relating to Director of Operational Test and Evaluation, Department of Defense.

Pub. L. 98-80 added items relating to Assistant Administrator for Toxic Substances, Environmental Protection Agency, Assistant Administrator, Office of Solid Waste, Environmental Protection Agency, and eight Assistant Administrators, Environmental Protection Agency.

EFFECTIVE DATE OF 1985 AMENDMENTS

Section 6(c) of Pub. L. 99-73 provided that: "The amendments made by this section [amending sections 5315 and 5316 of this title and section 274 of Title 15, Commerce and Trade] shall be effective October 1, 1985."

Amendment by Pub. L. 99-64 effective Oct. 1, 1986, see section 116(d) of Pub. L. 99-64, set out as a note under section 5314 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 609J of Pub. L. 98-473 effective Oct. 12, 1984, see section 609AA of Pub. L. 98-473, set out as an Effective Date note under section 3711 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of this title.

Amendment by Pub. L. 98-369 applicable to appointments made after July 18, 1984, see section 2332(c) of Pub. L. 98-369, set out as an Effective Date note under section 1317 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 1211(b) of Pub. L. 98-94 effective Nov. 1, 1983, see section 1211(c) of Pub. L. 98-94, set out as an Effective Date note under section 136a of Title 10, Armed Forces.

Amendment by section 1212(d) of Pub. L. 98-94 effective Oct. 1, 1983, see section 1212(e) of Pub. L. 98-94, set out as a note under section 136 of Title 10.

SALARY INCREASES

1985—Salaries of positions at level IV increased to $72,300 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1985, as provided by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of this title.

1984—Salaries of positions at level IV increased to $69,900 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1984, as provided by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5317 of this title; title 2 sections 136a-2, 166, 285e, 286e, 288; 437c, 474, 601; title 10 sections 973, 2359; title 12 section 2242; title 15 sections 274, 790b, 2204; title 20 sections 3501, 3503; title 16 section 3181; title 22 sections 286a, 290f, 290h-5, 2882, 3506, 3961; title 26 section 3121; title 28 sections 548, 594; title 30 sections 1121, 1211; title 31 section 731; title 38 section 4107; title 40 sections 166b, 206-1; title 42 sections 410, 1396ww, 1975b, 3525, 4346, 5041, 5553, 5871, 5872, 7002, 7132, 7133, 7134, 7135, 7136, 7138, 7139, 7141, 7211, 7291, 7293, 8718, 8820, 10224; title 44 section 303; title 49 section 11161; title 50 App. section 2168.

§ 5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Administrator, Agricultural Marketing Service, Department of Agriculture.

Administrator, Agricultural Research Service, Department of Agriculture.

Administrator, Agricultural Stabilization and Conservation Service, Department of Agriculture.

Administrator, Farmers Home Administration.

Administrator, Foreign Agricultural Service, Department of Agriculture.

Administrator, Rural Electrification Administration, Department of Agriculture.

Administrator, Soil Conservation Service, Department of Agriculture.

Administrator, Bonneville Power Administration, Department of the Interior.

Administrator of the National Capital Transportation Agency.

Associate Administrators of the Small Business Administration (4).

Associate Administrators, National Aeronautics and Space Administration (7).

Associate Deputy Administrator, National Aeronautics and Space Administration.

Deputy Associate Administrator, National Aeronautics and Space Administration.

Associate Deputy Administrator of Veterans' Affairs.

Archivist of the United States.

Assistant Secretary of Health and Human Services for Administration.

Assistant Attorney General for Administration.

Assistant Secretary of Labor for Administration.

Assistant and Science Adviser to the Secretary of the Interior.

Chairman, Foreign Claims Settlement Commission of the United States, Department of Justice.

Chairman of the Military Liaison Committee to the Atomic Energy Commission, Department of Defense.

Chairman of the Renegotiation Board.

Chairman of the Subversive Activities Control Board.

Chief Counsel for the Internal Revenue Service, Department of the Treasury.

Chief Forester of the Forest Service, Department of Agriculture.

Additional officers, Department of Education, (4).

Commissioner of Customs, Department of the Treasury.

Commissioner, Federal Supply Service, General Services Administration.

Director, United States Fish and Wildlife Service, Department of the Interior.

Commissioner of Food and Drugs, Department of Health and Human Services.

Commissioner of Indian Affairs, Department of the Interior.

Commissioners, Indian Claims Commission (5).

Commissioner of Patents, Department of Commerce.

Commissioner, Public Buildings Service, General Services Administration.

Commissioner of Reclamation, Department of the Interior.
Commissioner of Vocational Rehabilitation, Department of Health and Human Services.
Commissioner of Welfare, Department of Health and Human Services.
Director, Advanced Research Projects Agency, Department of Defense.
Director, Bureau of the Census, Department of Commerce.
Director, Bureau of Mines, Department of the Interior.
Director, Geological Survey, Department of the Interior.
Director of Science and Education, Department of Agriculture.
Deputy Commissioner of Internal Revenue, Department of the Treasury.
Assistant Directors, National Science Foundation (4).
Deputy Director, Policy and Plans, United States Information Agency.
Deputy General Counsel, Department of Defense.
Associate Director of the Federal Mediation and Conciliation Service.
Associate Director for Volunteers, Peace Corps.
Associate Director for Program Development and Operations, Peace Corps.
Assistants to the Director of the Federal Bureau of Investigation, Department of Justice (2).
Assistant Directors, Office of Emergency Planning (3).
Fiscal Assistant Secretary of the Treasury.
General Counsel of the Agency for International Development.
General Counsel of the Department of the Air Force.
General Counsel of the Department of the Army.
General Counsel of the Nuclear Regulatory Commission.
General Counsel of the Department of the Navy.
General Counsel of the United States Arms Control and Disarmament Agency.
General Counsel of the National Aeronautics and Space Administration.
Administrator of the Panama Canal Commission.
Manpower Administrator, Department of Labor.
Members, Renegotiation Board.
Members, Subversive Activities Control Board.
Deputy Under Secretaries of Defense for Research and Engineering, Department of Defense (4).
Assistant Administrator of General Services.
Director, United States Travel Service, Department of Commerce.
Administrator, Wage and Hour and Public Contracts Division, Department of Labor.
Assistant Director (Program Planning, Analysis and Research), Office of Economic Opportunity.
Associate Director (Policy and Plans), United States Information Agency.
Chief Benefits Director, Veterans' Administration.
Commissioner of Labor Statistics, Department of Labor.
Deputy Director, National Security Agency.
Director, Bureau of Land Management, Department of the Interior.
Director, National Park Service, Department of the Interior.
General Counsel of the Veterans' Administration.
National Export Expansion Coordinator, Department of Commerce.
Special Assistant to the Secretary of Defense.
Staff Director, Commission on Civil Rights.
Assistant Secretary for Administration, Department of Transportation.
Director, United States National Museum, Smithsonian Institution.
Director, Smithsonian Astrophysical Observatory, Smithsonian Institution.
Administrator for Economic Development.
Administrator of the Environmental Science Services Administration.
Associate Directors of the Office of Personnel Management (5).
Assistant Federal Highway Administrator.
Deputy Administrator of the National Highway Traffic Safety Administration.
Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice.
Inspector General, Agency for International Development.
Vice Presidents, Overseas Private Investment Corporation (3).
Deputy Administrator, Urban Mass Transportation Administration, Department of Transportation.
General Counsel of the Equal Employment Opportunity Commission.
Director, National Cemetery System, Veterans' Administration.
Executive Director, Advisory Council on Historic Preservation.
Deputy Inspector General, Department of Energy.
Additional Officers, Department of Energy (14).
General Counsel, Commodity Futures Trading Commission.
Administrator, Animal and Plant Health Inspection Service, Department of Agriculture.
Administrator, Federal Grain Inspection Service, Department of Agriculture.
Additional officers, Nuclear Regulatory Commission (5).
Executive Director, Commodity Futures Trading Commission.
Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.
Associate Administrator, Office of Juvenile Justice and Delinquency Prevention of the Law Enforcement Assistance Administration.
Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.
Assistant Administrators (3), National Oceanic and Atmospheric Administration.

General Counsel, National Oceanic and Atmospheric Administration.

Deputy Inspector General, Department of Health and Human Services.

Inspector General, Department of Commerce.

Members, Federal Labor Relations Authority (2) and its General Counsel.

Inspector General, Department of the Interior.

Director of the Office of Government Ethics.

Inspector General, Community Services Administration.

Inspector General, Environmental Protection Agency.

Inspector General, General Services Administration.

Inspector General, National Aeronautics and Space Administration.

Inspector General, Small Business Administration.

Additional officers, Institute for Scientific and Technological Cooperation (2).

Assistant Secretary of Labor for Veterans' Employment.

Additional officers, Office of Management and Budget (6).

Associate Deputy Secretary, Department of Transportation.

(As amended Pub. L. 98-557, § 26(b), Oct. 30, 1984, 98 Stat. 2873; Pub. L. 99-73, § 6(b)(2), July 29, 1985, 99 Stat. 173; Pub. L. 99-93, title VII, § 704(a)(3), Aug. 16, 1985, 99 Stat. 446; Pub. L. 99-145, title XII, § 1204(c), Nov. 8, 1985, 99 Stat. 721.)

AMENDMENTS

1985—Pub. L. 99-145 struck out item relating to Administrator of Education for Overseas Dependents, Department of Education.

Pub. L. 99-93 struck out item relating to Assistant Directors, United States Arms Control and Disarmament Agency (4).

Pub. L. 99-73 struck out item relating to Director, National Bureau of Standards, Department of Commerce.

1984—Pub. L. 98-557 added item relating to Associate Deputy Secretary, Department of Transportation.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-73 effective Oct. 1, 1985, see section 6(c) of Pub. L. 99-73, set out as a note under section 5315 of this title.

TRANSFER OF FUNCTIONS

Pub. L. 93-644, § 9(a), Jan. 4, 1975, 88 Stat. 2310 [42 U.S.C. 2941], amended the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.] to create the Community Services Administration, an independent agency in the executive branch, as the successor authority to the Office of Economic Opportunity, and provided that references to the Office of Economic Opportunity or to its Director were deemed to refer to the Community Services Administration or to its Director. The Community Services Administration was terminated when the Economic Opportunity Act of 1964, except for titles VIII and X, was repealed, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97-35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub. L. 97-35, which is classified to 42 U.S.C. 9905.

OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

The Office of Juvenile Justice and Delinquency Prevention, referred to in text, was created by section 5611 of Title 42, The Public Health and Welfare, within the Law Enforcement Assistance Administration of the Department of Justice and to be headed by an Associate Administrator. However, section 5611 of Title 42, as amended by Pub. L. 98-473, establishes the Office of Juvenile Justice and Delinquency Prevention within the Department of Justice under the general authority of the Attorney General and to be headed by an Administrator.

COMMISSIONER OF PATENTS

Commissioner of Patents was redesignated the Commissioner of Patents and Trademarks by Pub. L. 93-596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of Title 35, Patents.

SALARY INCREASES

1985—Salaries of positions at level V increased to $68,700 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1985, as provided by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of this title.

1984—Salaries of positions at level V increased to $66,400 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1984, as provided by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5311, 5317 of this title; title 2 sections 60a-2, 74a-3, 84a-1, 282b, 288, 353, 437c; title 3 section 113; title 10 section 973; title 12 sections 1723a, 3605; title 15 sections 2204, 3704; title 20 sections 964, 1221e, 3501, 3503; title 22 sections 286a, 1465c, 1622c, 2872, 3506, 3961, 4106; title 26 sections 3121, 6103; title 28 sections 332, 548, 603, 625; title 29 section 761a; title 31 section 731; title 38 section 4107; title 39 section 206; title 40 section 166b-1; title 42 sections 410, 907a, 1864a, 2996d, 3201, 3525, 5041, 5871, 5872, 7138, 7211, 7232, 7291, 7293, 10704; title 44 sections 303, 3319; title 47 section 155; title 50 App. section 2168.

§ 5317. Presidential authority to place positions at levels IV and V

EX. ORD. NO. 12154. PLACEMENT OF POSITIONS IN LEVELS IV AND V

Ex. Ord. No. 12154, Sept. 4, 1979, 44 F.R. 51965, as amended by Ex. Ord. No. 12199, Mar. 12, 1980, 45 F.R. 16441; Ex. Ord. No. 12236, Sept. 3, 1980, 45 F.R. 58805; Ex. Ord. No. 12237, Sept. 3, 1980, 45 F.R. 58807; Ex. Ord. No. 12422, May 20, 1983, 48 F.R. 23157; Ex. Ord. No. 12431, July 8, 1983, 48 F.R. 31849, provided:

By the authority vested in me as President by Section 5317 of Title 5 of the United States Code it is hereby ordered as follows:

1-1. EXECUTIVE SCHEDULE POSITIONS

1-101. The following positions are placed in level IV of the Executive Schedule:

[See main edition for text of (a) to (h)]

(i) Executive Secretary of the National Security Council.

(j) Administrator, Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

[*See main edition for text of Sec. 1-2*]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 973; title 26 section 3121; title 28 section 548; title 42 section 410.

§ 5318. Adjustments in rates of pay

REDUCTION OF RATE OF SALARY OR BASIC PAY OF OFFICES OR POSITIONS IN THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES TO THE SALARY OR BASIC PAY RATE PAYABLE AS OF JULY 14, 1983

Pub. L. 98-51, title III, § 304, July 14, 1983, 97 Stat. 279, provided that:

"(a) Except as provided in subsection (b), the rate of salary or basic pay prescribed by law as of the date of the enactment of this Act [July 14, 1983] shall be reduced to the salary or basic pay rate payable as of such date in the case of—

"(1) any office or position at level I, II, or III of the Executive Schedule,

"(2) any Member of Congress, and

"(3) any other office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, for which the rate of salary or basic pay that is payable on such date of enactment is less than the rate then prescribed by law.

"(b) In the case of any office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, for which the maximum rate of salary or basic pay that is payable on the date of the enactment of this Act [July 14, 1983] is less than the maximum rate then prescribed by law, the maximum rate prescribed by law as of such date of enactment shall be reduced to the maximum rate payable as of such date.

"(c) In determining the amount of the reduction under this section in the case of any Senator, the provisions of section 129, of Public Law 97-377 [set out as a note below] shall be applied without regard to subsection (c) of such section."

SUBCHAPTER III—GENERAL SCHEDULE PAY RATES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3102, 3109, 3374, 5301, 5304, 5306, 5372, 5541, 5544, 5545, 7204 of this title; title 2 sections 60e-2, 60e-2a, 60e-2b, 60e-6, 162a, 166, 197, 293, 353, 356, 437c; title 4 section 142; title 7 sections 511m, 610, 1507, 1642, 1765a, 1981, 5005; title 8 section 1103; title 10 sections 1464, 2006, 4540, 7212, 9540; title 12 sections 1701c, 2405, 3012; title 13 section 23; title 14 section 432; title 15 sections 78d, 78s, 79z-5, 80a-45, 80b-18, 205i, 278e, 327, 634d, 648, 714g, 714h, 715h, 717q, 1023, 1942, 2451, 4105; title 16 sections 18c, 410cc-36, 450jj-1, 469j, 470m, 590d, 793, 825i, 832i, 833h, 916l, 3702; title 18 section 4001; title 20 sections 74, 75f, 76dd, 80g, 80o, 241, 964, 1004, 1089, 1098, 1102, 1135a-2, 1145, 1221e, 1417, 2106, 3413, 3461; title 22 sections 272a, 277d-3, 277d-19, 280b, 280l, 280k, 287e, 287r, 289b, 290b, 2024, 2083, 2454, 2581, 2873, 3008, 4154, 4606; title 25 sections 2a, 305a, 633, 640d-11, 2011; title 26 sections 7471, 9010, 9040; title 28 sections 602, 625, 626; title 29 sections 172, 661, 676, 761a, 783, 1774; title 30 sections 556, 664, 823; title 33 sections 569a, 984, 1325, 1374; title 35 sections 3, 7; title 36 section 1405; title 38 sections 2003, 4107, 4202; title 40 sections 13b, 166b-1f, 166b-3, 174j-8, 609, 873; title 40 App. section 109; title 41 sections 38, 46, 104; title 42 sections 204, 217a, 282, 300v-2, 907a, 1320a-4, 1503, 1731, 1855f, 1873, 1962a-4, 2000e-4, 2000g, 2201, 2473, 3525, 4276, 4365, 4372, 5149, 8713; title 43 sections 316n, 1731; title 45 sections 154, 362; title 46 App. sections 1111, 1295e, 1295g; title 47 section 154; title 49 sections 10363, 10383, 11161; title 49 App. sections 231, 1441; title 50 sections 402, 404; title 50 App. sections 460, 2001, 2153, 2162, 2168, 2169, 2253.

§ 5332. The General Schedule

(a) The General Schedule, the symbol for which is "GS", is the basic pay schedule for positions to which this subchapter applies. Each employee to whom this subchapter applies, except an employee covered by the performance management and recognition system established under chapter 54 of this title, is entitled to basic pay in accordance with the General Schedule.

[*See main edition for text of (b)*]

(As amended Pub. L. 98-615, title II, § 204(a)(1), Nov. 8, 1984, 98 Stat. 3216.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-615 substituted "the performance management and recognition system established under chapter 54" for "the merit pay system established under section 5402".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 203 of Pub. L. 98-615, set out as a note under section 5401 of this title.

EXECUTIVE ORDER NO. 12387

Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, which provided for the adjustment of pay rates effective Oct. 1, 1982, was superseded by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended by Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041, formerly set out as a note under this section.

EXECUTIVE ORDER NO. 12456

Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended by Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, which provided for the adjustment of pay rates effective Jan. 1, 1984, was superseded by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note below.

EX. ORD. NO. 12496. ADJUSTMENT OF PAY RATES EFFECTIVE JANUARY 1, 1985

Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Statutory Pay Systems.* Pursuant to the provisions of subchapter I of chapter 53 of title 5 of the United States Code, the rates of basic pay and salaries are adjusted, as set forth at the schedules attached hereto and made a part hereof, for the following statutory pay systems:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Department of Medicine and Surgery, Veterans' Administration (38 U.S.C. 4107) at Schedule 3.

SEC. 2. *Senior Executive Service.* Pursuant to the provisions of section 5382 of title 5 of the United States Code, the rates of basic pay are adjusted, as set forth at Schedule 4 attached hereto and made a part hereof, for members of the Senior Executive Service.

SEC. 3. *Executive Salaries.* The Executive Salary Cost-of-Living Adjustment Act (Public Law 94-82, 89 Stat. 419) [see Short Title of 1975 Amendment note

set out under 5 U.S.C. 5312] provides for adjustments in rates of pay and salaries as set forth at the schedules attached hereto and made a part hereof, for the following:

(a) The Vice President (3 U.S.C. 104) and the Executive Schedule (5 U.S.C. 5312-5316) at Schedule 5;

(b) Congressional Salaries (2 U.S.C. 31) at Schedule 6; and

(c) Judicial Salaries (28 U.S.C. 5, 44(d), 135, 153(a), 172(b), and 252 at Schedule 7.

SEC. 4. *Pay and Allowances for Members of the Uniformed Services.* Pursuant to the provisions of section 601 of the Department of Defense Authorization Act, 1986 [section 601 of Pub. L. 99-145, 37 U.S.C. 1009 note], the rates of monthly basic pay [37 U.S.C. 203(a)), the rates of basic allowance for subsistence (37 U.S.C. 402), and the rates of basic allowance for quarters (37 U.S.C. 403(a)) are adjusted as set forth at Schedule 8 attached hereto and made a part hereof, for members of the uniformed services.

SEC. 5. *Effective Dates.* The Adjustments in rates of pay under sections 1 through 3 of this Order, as set forth at Schedules 1 through 7 attached hereto, are effective on the first day of the first applicable pay period beginning on or after January 1, 1985. The adjustments in rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services under section 4 of this Order, as set forth at Schedule 8 attached hereto, are effective on October 1, 1985.

SEC. 6. Executive Order No. 12456 of December 30, 1983, as amended, is superseded.

RONALD REAGAN.

SCHEDULE 1

General Schedule

	1	2	3	4	5	6	7	8	9	10
GS-1	$9,339	$9,650	$9,961	$10,271	$10,582	$10,764	$11,071	$11,380	$11,393	$11,686
GS-2	10,501	10,750	11,097	11,393	11,521	11,860	12,199	12,538	12,877	13,216
GS-3	11,458	11,840	12,222	12,604	12,986	13,368	13,750	14,132	14,514	14,896
GS-4	12,862	13,291	13,720	14,149	14,578	15,007	15,436	15,865	16,294	16,723
GS-5	14,390	14,870	15,350	15,830	16,310	16,790	17,270	17,750	18,230	18,710
GS-6	16,040	16,575	17,110	17,645	18,180	18,715	19,250	19,785	20,320	20,855
GS-7	17,824	18,418	19,012	19,606	20,200	20,794	21,388	21,982	22,576	23,170
GS-8	19,740	20,398	21,056	21,714	22,372	23,030	23,688	24,346	25,004	25,662
GS-9	21,804	22,531	23,258	23,985	24,712	25,439	26,166	26,893	27,620	28,347
GS-10	24,011	24,811	25,611	26,411	27,211	28,011	28,811	29,611	30,411	31,211
GS-11	26,381	27,260	28,139	29,018	29,897	30,776	31,655	32,534	33,413	34,292
GS-12	31,619	32,673	33,727	34,781	35,835	36,889	37,943	38,997	40,051	41,105
GS-13	37,599	38,852	40,105	41,358	42,611	43,864	45,117	46,370	47,623	48,876
GS-14	44,430	45,911	47,392	48,873	50,354	51,835	53,316	54,797	56,278	57,759
GS-15	52,262	54,004	55,746	57,488	59,230	60,972	62,714	64,456	66,198	67,940
GS-16	61,296	63,339	65,382	67,425	*69,468	*71,511	*73,554	*75,597	*77,640	
GS-17	*71,804	*74,197	*76,590	*78,983	*81,376					
GS-18	*84,157									

* The rate of basic pay payable to employees at these rates is limited to the rate payable for level V of the Executive Schedule, which is $68,700.

SCHEDULE 2

Foreign Service Schedule

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$52,262	$42,348	$34,315	$27,806	$22,531	$20,142	$18,006	$16,097	$14,390
2	53,830	43,618	35,344	28,640	23,207	20,746	18,546	16,580	14,822
3	55,445	44,927	36,405	29,499	23,903	21,369	19,103	17,077	15,266
4	57,108	46,275	37,497	30,384	24,620	22,010	19,676	17,590	15,724
5	58,821	47,663	38,622	31,296	25,359	22,670	20,266	18,117	16,196
6	60,586	49,093	39,780	32,235	26,120	23,350	20,874	18,661	16,682
7	62,404	50,566	40,974	33,202	26,903	24,051	21,500	19,221	17,182
8	64,276	52,083	42,203	34,198	27,710	24,772	22,145	19,797	17,698
9	66,204	53,645	43,469	35,224	28,542	25,515	22,809	20,391	18,229
10	67,940	55,255	44,773	36,281	29,398	26,281	23,494	21,003	18,776
11	67,940	56,912	46,116	37,369	30,280	27,069	24,199	21,633	19,339
12	67,940	58,620	47,500	38,490	31,188	27,881	24,925	22,282	19,919
13	67,940	60,378	48,925	39,645	32,124	28,718	25,672	22,950	20,517
14	67,940	62,189	50,393	40,834	33,088	29,579	26,442	23,639	21,132

SCHEDULE 3

Department of Medicine and Surgery Schedules, Veterans Administration

Section 4103 Schedule:	
Chief Medical Director	*** $94,375
Deputy Chief Medical Director	** 90,532
Associate Deputy Chief Medical Director	* 86,713
Assistant Chief Medical Director	* 84,157

	Minimum	Maximum
Medical Director	*$71,804	* $81,376
Director of Nursing Service	*71,804	* 81,376
Director of Podiatric Service	61,296	* 77,640
Director of Chaplain Service	61,296	* 77,640
Director of Pharmacy Service	61,296	* 77,640
Director of Dietetic Service	61,296	* 77,640
Director of Optometric Service	61,296	* 77,640

SCHEDULE 3—Continued

Department of Medicine and Surgery Schedules, Veterans Administration

	Minimum	Maximum
Physician and Dentist Schedule:		
Director grade	$61,296	* $77,640
Executive grade	56,599	* 73,582
Chief grade	52,262	67,940
Senior grade	44,430	57,759
Intermediate grade	37,599	48,876
Full grade	31,619	41,105
Associate grade	26,381	34,292
Nurse Schedule:		
Director grade	$52,262	$67,940
Assistant Director grade	44,430	57,759
Chief grade	37,599	48,876
Senior grade	31,619	41,105
Intermediate grade	26,381	34,292
Full grade	21,804	28,347
Associate grade	18,763	24,388
Junior grade	16,040	20,855

SCHEDULE 3—Continued

Department of Medicine and Surgery Schedules, Veterans Administration

	Minimum	Maximum
Clinical Podiatrist and Optometrist Schedule:		
Chief grade	$52,262	$67,940
Senior grade	44,430	57,759
Intermediate grade	37,599	48,876
Full grade	31,619	41,105
Associate grade	26,381	34,292

*** The rate of basic pay is limited to the rate payable for level III of the Executive Schedule, which is $73,600.
** The rate of basic pay is limited to the rate payable for level IV of the Executive Schedule, which is $72,300.
* The rate of basic pay is limited to the rate payable for level V of the Executive Schedule, which is $68,700.

SCHEDULE 4

Senior Executive Service Schedule

ES-1	$61,296	ES-4	$68,700
ES-2	63,764	ES-5	70,500
ES-3	66,232	ES-6	72,300

SCHEDULE 5

Vice President and Executive Schedule

Vice President	$97,900
Level I	86,200
Level II	75,100
Level III	73,600
Level IV	72,300
Level V	68,700

SCHEDULE 6

Congressional Salaries

Senators	$75,100
Members of the House of Representatives	75,100
Delegates to the House of Representatives	75,100
Resident Commissioner from Puerto Rico	75,100
President pro tempore of the Senate	85,000
Majority leader and minority leader of the Senate	85,000
Majority leader and minority leader of the House of Representatives	85,000
Speaker of the House of Representatives	97,900

SCHEDULE 7

Judicial Salaries

Chief Justice of the United States	$108,400
Associate Justices of the Supreme Court	104,100
Circuit Judges	83,200
District Judges	78,700
Judges of the Court of International Trade	78,700
Judges of the United States Claims Court	70,200
Bankruptcy Judges	68,400

SCHEDULE 8

Pay and Allowances of the Uniformed Services

PART I—MONTHLY BASIC PAY

(Years of service computed under 37 U.S.C. 205)

Commissioned Officers

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
O-10 [1]	$5,221.50	$5,405.40	$5,405.40	$5,405.40	$5,405.40
O-9	4,027.80	4,749.00	4,850.10	4,850.10	4,850.10
O-8	4,191.60	4,317.00	4,419.60	4,419.60	4,419.60
O-7	3,483.00	3,719.70	3,719.70	3,719.70	3,886.20
O-6	2,581.50	2,836.20	3,021.90	3,021.90	3,021.90
O-5	2,064.60	2,424.60	2,592.00	2,592.00	2,592.00
O-4	1,740.30	2,119.20	2,260.50	2,260.50	2,302.50
O-3 [2]	1,617.30	1,808.10	1,932.90	2,138.70	2,341.00
O-2 [2]	1,410.30	1,540.20	1,850.10	1,912.50	1,952.70
O-1 [2]	1,224.30	1,274.70	1,540.20	1,540.20	1,540.20
	Over 8	Over 10	Over 12	Over 14	Over 16
O-10 [1]	$5,612.70	$5,612.70	*$6,042.30	*$6,042.30	*$6,474.60
O-9	4,973.40	4,973.40	5,180.40	5,180.40	5,612.70
O-8	4,749.00	4,749.00	4,973.40	4,973.40	5,180.40

SCHEDULE 8—Continued

PART I—MONTHLY BASIC PAY

(Years of service computed under 37 U.S.C. 205)

Commissioned Officers

Pay Grade	Over 8	Over 10	Over 12	Over 14	Over 16
O-7	3,886.20	4,111.80	4,111.80	4,317.00	4,749.00
O-6	3,021.90	3,021.90	3,021.90	3,124.50	3,618.60
O-5	2,592.00	2,670.60	2,814.00	3,002.70	3,227.10
O-4	2,404.20	2,568.00	2,712.60	2,836.20	2,960.70
O-3 [2]	2,321.70	2,447.10	2,568.00	2,631.30	2,631.30
O-2 [2]	1,952.70	1,952.70	1,952.70	1,952.70	1,952.70
O-1 [2]	1,540.20	1,540.20	1,540.20	1,540.20	1,540.20
	Over 18	Over 20	Over 22	Over 26	
O-10 [1]	*$6,474.60	*$6,907.80	*$6,907.80	*$7,338.30	
O-9	5,612.70	*6,042.30	*6,042.30	*6,474.60	
O-8	5,405.40	5,612.70	*5,837.70	*5,837.70	
O-7	5,075.40	5,075.40	5,075.40	5,075.40	
O-6	3,803.70	3,886.20	4,111.80	4,459.50	
O-5	3,412.50	3,515.70	3,638.40	3,638.40	
O-4	3,042.60	3,042.60	3,042.60	3,042.60	
O-3 [2]	2,631.30	2,631.30	2,631.30	2,631.30	
O-2 [2]	1,952.70	1,952.70	1,952.70	1,952.70	
O-1 [2]	1,540.20	1,540.20	1,540.20	1,540.20	

[1] While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is *$8,097.00 regardless of cumulative years of service computed under section 205 of title 37, United States Code.
[2] Does not apply to commissioned officers who have been credited with over 4 years' active service as enlisted members and/or as warrant officers.
* Basic pay is limited to the rate of basic pay payable for level V of the Executive Schedule, which is $5,724.90 per month.

Commissioned officers credited with over 4 years active duty as an enlisted member and/or warrant officer

Pay Grade	Over 4	Over 6	Over 8	Over 10
O-3	$2,138.70	$2,241.00	$2,321.70	$2,447.10
O-2	1,912.50	1,952.70	2,014.50	2,119.20
O-1	1,540.20	1,645.20	1,705.80	1,767.60
	Over 12	Over 14	Over 16	Over 18
O-3	$2,568.00	$2,670.60	$2,670.60	$2,670.60
O-2	2,200.20	2,260.50	2,260.50	2,260.50
O-1	1,829.10	1,912.50	1,912.50	1,912.50
	Over 20	Over 22	Over 26	
O-3	$2,670.60	$2,670.60	$2,670.60	
O-2	2,260.50	2,260.50	2,260.50	
O-1	1,912.50	1,912.50	1,912.50	

Warrant Officers

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
W-4	$1,647.60	$1,767.60	$1,767.60	$1,808.10	$1,890.30
W-3	1,497.30	1,624.50	1,624.50	1,645.20	1,664.70
W-2	1,311.60	1,419.00	1,419.00	1,460.40	1,540.20
W-1	1,092.90	1,253.10	1,253.10	1,357.50	1,419.00
	Over 8	Over 10	Over 12	Over 14	Over 16
W-4	$1,973.70	$2,056.50	$2,200.20	$2,302.50	$2,383.20
W-3	1,786.20	1,890.30	1,952.70	2,014.50	2,074.50
W-2	1,624.50	1,686.00	1,747.80	1,808.10	1,871.40
W-1	1,479.90	1,540.20	1,604.10	1,664.70	1,726.20
	Over 18	Over 20	Over 22	Over 26	
W-4	$2,447.10	$2,526.00	$2,610.60	$2,814.00	
W-3	2,136.70	2,221.80	2,302.50	2,383.20	
W-2	1,932.90	1,994.10	2,074.50	2,074.50	
W-1	1,786.20	1,850.10	1,850.10	1,850.10	

Enlisted Members

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
E-9 [1]	$0.00	$0.00	$0.00	$0.00	$0.00
E-8	0.00	0.00	0.00	0.00	0.00
E-7	1,122.30	1,211.40	1,256.40	1,300.20	1,344.90
E-6	965.40	1,053.40	1,096.20	1,143.00	1,185.30

Enlisted Members—Continued

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
E-5	847.20	922.50	966.90	1,009.20	1,075.20
E-4	790.50	834.60	883.50	952.20	989.70
E-3	744.60	785.10	816.90	849.30	849.30
E-2	716.40	716.40	716.40	716.40	716.40
E-1 [2]	639.00	639.00	639.00	639.00	639.00
E-1 [3]	590.70	590.70	590.70	590.70	590.70
	Over 8	Over 10	Over 12	Over 14	Over 16
E-9 [1]	$0.00	$1,916.40	$1,959.90	$2,004.30	$2,050.20
E-8	1,607.40	1,653.30	1,696.50	1,740.90	1,786.50
E-7	1,387.50	1,431.90	1,476.30	1,543.20	1,587.00
E-6	1,228.50	1,273.80	1,339.20	1,381.20	1,425.60
E-5	1,119.00	1,163.70	1,206.30	1,228.50	1,228.50
E-4	989.70	989.70	989.70	989.70	989.70
E-3	849.30	849.30	849.30	849.30	849.30
E-2	716.40	716.40	716.40	716.40	716.40
E-1 [2]	639.00	639.00	639.00	639.00	639.00
E-1 [3]	590.70	590.70	590.70	590.70	590.70
	Over 18	Over 20	Over 22	Over 26	
E-9 [1]	$2,095.80	$2,136.60	$2,249.10	$2,467.80	
E-8	1,827.90	1,872.90	1,983.00	2,204.10	
E-7	1,631.40	1,652.70	1,763.70	1,983.00	
E-6	1,447.50	1,447.50	1,447.50	1,447.50	
E-5	1,228.50	1,228.50	1,228.50	1,228.50	
E-4	989.70	989.70	989.70	989.70	
E-3	849.30	849.30	849.30	849.30	
E-2	716.40	716.40	716.40	716.40	
E-1 [2]	639.00	639.00	639.00	639.00	
E-1 [3]	590.70	590.70	590.70	590.70	

[1] While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $2,999.40 regardless of cumulative years of service computed under section 205 of title 37, United States Code.

[2] Applies to personnel who have served 4 months or more on active duty.

[3] Applies to personnel who have served less than 4 months on active duty.

PART II—BASIC ALLOWANCE FOR SUBSISTENCE RATES

Officers (per month)	$109.37	
	E-1 (less than 4 months' active duty)	All Other Enlisted
Enlisted members (per day):		
When on leave or authorized to mess separately	$4.82	$5.21
When rations-in-kind are not available	$5.45	$5.89
When assigned to duty under emergency conditions where no messing facilities of the United States are available	$7.21	$7.80

PART III—MONTHLY BASIC ALLOWANCE FOR QUARTERS RATES

Pay Grade	Without Dependents		With Dependents
	Full Rate [1]	Partial Rate [2]	
Commissioned officers:			
O-10	$553.50	$50.70	$680.70
O-9	553.50	50.70	680.70
O-8	553.50	50.70	680.70
O-7	553.50	50.70	680.70
O-6	507.90	39.60	617.40
O-5	479.40	33.00	568.80
O-4	439.50	26.70	519.90
O-3	355.80	22.20	433.50
O-2	286.50	17.70	371.70
O-1	245.70	13.20	333.30
Warrant officers:			
W-4	402.90	25.20	487.40
W-3	340.20	20.70	418.20
W-2	306.00	15.90	390.90
W-1	258.90	13.80	340.80
Enlisted members:			
E-9	324.90	18.60	442.80
E-8	300.90	15.30	412.50
E-7	256.80	12.00	383.70
E-6	228.00	9.90	345.00
E-5	210.90	8.70	309.30
E-4	183.00	8.10	297.30

PART III—MONTHLY BASIC ALLOWANCE FOR QUARTERS RATES—Continued

Pay Grade	Without Dependents		With Dependents
	F	Partial Rate [2]	
E-3	[illegible]	7.80	245.70
E-2	0.90	7.20	245.70
E-1	7.40	6.90	245.70

[1] Payment of the full r[illegible] of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by title 37, United States Code, and part IV of Executive Order 11157, as amended.

[2] Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(d) and part IV of Executive Order 11157, as amended.

Section Referred to in Other Sections

This section is referred to in sections 575, 3109, 5303, 5374, 5404, 5405, 5948, 6301, 8141 of this title; title 2 sections 60a–1, 60a–2, 166, 353, 414, 416, 437c, 476, 601; title 3 sections 105, 106, 107, 113, 114; title 7 sections 16, 1505, 1765a, 3127; title 10 sections 867, 1604, 7043; title 11 section 1302; title 12 sections 634, 636, 1749bbb–1, 2405, 3013, 3606; title 15 sections 205h, 205i, 1275, 2218, 2412, 2451, 3709, 4102; title 16 sections 79l, 469j, 470m, 825q–1, 1401, 1403; title 17 section 802; title 18 sections 207, 3153, 4202, 4204, 4351, 4352; title 19 sections 1331, 2171; title 20 sections 929, 955, 957, 963, 964, 1002, 1047c, 1102, 1134i, 1135c–1, 1221e, 1221f, 1233c, 1233d, 1505, 2011, 2012, 2103, 3413, 3461, 3462; title 21 sections 113a, 376; title 22 sections 1469, 1622d, 2385, 2386, 2456, 2511, 2512, 2669, 2903, 2905, 3507, 3508, 3612, 3614, 3963, 4110, 4135, 4155, 4605; title 25 section 640d–11; title 26 section 4946; title 28 sections 332, 548, 586, 587, 594, 602, 625, 995; title 28 App. section 308; title 29 sections 183, 656, 661, 676, 761a, 782, 783, 792, 794b; title 30 sections 812, 938, 1229, 1315; title 31 section 731; title 32 section 709; title 33 sections 1128, 1320, 1325, 1374; title 35 sections 3, 7; title 37 section 1009; title 38 section 4107; title 41 sections 351, 607; title 42 sections 300j–10, 1320a–1, 1320c–2, 1395oo, 1863, 1873, 1962a–4, 1962b–4, 1975d, 3015, 3525, 3788, 4365, 4372, 4845, 5042, 5105, 5112, 5612, 5651, 5841, 6614, 6616, 6632, 7211, 7213, 7231, 7233, 7546, 8103, 8718; title 44 section 3319; title 46 App. section 1717; title 47 section 611; title 49 App. sections 1673, 2003; title 50 section 405; title 50 App. section 2169.

§ 5334. Rate on change of position or type of appointment; regulations

[*See main edition for text of* (a) *and* (b)]

(c) An employee in the legislative branch who is paid by the Secretary of the Senate or the Clerk of the House of Representatives, and who has completed two or more years of service as such an employee, and a Member of the Senate or House of Representatives who has completed two or more years of service as such a Member, may, on appointment to a position to which this subchapter applies, have his initial rate of pay fixed—

(1) at the minimum rate of the appropriate grade; or

(2) at a step, or for an employee appointed to a position covered by the performance management and recognition system established under chapter 54 of this title, any dollar amount, of the appropriate grade that does not exceed the highest previous rate of pay received by him during that service in the legislative branch.

[See main edition for text of (d) and (e)]

(f) In the case of an employee covered by the performance management and recognition system established under chapter 54 of this title, all references in this section to "two steps" or "two step-increases" shall be deemed to mean 6 percent.

(As amended Pub. L. 98-615, title II, § 204(a)(1), Nov. 8, 1984, 98 Stat. 3216.)

AMENDMENTS

1984—Subsecs. (c)(2), (f). Pub. L. 98-615 substituted "the performance management and recognition system established under chapter 54" for "the merit pay system established under section 5402".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as a note under section 5401 of this title.

§ 5335. Periodic step-increases

[See main edition for text of (a) to (d)]

(e) This section does not apply to the pay of an individual covered by the performance management and recognition system established under chapter 54 of this title, or, appointed by the President, by and with the advice and consent of the Senate.

(f) Notwithstanding subsection (b) or (e) of this section, an increase in pay granted under section 5404 of this title is an equivalent increase in pay within the meaning of subsection (a) of this section and shall be taken into account in the case of any employee who, before becoming subject to this section, was granted such an increase while covered by the performance management and recognition system established under chapter 54 of this title.

(As amended Pub. L. 98-615, title II, §§ 203, 204(a)(1), Nov. 8, 1984, 98 Stat. 3216.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-615, § 204(a)(1), substituted "the performance management and recognition system established under chapter 54" for "the merit pay system established under section 5402".

Subsec. (f). Pub. L. 98-615, § 203, added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as a note under section 5401 of this title.

§ 5336. Additional step-increases

[See main edition for text of (a) and (b)]

(c) This section does not apply to the pay of an individual covered by the performance management and recognition system established under chapter 54 of this title, or, appointed by the President, by and with the advice and consent of the Senate.

(As amended Pub. L. 98-615, title II, § 204(a)(1), Nov. 8, 1984, 98 Stat. 3216.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-615 substituted "the performance management and recognition system established under chapter 54" for "the merit pay system established under section 5402".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as a note under section 5401 of this title.

SUBCHAPTER IV—PREVAILING RATE SYSTEMS

§ 5341. Policy

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 1604; title 41 section 351.

§ 5342. Definitions; application

(a) For the purpose of this subchapter—

(1) "agency" means an Executive agency; but does not include—

(A) a Government controlled corporation;

(B) the Tennessee Valley Authority;

(C) the Virgin Islands Corporation;

(D) the Atomic Energy Commission;

(E) the Central Intelligence Agency;

(F) the Panama Canal Commission;

(G) the National Security Agency, Department of Defense;

(H) the Bureau of Engraving and Printing, except for the purposes of section 5349 of this title;

(I) the General Accounting Office; or

(K) [1] the Defense Intelligence Agency, Department of Defense;

[See main edition for text of (2) and (3); (b) and (c)]

(As amended Pub. L. 97-468, title VI, § 615(b)(1)(D), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 98-618, title V, § 502(b), Nov. 8, 1984, 98 Stat. 3303.)

AMENDMENTS

1984—Subsec. (a)(1)(K). Pub. L. 98-618 added subpar. (K).

1983—Subsec. (a)(1)(C) to (J). Pub. L. 97-468 struck out subpar. (C) which excluded the Alaska Railroad, and redesignated subpars. (D) to (J) as (C) to (I), respectively.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-468 became effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97-468.

DISSOLUTION OF VIRGIN ISLANDS CORPORATION

The Virgin Islands Corporation was established to have succession until June 30, 1969, unless sooner dissolved by Act of Congress, by act June 30, 1949, ch. 285, 63 Stat. 350, as amended (48 U.S.C. 1407 et seq.). The Corporation terminated its program June 30, 1965, and dissolved July 1, 1966. Act June 30, 1949, was

[1] So in original. Subsec. (a)(1) does not contain a subpar. (J).

repealed by Pub. L. 97-357, title III, § 308(e), Oct. 19, 1982, 96 Stat. 1710.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5343, 5361, 5550 of this title; title 10 section 1604.

§ 5343. Prevailing rate determinations; wage schedules; night differentials

[See main edition for text of (a) to (c)]

(d) *[See main edition for text of (1)]*

(2) When the lead agency determines that there is a number of comparable positions in private industry insufficient to establish the wage schedules and rates, such agency shall—

(A) establish the wage schedules and rates to be applicable to prevailing rate employees other than prevailing rate employees of the Department of Defense on the basis of—

(i) local private industry rates; and

(ii) rates paid for comparable positions in private industry in the nearest wage area that such agency determines is most similar in the nature of its population, employment, manpower, and industry to the local wage area for which the wage survey is being made; and

(B) establish the wage schedules and rates to be applicable to prevailing rate employees of the Department of Defense only on the basis of local private industry rates.

[See main edition for text of (e) and (f)]

(As amended Pub. L. 99-145, title XII, § 1242(a), Nov. 8, 1985, 99 Stat. 735.)

AMENDMENTS

1985—Subsec. (d)(2). Pub. L. 99-145 amended par. (2) generally, designating existing provisions as subpar. (A), inserting "to be applicable to prevailing rate employees other than prevailing rate employees of the Department of Defense", redesignating as cls. (i) and (ii) provisions previously designated subpars. (A) and (B), and adding subpar. (B).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1242(b) of Pub. L. 99-145 provided that: "The rate of pay payable to a prevailing rate employee employed by the Department of Defense on the day before the date of enactment of this Act [Nov. 8, 1985] may not be reduced by reason of the amendment made by subsection (a) [amending this section]."

LIMITATION ON USE OF FUNDS FOR PAY ADJUSTMENTS FOR PREVAILING RATE EMPLOYEES AND CREWS OF VESSELS

Pub. L. 98-270, title II, § 202(b), Apr. 18, 1984, 98 Stat. 158, provided that:

"(1) Notwithstanding any other provision of law, in the case of a prevailing rate employee described in section 5342(a)(2) of title 5, United States Code, or an employee covered by section 5348 of such title—

"(A) any increase in the rate of pay payable to such employee which would result from the expiration of the limitation contained in section 107(a) of Public Law 97-377 (96 Stat. 1909) [5 U.S.C. 5343 note] shall not take effect; and

"(B) any adjustment under subchapter IV of chapter 53 of such title to any wage schedule or rate applicable to such employee which results from a wage survey and which is to become effective during the fiscal year beginning October 1, 1983, shall not exceed the amount which is 4 percent above the schedule or rate payable on September 30, 1983 (determined with regard to the limitation contained in section 107(a) of Public Law 97-377), and shall not be effective with respect to any pay period commencing before January 1 of such fiscal year.

"(2) Notwithstanding the provisions of section 9(b) of Public Law 92-392 or section 704(b) of the Civil Service Reform Act of 1978 [5 U.S.C. 5343 notes], the provisions of paragraph (1) shall apply (in such manner as the Office of Personnel Management shall prescribe) to prevailing rate employees to whom such section 9(b) applies, except that the provisions of paragraph (1) shall not apply to any increase in a wage schedule or rate which is required by the terms of a contract entered into before the date of the enactment of this Act [Apr. 18, 1984].

"(3) The provisions of paragraph (1) shall not apply with respect to wage adjustments for prevailing rate supervisors under the supervisory pay plan published in the Federal Register on May 21, 1982 (47 Fed. Reg. 22100)."

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 98-107, § 110, Oct. 1, 1983, 97 Stat. 741.

Pub. L. 97-377, title I, § 107, Dec. 21, 1982, 96 Stat. 1909.

Pub. L. 97-276, § 109, Oct. 2, 1982, 96 Stat. 1191.

Pub. L. 97-35, title XVII, § 1701(b), Aug. 13, 1981, 95 Stat. 754.

Pub. L. 96-369, § 114, Oct. 1, 1980, 94 Stat. 1356.

Pub. L. 96-74, title VI, § 613, Sept. 29, 1979, 93 Stat. 576.

Pub. L. 95-429, title VI, § 614, Oct. 10, 1978, 92 Stat. 1018.

EFFECTIVE DATE OF ADJUSTMENTS IN WAGE SCHEDULES OR RATES DURING FISCAL YEAR 1984

Pub. L. 98-369, div. B, title II, § 2202, July 18, 1984, 98 Stat. 1058, provided that:

"(a) Notwithstanding any other provision of law, effective as of October 1, 1983, any adjustment in a wage schedule or rate—

"(1) that applies—

"(A) to a prevailing rate employee described in section 5342(a)(2) of title 5, United States Code;

"(B) to an employee covered by section 5348 of such title; or

"(C) to any other employee subject to section 202(b)(1) of the Omnibus Budget Reconciliation Act of 1983 (Public Law 98-270; 98 Stat. 158) [5 U.S.C. 5343 note];

"(2) that results from a wage survey; and

"(3) that first becomes effective during the fiscal year ending September 30, 1984;

shall not take effect until the first day of the first applicable pay period beginning after the expiration of the 90-day period beginning on the date on which such adjustment would otherwise have taken effect.

"(b) The Office of Personnel Management shall take such actions as may be necessary to carry out the provisions of this section."

SUBCHAPTER VI—GRADE AND PAY RETENTION

§ 5361. Definitions

For the purpose of this subchapter—

[See main edition for text of (1) to (4)]

(5) "covered pay schedule" means the General Schedule, any prevailing rate schedule established under subchapter IV of this chapter, or the performance management and recognition system under chapter 54 of this title;

[See main edition for text of (6) and (7)]

(As amended Pub. L. 98-615, title II, § 201(a)(2), Nov. 8, 1984, 98 Stat. 3216.)

AMENDMENTS

1984—Par. (5). Pub. L. 98-615 substituted "performance management and recognition system" for "merit pay system".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as a note under section 5401 of this title.

§ 5362. Grade retention following a change of positions or reclassification

[See main edition for text of (a) and (b)]

(c) For the 2-year period referred to in subsections (a) and (b) of this section, the retained grade of an employee under such subsection (a) or (b) shall be treated as the grade of the employee's position for all purposes (including pay and pay administration under this chapter and chapters 54 and 55 of this title, retirement and life insurance under chapters 83 and 87 of this title, and eligibility for training and promotion under this title) except—

(1) for purposes of subsection (a) of this section,

(2) for purposes of applying any reduction-in-force procedures,

(3) for purposes of determining whether the employee is covered by the performance management and recognition system established under chapter 54 of this title, or

[See main edition for text of (4); (d)]

(As amended Pub. L. 98-615, title II, § 204(a)(1), Nov. 8, 1984, 98 Stat. 3216.)

AMENDMENTS

1984—Subsec. (c)(3). Pub. L. 98-615 substituted "performance management and recognition system established under chapter 54" for "merit pay system established under section 5402".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as a note under section 5401 of this title.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

§ 5373. Limitation on pay fixed by administrative action

REFERENCES IN TEXT

Sections 403a-403c, 403e-403h, and 403j of title 50, referred to in par. (4), was in the original (78 Stat. 432) a reference to "the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a and the following". Subsequent to the enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, additional sections have been added to the 1949 Act and are classified to sections 403k to 403o of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5382 of this title; title 12 section 2245.

SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE

§ 5382. Establishment and adjustment of rates of pay for the Senior Executive Service

PAY INCREASES

1985—The President, under Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of this title, adjusted the rates of basic pay for the Senior Executive Service effective on the first day of the first applicable pay period beginning on or after Jan. 1, 1985:

ES-1	$61,296	ES-4	$68,700
ES-2	63,764	ES-5	70,500
ES-3	66,232	ES-6	72,300

1984—Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended by Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, which provided for the adjustment of pay rates effective Jan. 1, 1984, was superseded by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, set out as a note under section 5332 of this title.

1982—Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, which provided for the adjustment of pay rates effective Oct. 1, 1982, was superseded by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493.

§ 5383. Setting individual senior executive pay

[See main edition for text of (a)]

(b)(1) In no event may the aggregate amount paid to a senior executive during any fiscal year under sections 4507, 5382, 5384, and 5948 of this title exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such fiscal year.

(2)(A) Any amount which is not paid to a senior executive during a fiscal year because of the limitation under paragraph (1) of this subsection shall be paid to that individual in a lump sum at the beginning of the following fiscal year.

(B) Any amount paid under this paragraph during a fiscal year shall be taken into account for purposes of applying the limitation under paragraph (1) of this subsection with respect to such fiscal year.

(C) The Office of Personnel Management shall prescribe regulations, consistent with section 5582 of this title, under which payment under this paragraph shall be made in the case of any individual whose death precludes payment under subparagraph (A) of this paragraph.

[See main edition for text of (c) and (d)]

(As amended Pub. L. 98-615, title III, § 305, Nov. 8, 1984, 98 Stat. 3219.)

REFERENCES IN TEXT

Level I of the Executive Schedule, referred to in subsec. (b)(1), is set out in section 5312 of this title.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-615 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective following the expiration of the 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3135 of this title.

SENIOR EXECUTIVE SERVICE; MAXIMUM AGGREGATE AMOUNT PAYABLE, ETC.; REPORT

Pub. L. 98-168, title III, § 301(a), Nov. 29, 1983, 97 Stat. 1112, provided that: "The Office of Personnel Management shall study and, within 12 months after the date of enactment of this Act [Nov. 29, 1983], submit to each House of Congress a report on the effect which section 5383(b) of title 5, United States Code (relating to the maximum aggregate amount payable to a member of the Senior Executive Service in a fiscal year) has had with respect to recruitment, retention, and morale of career appointees in the Senior Executive Service."

§ 5384. Performance awards in the Senior Executive Service

[See main edition for text of (a)]

(b) *[See main edition for text of (1)]*

(2) The amount of a performance award under this section shall be determined by the agency head but may not be less than 5 percent nor more than 20 percent of the career appointee's rate of basic pay.

(3) The aggregate amount of performance awards paid under this section by an agency during any fiscal year may not exceed the greater of—

(A) an amount equal to 3 percent of the aggregate amount of basic pay paid to career appointees in such agency during the preceding fiscal year; or

(B) an amount equal to 15 percent of the average of the annual rates of basic pay paid to career appointees in such agency during the preceding fiscal year.

[See main edition for text of (c) and (d)]

(As amended Pub. L. 98-615, title III, § 302, Nov. 8, 1984, 98 Stat. 3217.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-615, § 302(1), substituted "but may not be less than 5 percent nor more than 20 percent" for "but may not exceed 20 percent".

Subsec. (b)(3). Pub. L. 98-615, § 302(2), substituted provisions limiting the aggregate amount of performance awards paid under this section by an agency during any fiscal year to the greater of 3 percent of the aggregate basic pay of career appointees in that agency during the preceding fiscal year or 15 percent of the average of the annual rates of basic pay of such appointees during such fiscal year for provisions limiting the number of career appointees paid performance awards under this section during any fiscal year to 50 percent of the number of Senior Executive Service positions in such agency, except for an agency having less than 4 such positions.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective following the expiration of the 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3135 of this title.

CHAPTER 54—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

Sec.
5401. Purpose.
5402. Coverage.
5403. General pay increases.
5404. Merit increases.
5405. Pay administration.
5406. Performance awards.
5407. Cash award program.
5408. Report.
5409. Regulations.
5410. Termination.

AMENDMENTS

1984—Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3208, substituted "Performance Management and Recognition System" for "Merit Pay and Cash Awards" in chapter heading, substituted "Coverage" for "Merit pay system" in item 5402, added items 5403 to 5406 and 5410, and redesignated former items 5403 to 5405 as items 5407 to 5409, respectively.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 4302a, 4501, 5332, 5334, 5335, 5336, 5361, 5362, 5363, 5948 of this title; title 49 App. section 1555.

§ 5401. Purpose

It is the purpose of this chapter to provide for a performance management and recognition system which shall—

(1) use performance appraisals as the basis for (a) determining adjustments in basic pay by general pay increases and merit increases, and (b) making performance award determinations;

(2) within available funds, recognize and reward quality performance by varying amounts of performance and cash awards;

(3) within available funds, provide for training to improve accuracy, objectivity, and fairness in the evaluation of performance;

(4) regulate the costs of performance awards by establishing funding level requirements; and

(5) provide the means to reduce or withhold certain pay increases for less than fully successful performance.

(As amended Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3208.)

AMENDMENTS

1984—Pub. L. 98-615 amended section generally, substituting provisions relating to a performance management and recognition system for provisions relating to a merit pay system and a cash awards program, and striking out provisions applying this chapter to any supervisor or management official in a position in GS-13, 14, or 15, of the General Schedule described in section 5104 of this title, except for individuals employed under the Office of the Architect of the Capitol or the Botanic Garden, and provisions relating to the exclusion in writing by the President of an agency or any unit thereof from the application of this chapter on specified grounds, upon filing of an application for exclusion by the head of the agency or unit with the Office of Personnel Management. See section 3402 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT; TRANSITION PROVISIONS

Section 205 of title II of Pub. L. 98-615 provided that:

"(a) The amendments made by this title [enacting sections 4302a and 5406 to 5410 of this title and amending sections 4501, 5332, 5334 to 5336, 5361, 5362, 5401 to 5405, and 5948 of this title, section 1602 of Title 10, Armed Forces, and section 731 of Title 31, Money and Finance] shall be effective as of October 1, 1984, and shall apply with respect to pay periods commencing on or after that date.

"(b) The rate of basic pay for any individual serving in a position—

"(1) which is in the merit pay system before the date on which the amendments made by this title take effect, but

"(2) which does not become covered by the performance management and recognition system,

shall not be reduced on account of such position not becoming so covered.

"(c) The rate of basic pay for any individual serving in a position which ceases to be covered by the performance management and recognition system as a result of the termination of such system under section 5410 of title 5, United States Code, as amended by this title, shall not be reduced on account of such termination.

"(d)(1) Except as provided in paragraph (2), any agency or unit of an agency which, immediately before the date of enactment of this Act [Nov. 8, 1984], was excluded from coverage under the merit pay system shall be excluded from coverage under the performance management and recognition system for the 12-month period beginning on such date of enactment.

"(2) An exclusion under paragraph (1) may be revoked at any time in accordance with section 5402(b)(5) of title 5, United States Code, as amended by this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 1602; title 31 section 731.

§ 5402. Coverage

(a) Except as provided in subsection (b) or (c) of this section, this chapter shall apply to any supervisor or management official (as defined in paragraphs (10) and (11) of section 7103(a) of this title, respectively) who is in a position within grade GS-13, GS-14, or GS-15 of the General Schedule described in section 5104 of this title.

(b)(1) Upon request filed under paragraph (3) of this subsection, the President may, in writing, exclude an agency, any unit of an agency, or any class of employees within any such unit, from the application of this chapter, if the President considers such exclusion to be required as a result of conditions arising from—

(A) the recent establishment of the agency, unit, or class, or the implementation of a new program;

(B) an emergency situation; or

(C) any other situation or circumstance.

(2) Any exclusion under this subsection shall not take effect earlier than 30 calendar days after the President transmits to each House of the Congress a report describing the agency, unit, or class to be excluded and the reasons therefor.

(3) A request for exclusion of an agency, any unit of an agency, or any class of employees within any such unit, under this subsection shall be filed by the head of the agency with the Office of Personnel Management, and shall set forth reasons why the agency, unit, or class should be excluded from the application of this chapter. The Office shall review the request and reasons therefor, undertake such other review as it considers appropriate to determine whether the agency, unit, or class should be excluded from the application of this chapter and, upon completion of its review, recommend to the President whether the agency, unit, or class should be so excluded.

(4) Any agency, unit, or class which is excluded pursuant to this subsection shall, insofar as practicable, make a sustained effort to eliminate the conditions on which the exclusion is based.

(5) The Office shall periodically review any exclusion from coverage and may at any time recommend to the President that an exclusion under this subsection be revoked. The President may at any time revoke, in writing, any exclusion under this subsection.

(6) The Office shall prescribe regulations under which an employee may be excluded from the application of this chapter other than as part of an agency, unit, or class so excluded under the preceding paragraphs of this subsection. To the extent practicable, the regulations shall be based on the provisions of such paragraphs.

(c) This chapter shall not apply to individuals employed under the Office of the Architect of the Capitol, the Library of Congress, the Botanic Garden, or the Administrative Office of the United States Courts.

(As amended Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3208.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a), is set out under section 5332 of this title.

AMENDMENTS

1984—Pub. L. 98-615 amended section generally, substituting provisions relating to coverage under the performance management and recognition system for provisions relating to the merit pay system.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as a note under section 5401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 App. section 1555.

§ 5403. General pay increases

(a) For purposes of this section, a pay adjustment period, in the case of an employee covered by this chapter, shall be the period beginning on the first day of the first pay period applicable to such employee commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title and ending at the close of the day before the beginning of the following pay adjustment period.

(b) A determination concerning a general pay increase under this section shall, for any pay adjustment period, be made based on the level of performance of the employee involved, as determined for the latest appraisal period under section 4302a of this title (or an equivalent rating system) before the beginning of such pay adjustment period.

(c) Subject to section 5405(a)(1)(A) of this title, if the employee's performance is rated—

(1) at the fully successful level or either of the 2 levels above the fully successful level, the rate of basic pay of the employee shall be increased by the full general pay increase, effective as of the beginning of the pay adjustment period;

(2) at the level 1 level below the fully successful level, the rate of basic pay of the employee shall be increased by one-half of the full general pay increase, effective as of the beginning of the pay adjustment period; or

(3) at the level 2 levels below the fully successful level, the rate of basic pay of the employee shall not be increased under this section.

(d) A full general pay increase for any pay adjustment period under this section shall be determined by multiplying the rate of basic pay of the employee involved on the day immediately preceding the pay adjustment period by the percentage corresponding to the percentage generally applicable under section 5305 of this title to positions not covered by this chapter which are in the same grade as the position held by such employee.

(e)(1) The basic pay of an employee for whom a determination under section 4302a of this title (or an equivalent rating system) for the latest appraisal period is not available shall be adjusted under this subsection in such circumstances as the Office of Personnel Management shall by regulation prescribe.

(2) Any adjustment made under this subsection shall be equal to an adjustment under subsection (c)(1) of this section.

(As amended Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3209.)

AMENDMENTS

1984—Pub. L. 98-615 substituted provisions relating to general pay increases for provisions relating to a cash award program. See section 5407 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as a note under section 5401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5405 of this title.

§ 5404. Merit increases

(a) For purposes of this section—

(1) the term "applicable reference rate", as used with respect to the rate of basic pay of an employee, means the rate equal to the sum of—

(A) the minimum rate of basic pay provided under section 5332 of this title for the grade of the position held by such employee; and

(B) one-third of the difference between the maximum rate of basic pay provided for such grade under such section and the minimum rate of basic pay so provided;

(2) the term "merit increase" means, with respect to a grade, an increase equal to one-ninth of the difference between the maximum rate of basic pay provided for such grade under section 5332 of this title and the minimum rate of basic pay so provided; and

(3) a reference to the performance rating of an employee shall, for purposes of any increase which may take effect under this section in a year, be considered to be a reference to the level of performance of such employee, as determined for the latest appraisal period under section 4302a of this title (or an equivalent rating system) before the effective date of such increase.

(b) Subject to section 5405(a)(1)(A) of this title, under regulations prescribed by the Office of Personnel Management, the rate of basic pay of an employee covered by this chapter shall be increased each year in accordance with the applicable provisions of subsection (c) of this section, effective as of the beginning of the first applicable pay period commencing on or after October 1 of such year.

(c)(1)(A) If the rate of basic pay of the employee does not equal or exceed the applicable reference rate on the day before the effective date of an increase under this section, and the performance of such employee is rated at the fully successful level or either of the 2 levels above the fully successful level, the rate of basic pay of the employee shall be increased by an amount equivalent to a merit increase.

(B) If the rate of basic pay of the employee equals or exceeds the applicable reference rate on the day before the effective date of an increase under this section, and the performance of such employee is rated—

(i) at the level 2 levels above the fully successful level, the rate of basic pay of the employee shall be increased by an amount equivalent to a merit increase;

(ii) at the level 1 level above the fully successful level, the rate of basic pay of the employee shall be increased by an amount equivalent to one-half of a merit increase; or

(iii) at the fully successful level, the rate of basic pay of the employee shall be increased by an amount equivalent to one-third of a merit increase.

(2) The rate of basic pay of an employee whose performance is rated at either of the 2 levels below the fully successful level shall not be increased under this section for the year involved.

(d) The Office of Personnel Management shall prescribe regulations under which this section shall be applied in the case of an employee for whom a determination under section 4302a of this title (or an equivalent rating system) for the latest appraisal period is not available.

(As amended Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3210.)

AMENDMENTS

1984—Pub. L. 98-615 amended section generally, substituting provisions relating to merit increases for provisions relating to reports on the operation of the merit pay system and the cash awards program established under former provisions of this chapter. See section 5408 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as a note under section 5401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5335, 5405 of this title.

§ 5405. Pay administration

(a)(1) An employee covered by this chapter—

(A) may not be paid at a rate greater than the maximum rate of basic pay for the grade of the employee's position, as set forth in section 5332 of this title; and

(B) except as provided in paragraph (2) of this subsection, may not be paid at a rate less than the minimum rate of basic pay for such grade, as set forth in section 5332 of this title.

(2) An employee may be paid at a rate less than the minimum rate of basic pay for the grade of such employee's position to the extent that payment of the lesser rate is the result of the employee having received less than a full general pay increase under section 5403 of this title.

(b) Any employee whose position is brought under this chapter shall, so long as the employee continues to occupy the position, be entitled to receive basic pay at a rate of basic pay not less than the rate the employee was receiving when the position was brought under this chapter, plus any subsequent increases under sections 5403 and 5404 of this title.

(c) The Office of Personnel Management shall prescribe regulations governing the method by which an increase under section 5403 of this title and an increase under section 5404 of this title shall be made in any case in which both of those increases are to take effect beginning on the same date.

(d) Under regulations which the Office shall prescribe, the benefit of advancement through the range of basic pay for a grade shall be preserved for any employee who is covered by this chapter and whose continuous service is interrupted in the public interest by service in the Armed Forces, or by service in essential non-Government civilian employment during a period of war or national emergency.

(e) For the purpose of section 5941 of this title, rates of basic pay of employees covered by this chapter shall be considered rates of basic pay fixed by statute.

(f) In the case of an employee covered by this chapter for whose position a higher rate of basic pay has been established under section 5303 of this title, any reference in this chapter to a rate of basic pay provided under or set forth in section 5332 of this title shall be deemed to be a reference to the corresponding rate of basic pay established under such section 5303.

(As amended Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3211.)

AMENDMENTS

1984—Pub. L. 98-615 substituted provisions relating to pay administration for provisions relating to regulations. See section 5409 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as a note under section 5401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5403, 5404 of this title.

§ 5406. Performance awards

(a)(1) Any employee who is covered by this chapter, and whose performance for an appraisal period is rated under section 4302a of this title (or an equivalent rating system) at the level 2 levels above the fully successful level, shall be paid a performance award under this section for such period.

(2)(A) The amount of a performance award referred to in paragraph (1) of this subsection shall be determined by the appropriate agency head, except that any such award shall be not more than 10 percent of the employee's annual rate of basic pay and, effective after fiscal year 1985, shall be not less than 2 percent of such annual rate.

(B) Notwithstanding subparagraph (A) of this paragraph, a performance award exceeding 10 percent but not exceeding 20 percent of the employee's annual rate of basic pay may be paid if the agency head determines that such award is warranted by unusually outstanding performance.

(b)(1) Any employee who is covered by this chapter, and whose performance for an appraisal period is rated under section 4302a of this title (or an equivalent rating system) at the level 1 level above the fully successful level or at the fully successful level, may be paid a performance award under this section for such period.

(2) The amount of a performance award referred to in paragraph (1) of this subsection shall be determined by the appropriate agency head, except that any such award shall be not more than 10 percent of the employee's annual rate of basic pay.

(c)(1) Subject to subsections (a)(2) and (b)(2) of this section, the aggregate amount of performance awards paid under this section by an agency during any fiscal year shall be—

(A) not less than the product of—

(i) the applicable minimum percentage for such year under paragraph (2) of this subsection, multiplied by

(ii) an estimated aggregate amount of basic pay which will be payable to employ-

ees of the agency covered by the performance management and recognition system during such year, as determined by the head of the agency, taking into consideration the number of employees who were covered by such system during the preceding fiscal year (or by the merit pay system in the case of fiscal year 1984) and the applicable rates of basic pay in such preceding year; and

(B) not more than the product of—

(i) the applicable maximum percentage for such year under paragraph (2) of this subsection, multiplied by

(ii) the amount under subparagraph (A)(ii) of this paragraph for such year.

(2)(A)(i) The applicable minimum percentage—

(I) shall be 0.75 percent for fiscal year 1985;

(II) shall, for each of the 4 fiscal years thereafter, be adjusted incrementally (by equal increments or otherwise) over the percentage for the preceding fiscal year by the appropriate agency head in accordance with regulations which the Office of Personnel Management shall prescribe; and

(III) shall, as a result of the final adjustment, be increased to 1.15 percent for fiscal year 1989.

(ii) The applicable maximum percentage for each of the 5 fiscal years during which this chapter is in effect shall be 1.5 percent.

(B)(i) Notwithstanding subparagraph (A) of this paragraph, in the case of an agency described in clause (ii) of this subparagraph the applicable minimum percentage for any fiscal year during which this chapter is in effect shall be a percentage, not less than the minimum percentage described in subsection (2)(A)(i) and not to exceed 10 percent, which the Office shall by regulation prescribe.

(ii) This subparagraph applies to an agency in a fiscal year if the average number of employees employed under such agency during the immediately preceding fiscal year was equal to or less than the equivalent of 20 full-time employees.

(d) A failure to pay a performance award authorized by subsection (b) of this section may not be appealed.

(e) A performance award paid to an employee under this section shall be in addition to the basic pay of the employee and any cash award paid under section 5407 of this title.

(Added Pub. L. 98–615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3211.)

EFFECTIVE DATE

Section effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98–615, set out as an Effective Date of 1984 Amendment note under section 5401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5407 of this title.

§ 5407. Cash award program

(a) The head of an agency may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee who is covered by this chapter, and who—

(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations, or achieves a significant reduction in paperwork; or

(2) performs a special act or service in the public interest in connection with or related to the employee's Federal employment.

(b) The President may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee who is covered by this chapter, and who—

(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations, or achieves a significant reduction in paperwork; or

(2) performs an exceptionally meritorious special act or service in the public interest in connection with or related to the employee's Federal employment.

A Presidential cash award may be in addition to an agency cash award under subsection (a) of this section.

(c) A cash award paid to an employee under this section shall be in addition to the basic pay of the employee and any performance award paid under section 5406 of this title. Acceptance of a cash award under this section constitutes an agreement that the use by the Government of any idea, method, or device for which the award is made does not form the basis of any claim of any nature against the Government by the employee accepting the award, or the employee's heirs or assigns.

(d) A cash award to, and expenses for the honorary recognition of, any employee who is covered by this chapter may be paid from the fund or appropriation available to the activity primarily benefiting, or the various activities benefiting, from the suggestion, invention, superior accomplishment, or other meritorious effort of the employee. The head of the agency concerned shall determine the amount to be contributed by each activity to any agency cash award under subsection (a) of this section. The President shall determine the amount to be contributed by each activity to a Presidential award under subsection (b) of this section.

(e)(1) Except as provided in paragraph (2) of this subsection, a cash award under this section may not exceed $10,000.

(2) If the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment or other meritorious effort of an employee for which a cash award is proposed is highly exceptional and unusually outstanding, a cash award in excess of $10,000 but not in excess of $25,000 may be awarded to the employee on the approval of the Office.

(f) The President or the head of an agency may pay a cash award under this section notwithstanding the death or separation from the service of an employee, if the suggestion, inven-

tion, superior accomplishment, or other meritorious effort of the employee for which the award is proposed was made or performed while the employee was covered by this chapter.

(Added Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3213.)

EFFECTIVE DATE

Section effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as an Effective Date of 1984 Amendment note under section 5401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5406 of this title.

§ 5408. Report

The Office of Personnel Management shall submit an annual report to the President and each House of the Congress evaluating the effectiveness of the performance management and recognition system established by this chapter. Each such report shall be prepared after consultation with the respective heads of a sufficient range of agencies so as to permit an adequate basis for making a meaningful evaluation.

(Added Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3214.)

EFFECTIVE DATE

Section effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as an Effective Date of 1984 Amendment note under section 5401 of this title.

§ 5409. Regulations

The Office of Personnel Management shall prescribe regulations to carry out this chapter.

(Added Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3214.)

EFFECTIVE DATE

Section effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as an Effective Date of 1984 Amendment note under section 5401 of this title.

§ 5410. Termination

This chapter and any regulations prescribed under this chapter shall cease to be effective after September 30, 1989.

(Added Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3214.)

EFFECTIVE DATE

Section effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as an Effective Date of 1984 Amendment note under section 5401 of this title.

CHAPTER 55—PAY ADMINISTRATION

SUBCHAPTER V—PREMIUM PAY

Sec.
5546a. Differential pay for certain employees of the Federal Aviation Administration and the Department of Defense.

SUBCHAPTER VIII—SETTLEMENT OF ACCOUNTS

5584. Claims for overpayment of pay and allowances, and of travel, transportation and relocation expenses and allowances.

AMENDMENTS

1985—Pub. L. 99-224, § 1(b), Dec. 28, 1985, 99 Stat. 1741, substituted "and of travel, transportation and relocation expenses and allowances" for "other than travel and transportation expenses and allowances and relocation expenses" in item 5584.

1984—Pub. L. 98-525, title XV, § 1537(c)(6)(B), Oct. 19, 1984, 98 Stat. 2636, inserted "and the Department of Defense" in item 5546a.

SUBCHAPTER I—GENERAL PROVISIONS

§ 5504. Biweekly pay periods; computation of pay

DETERMINATION OF HOURLY RATE

Pub. L. 97-253, title III, § 310(b), Sept. 8, 1982, 96 Stat. 799, as amended by Pub. L. 97-346, § 3(*l*), Oct. 15, 1982, 96 Stat. 1649; Pub. L. 98-117, § 1, Oct. 11, 1983, 97 Stat. 802, provided that:

[*See main edition for text of (1) to (3)*]

"(4) Notwithstanding any other provision of this subsection, paragraph (1) shall not be effective with respect to pay periods beginning before the effective date of any increase under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule and the rates of pay under the other statutory pay systems for fiscal year 1984."

[Section 2 of Pub. L. 98-117 provided that: "The amendment made by this Act [enacting par. (4) of this note] shall be effective as of October 1, 1983."]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5332, 5505 of this title; title 2 sections 142e, 142f, 142g; title 20 section 241; title 38 section 4108; title 40 sections 166b-1d, 166b-1e.

SUBCHAPTER II—WITHHOLDING PAY

§ 5514. Installment deduction for indebtedness to the United States

[*See main edition for text of (a) and (b)*]

(c) Subsection (a) of this section does not modify existing statutes which provide for forfeiture of pay or allowances. This section and section 3530(d) of title 31 do not repeal, modify, or amend section 4837(d) or 9837(d) of title 10 or section 1007(b), (c) of title 37.

(As amended Pub. L. 98-216, § 3(a)(4), Feb. 14, 1984, 98 Stat. 6.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-216 substituted "section 3530(d)" for "section 581d".

SUBCHAPTER IV—DUAL PAY AND DUAL EMPLOYMENT

§ 5532. Employment of retired members of the uniformed services; reduction in retired or retainer pay

[*See main edition for text of (a) to (e)*]

(f)(1) Notwithstanding any other provision of law, the retired or retainer pay of a former member of a uniformed service shall not be reduced while such former member is temporarily employed, during the period described in paragraph (2) or any portion thereof, under the administrative authority of the Administrator, Federal Aviation Administration, or of the Secretary of Defense to perform duties in the operation of the air traffic control system or to train others to perform such duties.

(2) The provisions of paragraph (1) of this subsection shall be in effect for any period ending not later than December 31, 1986, during which the Administrator, Federal Aviation Administration, or the Secretary of Defense determines that there is an unusual shortage of air traffic controllers performing duties under the administrative authority of such Administrator or such Secretary, respectively.

(As amended Pub. L. 98-396, title III, § 306, Aug. 22, 1984, 98 Stat. 1424; Pub. L. 98-525, title XV, § 1537(b), Oct. 19, 1984, 98 Stat. 2635; Pub. L. 99-88, title I, § 100, Aug. 15, 1985, 99 Stat. 351.)

AMENDMENTS

1985—Subsec. (f)(2). Pub. L. 99-88 substituted "December 31, 1986" for "December 31, 1985".

1984—Subsec. (f)(1). Pub. L. 98-525, § 1537(b)(1), inserted "or of the Secretary of Defense".

Subsec. (f)(2). Pub. L. 98-525, § 1537(b)(2), inserted "or the Secretary of Defense" and "or such Secretary, respectively".

Pub. L. 98-396 substituted "December 31, 1985" for "December 31, 1984".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective Oct. 1, 1984, see section 1537(f) of Pub. L. 98-525, set out as a note under section 4109 of this title.

REDUCTION IN PAY OF MEMBERS OF A UNIFORMED SERVICE HOLDING CIVILIAN POSITIONS WHILE RECEIVING RETIRED OR RETAINER PAY

Pub. L. 97-253, title III, § 301(d), Sept. 8, 1982, 96 Stat. 791, as amended by Pub. L. 97-346, § 3(h), Oct. 15, 1982, 96 Stat. 1648, which provided that in the case of any member or former member of a uniformed service who, during any period in fiscal year 1983, 1984, or 1985, was receiving retired or retainer pay and held a civilian position, there would be deducted from the pay for such position, in accordance with regulations issued by the Office of Personnel Management, an amount equal to the amount of any increase in such individual's retired or retainer pay pursuant to section 1401a(b) of Title 10, Armed Forces, which took effect during any of such fiscal years in which he held such a civilian position and which was allocable to the period of actual employment in such civilian position, was repealed by Pub. L. 98-369, div. B, title II, § 2203, July 18, 1984, 98 Stat. 1059, effective with respect to pay periods beginning after July 18, 1984.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5531, 8116, 8339, 8344 of this title; title 22 sections 2584, 4048; title 38 section 4107; title 39 section 410; title 42 section 2038.

§ 5533. Dual pay from more than one position; limitations; exceptions

INCREASE IN COMPENSATION OF INDIVIDUALS WHOSE PAY IS DISBURSED BY THE SECRETARY OF THE SENATE

1985—The figure "$10,540" in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 1985, to the figure "$17,073", see section 9 of Salary Directive of President pro tempore of the Senate, Jan. 4, 1985, set out as a note under section 60a-1 of Title 2, The Congress.

1984—The figure "$10,540" in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 1984, to the figure "$16,495", see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 20, 1983, set out as a note under section 60a-1 of Title 2.

SUBCHAPTER V—PREMIUM PAY

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5504, 5550a, 6101 of this title; title 20 section 241.

§ 5542. Overtime rates; computation

[*See main edition for text of (a)*]

(b) For the purpose of this subchapter—

[*See main edition for text of (1)*]

(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless—

[*See main edition for text of (A)*]

(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to his or her official-duty station.

(As amended Pub. L. 98-473, title I, § 101(c) [title III, § 322], Oct. 12, 1984, 98 Stat. 1874.)

AMENDMENTS

1984—Subsec. (b)(2)(B)(iv). Pub. L. 98-473 inserted ", including travel by an employee to such an event and the return of such employee from such event to his or her official-duty station".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5543, 5545, 5546, 5547, 6123, 6128 of this title; title 14 section 432; title 15 section 278e; title 20 section 241; title 32 section 709.

§ 5543. Compensatory time off

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6123 of this title; title 14 section 432; title 15 section 278e; title 20 section 241; title 32 section 709.

§ 5544. Wage-board overtime and Sunday rates: computation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5541, 5550, 6123, 6128 of this title; title 2 section 60e-2b; title 14 section 432; title 15 section 278e; title 20 section 241; title 22 section 3664; title 32 section 709.

§ 5545. Night, standby, irregular, and hazardous duty differential

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5546, 5547, 5548, 5595, 6123, 8114, 8331, 8704 of this title; title 14 section 432; title 15 section 278e; title 20 section 241.

§ 5546. Pay for Sunday and holiday work

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5547, 6128 of this title; title 14 section 432; title 15 section 278e; title 20 section 241.

§ 5546a. Differential pay for certain employees of the Federal Aviation Administration and the Department of Defense

(a) The Administrator of the Federal Aviation Administration (hereafter in this section referred to as the "Administrator") and the Secretary of Defense (hereafter in this section referred to as the "Secretary") may pay premium pay at the rate of 5 per centum of the applicable rate of basic pay to—

(1) any employee of the Federal Aviation Administration or the Department of Defense who is—

[*See main edition for text of (A) to (C)*]

the duties of whose position are determined by the Administrator or the Secretary to be directly involved in or responsible for the operation and maintenance of the air traffic control system; and

(2) any employee of the Federal Aviation Administration or the Department of Defense who is assigned to a flight test pilot position classified not lower than GS-12 located in a region or center, the duties of whose position are determined by the Administrator or the Secretary to be unusually taxing, physically or mentally, and to be critical to the advancement of aviation safety; and

[*See main edition for text of (3); (b)*]

(c)(1) The Administrator or the Secretary may pay premium pay to any employee of the Federal Aviation Administration or the Department of Defense who—

(A) is an air traffic controller located in an air traffic control center or terminal;

(B) is not required as a condition of employment to be certified by the Administrator or the Secretary as proficient and medically qualified to perform duties including the separation and control of air traffic; and

(C) is so certified.

(2) Premium pay paid under paragraph (1) of this subsection shall be paid at the rate of 1.6 per centum of the applicable rate of basic pay for so long as such employee is so certified.

(d)(1) The Administrator or the Secretary may pay premium pay to any air traffic controller of the Federal Aviation Administration or the Department of Defense who is assigned by the Administrator or the Secretary to provide on-the-job training to another air traffic controller while such other air traffic controller is directly involved in the separation and control of live air traffic.

(2) Premium pay paid under paragraph (1) of this subsection shall be paid at the rate of 10 per centum of the applicable hourly rate of basic pay times the number of hours and portion of an hour during which the air traffic controller of the Federal Aviation Administration or the Department of Defense provides on-the-job training.

(e)(1) The Administrator or the Secretary may pay premium pay to any air traffic controller or flight service station specialist of the Federal Aviation Administration or the Department of Defense who, while working a regularly scheduled eight-hour period of service, is required by his supervisor to work during the fourth through sixth hour of such period without a break of thirty minutes for a meal.

(2) Premium pay paid under paragraph (1) of this subsection shall be paid at the rate of 50 per centum of one-half of the applicable hourly rate of basic pay.

(f)(1) The Administrator or the Secretary shall prescribe standards for determining which air traffic controllers and other employees of the Federal Aviation Administration or the Department of Defense are to be paid premium pay under this section.

(2) The Administrator and the Secretary may prescribe such rules as he determines are necessary to carry out the provisions of this section.

(Added Pub. L. 97-276, § 151(c)(1), (d), Oct. 2, 1982, 96 Stat. 1200, 1201, and amended Pub. L. 97-377, title I, § 145(a), formerly § 145, Dec. 21, 1982, 96 Stat. 1917, renumbered Pub. L. 98-78, title III, § 320(1), Aug. 15, 1983, 97 Stat. 473; Pub. L. 98-525, title XV, § 1537(c)(1)-(6)(A), Oct. 19, 1984, 98 Stat. 2635, 2636.)

AMENDMENTS

1984—Pub. L. 98-525, § 1537(c)(6)(A), inserted "and the Department of Defense" in section catchline.

Subsec. (a). Pub. L. 98-525, § 1537(c)(1)(A), inserted "and the Secretary of Defense (hereafter in this section referred to as the 'Secretary')" in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98-525, § 1537(c)(1)(B), inserted "or the Department of Defense" in provisions preceding subpar. (A) and "or the Secretary" in provisions following subpar. (C).

Subsec. (a)(2). Pub. L. 98-525, § 1537(c)(1)(C), inserted "or the Department of Defense" and "or the Secretary".

Subsecs. (c)(1), (d), (e)(1), (f)(1). Pub. L. 98-525, § 1537(c)(2)-(5)(A), inserted "or the Secretary" after "Administrator" wherever appearing, and "or the Department of Defense" after "Administration" wherever appearing.

Subsec. (f)(2). Pub. L. 98-525, § 1537(c)(5)(B), inserted "and the Secretary".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective Oct. 1, 1984, see section 1537(f) of Pub. L. 98-525, set out as a note under section 4109 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 145(b) of Pub. L. 97-377, as added by Pub. L. 98-78, title III, § 320(2), Aug. 15, 1983, 97 Stat. 473, provided that: "The amendment made by subsection (a) of this section [amending this section] shall be effective as of 5 o'clock ante meridian eastern daylight time, August 3, 1981."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5547 of this title; title 20 section 241.

§ 5547. Limitation on premium pay

An employee may be paid premium pay under sections 5542, 5545(a)–(c), and 5546(a), (b) of this title only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS-15. The first sentence of this section shall not apply to any employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under section 5546a of this title.

(As amended Pub. L. 98-525, title XV, § 1537(d), Oct. 19, 1984, 98 Stat. 2636.)

AMENDMENTS

1984—Pub. L. 98-525 inserted "or the Department of Defense".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective Oct. 1, 1984, see section 1537(f) of Pub. L. 98-525, set out as a note under section 4109 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241.

§ 5548. Regulations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241.

§ 5549. Effect on other statutes

This subchapter does not prevent payment for overtime services or for Sunday or holiday work under any of the following statutes—

[*See main edition for text of (1) to (3)*]

(4) sections 2111 and 2112 of title 46; and
(5) section 154(f)(3) of title 47.

However, an employee may not receive premium pay under this subchapter for the same services for which he is paid under one of these statutes.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 488; Pub. L. 98-89, § 3(a), Aug. 26, 1983, 97 Stat. 599.)

AMENDMENTS

1983—Par. (4). Pub. L. 98-89 substituted "sections 2111 and 2112 of title 46" for "section 382b of title 46".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241.

SUBCHAPTER VI—PAYMENT FOR ACCUMULATED AND ACCRUED LEAVE

§ 5551. Lump-sum payment for accumulated and accrued leave on separation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5552, 5596, 6304, 6306, 8344 of this title; title 15 section 2081; title 20 section 904; title 25 section 2011; title 45 section 1206.

SUBCHAPTER VIII—SETTLEMENT OF ACCOUNTS

§ 5582. Designation of beneficiary; order of precedence

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5383, 5583, 5595 of this title; title 22 section 2504; title 29 section 1699; title 42 section 4955.

§ 5584. Claims for overpayment of pay and allowances, and of travel, transportation and relocation expenses and allowances

(a) A claim of the United States against a person arising out of an erroneous payment of pay or allowances made on or after July 1, 1960, or arising out of an erroneous payment of travel, transportation or relocation expenses and allowances, to an employee of an agency, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part by—

[*See main edition for text of (1) and (2)*]

(b) The Comptroller General or the head of the agency, as the case may be, may not exercise his authority under this section to waive any claim—

[*See main edition for text of (1) and (2)*]

(3) except in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden, if application for waiver is received in his office after the expiration of three years immediately following the date on which the erroneous payment of allowances was discovered or three years immediately following October 2, 1972, whichever is later;

(4) in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden, if application for waiver is received in his office after the expiration of 3 years immediately following the date on which the erroneous payment of pay or allowances was discovered or 3 years immediately following July 25, 1974, whichever is later; or

(5) in the case of a claim involving an erroneous payment of travel, transportation or relocation expenses and allowances, if application for waiver is received in his office after the expiration of 3 years immediately following the date on which the erroneous payment was discovered.

[*See main edition for text of* (c) *to* (g)]

(As amended Pub. L. 99-224, § 1(a), Dec. 28, 1985, 99 Stat. 1741.)

AMENDMENTS

1985—Pub. L. 99-224, § 1(a)(1), substituted "and of travel, transportation and relocation expenses and allowances" for "other than travel and transportation expenses and allowances and relocation expenses" in section catchline.

Subsec. (a). Pub. L. 99-224, § 1(a)(2), substituted "made on or after July 1, 1960, or arising out of an erroneous payment of travel, transportation or relocation expenses and allowances" for ", other than travel and transportation expenses and allowances and relocation expenses payable under section 5724a of this title, on or after July 1, 1960".

Subsec. (b). Pub. L. 99-224, § 1(a)(3), added par. (5).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 4 of Pub. L. 99-224 provided that: "The amendments made by section 1 of this Act [amending this section] shall apply to any claim arising out of an erroneous payment of travel, transportation, or relocation expenses and allowances made on or after the date of the enactment of this Act [Dec. 28, 1985]. The amendments made by sections 2 and 3 of this Act [amending section 2774 of Title 10, Armed Forces, and section 716 of Title 32, National Guard] shall apply to any claim arising out of an erroneous payment of travel and transportation allowances made on or after the date of the enactment of this Act."

CHAPTER 57—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

SUBCHAPTER I—TRAVEL AND SUBSISTENCE EXPENSES; MILEAGE ALLOWANCES

Sec.
5706a. Subsistence and travel expenses for threatened law enforcement personnel.

SUBCHAPTER II—TRAVEL AND TRANSPORTATION EXPENSES; NEW APPOINTEES, STUDENT TRAINEES, AND TRANSFERRED EMPLOYEES

5724b. Taxes on reimbursements for travel, transportation, and relocation expenses of employees transferred.
5724c. Relocation services.
5734. Travel, transportation, and relocation expenses of employees transferred from the Postal Service.

AMENDMENTS

1986—Pub. L. 99-234, title I, §§ 103(b), 106(b), Jan. 2, 1986, 99 Stat. 1758, 1759, added items 5706a and 5734.

1983—Pub. L. 98-151, § 118(a)(7)(A)(ii), Nov. 14, 1983, 97 Stat. 979, added items 5724b and 5724c.

SUBCHAPTER I—TRAVEL AND SUBSISTENCE EXPENSES; MILEAGE ALLOWANCES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3375, 3381, 4109, 5354, 5723, 5751 of this title; title 2 section 476; title 7 section 2229; title 10 section 9441; title 15 section 634; title 16 sections 916*l*, 961, 1032; title 19 section 2171; title 21 section 874; title 22 sections 1754, 2024, 2511, 2672; title 26 sections 7456, 7471; title 41 section 420; title 42 sections 275, 1975b, 2477, 4276, 4277; title 46 App. section 1717; title 50 App. section 2281.

§ 5701. Definitions

For the purpose of this subchapter—

[*See main edition for text of* (1) *to* (3)]

(4) "per diem allowance" means a daily payment instead of actual expenses for subsistence and fees or tips to porters and stewards;

[*See main edition for text of* (5) *and* (6)]

(As amended Pub. L. 99-234, title I, § 101, Jan. 2, 1986, 99 Stat. 1756.)

AMENDMENTS

1986—Par. (4). Pub. L. 99-234 amended par. (4) generally, striking out "flat rate" before "payment".

EFFECTIVE DATE OF 1986 AMENDMENT; REGULATIONS

Section 301 of Pub. L. 99-234 provided that:

"(a) The Administrator of General Services shall promulgate regulations implementing the amendments made by sections 101, 102, 103, 104, and 106 of this Act [enacting sections 5706a and 5734 of this title and amending sections 5701, 5702, and 5707 of this title] not later than 150 days after the date of enactment of this Act [Jan. 2, 1986]. The amendments made by title I of this Act [enacting sections 5706a and 5734 of this title, and amending sections 5701, 5702, 5707, and 5724a of this title, section 476 of Title 2, The Congress, section 2396 of Title 22, Foreign Relations and Intercourse, section 4941 of Title 26, Internal Revenue Code, section 456 of Title 28, Judiciary and Judicial Procedure, section 326 of Title 31, Money and Finance, and section 2477 of Title 42, The Public Health and Welfare] shall take effect on the effective date of such regulations, or 180 days after the date of enactment of this Act [Jan. 2, 1986], whichever occurs first.

"(b) The amendments made by section 201 of this Act [enacting section 420 of Title 41, Public Contracts] shall take effect 30 days after the effective date of the amendments made by title I [see subsec. (a) of this note]."

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99-234 provided that: "This Act [enacting sections 5706a and 5734 of this title and section 420 of Title 41, Public Contracts, amending sections 5701, 5702, 5707, and 5724a of this title, section 476 of Title 2, The Congress, section 2396 of Title 22, Foreign Relations and Intercourse, section 4941 of Title 26, Internal Revenue Code, section 456 of Title 28, Judiciary and Judicial Procedure, section 326 of Title 31, Money and Finance, and section 2477 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 420 of Title 41] may be cited as the 'Federal Civilian Employee and Contractor Travel Expenses Act of 1985'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 68b; title 7 sections 3128, 3194, 3335, 4108, 5005; title 16 sections 971h, 2443, 3608, 3641; title 22 section 1474; title 46 App. section 1717.

§ 5702. Per diem; employee traveling on official business

(a)(1) Under regulations prescribed pursuant to section 5707 of this title, an employee, when traveling on official business away from the employee's designated post of duty, or away from the employee's home or regular place of business (if the employee is described in section 5703 of this title), is entitled to any one of the following:

(A) a per diem allowance at a rate not to exceed that established by the Administrator of General Services for travel within the con-

tinental United States, and by the President or his designee for travel outside the continental United States;

(B) reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by the Administrator for travel within the continental United States or an amount established by the President or his designee for travel outside the continental United States; or

(C) a combination of payments described in subparagraphs (A) and (B) of this paragraph.

(2) Any per diem allowance or maximum amount of reimbursement shall be established, to the extent feasible, by locality.

(3) For travel consuming less than a full day, the payment prescribed by regulation shall be allocated in such manner as the Administrator may prescribe.

(b)(1) Under regulations prescribed pursuant to section 5707 of this title, an employee who is described in subsection (a) of this section and who abandons the travel assignment prior to its completion—

(A) because of an incapacitating illness or injury which is not due to the employee's own misconduct is entitled to reimbursement for expenses of transportation to the employee's designated post of duty, or home or regular place of business, as the case may be, and to payments pursuant to subsection (a) of this section until that location is reached; or

(B) because of a personal emergency situation (such as serious illness, injury, or death of a member of the employee's family, or an emergency situation such as fire, flood, or act of God), may be allowed, with the approval of an appropriate official of the agency concerned, reimbursement for expenses of transportation to the employee's designated post of duty, or home or regular place of business, as the case may be, and payments pursuant to subsection (a) of this section until that location is reached.

(2)(A) Under regulations prescribed pursuant to section 5707 of this title, an employee who is described in subsection (a) of this section and who, with the approval of an appropriate official of the agency concerned, interrupts the travel assignment prior to its completion for a reason specified in subparagraph (A) or (B) of paragraph (1) of this subsection, may be allowed (subject to the limitation provided in subparagraph (B) of this paragraph)—

(i) reimbursement for expenses of transportation to the location where necessary medical services are provided or the emergency situation exists,

(ii) payments pursuant to subsection (a) of this section until that location is reached, and

(iii) such reimbursement and payments for return to such assignment.

(B) The reimbursement which an employee may be allowed pursuant to subparagraph (A) of this paragraph shall be the employee's actual costs of transportation to the location where necessary medical services are provided or the emergency exists, and return to assignment from such location, less the costs of transportation which the employee would have incurred had such travel begun and ended at the employee's designated post of duty, or home or regular place of business, as the case may be. The payments which an employee may be allowed pursuant to subparagraph (A) of this paragraph shall be based on the additional time (if any) which was required for the employee's transportation as a consequence of the transportation's having begun and ended at a location on the travel assignment (rather than at the employee's designated post of duty, or home or regular place of business, as the case may be).

(3) Subject to the limitations contained in regulations prescribed pursuant to section 5707 of this title, an employee who is described in subsection (a) of this section and who interrupts the travel assignment prior to its completion because of an incapacitating illness or injury which is not due to the employee's own misconduct is entitled to payments pursuant to subsection (a) of this section at the location where the interruption occurred.

(c) This section does not apply to a justice or judge, except to the extent provided by section 456 of title 28.

[(d) Repealed. Pub. L. 99-234, title I, § 102(a), Jan. 2, 1986, 99 Stat. 1756]

[(e) Redesignated (c)]

(As amended Pub. L. 99-234, title I, § 102, Jan. 2, 1986, 99 Stat. 1756.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-234, § 102(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Under regulations prescribed under section 5707 of this title, an employee while traveling on official business away from his designated post of duty, or in the case of an individual described under section 5703 of this title, his home or regular place of business, is entitled to (1) a per diem allowance for travel inside the continental United States at a rate not to exceed $50, and (2) a per diem allowance for travel outside the continental United States, that may not exceed the rate established by the President, or his designee, for each locality where travel is to be performed. For travel consuming less than a full day, such rate may be allocated proportionately."

Subsec. (b). Pub. L. 99-234, § 102(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Under regulations prescribed under section 5707 of this title, an employee who, while traveling on official business away from his designated post of duty or, in the case of an individual described under section 5703 of this title, his home or regular place of business, becomes incapacitated by illness or injury not due to his own misconduct, is entitled to the per diem allowance and appropriate transportation expenses to his designated post of duty, or home or regular place of business, as the case may be."

Subsec. (c). Pub. L. 99-234, § 102, redesignated subsec. (e) as (c) and struck out former subsec. (c) which provided: "Under regulations prescribed under section 5707 of this title, the Administrator of General Services, or his designee, may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the maximum per diem allowance would be less than these expenses, except that such reimbursement shall not exceed $75 for each day in a travel status within the continental United States when the per diem otherwise allowable is determined to be inadequate (1) due to the unusual circumstances of the travel assignment, or (2) for travel to high rate geographical areas

designated as such in regulations prescribed under section 5707 of this title."

Subsec. (d). Pub. L. 99-234, § 102(a), struck out subsec. (d) which provided: "Under regulations prescribed under section 5707 of this title, for travel outside the continental United States, the Administrator of General Services or his designee, may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the per diem allowance would be less than these expenses, except that such reimbursement shall not exceed $33 for each day in a travel status outside the continental United States plus the locality per diem rate prescribed for such travel."

Subsec. (e). Pub. L. 99-234, § 102(b), redesignated subsec. (e) as (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-234 effective (1) on the effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99-234, set out as a note under section 5701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5707, 5724a of this title; title 2 section 476; title 7 sections 3128, 3194, 3335, 4108, 5005; title 15 section 1341; title 16 sections 971h, 2443, 3608, 3641; title 18 section 4285; title 22 sections 1474, 2396, 2704; title 26 section 4941; title 28 sections 456, 1821; title 31 section 326; title 36 section 121; title 38 section 111; title 42 sections 275, 2477.

§ 5703. Per diem, travel, and transportation expenses; experts and consultants; individuals serving without pay

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 573, 5306, 5702, 7119 of this title; title 2 sections 175, 352, 475; title 7 sections 87i, 1388, 1505, 2233, 3128, 3194, 3335, 4108, 5005; title 10 sections 1464, 1589, 2006; title 12 sections 1701j-2, 1701y, 1749bbb-1, 3013; title 15 sections 633, 637, 1275, 1341, 1942, 4102; title 16 sections 1a-2, 410cc-31, 450jj-6, 469j, 839b, 972a, 1105, 1157, 1401, 1403, 1460, 1536, 1537a, 1604, 2443, 3181; title 18 section 4351; title 19 section 2171; title 20 sections 929, 955, 957, 959, 963, 1098, 1134i, 1233c, 1505, 2012, 2103, 2106, 3602, 3701; title 21 sections 360c, 360d, 360e, 360j, 376, 1115; title 22 sections 287o, 287q, 290f, 290h-5, 1465c, 1471, 1474, 1622c, 2102, 2103, 2124b, 2351, 2456, 2581, 2672b, 2872, 2873, 2903, 2905, 3106, 3507, 3617, 4110, 4605; title 25 section 305; title 28 section 2077; title 29 sections 656, 782, 792, 794b, 1142, 1302; title 30 sections 663, 812, 1315; title 31 section 751; title 33 sections 426, 857-16, 1320, 2073; title 36 sections 121, 1403; title 40 sections 333, 486, 822, 872; title 41 section 46; title 42 sections 210, 242c, 242l, 254j, 290aa, 300j-5, 300k-3, 300v, 907, 1108, 1314, 1320a-1, 1395ss, 1870, 1873, 1975b, 2473, 2495, 3015, 3211, 3535, 3609, 3788, 4025, 4768, 4914, 5042, 5105, 5112, 5404, 5651, 5661, 5774, 6007, 6614, 6632, 7234, 7417, 7546, 9511; title 44 sections 2104, 2503, 3318; title 46 sections 9307, 13110; title 46 App. section 1295b; title 47 section 611; title 49 section 325; title 49 App. sections 1673, 2003, 2508; title 50 section 98h-1; title 50 App. section 2168.

§ 5704. Mileage and related allowances

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5707, 5724 of this title; title 2 section 476; title 7 sections 3128, 3194, 3335, 4108, 5005; title 13 sections 24, 26; title 16 sections 971h, 2443, 3608, 3641; title 22 section 1474; title 28 section 1821; title 30 section 812; title 33 section 1320; title 37 section 404; title 38 section 111; title 42 sections 275, 2477.

§ 5705. Advancements and deductions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5724 of this title; title 7 sections 3128, 3194, 3335, 4108, 5005; title 16 sections 971h, 2443, 3608, 3641; title 22 section 1474.

§ 5706. Allowable travel expenses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 3128, 3194, 3335, 4108, 5005; title 16 sections 971h, 2443, 3608, 3641; title 22 section 1474.

§ 5706a. Subsistence and travel expenses for threatened law enforcement personnel

(a) Under regulations prescribed pursuant to section 5707 of this title, when the life of an employee who serves in a law enforcement, investigative, or similar capacity, or members of such employee's immediate family, is threatened as a result of the employee's assigned duties, the head of the agency concerned may approve appropriate subsistence payments for the employee or members of the employee's family (or both) while occupying temporary living accommodations at or away from the employee's designated post of duty.

(b) When a situation described in subsection (a) of this section requires the employee or members of the employee's family (or both) to be temporarily relocated away from the employee's designated post of duty, the head of the agency concerned may approve transportation expenses to and from such alternate location.

(Added Pub. L. 99-234, title I, § 103(a), Jan. 2, 1986, 99 Stat. 1757.)

EFFECTIVE DATE

Section effective (1) on the effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99-234, set out as an Effective Date of 1986 Amendment note under section 5701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5707 of this title; title 7 sections 3128, 3194, 3335, 4108, 5005; title 16 sections 971h, 2443, 3608, 3641; title 22 section 1474.

§ 5707. Regulations and reports

(a)(1) The Administrator of General Services shall prescribe regulations necessary for the administration of this subchapter, except that the Director of the Administrative Office of the United States Courts shall prescribe such regulations with respect to official travel by employees of the judicial branch of the Government.

(2) Regulations promulgated to implement section 5702 or 5706a of this title shall be transmitted to the appropriate committees of the Congress and shall not take effect until 30 days after such transmittal.

[*See main edition for text of* (b)]

(c)(1) The Administrator of General Services shall periodically, but at least every 2 years, submit to the Director of the Office of Management and Budget an analysis of estimated total

agency payments for such items as travel and transportation of people, average costs and duration of trips, and purposes of official travel; and of estimated total agency payments for employee relocation. This analysis shall be based on a sampling survey of agencies each of which spent more than $5,000,000 during the previous fiscal year on travel and transportation payments, including payments for employee relocation. Agencies shall provide to the Administrator the necessary information in a format prescribed by the Administrator and approved by the Director.

(2) The requirements of paragraph (1) of this subsection shall expire upon the Administrator's submission of the analysis that includes the fiscal year that ends September 30, 1991.

(As amended Pub. L. 99-234, title I, § 104, Jan. 2, 1986, 99 Stat. 1758.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-234 designated existing provisions as par. (1) and added par. (2).
Subsec. (c). Pub. L. 99-234 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-234 effective (1) on the effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99-234, set out as a note under section 5701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5702, 5704, 5706a, 5709 of this title; title 7 sections 3128, 3194, 3335, 4108, 5005; title 16 sections 971h, 2443, 3608, 3641; title 22 section 1474; title 28 section 456; title 40 section 872.

§ 5708. Effect on other statutes

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 sections 971h, 2443, 3608, 3641; title 22 section 1474.

SUBCHAPTER II—TRAVEL AND TRANSPORTATION EXPENSES; NEW APPOINTEES, STUDENT TRAINEES, AND TRANSFERRED EMPLOYEES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This section is referred to in title 8 section 1353; title 22 section 3650; title 46 App. section 1717.

§ 5721. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 302, 503, 3109, 5734, 5913 of this title; title 26 section 912; title 42 section 8241.

§ 5722. Travel and transportation expenses of new appointees; posts of duty outside the continental United States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5724, 5726, 5727 of this title; title 22 section 3650.

§ 5723. Travel and transportation expenses of new appointees and student trainees; manpower shortage positions

(a) Under such regulations as the President may prescribe and subject to subsections (b) and (c) of this section, an agency may pay from its appropriations—

(1) travel expenses (A) of a new appointee, or a student trainee when assigned on completion of college work, to a position in the United States for which the Office of Personnel Management determines there is a manpower shortage, (B) of a new appointee to the Senior Executive Service, or (B)[1] of any person appointed by the President to a position the rate of pay for which is equal to or higher than the minimum rate of pay prescribed for GS-16; and

(2) transportation expenses of his immediate family and his household goods and personal effects to the extent authorized by section 5724 of this title;

from his place of residence at the time of selection or assignment to his duty station. If the travel and transportation expenses of a student trainee were paid when he was appointed, they may not be paid when he is assigned after completion of college work. Travel expenses payable under this subsection may include the per diem and mileage allowances authorized for employees by subchapter I of this chapter. Advances of funds may be made for the expenses authorized by this subsection to the extent authorized by section 5724(f) of this title.

[See main edition for text of (b) to (e)]

(As amended Pub. L. 98-151, § 118(a)(1), Nov. 14, 1983, 97 Stat. 977; Pub. L. 98-473, title I, § 120(a), Oct. 12, 1984, 98 Stat. 1968.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-473 directed the amendment of subpar. (C) by striking out ", by and with the advice and consent of the Senate," which was executed to the second subpar. (B) by striking out that phrase following "appointed by the President", as the probable intent of Congress.

1983—Subsec. (a)(1). Pub. L. 98-151, designated existing provisions as subpars. (A) and (B), and added a second subpar. (B) relating to any person appointed by the President.

EFFECTIVE DATE OF 1983 AMENDMENT; PROMULGATION OF REGULATIONS

Amendment by Pub. L. 98-151 and promulgation of regulations for amendments by Pub. L. 98-151 effective Nov. 14, 1983, see section 118(c) of Pub. L. 98-151, set out as a note under section 5724 of this title.

FUNDING OF AMENDMENTS BY PUB. L. 98-151

Amendments by Pub. L. 98-151 to be carried out by agencies by use of funds appropriated or otherwise available for administrative expenses of such agencies, and do not authorize appropriation of funds in amounts exceeding sums already authorized to be appropriated for such agencies, see section 118(b) of Pub. L. 98-151, set out as a note under section 5724 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5726, 5727 of this title; title 28 section 530.

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[1] So in original. Probably should be "(C)".

§ 5724. Travel and transportation expenses of employees transferred; advancement of funds; reimbursement on commuted basis

(a) Under such regulations as the President may prescribe and when the head of the agency concerned or his designee authorizes or approves, the agency shall pay from Government funds—

[*See main edition for text of (1)*]

(2) the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking his household goods and personal effects not in excess of 18,000 pounds net weight.

(b) Under such regulations as the President may prescribe, an employee who transports a house trailer or mobile dwelling inside the continental United States, inside Alaska, or between the continental United States and Alaska, for use as a residence, and who otherwise would be entitled to transportation of household goods and personal effects under subsection (a) of this section, is entitled, instead of that transportation, to—

(1) a reasonable allowance for transportation of the house trailer or mobile dwelling, if the trailer or dwelling is transported by the employee; or

[*See main edition for text of (2)*]

However, payment under this subsection may not exceed the maximum payment to which the employee otherwise would be entitled under subsection (a) of this section for transportation and temporary storage of his household goods and personal effects in connection with this transfer.

[*See main edition for text of (c) to (h)*]

(i) An agency may pay travel and transportation expenses (including storage of household goods and personal effects) and other relocation allowances under this section and sections 5724a, 5724b, and 5726(c) of this title when an employee is transferred within the continental United States only after the employee agrees in writing to remain in the Government service for 12 months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned. If the employee violates the agreement, the money spent by the United States for the expenses and allowances is recoverable from the employee as a debt due the United States.

(j) The regulations prescribed under this section shall provide that the reassignment or transfer of any employee, for permanent duty, from one official station or agency to another which is outside the employee's commuting area shall take effect only after the employee has been given advance notice for a reasonable period. Emergency circumstances shall be taken into account in determining whether the period of advance notice is reasonable.

(As amended Pub. L. 98-151, § 118(a)(2)-(4), (7)(B), Nov. 14, 1983, 97 Stat. 977, 979.)

AMENDMENTS

1983—Subsec. (a)(2). Pub. L. 98-151, § 118(a)(2), substituted "18,000" for "11,000".

Subsec. (b)(1). Pub. L. 98-151, § 118(a)(3), struck out "not in excess of 20 cents a mile" after "allowance".

Subsec. (i). Pub. L. 98-151, § 118(a)(7)(B), added reference to section 5724b of this title.

Subsec. (j). Pub. L. 98-151, § 118(a)(4), added subsec. (j).

EFFECTIVE DATE OF 1983 AMENDMENT; PROMULGATION OF REGULATIONS

Section 118(c) of Pub. L. 98-151 provided that:

"(1) The amendments made by subsection (a) [enacting sections 5724b and 5724c of this title and amending sections 5723, 5724, 5724a, and 5726 of this title] shall take effect on the date of the enactment of this joint resolution [Nov. 14, 1983].

"(2) Not later than thirty days after the date of the enactment of this joint resolution, the President shall prescribe the regulations required under the amendments made by subsection (a). Such regulations shall take effect as of such date of enactment."

FUNDING OF AMENDMENTS BY PUB. L. 98-151

Section 118(b) of Pub. L. 98-151 provided that: "The amendments made by subsection (a) [enacting sections 5724b and 5724c of this title and amending sections 5723, 5724, 5724a, and 5726 of this title] shall be carried out by agencies by the use of funds appropriated or otherwise available for the administrative expenses of each of such respective agencies. The amendments made by such subsection do not authorize the appropriation of funds in amounts exceeding the sums already authorized to be appropriated for such agencies."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3375, 4109, 5723, 5724a, 5724b, 5726 of this title; title 16 section 3378; title 42 section 290aa; title 50 section 403e.

§ 5724a. Relocation expenses of employees transferred or reemployed

(a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of all or part of the following expenses of an employee for whom the Government pays expenses of travel and transportation under section 5724(a) of this title:

(1) Expenses of per diem allowance or the subsistence expenses of the immediate family of the employee while en route between his old and new official stations, not in excess of the maximum payment permitted under regulations which implement section 5702 of this title.

(2) Expenses of per diem allowance or subsistence of the employee and his spouse, not in excess of the maximum payment permitted under regulations which implement section 5702 of this title. Expenses of transportation to seek permanent residence quarters at a new official station when both the old and new stations are located within the continental United States. However, expenses under this paragraph may be allowed only for one

round trip in connection with each change of station of the employee.

(3) Subsistence expenses of the employee and his immediate family for a period of 60 days while occupying temporary quarters when the new official station is located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979). The period of residence in temporary quarters may be extended for an additional 60 days if the head of the agency concerned or his designee determines that there are compelling reasons for the continued occupancy of temporary quarters. The regulations shall prescribe daily rates and amounts for subsistence expenses per individual, not in excess of the maximum payment permitted under regulations which implement section 5702 of this title, for the location in which the temporary quarters are located.

(4)(A) Expenses of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old station and purchase of a home at the new official station required to be paid by him when the old and new official stations are located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979). However, reimbursement for brokerage fees on the sale of the residence and other expenses under this paragraph may not exceed those customarily charged in the locality where the residence is located, and reimbursement may not be made for losses on the sale of the residence. This paragraph applies regardless of whether title to the residence or the unexpired lease is in the name of the employee alone, in the joint names of the employee and a member of his immediate family, or in the name of a member of his immediate family alone.

(B)(i) In connection with the sale of the residence at the old official station, reimbursement under this paragraph shall not exceed 10 percent of the sale price or $15,000, whichever is the lesser amount.

(ii) In connection with the purchase of a residence at the new official station, reimbursement under this paragraph shall not exceed 5 percent of the purchase price or $7,500, whichever is the lesser amount.

(iii) Effective October 1 of each year, the respective maximum dollar amounts applicable under clauses (i) and (ii) shall be increased by the percent change, if any, in the Consumer Price Index published for December of the preceding year over that published for December of the second preceding year, adjusted to the nearest one-tenth of 1 percent. For the purpose of this clause, "Consumer Price Index" means the Consumer Price Index for All Urban Consumers, United States City Average, Housing Component (1967=100), prepared by the Bureau of Labor Statistics, Department of Labor.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 98-151, § 118(a)(5), (6), Nov. 14, 1983, 97 Stat. 977, 978; Pub. L. 99-234, title I, § 105, Jan. 2, 1986, 99 Stat. 1758.)

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99-234, § 105(1), (2), substituted "allowance or" for "allowance instead of" and "maximum payment permitted under regulations which implement section 5702 of this title" for "maximum per diem rates prescribed by or under section 5702 of this title".

Subsec. (a)(2). Pub. L. 99-234, § 105(1), (2), substituted "allowance or" for "allowance instead of" and "maximum payment permitted under regulations which implement section 5702 of this title" for "maximum per diem rates prescribed by or under section 5702 of this title".

Subsec. (a)(3). Pub. L. 99-234, § 105(2), (3), substituted "maximum payment permitted under regulations which implement section 5702 of this title" for "maximum per diem rates prescribed by or under section 5702 of this title" and "daily rates and amounts" for "average daily rates".

1983—Subsec. (a)(3). Pub. L. 98-151, § 118(a)(5)(A), in first sentence substituted "60 days" for "30 days".

Pub. L. 98-151, § 118(a)(5)(B), substituted provisions authorizing extension for an additional 60 days if agency head or designee determines existence of compelling reasons for continued occupancy, for provisions authorizing extension for an additional 30 days if the employee moves to or from Alaska, Hawaii, the territories or possessions, etc., and struck out provisions relating to additional limitations on daily rates for reimbursement for subsistence expenses.

Subsec. (a)(4). Pub. L. 98-151, § 118(a)(6), redesignated existing provisions as subpar. (A) and added subpar. (B).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-234 effective (1) on the effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99-234, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; PROMULGATION OF REGULATIONS

Amendment by Pub. L. 98-151 and promulgation of regulations for amendments by Pub. L. 98-151 effective Nov. 14, 1983, see section 118(c) of Pub. L. 98-151, set out as a note under section 5724 of this title.

FUNDING OF AMENDMENTS BY PUB. L. 98-151

Amendments by Pub. L. 98-151 to be carried out be agencies by use of funds appropriated or otherwise available for administrative expenses of such agencies, and do not authorize appropriation of funds in amounts exceeding sums already authorized to be appropriated for such agencies, see section 118(b) of Pub. L. 98-151, set out as a note under section 5724 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3375, 5724, 5724b of this title; title 22 section 3691; title 38 section 235; title 42 section 290aa; title 50 section 403e.

§ 5724b. Taxes on reimbursements for travel, transportation, and relocation expenses of employees transferred

(a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of substantially all of the Federal, State, and local income taxes incurred by an employee, or by an employee and such employee's spouse (if filing jointly), for any moving or storage expenses furnished in kind, or for which reimbursement or an allowance is provided (but only to the extent of the expenses paid or incurred). Reimbursements under this subsection shall also include an amount equal to all income taxes for which the employee and spouse, as the case may be,[2] would be liable due to the reimbursement for the taxes referred to in the first sentence of this subsection.

(b) For the purposes of this section, "moving or storage expenses" means travel and transportation expenses (including storage of household goods and personal effects under section 5724 of this title) and other relocation expenses under sections 5724a and 5724c of this title.

(Added Pub. L. 98–151, § 118(a)(7)(A)(i), Nov. 14, 1983, 97 Stat. 978, and amended Pub. L. 98–473, title I, § 120(b), Oct. 12, 1984, 98 Stat. 1969.)

CODIFICATION

Prior to amendment by Pub. L. 98–473, the words "as the case may be" were preceded by "the employee, or the employee and spouse,".

AMENDMENTS

1984—Pub. L. 98–473 amended section generally, substituting "reimbursement of substantially all of the Federal, State, and local income taxes" for "reimbursement of all or part of the Federal, State, and city income taxes" and "for which the employee and spouse, as the case may be" for "for which the employee, or the employee and spouse, as the case may be" in subsec. (a) and "5724c" for "5726(c)" in subsec. (b).

EFFECTIVE DATE; PROMULGATION OF REGULATIONS

Enactment by Pub. L. 98–151 and promulgation of regulations for amendments by Pub. L. 98–151 effective Nov. 14, 1983, see section 118(c) of Pub. L. 98–151, set out as an Effective Date of 1983 Amendment; Promulgation of Regulations note under section 5724 of this title.

DELEGATION OF FUNCTIONS

Authority of the President under this section to prescribe the regulations, relating to reimbursement of Federal, State, and city income taxes for travel, transportation, and relocation expenses of employees, transferred at Government expense, furnished in kind or for which reimbursement or an allowance is provided, delegated to the Administrator of General Services, in consultation with the Secretary of the Treasury, see section 1(7)(b) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

[2] See Codification note below.

FUNDING OF AMENDMENTS BY PUB. L. 98–151

Amendments by Pub. L. 98–151 to be carried out by agencies by use of funds appropriated or otherwise available for administrative expenses of such agencies, and do not authorize appropriation of funds in amounts exceeding sums already authorized to be appropriated for such agencies, see section 118(b) of Pub. L. 98–151, set out as a note under section 5724 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5724 of this title.

§ 5724c. Relocation services

Under such regulations as the President may prescribe, each agency is authorized to enter into contracts to provide relocation services to agencies and employees for the purpose of carrying out the provisions of this subchapter. Such services include but need not be limited to arranging for the purchase of a transferred employee's residence.

(Added Pub. L. 98–151, § 118(a)(7)(A)(i), Nov. 14, 1983, 97 Stat. 978, and amended Pub. L. 98–473, title I, § 120(b), Oct. 12, 1984, 98 Stat. 1969.)

AMENDMENTS

1984—Pub. L. 98–473 amended section generally, adding authority of the President to prescribe regulations.

EFFECTIVE DATE; PROMULGATION OF REGULATIONS

Enactment by Pub. L. 98–151 and promulgation of regulations for amendments by Pub. L. 98–151 effective Nov. 14, 1983, see section 118(c) of Pub. L. 98–151, set out as an Effective Date of 1983 Amendment; Promulgation of Regulations note under section 5724 of this title.

DELEGATION OF FUNCTIONS

Authority of the President to prescribe regulations under this section delegated to the Administrator of General Services, except with respect to the Central Intelligence Agency, see section 1(7)(c) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, as amended, set out as a note under section 301 of Title 3, The President.

FUNDING OF AMENDMENTS BY PUB. L. 98–151

Amendments by Pub. L. 98–151 to be carried out by agencies by use of funds appropriated or otherwise available for administrative expenses of such agencies, and do not authorize appropriation of funds in amounts exceeding sums already authorized to be appropriated for such agencies, see section 118(b) of Pub. L. 98–151, set out as a note under section 5724 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5724b of this title.

§ 5726. Storage expenses; household goods and personal effects

[See main edition for text of (a)]

(b) Under such regulations as the President may prescribe, an employee, including a new appointee and a student trainee to the extent authorized by sections 5722 and 5723 of this title, assigned to a permanent duty station outside the continental United States may be al-

lowed storage expenses and related transportation and other expenses for his household goods and personal effects when—

[*See main edition for text of (1) and (2)*]

The weight of the household goods and personal effects stored under this subsection, together with the weight of property transported under section 5724(a), may not exceed 18,000 pounds net weight, excluding a motor vehicle described by subsection (a) of this section.

[*See main edition for text of (c)*]

(As amended Pub. L. 98-151, § 118(a)(2), Nov. 14, 1983, 97 Stat. 977.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-151 substituted "18,000" for "11,000".

EFFECTIVE DATE OF 1983 AMENDMENT; PROMULGATION OF REGULATIONS

Amendment by Pub. L. 98-151 and promulgation of regulations for amendments by Pub. L. 98-151 effective Nov. 14, 1983, see section 118(c) of Pub. L. 98-151, set out as a note under section 5724 of this title.

FUNDING OF AMENDMENTS BY PUB. L. 98-151

Amendments by Pub. L. 98-151 to be carried out by agencies by use of funds appropriated or otherwise available for administrative expenses of such agencies, and do not authorize appropriation of funds in amounts exceeding sums already authorized to be appropriated for such agencies, see section 118(b) of Pub. L. 98-151, set out as a note under section 5724 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3735, 5724, 5724a of this title; title 26 section 912; title 42 section 290aa.

§ 5731. Expenses limited to lowest first-class rate

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 476; title 16 sections 916*l*, 961, 971h, 1032, 2443, 3608, 3641; title 22 sections 287e, 287r, 2024; title 42 sections 275, 2477, 4277; title 50 section 403e.

§ 5733. Expeditious travel

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 2443; title 46 App. section 1717.

§ 5734. Travel, transportation, and relocation expenses of employees transferred from the Postal Service

Notwithstanding the provisions of any other law, officers and employees of the United States Postal Service promoted or transferred under section 1006 of title 39, United States Code, from the Postal Service to an agency (as defined in section 5721 of this title), for permanent duty may be authorized travel, transportation, and relocation expenses and allowances under the same conditions and to the same extent authorized by this subchapter for other transferred employees within the meaning of this chapter.

(Added Pub. L. 99-234, title I, § 106(a), Jan. 2, 1986, 99 Stat. 1758.)

EFFECTIVE DATE

Section effective (1) on the effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99-234, set out as an Effective Date of 1986 Amendment note under section 5701 of this title.

CHAPTER 59—ALLOWANCES

SUBCHAPTER IV—MISCELLANEOUS ALLOWANCES

Sec.
[5944. Repealed.]

AMENDMENTS

1983—Pub. L. 98-164, title I, § 127(b)(2), Nov. 22, 1983, 97 Stat. 1027, struck out item 5944 "Illness and burial expenses; native employees in foreign countries".

SUBCHAPTER I—UNIFORMS

§ 5901. Uniform allowances

UNIFORM ALLOWANCE FOR UNIFORMED CIVILIAN EMPLOYEES OF CORPS OF ENGINEERS

Pub. L. 98-63, title I, § 101, July 30, 1983, 97 Stat. 312, provided that: "Notwithstanding subsection 5901(a) of title 5, United States Code (80 Stat. 508), as amended, the uniform allowance for uniformed civilian employees of the United States Army Corps of Engineers may be up to $400 annually."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5902, 8331 of this title; title 16 sections 1a-4, 742j-2; title 38 section 218; title 43 section 1468; title 44 section 309.

SUBCHAPTER II—QUARTERS

§ 5911. Quarters and facilities; employees in the United States

[*See main edition for text of (a) to (g)*]

(h) A member of the uniformed service on a permanent change of duty station or temporary duty orders and occupying unaccompanied personnel housing—

(1) is exempt from the requirement of subsection (c) to pay a rental rate or charge based on the reasonable value of the quarters and facilities provided; and

(2) shall pay such lesser rate or charge as the Secretary of Defense establishes by regulation.

(As amended Pub. L. 99-145, title VIII, § 809(c), Nov. 8, 1985, 99 Stat. 681.)

AMENDMENTS

1985—Subsec. (h). Pub. L. 99-145 added subsec. (h).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-145 effective Oct. 1, 1985, see section 813 of Pub. L. 99-145, set out in a Military Family Policy and Programs note under section 133 of Title 10, Armed Forces.

DEPOSIT IN SPECIAL FUND OF RENTS AND CHARGES COLLECTED FOR USE OR OCCUPANCY OF QUARTERS

Pub. L. 98-473, title I, § 101(c) [title III, § 320], Oct. 12, 1984, 98 Stat. 1874, provided that: "Notwithstanding title 5 of the United States Code or any other provision of law, after September 30, 1984, rents and

charges collected by payroll deduction or otherwise for the use or occupancy of quarters of agencies funded by this Act [probably means Department of the Interior and Related Agencies Appropriation Act, 1985, as set forth in section 101(c) of Pub. L. 98-473] shall thereafter be deposited in a special fund in each agency, to remain available until expended, for the maintenance and operation of the quarters of that agency: *Provided*, That for the fiscal year ending September 30, 1985, and each fiscal year thereafter, such amounts as may be collected may be expended in the agency unit or submit (e.g. Park, refuge, hatchery, Forest, Agency office, School, Service unit, hospital, clinic, etc.) where the funds are collected: *Provided further*, That up to 10 per centum of funds collected in such unit may be transferred to another unit within the same agency."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 754.

SUBCHAPTER III—OVERSEAS DIFFERENTIALS AND ALLOWANCES

§ 5924. Cost-of-living allowances

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5941 of this title; title 10 section 1605; title 20 section 906; title 22 sections 2506, 4081; title 26 section 912; title 37 section 431.

§ 5928. Danger pay allowance

An employee serving in a foreign area may be granted a danger pay allowance on the basis of civil insurrection, civil war, terrorism, or wartime conditions which threaten physical harm or imminent danger to the health or well-being of the employee. A danger pay allowance may not exceed 25 percent of the basic pay of the employee, except that if an employee is granted an additional differential under section 5925(b) of this title with respect to an assignment, the sum of that additional differential and any danger pay allowance granted to the employee with respect to that assignment may not exceed 25 percent of the basic pay of the employee. The presence of nonessential personnel or dependents shall not preclude payment of an allowance under this section. In each instance where an allowance under this section is initiated or terminated, the Secretary of State shall inform the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate of the action taken and the circumstances justifying it.

(As amended Pub. L. 98-164, title I, § 131, Nov. 22, 1983, 97 Stat. 1028.)

AMENDMENTS

1983—Pub. L. 98-164 added provision that presence of nonessential personnel or dependents shall not preclude payment of an allowance under this section, and that each instance where an allowance under this section is initiated or terminated, the Secretary of State shall inform the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate of action taken and circumstances justifying it.

GREATER UTILIZATION OF DANGER PAY ALLOWANCE

Pub. L. 98-533, title III, § 304, Oct. 19, 1984, 98 Stat. 2711, provided that: "In recognition of the current epidemic of worldwide terrorist activity and the courage and sacrifice of employees of United States agencies overseas, civilian as well as military, it is the sense of Congress that the provisions of section 5928 of title 5, United States Code, relating to the payment of danger pay allowance, should be more extensively utilized at United States missions abroad."

SUBCHAPTER IV—MISCELLANEOUS ALLOWANCES

§ 5941. Allowances based on living costs and conditions of environment; employees stationed outside continental United States or in Alaska

EX. ORD. NO. 10000. REGULATIONS GOVERNING ADDITIONAL COMPENSATION AND CREDIT GRANTED CERTAIN FEDERAL EMPLOYEES SERVING OUTSIDE THE UNITED STATES

Ex. Ord. No. 10000, Sept. 16, 1948, 13 F.R. 5453, as amended by Ex. Ord. No. 10636, Sept. 16, 1955, 20 F.R. 7025; Ex. Ord. No. 11938, Sept. 29, 1976, 41 F.R. 43383; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12510, Apr. 17, 1985, 50 F.R. 15535, provided:

[See main edition for text of first par.]

PART I—ADDITIONAL COMPENSATION IN FOREIGN AREAS

SECTION 101. DEFINITIONS. As used in this Part, (a) the words "foreign areas" mean all areas exclusive of (1) the forty-eight states of the United States, (2) the District of Columbia, and (3) non-foreign areas as defined in section 201 of this order, and (b) the words "section 207 of the Act" mean section 207 of the Independent Offices Appropriation Act, 1949, approved April 20, 1948, Public Law 491, 80th Congress, as amended by section 104 of the Supplemental Independent Offices Appropriation Act, 1949, approved June 30, 1948, Public Law 862, 80th Congress.

[See main edition for text of Secs. 102 to 104]

SEC. 105. PERSONS ELIGIBLE TO RECEIVE FOREIGN POST DIFFERENTIAL. (a) In order that an employee be eligible to receive a foreign post differential under this Part, (1) he shall be a citizen or national of the United States, (2) his residence in the place to which the foreign post differential applies, at the time of receipt thereof, shall be fairly attributable to his employment by the United States, and (3) his residence at such place over an appropriate prior period of time must not be fairly attributable to reasons other than employment by the United States or by United States firms, interests, or organizations.

(b) Subject to the provisions of section 105(a) hereof, the classes of persons eligible to receive the foreign post differentials fixed pursuant to section 102 hereof shall include:

(1) Persons recruited or transferred from the United States.

(2) Persons employed locally but (a) who were originally recruited from the United States and have been in substantially continuous employment by other Federal agencies, United States firms, interests, or organizations, international organizations in which the United States Government participates, or foreign governments, and whose conditions of employment provide for their return transportation to the United States, or (b) who were at the time of employment temporarily absent from the United States for purposes of travel or formal study and maintained residence in the United States during such temporary absence. When used in a geographical sense in section 105(b) hereof, "United States" includes the areas included within the definition of non-foreign areas as set forth in section 201 hereof.

(3) Persons who are not normally residents of the area concerned and who are discharged from the military service of the United States in such area to accept employment therein with an agency of the Federal Government.

[See main edition for text of Secs. 106 to 109]

PART II—ADDITIONAL COMPENSATION IN NON-FOREIGN AREAS

SEC. 201. DEFINITION. As used in this Part, (a) the term "non-foreign areas" includes Alaska, Hawaii, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and such additional areas located outside the continental United States as the Secretary of State shall designate as being within the scope of the provisions of this Part, and (b) the words "section 207 of the Act" have the meaning set forth in section 101 hereof.

SEC. 202. ADDITIONAL COMPENSATION BY REASON OF ENVIRONMENT. The Office of Personnel Management shall from time to time, subject to applicable law, (a) designate places in non-foreign areas having conditions of environment which differ substantially from conditions of environment in the United States and warrant additional compensation as a recruitment incentive, (b) fix for each such place the additional rate or rates of compensation to be paid by reason of such environment pursuant to section 207 of the Act, after giving due consideration to the degree of environmental difference, and (c) prescribe such further regulations, governing such compensation, as may be necessary. Additional compensation so fixed is hereafter in this Part referred to as "non-foreign area post differential."

SEC. 203. BASIS FOR NON-FOREIGN AREA POST DIFFERENTIAL. The Office of Personnel Management may establish a non-foreign area post differential for any place in the non-foreign areas when, and only when, the place involves any one or more of the following: (a) extraordinarily difficult living conditions, (b) excessive physical hardship, or (c) notably unhealthful conditions.

SEC. 204. PERSONS ELIGIBLE TO RECEIVE NON-FOREIGN AREA POST DIFFERENTIAL. (a) In order that an employee be eligible to receive a non-foreign area post differential under this Part, (1) he shall be a citizen or national of the United States, (2) his residence in the place to which the non-foreign area post differential applies, at the time of receipt thereof, shall be fairly attributable to his employment by the United States, and (3) his residence at such place over an appropriate prior period of time must not be fairly attributable to reasons other than employment by the United States or by United States firms, interests, or organizations.

(b) Subject to the provisions of section 204(a) hereof, the classes of persons eligible to receive the non-foreign area post differentials fixed pursuant to section 202 hereof shall include:

[See main edition for text of (1) to (3)]

SEC. 205. ADDITIONAL LIVING COST COMPENSATION. (a) The Office of Personnel Management shall from time to time, subject to applicable law, (1) designate places in non-foreign areas eligible to receive additional compensation by virtue of living costs that are substantially higher than in the Washington, D.C., area, (2) fix for each place so designated an additional rate or rates of compensation by reason of such higher living costs, and (3) prescribe by regulation such additional policies or procedures as may be necessary to administer such compensation. Additional compensation under this section is referred to as a "non-foreign area cost-of-living allowance".

(b) In fixing the non-foreign area cost-of-living allowances, the Office of Personnel Management shall make appropriate deductions when quarters or subsistence, or commissary or other purchasing privileges are furnished as a result of Federal civilian employment at a cost substantially lower than the prevailing costs in the allowance area concerned.

SEC. 206. COORDINATION. The Office of Personnel Management shall define the extent to which and the conditions under which an employee serving within the non-foreign areas may receive both a non-foreign area post differential and a non-foreign area cost-of-living allowance, pursuant to section 207 of the Act. In carrying out its functions under this Part the Office may take due notice if any special allowances, other than under section 207 of the act, granted to personnel employed by the United States in non-foreign areas.

SEC. 207. AGENCIES COVERED. Subject to the provisions of section 207 of the Act and of this Part, every Executive department, independent establishment, and wholly owned Government corporation shall pay (a) a non-foreign area post differential fixed under section 202 hereof to each of its employees whose basic compensation is fixed by statute and who is located at the post for which that differential has been fixed, and (b) a non-foreign area cost-of-living allowance fixed under section 205 hereof to each of its employees whose basic compensation is fixed by statute and who is located at the post for which that allowance has been fixed.

SEC. 208. PAYMENT OF NON-FOREIGN AREA POST DIFFERENTIALS AND COST-OF-LIVING ALLOWANCES.

(a) The following regulations shall govern the payment of non-foreign area post differentials and non-foreign area cost-of-living allowances under this Part:

[See main edition for text of (1) to (4)]

SEC. 209. PERSONS SERVING UNDER CONTRACT. Any other provision of this Part notwithstanding, any person who would otherwise be eligible to receive a non-foreign area post differential or a non-foreign area cost-of-living allowance under this Part shall, if he is serving under a contract, be compensated according to the terms of such contract for the period thereof and shall, during such period, be ineligible to receive said differential and allowance.

[See main edition for text of Sec. 210; Part III to Part VI]

EXECUTIVE ORDER NO. 12070

Ex. Ord. No. 12070, June 30, 1978, 43 F.R. 28977, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which related to suspension of certain requirements in determination of cost of living allowance rates, was superseded by Ex. Ord. No. 12510, Apr. 17, 1985, 50 F.R. 15535.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5405 of this title; title 10 section 1604; title 20 section 906; title 22 section 2506; title 39 section 1005.

§ 5943. Foreign currency appreciation allowances

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 134.

[§ 5944. Repealed. Pub. L. 98-164, title I, § 127(b)(1), Nov. 22, 1983, 97 Stat. 1027]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 513, authorized head of Executive department or military department which maintained a permanent staff of employees in foreign countries to pay burial expenses and expenses in connection with last illness and death of a native employee of his department in a country in which Secretary of State determined it was customary for employers to pay these expenses, and in foreign countries in which custom did not exist, on finding that immediate family of deceased was destitute, he could pay such of expenses as employee in charge of the office abroad in which deceased was employed considered proper. See section 3968(a)(1) of Title 22, Foreign Relations and Intercourse.

§ 5948. Physicians comparability allowances

[See main edition for text of (a) to (c)]

(d) Any agreement entered into by a physician under this section shall be for a period of one year of service in the agency involved unless the physician requests an agreement for a longer period of service. No agreement shall be entered into under this section later than September 30, 1987, nor shall any agreement cover a period of service extending beyond September 30, 1989.

[See main edition for text of (e) and (f)]

(g) For the purpose of this section—

(1) "Government physician" means any individual employed as a physician or dentist who is paid under—

[See main edition for text of (A) and (B)]

(C) chapter 54 of this title, relating to the performance management and recognition system;

[See main edition for text of (D) to (I); (h) and (i)]

(As amended Pub. L. 98-168, title I, § 102(a), Nov. 29, 1983, 97 Stat. 1105; Pub. L. 98-615, title II, § 204(a)(3), Nov. 8, 1984, 98 Stat. 3216.)

AMENDMENTS

1984—Subsec. (g)(1)(C). Pub. L. 98-615 substituted "performance management and recognition system" for "Merit Pay System".

1983—Subsec. (d). Pub. L. 98-168 substituted "1987" for "1983", and "1989" for "1985".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as a note under section 5401 of this title.

EFFECTIVE DATE OF REPEAL WITHOUT CONGRESSIONAL EXTENSION

Section 3 of Pub. L. 95-603, as amended by Pub. L. 96-166, § 4, Dec. 29, 1979, 93 Stat. 1273; Pub. L. 97-141, § 3, Dec. 29, 1981, 95 Stat. 1719; Pub. L. 98-168, title I, § 102(b), Nov. 29, 1983, 97 Stat. 1105, provided that: "The amendments made by this Act [enacting this section and provisions set out as notes under this section] are repealed, unless specifically extended by Act of Congress, effective on September 30, 1989."

SHORT TITLE OF 1983 AMENDMENT

Section 101 of title I of Pub. L. 98-168 provided that: "This title [amending this section enacting a provision set out as a note below, and amending a provision set out as a note above] may be cited as the 'Federal Physicians Comparability Allowance Amendments of 1983'."

PAY OF CERTAIN FEDERAL PHYSICIANS FOR FISCAL YEAR 1982

Section 103 of Pub. L. 98-168 provided that:

"(a) Any individual whose aggregate pay for fiscal year 1982 exceeded the limitation set forth in section 5383(b) of title 5, United States Code, is relieved of all liability to the United States for any amounts paid to such individual in excess of such limitation if, and to the extent that, such liability takes into account any allowance paid under section 5948 of such title.

"(b)(1) The appropriate agency head shall pay, out of any appropriation or fund available to pay allowances under section 5948 of title 5, United States Code, to any individual as to whom liability is relieved under subsection (a), an amount equal to the aggregate of any amounts paid by such individual, or withheld from sums otherwise due such individual, with respect to any liability relieved under such subsection.

"(2) A payment under paragraph (1)—

"(A) shall be made only if written application therefor is submitted to the appropriate agency head, in accordance with such regulations as the President or his designee may prescribe, within two years after the date of enactment of this Act [Nov. 29, 1983]; and

"(B) shall not be considered for purposes of applying the limitation set forth in section 5383(b) of title 5, United States Code.

"(c) For the purpose of this section—

"(1) the term 'aggregate pay', as used with respect to an individual, means the aggregate amount paid to such individual under sections 4507, 5382, 5384, and 5948 of title 5, United States Code;

"(2) the term 'appropriate agency head', as used with respect to an individual, means the head of the agency employing such individual when such individual was paid an allowance with respect to which liability is relieved under this subsection; and

"(3) the term 'agency' has the meaning given such term by section 5948(g)(2) of such title."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5383 of this title; title 24 section 225e; title 42 section 1395ww.

Subpart E—Attendance and Leave

CHAPTER 61—HOURS OF WORK

SUBCHAPTER I—GENERAL PROVISIONS

§ 6101. Basic 40-hour workweek; work schedules; regulations

TERMINATION DATE OF 1982 AMENDMENT

Pub. L. 97-221, § 5, July 23, 1982, 96 Stat. 234, as amended by Pub. L. 99-69, July 22, 1985, 99 Stat. 167; Pub. L. 99-109, Sept. 30, 1985, 99 Stat. 482; Pub. L. 99-140, Oct. 31, 1985, 99 Stat. 563, which had provided that enactment of subchapter II of this chapter, amendment of sections 3401 and 6106 of this title, and enactment of provisions set out as notes under sections 6101 and 6106 of this title, should not be in effect after Dec. 31, 1985, was repealed by Pub. L. 99-190, § 140, Dec. 19, 1985, 99 Stat. 1324, and also by Pub. L. 99-196, Dec. 23, 1985, 99 Stat. 1350.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5504, 6122, 6127 of this title; title 20 section 241; title 32 section 709; title 40 sections 166b-1d, 166b-1e.

§ 6103. Holidays

(a) The following are legal public holidays:

New Year's Day, January 1.

Birthday of Martin Luther King, Jr., the third Monday in January.

Washington's Birthday, the third Monday in February.

Memorial Day, the last Monday in May.

Independence Day, July 4.

Labor Day, the first Monday in September.

Columbus Day, the second Monday in October.

Veterans Day, November 11.

Thanksgiving Day, the fourth Thursday in November.

Christmas Day, December 25.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 98-144, § 1, Nov. 2, 1983, 97 Stat. 917.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-144 added item relating to birthday of Martin Luther King, Jr.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 2 of Pub. L. 98-144 provided that: "The amendment made by the first section of this Act [amending subsec. (a) of this section] shall take effect on the first January 1 that occurs after the two-year period following the date of the enactment of this Act [Nov. 2, 1983]."

SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULES

§ 6120. Purpose

REPEAL OF TERMINATION DATE

For repeal of section 5 of Pub. L. 97-221, as amended, which had provided that this section was not to be in effect after Dec. 31, 1985, see Termination Date of 1982 Amendment note set out under section 6101 of this title.

§ 6121. Definitions

REPEAL OF TERMINATION DATE

For repeal of section 5 of Pub. L. 97-221, as amended, which had provided that this section was not to be in effect after Dec. 31, 1985, see Termination Date of 1982 Amendment note set out under section 6101 of this title.

§ 6122. Flexible schedules; agencies authorized to use

REPEAL OF TERMINATION DATE

For repeal of section 5 of Pub. L. 97-221, as amended, which had provided that this section was not to be in effect after Dec. 31, 1985, see Termination Date of 1982 Amendment note set out under section 6101 of this title.

§ 6123. Flexible schedules; computation of premium pay

REPEAL OF TERMINATION DATE

For repeal of section 5 of Pub. L. 97-221, as amended, which had provided that this section was not to be in effect after Dec. 31, 1985, see Termination Date of 1982 Amendment note set out under section 6101 of this title.

§ 6124. Flexible schedules; holidays

REPEAL OF TERMINATION DATE

For repeal of section 5 of Pub. L. 97-221, as amended, which had provided that this section was not to be in effect after Dec. 31, 1985, see Termination Date of 1982 Amendment note set out under section 6101 of this title.

§ 6125. Flexible schedules; time-recording devices

REPEAL OF TERMINATION DATE

For repeal of section 5 of Pub. L. 97-221, as amended, which had provided that this section was not to be in effect after Dec. 31, 1985, see Termination Date of 1982 Amendment note set out under section 6101 of this title.

§ 6126. Flexible schedules; credit hours; accumulation and compensation

REPEAL OF TERMINATION DATE

For repeal of section 5 of Pub. L. 97-221, as amended, which had provided that this section was not to be in effect after Dec. 31, 1985, see Termination Date of 1982 Amendment note set out under section 6101 of this title.

§ 6127. Compressed schedules; agencies authorized to use

REPEAL OF TERMINATION DATE

For repeal of section 5 of Pub. L. 97-221, as amended, which had provided that this section was not to be in effect after Dec. 31, 1985, see Termination Date of 1982 Amendment note set out under section 6101 of this title.

§ 6128. Compressed schedules; computation of premium pay

REPEAL OF TERMINATION DATE

For repeal of section 5 of Pub. L. 97-221, as amended, which had provided that this section was not to be in effect after Dec. 31, 1985, see Termination Date of 1982 Amendment note set out under section 6101 of this title.

§ 6129. Administration of leave and retirement provisions

REPEAL OF TERMINATION DATE

For repeal of section 5 of Pub. L. 97-221, as amended, which had provided that this section was not to be in effect after Dec. 31, 1985, see Termination Date of 1982 Amendment note set out under section 6101 of this title.

§ 6130. Application of programs in the case of collective bargaining agreements

REPEAL OF TERMINATION DATE

For repeal of section 5 of Pub. L. 97-221, as amended, which had provided that this section was not to be in effect after Dec. 31, 1985, see Termination Date of 1982 Amendment note set out under section 6101 of this title.

§ 6131. Criteria and review

REPEAL OF TERMINATION DATE

For repeal of section 5 of Pub. L. 97-221, as amended, which had provided that this section was not to be in effect after Dec. 31, 1985, see Termination Date of 1982 Amendment note set out under section 6101 of this title.

§ 6132. Prohibition of coercion

REPEAL OF TERMINATION DATE

For repeal of section 5 of Pub. L. 97-221, as amended, which had provided that this section was not to be in effect after Dec. 31, 1985, see Termination Date of 1982 Amendment note set out under section 6101 of this title.

§ 6133. Regulations; technical assistance; program review

REPEAL OF TERMINATION DATE

For repeal of section 5 of Pub. L. 97-221, as amended, which had provided that this section was not to be in effect after Dec. 31, 1985, see Termination Date of

1982 Amendment note set out under section 6101 of this title.

CHAPTER 63—LEAVE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 4703 of this title; title 20 section 241; title 24 section 225e; title 25 section 2011.

SUBCHAPTER I—ANNUAL AND SICK LEAVE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5508, 5551, 8339 of this title; title 7 section 1766c; title 20 section 241; title 22 section 3942.

Subpart F—Labor-Management and Employee Relations

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in title 42 sections 290dd-1, 290ee-1.

CHAPTER 71—LABOR-MANAGEMENT RELATIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 4703, 5366, 5596, 6121 of this title; title 22 sections 3701, 4107, 4109; title 31 section 732; title 45 section 1203.

SUBCHAPTER I—GENERAL PROVISIONS

§ 7103. Definitions; application

EX. ORD. NO. 12171. EXCLUSIONS FROM COVERAGE OF PROGRAM

Ex. Ord. No. 12171, Nov. 19, 1979, 44 F.R. 66565, as amended by Ex. Ord. No. 12338, Jan. 11, 1982, 47 F.R. 1369; Ex. Ord. No. 12410, Mar. 28, 1983, 48 F.R. 13143, provided:

[See main edition for text of first par; Sec. 1-1]

1-2. EXCLUSIONS

[See main edition for text of 1-201 to 1-211]

1-212. Agencies or subdivisions under the operational jurisdiction of the Joint Chiefs of Staff (JCS).

[See main edition for text of (a) to (u)]

(v) The Joint Special Operations Command (JSOC).

[See main edition for text of 1-3]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4703, 5402, 5596, 6121 of this title; title 22 section 3701; title 38 section 210.

§ 7104. Federal Labor Relations Authority

[See main edition for text of (a)]

(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority. The Chairman is the chief executive and administrative officer of the Authority.

(c) A member of the Authority shall be appointed for a term of 5 years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. The term of any member shall not expire before the earlier of—

(1) the date on which the member's successor takes office, or

(2) the last day of the Congress beginning after the date on which the member's term of office would (but for this paragraph) expire.

[See main edition for text of (d) to (f)]

(As amended Pub. L. 98-224, § 3, Mar. 2, 1984, 98 Stat. 47.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-224, § 3(a), inserted provision directing that the Chairman be the chief executive and administrative officer.

Subsec. (c). Pub. L. 98-224, § 3(b), substituted provision that a member of the Authority be appointed for a term of 5 years and an individual chosen to fill a vacancy be appointed for the unexpired term of the member replaced for provision that one original member of the Authority be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years, and thereafter each member be appointed for a term of 5 years.

SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW

§ 7122. Exceptions to arbitral awards

[See main edition for text of (a)]

(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 30-day period beginning on the date the award is served on the party, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

(As amended Pub. L. 98-224, § 4, Mar. 2, 1984, 98 Stat. 48.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-224 amended subsec. (b) generally, substituting "beginning on the date the award is served on the party" for "beginning on the date of such award".

CHAPTER 72—ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS

SUBCHAPTER I—ANTIDISCRIMINATION IN EMPLOYMENT

§ 7201. Antidiscrimination policy; minority recruitment program

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 sections 3905, 3922a; title 31 section 732.

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

SUBCHAPTER I—REGULATION OF CONDUCT

§ 7301. Presidential regulations

LIMITATION ON GRATUITIES AT NAVAL SHIPBUILDING CEREMONIES

Pub. L. 99-145, title XIV, § 1461, Nov. 8, 1985, 99 Stat. 765, provided that:

"(a) GENERAL RULE.—A Federal officer, employee, or Member of Congress may not accept, directly or indirectly, any tangible thing of value as a gift or memento in connection with a ceremony to mark the completion of a naval shipbuilding milestone.

"(b) EXCLUSION.—Subsection (a) does not apply to a gift or memento that has a value of less than $100.

"(c) DEFINITIONS.—For purposes of this section, the terms 'officer', 'employee', and 'Member of Congress' have the meanings given those terms in sections 2104, 2105, and 2106, respectively, of title 5, United States Code."

SUBCHAPTER III—POLITICAL ACTIVITIES

§ 7327. Political activity permitted; employees residing in certain municipalities

The Office of Personnel Management may prescribe regulations permitting employees and individuals to whom section 7324 of this title applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest, when—

(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Office determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

(As amended Pub. L. 97-468, title VI, § 615(b)(1)(E), Jan. 14, 1983, 96 Stat. 2578.)

AMENDMENTS

1983—Pub. L. 97-468 struck out subsec. (a) which provided that section 7324(a)(2) of this title was not applicable to certain employees of the Alaska Railroad, and struck out the designation for subsec. (b).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-468 became effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97-468.

CHAPTER 75—ADVERSE ACTIONS

SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

§ 7511. Definitions; application

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241; title 22 section 1438; title 32 section 709.

§ 7512. Actions covered

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3315, 7121 of this title; title 20 section 241; title 22 section 1438; title 32 section 709; title 50 sections 832, 833.

SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

§ 7543. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

[See main edition for text of (b) to (e)]

(As amended Pub. L. 98-615, title III, § 304(c), Nov. 8, 1984, 98 Stat. 3219.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-615 added reference to failure to accept a directed reassignment or to accompany a position in a transfer of function.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3135 of this title.

CHAPTER 77—APPEALS

§ 7701. Appellate procedures

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1206, 3395a, 3592, 3593, 3595, 4303, 5596, 7121, 7513, 7543, 7702, 7703, 8347 of this title; title 20 section 241; title 22 sections 1438, 4137; title 28 section 576; title 31 section 783.

§ 7703. Judicial review of decisions of the Merit Systems Protection Board

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7121, 8347 of this title; title 28 section 1295.

CHAPTER 79—SERVICES TO EMPLOYEES

§ 7902. Safety programs

EXTENSION OF TERM OF FEDERAL ADVISORY COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1988, see Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Fed-

eral Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1987, see Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Subpart G—Insurance and Annuities

CHAPTER 81—COMPENSATION FOR WORK INJURIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3102, 3111, 5948 of this title; title 7 section 2272; title 10 sections 1588, 2113, 2360, 7086; title 15 section 4102; title 16 sections 565a-2, 1703, 3602, 3640; title 22 sections 2391, 3508, 3649, 3658; title 24 section 225e; title 25 section 2020; title 28 sections 995, 996; title 33 section 569c; title 38 sections 1515, 1685, 4107, 4118; title 42 section 3788.

SUBCHAPTER I—GENERALLY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2105, 3373, 3374, 3582, 5595, 8191, 8192, 8332, 8337, 8347, 8705, 8706, 8707, 8714a, 8714b, 8714c, 8901 of this title; title 2 section 31b-5; title 7 section 1507; title 15 section 637; title 16 sections 1a-6, 18i, 558c, 580j, 742f, 773a, 831b; title 18 sections 292, 1920, 1922, title 22 sections 3970, 4048, 4606; title 25 section 450i; title 28 section 1877; title 29 section 1706; title 33 section 941; title 38 sections 106, 416, 417, 4202; title 39 section 1005; title 40 section 290; title 42 sections 251, 1654, 1701, 1702, 1706, 1856c, 2996d, 5055, 10704; title 50 App. sections 1291, 1292, 2004.

§ 8101. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3373, 3374, 7902, 8110, 8118, 8133, 8191, 8192 of this title; title 16 sections 1a-6, 18i, 558c, 742f, 773a; title 22 section 3973; title 29 section 1706; title 30 section 902; title 42 sections 3796b, 5055.

§ 8113. Increase or decrease of basic compensation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8101, 8143 of this title; title 18 section 1921; title 29 section 1706; title 42 section 5055.

§ 8114. Computation of pay

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8115, 8133 of this title; title 28 section 1877.

§ 8141. Civil Air Patrol volunteers

(a) Subject to the provisions of this section, this subchapter applies to a volunteer civilian member of the Civil Air Patrol, except a Civil Air Patrol Cadet under 18 years of age.

(b) In administering this subchapter for a member of the Civil Air Patrol covered by this section—

(1) the monthly pay of a member is deemed the rate of basic pay payable for step 1 of grade GS-9 in the General Schedule under section 5332 of this title for the purpose of computing compensation for disability or death;

[See main edition for text of (2) to (5); (c)]

(As amended Pub. L. 98-94, title XII, § 1258(a), Sept. 24, 1983, 97 Stat. 702.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-94, § 1258(a)(1), inserted "under 18 years of age" after "Civil Air Patrol Cadet".

Subsec. (b)(1). Pub. L. 98-94, § 1258(a)(2), substituted "the rate of basic pay payable for step 1 of grade GS-9 in the General Schedule under section 5332 of this title" for "$300".

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1258(b) of Pub. L. 98-94 provided that:

"(1) The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 24, 1983].

"(2) The amendment made by subsection (a)(1) [amending subsec. (a) of this section] shall apply only to deaths or injuries occurring on or after the date of the enactment of this Act [Sept. 24, 1983].

"(3) The amendment made by subsection (a)(2) [amending subsec. (b)(1) of this section] shall apply only to the computation of compensation payable for periods commencing on or after the date of the enactment of this Act [Sept. 24, 1983]."

§ 8143. Job Corps enrollees; volunteers in service to America

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 1706.

CHAPTER 83—RETIREMENT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3374, 5362, 5948 of this title; title 22 sections 2391, 3649, 3681, 4606; title 24 section 225e; title 25 section 450i; title 28 section 996; title 38 sections 4107, 4118; title 39 section 1005; title 42 sections 426, 2996d, 10704.

SUBCHAPTER I—GENERAL PROVISIONS

§ 8301. Uniform retirement date

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 sections 564, 1164, 1210, 1221, 1263, 1305, 1331, 1404.

SUBCHAPTER III—CIVIL SERVICE RETIREMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1308, 3373, 3374, 5581, 5595, 6303, 8103, 8116, 8501, 8901 of this title; title 2 sections 31b-5, 60e-3, 72a; title 7 section 331; title 10 sections 1450, 1452; title 11 section 68; title 12 sections 1723a, 2227; title 14 sections 433, 434; title 16 section 1168; title 20 section 125; title 22 sections 2025, 3658, 3682, 3970, 4045, 4067; title 26 section 3121; title 28 sections 155, 332, 611, 625, 627, 634, 797; title 31 section 772; title 38 sections 4109, 4202; title 40 section 13b; title 42 sections 212, 410, 415, 417, 1395s, 4276; title 45 section 1206; title 50 App. section 1291.

§ 8331. Definitions

For the purpose of this subchapter—

[See main edition for text of (1) to (20)]

(21) "firefighter" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and

equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position;

(22) "bankruptcy judge" means an individual appointed under section 34 of the Bankruptcy Act (11 U.S.C. 62) or under section 404(d) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549)—

(A) who is serving as a United States bankruptcy judge on March 31, 1984;

(B) whose service as United States bankruptcy judge at any time in the period beginning on October 1, 1979, and ending on July 10, 1984, is terminated by reason of death or disability; or

(C) who is appointed as a bankruptcy judge under section 152 of title 28;

(23) "former spouse" means a former spouse of an individual—

(A) if such individual performed at least 18 months of civilian service covered under this subchapter as an employee or Member, and

(B) if the former spouse was married to such individual for at least 9 months; and

(24) "Indian court" means an Indian court as defined by section 201(3) of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes", approved April 11, 1968 (25 U.S.C. 1301(3); 82 Stat. 77).

(As amended Pub. L. 98-249, § 3(b), Mar. 31, 1984, 98 Stat. 117; Pub. L. 98-271, § 3(b), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98-299, § 3(b), May 25, 1984, 98 Stat. 214; Pub. L. 98-325, § 3(b), June 20, 1984, 98 Stat. 268; Pub. L. 98-353, title I, §§ 116(a), 121(g), July 10, 1984, 98 Stat. 343, 346; Pub. L. 98-531, § 2(a), Oct. 19, 1984, 98 Stat. 2704; Pub. L. 98-615, § 2(1), Nov. 8, 1984, 98 Stat. 3195.)

REFERENCES IN TEXT

Section 404(d) of the Act of November 6, 1978, referred to in par. (22), is section 404(d) of Pub. L. 95-598, title IV, Nov. 6, 1978, 92 Stat. 2684, which was set out in a note preceding section 151 of Title 28, Judiciary and Judicial Procedure, and was repealed by Pub. L. 98-353, title I, § 114, July 10, 1984, 98 Stat. 343.

AMENDMENTS

1984—Par. (22). Pub. L. 98-353, § 116(a)(1), substituted "of November 6, 1978 (Public Law 95-598; 92 Stat. 2549)" for "adding this paragraph" in provision preceding subpar. (A).

Par. (22)(A). Pub. L. 98-531 substituted "who is serving as a United States bankruptcy judge on March 31, 1984;" for "who is serving as a United States bankruptcy judge on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, and continues to serve as a bankruptcy judge after such date until either the date on which a successor for such judge is appointed, or October 1, 1986, whichever date is earlier;".

Pub. L. 98-353, § 121(g), substituted "the day before the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984" for "June 27, 1984".

Pub. L. 98-353, § 116(a)(2), substituted "who is serving as a United States bankruptcy judge on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, and continues to serve as a bankruptcy judge after such date until either the date on which a successor for such judge is appointed, or October 1, 1986, whichever date is earlier;" for "who is serving as a United States bankruptcy judge on June 27, 1984, and that has agreed by filing a notice of such agreement with the President, the Senate, and the Director of the Administrative Office of the United States Courts, to accept an appointment as a judge of a United States bankruptcy court established under section 201 of this Act but that is not appointed by the President as a judge of such court; or".

Pub. L. 98-325 substituted "June 27, 1984" for "June 20, 1984".

Pub. L. 98-299 substituted "June 20, 1984" for "May 25, 1984".

Pub. L. 98-271 substituted "May 25, 1984" for "April 30, 1984".

Pub. L. 98-249 substituted "April 30, 1984" for "March 31, 1984".

Par. (22)(B). Pub. L. 98-531 substituted "whose service as United States bankruptcy judge at any time in the period beginning on October 1, 1979, and ending on July 10, 1984, is terminated by reason of death or disability" for "whose service as a United States bankruptcy judge during the period beginning on October 1, 1979, and ending on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984 is terminated by reason of death or disability".

Pub. L. 98-353, § 116(a)(3)(A), substituted "period beginning on October 1, 1979, and ending on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984" for "transition period".

Par. (22)(C). Pub. L. 98-353, § 116(a)(4), added subpar. (C).

Pars. (23), (24). Pub. L. 98-615 added pars. (23) and (24).

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-615 effective 180 days after Nov. 8, 1984, with enumerated exceptions, and applicable to any individual who, on or after such date, is married to an employee or Member who, on or after such date, retires, dies, or applies for a refund of contributions under this subchapter, see section 4(a)(1) of Pub. L. 98-615, set out as a note under section 8341 of this title.

Section 3 of Pub. L. 98-531 provided that:

"(a) Except as provided in subsection (b), this Act and the amendments made by this Act [renumbering a provision set out as a note under section 101 of Title 11, Bankruptcy] shall take effect on July 10, 1984.

"(b) The amendments made by section 2 [amending sections 8331, 8336, and 8339 of this title] shall take effect on March 31, 1984."

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

Section 116(e) of Pub. L. 98-353 provided that: "The amendments made by this section [amending sections 8331, 8334, 8336, and 8339 of this title] shall take effect on the date of enactment [July 10, 1984] and shall apply to bankruptcy judges who retire on or after such date."

EFFECTIVE DATE OF 1982 AMENDMENT

Section 306(g) of Pub. L. 97-253, as amended by Pub. L. 97-346, § 3(e)(2), Oct. 15, 1982, 96 Stat. 1648; Pub. L. 98-369, div. B, title II, § 2205, July 18, 1984, 98 Stat. 1059, provided that: "The amendments made by this section [amending par. (8)(B) of this section and sections 8332, 8334, and 8348 of this title] shall take effect October 1, 1982; except that any employee or Member who retired after the date of the enactment of this Act [Sept. 8, 1982] and before October 1, 1985, or is entitled to an annuity under chapter 83 of title 5, United States Code, based on a separation from service occurring during such period, or a survivor of such individual, may make a payment under section

8334(j)(1) of title 5, United States Code. Regulations required to be issued under section 8334(j)(1) of title 5, United States Code, shall be issued by the Office of Personnel Management within 90 days after such effective date."

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98-615 provided: "That this Act [enacting sections 3595a, 4302a and 5406-5410 of this title, amending sections 3135, 3393, 3395, 3593-3595, 4312, 4501, 5332, 5334-5336, 5361, 5362, 5383, 5384, 5401-5405, 5948, 7543, 8331, 8334, 8336, 8339, 8341, 8342, 8345, 8348, 8901-8903, 8905, 8907, 8909, and 8913 of this title, section 1602 of Title 10, Armed Forces, and section 731 of Title 31, Money and Finance, and enacting provisions set out as notes under sections 3131, 3135, 5401, and 8341 of this title] may be cited as the 'Civil Service Retirement Spouse Equity Act of 1984'."

CONSTRUCTION OF ADJUSTMENTS IN RETIREMENT PROVISIONS MADE BY PUB. L. 98-353

Section 117 of Pub. L. 98-353 provided that: "The adjustments in the retirement provisions made by this Act shall not be construed to be a 'new government retirement system' for purposes of the Federal Employees Retirement Contribution Temporary Adjustment Act of 1983 (Public Law 98-168) [set out below]".

ELECTION OF RETIREMENT PLAN UNDER FEDERAL EMPLOYEES' RETIREMENT CONTRIBUTION TEMPORARY ADJUSTMENT ACT OF 1983

Pub. L. 98-369, div. B, title II, § 2206, July 18, 1984, 98 Stat. 1059, provided that:

"(a) For the purposes of this section, the term 'covered retirement system' shall have the same meaning as provided in section 203(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (Public Law 98-168; 97 Stat. 1107) [set out below].

"(b)(1) Any individual who was entitled to make an election under section 208(a) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1111) [set out below], but who did not make such an election, may make an election under such section not later than September 15, 1984.

"(2)(A) Not later than September 15, 1984, any such individual who made an election under paragraph (1) of section 208(a) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [set out below] may—

"(i) make any other election which such individual was entitled to make under such section before January 1, 1984; or

"(ii) elect to become a participant in a covered retirement system (if such individual is otherwise eligible to participate in such system), subject to sections 201 through 207 of such Act [set out below].

"(B) Not later than September 15, 1984, any such individual who made an election under paragraph (2) of section 208(a) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 may—

"(i) make any other election which such individual was entitled to make under such section before January 1, 1984; or

"(ii) elect to terminate participation in the covered retirement system with respect to which such individual made the election under such paragraph (2).

"(3) An election under this subsection shall be made by a written application submitted to the official by whom the electing individual is paid.

"(4) An election made as provided in this subsection shall take effect with respect to service performed on or after the first day of the first applicable pay period commencing after September 15, 1984.

"(c)(1) Section 8342(a)(4) of title 5, United States Code, does not apply for the purpose of determining an entitlement to a refund under section 208(c) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1111) [set out below].

"(2) Paragraph (1) shall take effect with respect to any election made under section 208(a) of such Act or this Act before, on, or after January 1, 1984.

"(d) Nothing in this section or the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [set out below] affects any entitlement to benefits accrued under a covered retirement system before January 1, 1984, except to the extent that any amount refunded under section 208(c) of such Act is not redeposited in the applicable retirement fund."

FEDERAL EMPLOYEES' RETIREMENT CONTRIBUTION TEMPORARY ADJUSTMENT

Pub. L. 98-168, title II, Nov. 29, 1983, 97 Stat. 1106, as amended by Pub. L. 99-190, § 147, Dec. 19, 1985, 99 Stat. 1324, provided that:

"SHORT TITLE

"SEC. 201. This title may be cited as the 'Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983'.

"STATEMENT OF POLICY

"SEC. 202. It is the policy of the Government—

"(1) that the amount required to be contributed to certain public retirement systems by employees and officers of the Government who are also required to pay employment taxes relating to benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] for service performed after December 31, 1983, be modified until the date on which such employees and officers are covered by a new Government retirement system (the design, structure, and provisions of which have not been determined on the date of enactment of this Act [Nov. 29, 1983]) or May 1, 1986, whichever is earlier;

"(2) that the Treasury be required to pay into such retirement systems the remainder of the amount such employees and officers would have contributed during such period but for the temporary modification;

"(3) that the employing agencies make contributions to the retirement systems with respect to such service in amounts required by law in effect before January 1, 1984, without reduction in such amounts;

"(4) that such employees and officers accrue credit for service for the purposes of the public retirement systems in effect on the date of enactment of this Act [Nov. 29, 1983] until a new Government retirement system covering such employees and officers is established;

"(5) that, where appropriate, deposits to the credit of such a retirement system be required with respect to service performed by an employee or officer of the Government during the period described in clause (1), and, where appropriate, annuities be offset by the amount of certain social security benefits attributable to such service; and

"(6) that such employees and officers who are first employed in civilian service by the Government or first take office in civilian service in the Government on or after January 1, 1984, become subject to such new Government retirement system as may be established for employees and officers of the Government on or after January 1, 1984, and before May 1, 1986, with credit for service performed after December 31, 1983, by such employees and officers transferred to such new Government retirement system.

"DEFINITIONS

"SEC. 203. (a) For the purposes of this title—

"(1) the term 'covered employee' means any individual whose service is covered service;

"(2) the term 'covered retirement system' means—

"(A) the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;

"(B) the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.);

"(C) the Central Intelligence Agency Retirement and Disability System under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); and

"(D) any other retirement system (other than a new Government retirement system) under which a covered employee who is a participant in the system is required to make contributions to the system in an amount equal to a portion of the participant's basic pay for covered service, as determined by the President.

"(3) the term 'covered service' means service which is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of the Internal Revenue Code of 1954 [26 U.S.C. 3101 et seq.] by reason of the amendments made by section 101 of the Social Security Amendments of 1983 (97 Stat. 67) [amending section 3121 of Title 26, Internal Revenue Code, and sections 409 and 410 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under section 3121 of Title 26 and section 410 of Title 42]; and

"(4) the term 'new Government retirement system' means any retirement system which (A) is established for officers or employees of the Government by or pursuant to a law enacted after December 31, 1983, and before May 1, 1986, and (B) takes effect on or before May 1, 1986.

"(b) The President shall publish the determinations made for the purpose of subsection (a)(2)(D) in an Executive order.

"CONTRIBUTION ADJUSTMENTS

"SEC. 204. (a) In the case of a covered employee who is participating in a covered retirement system, an employing agency shall deduct and withhold only 1.3 percent of the basic pay of such employee under—

"(1) section 8334 of title 5, United States Code;

"(2) section 805 of the Foreign Service Act of 1980 (22 U.S.C. 4045);

"(3) section 211 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); or

"(4) any provision of any other covered retirement system which requires a participant in the system to make contributions of a portion of the basic pay of the participant;

for covered service which is performed after December 31, 1983, and before the earlier of the effective date of a new Government retirement system or May 1, 1986. Deductions shall be made and withheld as provided by such provisions in the case of covered service which is performed on or after such effective date or May 1, 1986, as the case may be, and is not subject to a new Government retirement system.

"(b) Employing agencies of the Government shall make contributions with respect to service to which subsection (a) of this section applies under the second sentence of section 8334(a)(1) of title 5, United States Code, the second sentence of section 805(a) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)), the second sentence of section 211(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note), and any provision of any other covered retirement system requiring a contribution by the employing agency, as if subsection (a) of this section had not been enacted.

"REIMBURSEMENT FOR CONTRIBUTION DEFICIENCY

"SEC. 205. (a) For purposes of this section—

"(1) the term 'contribution deficiency', when used with respect to a covered retirement system, means the excess of—

"(A) the total amount which, but for section 204(a) of this Act, would have been deducted and withheld under a provision referred to in such section from the pay of covered employees participating in such retirement system for service to which such section applies, over

"(B) the total amount which was deducted and withheld from the pay of covered employees for such service as provided in section 204(a) of this Act; and

"(2) the term 'appropriate agency head' means—

"(A) the Director of the Office of Personnel Management, with respect to the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;

"(B) the Secretary of State, with respect to the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Retirement Act of 1980 (22 U.S.C. 404 et seq.) [22 U.S.C. 4041 et seq.];

"(C) the Director of Central Intelligence, with respect to the Central Intelligence Agency Retirement and Disability System under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); and

"(D) the officer designated by the President for that purpose in the case of any retirement system described in section 203(a)(2)(D) of this Act.

"(b) At the end of each of fiscal years 1984, 1985, 1986, and 1987, the appropriate agency head—

"(1) shall determine the amount of the contribution deficiency for such fiscal year in the case of each covered retirement system, including the interest that those contributions would have earned had they been credited to the fund established for the payment of benefits under such retirement system in the same manner and at the same time as deductions under the applicable provision of law referred to in section 204(a) of this Act; and

"(2) shall notify the Secretary of the Treasury of the amount of the contribution deficiency in each such case.

"(c) Before closing the accounts for each of fiscal years 1984, 1985, 1986, and 1987, the Secretary of the Treasury shall credit to the fund established for the payment of benefits under each covered retirement system, as a Government contribution, out of any money in the Treasury not otherwise appropriated, an amount equal to the amount determined under subsection (b) with respect to that covered retirement system for the fiscal year involved.

"(d) Amounts credited to a fund under subsection (c) shall be accounted for separately than amounts credited to such fund under any other provision of law.

"SPECIAL DEPOSIT AND OFFSET RULES RELATING TO RETIREMENT BENEFITS FOR INTERIM COVERED SERVICE

"SEC. 206. (a) For the purposes of this section, the term 'interim covered service' means covered service to which section 204(a) applies.

"(b)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who is employed by the Government on December 31, 1983.

"(2)(A) Notwithstanding any other provision of law, the interim covered service of such covered employee shall be considered—

"(i) in determining entitlement to and computing the amount of an annuity (other than a disability or survivor annuity) commencing under a covered retirement system during the period beginning January 1, 1984, and ending on the earlier of the date a new Government retirement system takes effect or May 1, 1986, by reason of the retirement of such covered employee during such period only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f); and

"(ii) in computing a disability or survivor annuity which commences under a covered retirement system during such period and is based in any party on such interim covered service.

"(B) Notwithstanding any other provision of law, an annuity to which subparagraph (A)(ii) applies shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] and is attributable to the interim covered service considered in computing the amount of such annuity, as determined under subsection (g), unless, in the case of a survivor annuity, a covered employee has made a deposit with respect to such covered service for the purposes of subparagraph (A)(i) before the date on which payment of such annuity commences.

"(3) Notwithstanding any other provision of law, if a new Government retirement system is not established or is inapplicable to such a covered employee who retires or dies subject to a covered retirement system after the date on which such new Government retirement system takes effect, the interim covered service of such covered employee shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

"(c)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who was not employed by the Government on December 31, 1983.

"(2) Notwithstanding any other provision of law, any annuity which commences under a covered retirement system during the period described in subsection (b)(2)(A)(i) and is based, in any part, on interim covered service shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] to the annuitant and is attributable to such service, as determined under subsection (g).

"(3) Notwithstanding any other provision of law, if a new Government retirement system is not established, the interim covered service of such a covered employee who retires or dies after April 30, 1986, shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

"(d) If a covered employee with respect to whom subsection (b)(3) or (c)(3) applies dies without having made a deposit pursuant to such subsection, any individual who is entitled to an annuity under a covered retirement system based on the service of such covered employee or who would be entitled to such an annuity if such deposit had been made by the covered employee before death may make such deposit after the date of death of such covered employee. Service covered by a deposit made pursuant to the first sentence shall be considered in determining, in the case of each individual to whom the first sentence applies, the entitlement to and the amount of an annuity under a covered retirement system based on the service of such covered employee.

"(e) A reduction in annuity under subsection (b)(2)(B) or (c)(2) shall commence on the first day of the first month after the date on which payment of benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] commence and shall be redetermined each time an increase in such benefits takes effect pursuant to section 215(i) of the Social Security Act [42 U.S.C. 415(i)]. In the case of an annuity of a participant or former participant in a covered retirement system, of a surviving spouse or child of such participant or former participant, or of any other person designated by such participant or former participant to receive an annuity, under a covered retirement system (other than a former spouse) the reduction in annuity under subsection (b)(2)(B) or (c)(2) shall be calculated before any reduction in such annuity provided under such system for the purpose of paying an annuity under such system to any former spouse of such participant or former participant based on the service of such participant or former participant.

"(f) For the purposes of subsection (b) or (c), the amount of a deposit to the credit of the applicable covered retirement system shall be equal to the excess of—

"(1) the total amount which would have been deducted and withheld from the basic pay of the covered employee for the interim covered service under such covered retirement system but for the application of section 204(a), over

"(2) the amount which was deducted and withheld from such basic pay for such interim covered service pursuant to section 204(a) and was not refunded to such covered employee.

"(g) For the purpose of subsections (b)(2)(B) and (c)(2), the portion of the amount of the benefits which is payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] to an individual and is attributable to interim covered service shall be determined by—

"(1) computing the amount of such benefits including credit for such service;

"(2) computing the amount of such benefits, if any, without including credit for such service; and

"(3) subtracting the amount computed under clause (2) from the amount computed under clause (1).

"(h) The Secretary of Health and Human Services shall furnish to the appropriate agency head (as defined in section 205(a)(2)) such information as such agency head considers necessary to carry out this section.

"TRANSFER OF CREDIT TO NEW RETIREMENT SYSTEM

"SEC. 207. (a) Any covered employee who first becomes employed in civilian service by the Government or first takes office in civilian service in the Government on or after January 1, 1984, shall become subject to such new Government retirement system as may be established.

"(b) In the case of any covered employee who is subject to a covered retirement system on or after January 1, 1984, and thereafter becomes subject to a new Government retirement system—

"(1) credit for the service of such employee to which section 204(a) applies shall be transferred from such covered retirement system to the new Government retirement system for the purposes of the new Government retirement system; and

"(2) such service shall be considered not to be creditable service for the purposes of such covered retirement system,

effective on the date on which such employee becomes subject to such new Government retirement system.

"ELECTIONS BY CERTAIN COVERED EMPLOYEES

"SEC. 208. (a) Any individual performing service of a type referred to in clause (i), (ii), (iii), or (iv) of section 210(a)(5) of the Social Security Act [42 U.S.C. 410(a)(5)(i)–(iv)] beginning on or before December 31, 1983, may—

"(1) if such individual is then currently a participant in a covered retirement system, elect by written application submitted before January 1, 1984—

"(A) to terminate participation in such system, effective after December 31, 1983; or

"(B) to remain under such system, as if the preceding sections of this Act [probably means this 'title'] and the amendments made by this Act had not been enacted; or

"(2) if such individual is then currently not a participant in a covered retirement system, elect by written application—

"(A) to become a participant under such system (if such individual is otherwise eligible to participate in the system), subject to the preceding sections of this Act [probably means this 'title'] and the amendments made by this Act; or

"(B) to become a participant under such system (if such individual is otherwise eligible to participate in the system), as if the preceding sections of this Act and the amendments made by this Act had not been enacted.

"(b) An application by an individual under subsection (a) shall be submitted to the official by whom such covered employee is paid.

"(c) Any individual who elects to terminate participation in a covered retirement system under subsection (a)(1)(A) is entitled to have such individual's contributions to the retirement system refunded, in accordance with applicable provisions of law, as if such individual had separated from service as of the effective date of the election.

"(d) Any individual who is eligible to make an election under subparagraph (A) or (B) of subsection (a)(1), but who does not make an election under either such subparagraph, shall be subject to the preceding sections of this Act [probably means this 'title'] and the amendments made by this Act."

[Amendment by section 147(a) of Pub. L. 99-190 to section 201(1) of Pub. L. 98-168 has been executed to section 202(1) of Pub. L. 98-168 by substituting "May 1, 1986" for "January 1, 1986" as the probable intent of Congress.]

EX. ORD. NO. 12461. DESIGNATION AS A FEDERAL RETIREMENT SYSTEM

Ex. Ord. No. 12461, Feb. 17, 1984, 49 F.R. 6471, provided:

By the authority vested in me as President by the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (title II of Public Law 98-168) ("the Act") [set out as a note above], it is hereby ordered as follows:

SECTION 1. The District of Columbia Police and Firefighters' Retirement and Disability System, insofar as it applies to Federal employees who are covered under section 203(a)(1) of the Act [set out as a note above], is designated a covered retirement system under section 203(a)(2)(D) of the Act. The Secretary of the Treasury is designated the appropriate agency head with respect to such system, under section 205(a)(2)(D) of the Act [set out as a note above]. In discharging the responsibilities delegated by this Order, the Secretary shall be guided by the information and recommendations provided by the Mayor of the District of Columbia.

SEC. 2. This Order shall be effective as of January 1, 1984.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3307, 3323, 8332, 8344, 8347, 8704 of this title; title 12 section 1723a; title 22 sections 3671, 3681; title 26 sections 402, 7447; title 28 section 376; title 38 sections 4109, 4118; title 45 section 1206.

§ 8332. Creditable service

[See main edition for text of (a)]

(b) The service of an employee shall be credited from the date of original employment to the date of separation on which title to annuity is based in the civilian service of the Government. Except as provided in paragraph (13) [1] of this subsection, credit may not be allowed for a period of separation from the service in excess of 3 calendar days. The service includes—

[See main edition for text of (1) to (10)]

(11) subject to sections 8334(c) and 8339(i) of this title, service in any capacity of at least 130 days (or its equivalent) per calendar year performed after July 1, 1946, for the National Committee for a Free Europe; Free Europe Committee, Incorporated; Free Europe, Incorporated; Radio Liberation Committee; Radio Liberty Committee; subdivisions of any of those organizations; Radio Free Europe/Radio Liberty, Incorporated, Radio Free Asia; the Asia Foundation; or the Armed Forces Network, Europe (AFN-E), but only if such service is not credited for benefits under any other retirement system which is established for such entities and funded in whole or in part by the Government and only if the individual later becomes subject to this subchapter;

(12) service as a justice or judge of the United States, as defined by section 451 of title 28, and service as a judge of a court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States, but no credit shall be allowed for such service if the employee is entitled to a salary or an annuity under section 371, 372, or 373 of title 28; and

(13) [2] one year of service to be credited for each year in which a Native of the Pribilof Islands performs service in the taking and curing of fur seal skins and other activities in connection with the administration of the Pribilof Islands, notwithstanding any period of separation from the service, and regardless of whether the Native who performs the service retires before, on, or after the effective date of this paragraph.

(13) [2] subject to sections 8334(c) and 8339(i) of this title, service performed on or after December 6, 1967, and before the effective date of this paragraph as an employee of the House Beauty Shop, only if he serves as such an employee for a period of at least five year after such effective date.

The Office of Personnel Management shall accept the certification of the Secretary of Agriculture or his designee concerning service for the purpose of this subchapter of the type performed by an employee named by paragraph (3) of this subsection. The Office of Personnel Management shall accept the certification of the Secretary of Commerce or his designee concerning service for the purpose of this subchapter of the type performed by an employee named by paragraph (13) [1] of this subsection. The Office of Personnel Management shall accept the certification of the Capitol Guide Board concerning service for the purpose of this subchapter of the type described in paragraph (8) of this subsection and performed by an employee. The Office of Personnel Management shall accept the certification of the Clerk of the House of Representatives concerning service for the purpose of this subchapter of

[1] See References in Text note below.

[2] Two pars. (13) have been enacted. See 1983 Amendment note below for subsec. (b)(13).

the type described in paragraph (13) [1] of this subsection. For the purpose of paragraph (5) of this subsection—

(A) a volunteer and a volunteer leader are deemed receiving pay during their service at the respective rates of readjustment allowances payable under sections 2504(c) and 2505(1) of title 22; and

(B) the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22 is the period between enrollment as a volunteer or volunteer leader and the termination of that service by the President or by death or resignation.

Service referred to in paragraph (6) is allowable only in the case of persons performing service under section 709 of title 32 after December 31, 1968. The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting concerning services for the purposes of this subchapter of the type described in paragraph (11) of this subsection.

[*See main edition for text of* (c) *to* (e)]

(f) Credit shall be allowed for leaves of absence without pay granted an employee while performing military service or while receiving benefits under subchapter I of chapter 81 of this title. An employee or former employee who returns to duty after a period of separation is deemed, for the purpose of this subsection, to have been in a leave of absence without pay for that part of the period in which he was receiving benefits under subchapter I of chapter 81 of this title or any earlier statute on which such subchapter is based. Except for a substitute in the postal field service and service described in paragraph (13) [1] of subsection (b) of this section,,[3] credit may not be allowed for so much of other leaves of absence without pay as exceeds 6 months in the aggregate in a calendar year.

[*See main edition for text of* (g) *to* (k)]

(*l*)(1) Any employee or Member who—

(A) is of Japanese ancestry; and

(B) while a citizen of the United States or an alien lawfully admitted to the United States for permanent residence, was interned or otherwise detained at any time during World War II in any camp, installation, or other facility in the United States, or in any territory or possession of the United States, under any policy or program of the United States respecting individuals of Japanese ancestry which was established during World War II in the interests of national security pursuant to—

[*See main edition for text of* (i) *to* (iv)]

(v) any other statute, rules, regulation, or order; or

(C) is of Aleut ancestry and while a citizen of the United States was interned or otherwise detained in, or relocated to any camp, installation, or other facility in the Territory of Alaska which was established during World War II for the purpose of the internment, detention, or relocation of Aleuts pursuant to any statute, rule, regulation, or order;

shall be allowed credit (as civilian service) for any period during which such employee or Member was so interned or otherwise detained after such employee became 18 years of age.

[*See main edition for text of* (2); (m)]

(As amended Pub. L. 98–51, title I, § 111(2), July 14, 1983, 97 Stat. 269; Pub. L. 89–702, title II, § 209(a)–(e), as added Pub. L. 98–129, § 2, Oct. 14, 1983, 97 Stat. 843; Pub. L. 98–369, div. B, title II, § 2208(a), July 18, 1984, 98 Stat. 1060.)

REFERENCES IN TEXT

Paragraph (13) of this subsection, referred to in the provisions preceding par. (1) of subsec. (b) and in the provisions following par. (13) in the phrase "certification of the Secretary of Commerce or his designee concerning service for the purpose of this subchapter of the type performed by an employee named by paragraph (13) of this subsection", refers to par. (13) of subsec. (b) appearing first which was added by Pub. L. 98–129 and which relates to service performed by Pribilof Island Natives.

The effective date of this paragraph, referred to in par. (13) of subsec. (b) appearing first, is Oct. 14, 1983, the date of enactment of Pub. L. 98–129.

The effective date of this paragraph, referred to in par. (13) of subsec. (b) appearing second, is Jan. 3, 1978, the effective date of section 111(2) of Pub. L. 98–51. See Effective Date of 1983 Amendment note below.

Paragraph (13) of this subsection, referred to in the provisions following par. (13) of subsec. (b) in the phrase "certification of the Clerk of the House of Representatives concerning service for the purpose of this subchapter of the type described in paragraph (13) of this subsection", refers to par. (13) of subsec. (b) appearing second which was added by Pub. L. 98–51 and which relates to service by a person as an employee of the House Beauty Shop.

Paragraph (13) of subsection (b) of this section, referred to in subsec. (f), refers to par. (13) appearing first which was added by Pub. L. 98–129 and which relates to service performed by Pribilof Island Natives.

AMENDMENTS

1984—Subsec. (b)(13). Pub. L. 98–369 inserted in the par. (13) added by Pub. L. 98–129 ", and regardless of whether the Native who performs the service retires before, on, or after the effective date of this paragraph".

1983—Subsec. (b). Pub. L. 98–129 substituted "Except as provided in paragraph (13) of this subsection, credit" for "Credit" in the provisions preceding par. (1), and inserted in provisions immediately following par. (13) the sentence providing that the Office of Personnel Management shall accept the certification of the Secretary of Commerce or his designee concerning service for the purpose of this subchapter of the type performed by an employee named by par. (13) of this subsection.

Pub. L. 98–51, § 111(2)(D), added in provisions immediately following par. (13) the sentence providing that the Office of Personnel Management shall accept the certification of the Clerk of the House of Representatives concerning service for the purpose of this subchapter of the type described in par. (13) of this subsection.

Subsec. (b)(13). Pub. L. 98–129 added the par. (13) set out first relating to service performed by Pribilof Island Natives. This par. (13) was set out first and the par. (13) added by Pub. L. 98–51 was set out second, in

[3] So in original.

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view of the directory language of Pub. L. 98-129 that the new par. (13) be inserted following par. (12).

Pub. L. 98-51, § 111(2)(A)-(C), added the par. (13) set out second relating to service by a person as an employee of the House Beauty Shop.

Subsec. (f). Pub. L. 98-129 inserted "and service described in paragraph (13) of subsection (b) of this section," after "postal field service".

Subsec. (*l*)(1)(C). Pub. L. 98-129 added subpar. (C).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Oct. 14, 1983, see section 2208(c) of Pub. L. 98-369, set out as a note under section 1169a of Title 16, Conservation.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 111(2) of Pub. L. 98-51 provided in part that the amendment of this section by Pub. L. 98-51 is effective Jan. 3, 1978.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97-253 effective Oct. 1, 1982, except that any employee or Member who retired after Sept. 8, 1982, and before Oct. 1, 1985, or is entitled to an annuity under chapter 83 of this title based on a separation from service occurring during such period, or a survivor of such individual, may make a payment under section 8334(j)(1) of this title, and regulations required to be issued under section 8334(j)(1) of this title, to be issued by the Office of Personnel Management within 90 days after such effective date, see section 306(g) of Pub. L. 97-253, as amended, set out as a note under section 8331 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6303, 8331, 8334, 8339, 8345 of this title; title 16 section 1169a; title 22 sections 3671, 3681, 4048, 4056; title 25 section 450i; title 26 sections 3121, 7448; title 38 sections 4109, 4114; title 42 section 410.

§ 8334. Deductions, contributions, and deposits

(a)(1) The employing agency shall deduct and withhold 7 percent of the basic pay of an employee, 7½ percent of the basic pay of a Congressional employee, a law enforcement officer, and a firefighter, and 8 percent of the basic pay of a Member and a judge of the United States Court of Military Appeals and a bankruptcy judge. An equal amount shall be contributed from the appropriation or fund used to pay the employee or, in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment. When an employee in the legislative branch is paid by the Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee.

[*See main edition for text of* (2), (b)]

(c) Each employee or Member credited with civilian service after July 31, 1920, for which retirement deductions or deposits have not been made, may deposit with interest an amount equal to the following percentages of his basic pay received for that service:

	Percentage of basic pay	Service period
Employee	2½	August 1, 1920, to June 30, 1923.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	After December 31, 1969.
Member or employee for Congressional employee service.	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7½	After December 31, 1969.
Member for Member service.	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to August 1, 1946.
	6	August 2, 1946, to October 31, 1956.
	7½	November 1, 1956, to December 31, 1969.
	8	After December 31, 1969.
Law enforcement officer for law enforcement service and firefighter for firefighter service.	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to December 31, 1974.
	7½	After December 31, 1974.
Bankruptcy judge.	2½	August 1, 1920, to June 30, 1926.
	3½	July 3, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to December 31, 1983.
	8	After December 31, 1983.
Judge of the United States Court of Military Appeals for service as a judge of that court.	6	May 5, 1950, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to (but not including) the date of the enactment of the Department of Defense Authorization Act, 1984.
	8	On and after the date of the enactment of the Department of Defense Authorization Act, 1984.

[*See main edition for text of* (d) *to* (f)]

(g) Deposit may not be required for—

[*See main edition for text of* (1) *to* (3)]

(4) service performed before October 29, 1983,.[1] by natives of the Pribilof Islands in the taking and curing of fur seal skins and other activities in connection with the administration of the Pribilof Islands except where deductions, contributions, and deposits were made before October 29, 1983;

[*See main edition for text of* (5) *and* (6)]

(h) For the purpose of survivor annuities, deposits authorized by subsections (c), (d), and (j) of this section and by section 8339(j)(5)(C) and the last sentence of section 8339(c)(2) of this title may also be made by a survivor of an employee or Member.

[*See main edition for text of* (i)]

[1] So in original.

(j) [*See main edition for text of (1)*]

(2) Any deposit made under paragraph (1) of this subsection more than two years after the later of—

(A) October 1, 1983; or

(B) the date on which the employee or Member making the deposit first becomes an employee or Member,

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under subsection (e) of this section.

[*See main edition for text of (3) and (4)*]

(As amended Pub. L. 98-94, title XII, §§ 1256(a), 1257, Sept. 24, 1983, 97 Stat. 701, 702; Pub. L. 89-702, title II, § 209(f), as added Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 843; Pub. L. 98-353, title I, § 116(b), July 10, 1984, 98 Stat. 344; Pub. L. 98-615, § 2(2), Nov. 8, 1984, 98 Stat. 3195.)

REFERENCES IN TEXT

The date of the enactment of the Department of Defense Authorization Act, 1984, referred to in the table in subsec. (c), is the date of enactment of Pub. L. 98-94 which was approved Sept. 24, 1983.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-353, § 116(b)(1), inserted "and a bankruptcy judge".

Subsec. (c). Pub. L. 98-353, § 116(b)(2), substituted in the table relating to bankruptcy judges the items relating to 7 percent for the period Jan. 1, 1970 to Dec. 31, 1983, and 8 percent for the period after Dec. 31, 1983, for the prior item relating to 7 percent for the period after Jan. 1, 1970.

Subsec. (h). Pub. L. 98-615 substituted "annuities, deposits authorized by subsections (c), (d), and (j) of this section and by section 8339(j)(5)(C) and the last sentence of section 8339(k)(2) of this title may also be made by a survivor" for "annuity, deposits authorized by subsections (c), (d), and (j) of this section may also be made by the survivor".

1983—Subsec. (a)(1). Pub. L. 98-94, § 1256(a)(1), added "and a judge of the United States Court of Military Appeals" after "and 8 percent of the basic pay of a Member".

Subsec. (c). Pub. L. 98-94, § 1256(a)(2), added to the table items covering a judge of the United States Court of Military Appeals for service as a judge of that court.

Subsec. (g)(4). Pub. L. 98-129 substituted "October 29, 1983," for "January 1, 1950", and directed that the phrase "except where deductions, contributions, and deposits were made before October 29, 1983" be inserted after "the Pribilof Islands" which amendment was executed by inserting that phrase after "the Pribilof Islands" the second time those words appear, as the probable intent of Congress.

Subsec. (j)(2)(A). Pub. L. 98-94, § 1257, substituted "October 1, 1983" for "October 1, 1982".

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-615 effective 180 days after Nov. 8, 1984, with enumerated exceptions, and applicable to any individual who, on or after such date, is married to an employee or Member who, on or after such date, retires, dies, or applies for a refund of contributions under this subchapter, see section 4(a)(1) of Pub. L. 98-615, set out as a note under section 8341 of this title.

Amendment by Pub. L. 98-353 effective July 10, 1984, and applicable to bankruptcy judges who retire on or after such date, see section 116(e) of Pub. L. 98-353, set out as a note under section 8331 of this title. See, also, section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1256(f) of Pub. L. 98-94 provided that: "The increase in deductions from the pay of a judge of the United States Court of Military Appeals required by section 8334(a) of title 5, United States Code, as amended by subsection (a), shall take effect with respect to the first pay period that begins after the date of the enactment of this Act [Sept. 24, 1983]."

EFFECTIVE DATE OF 1982 AMENDMENTS

Enactment of subsec. (j) and amendment of subsec. (g)(2) by Pub. L. 97-253 effective Oct. 1, 1982, except that any employee or Member who retired after Sept. 8, 1982, and before Oct. 1, 1985, or is entitled to an annuity under chapter 83 of this title based on a separation from service occurring during such period, or a survivor of such individual, may make a payment under section 8334(j)(1) of this title, and regulations required to be issued under section 8334(j)(1) of this title, to be issued by the Office of Personnel Management within 90 days after such effective date, see section 306(g) of Pub. L. 97-253, as amended, set out as a note under section 8331 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8331, 8332, 8333, 8339, 8342, 8344, 8348 of this title; title 12 sections 1723a, 2227; title 22 sections 3671, 3681; title 26 section 3121; title 28 sections 611, 627; title 40 section 881; title 42 section 410; title 45 section 1206.

§ 8336. Immediate retirement

[*See main edition for text of (a) to (c)*]

(d) An employee who—

[*See main edition for text of (1) and (2)*]

after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity. For purposes of paragraph (1) of this subsection, separation for failure to accept a directed reassignment to a position outside the commuting area of the employee concerned or to accompany a position outside of such area pursuant to a transfer of function shall not be considered to be a removal for cause on charges of misconduct or delinquency. Notwithstanding the first sentence of this subsection, an employee described in paragraph (1) of this subsection is not entitled to an annuity under this subsection if the employee has declined a reasonable offer of another position in the employee's agency for which the employee is qualified, which is not lower than 2 grades (or pay levels) below the employee's grade (or pay level), and which is within the employee's commuting area.

[*See main edition for text of (e) to (i)*]

(j) [*See main edition for text of (1) and (2)*]

(3)(A) The provisions of paragraph (1) of this subsection shall not apply with respect to any separation of any employee which occurs after the date 10 years after—

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[*See main edition for text of* (i) *and* (ii), (*B*)]

The period of any postponement under this subparagraph shall not exceed 12 months and the total period of all postponements with respect to any employee shall not exceed 5 years.

[*See main edition for text of* (*4*)]

(k) A bankruptcy judge who is separated from service, except by removal, after becoming sixty-two years of age and completing ten years of service as a bankruptcy judge is entitled to an annuity.

(*l*) A judge of the United States Court of Military Appeals who is separated from the service after becoming 62 years of age and completing 5 years of civilian service or after completing the term of service for which he was appointed as a judge of such court is entitled to an annuity. A judge who is separated from the service before becoming 60 years of age is entitled to a reduced annuity.

(m) An annuity or reduced annuity authorized by this section is computed under section 8339 of this title.

(As amended Pub. L. 98-94, title XII, § 1256(b), Sept. 24, 1983, 97 Stat. 701; Pub. L. 98-353, title I, § 116(c), July 10, 1984, 98 Stat. 344; Pub. L. 98-531, § 2(b), Oct. 19, 1984, 98 Stat. 2704; Pub. L. 98-615, title III, § 304(d), Nov. 8, 1984, 98 Stat. 3219; Pub. L. 99-190, § 101(d) [title III, § 315], Dec. 19, 1985, 99 Stat. 1224, 1266.)

AMENDMENTS

1985—Subsec. (j)(3)(A). Pub. L. 99-190 substituted "10 years" for "5 years".

1984—Subsec. (d). Pub. L. 98-615 added provision that for purposes of par. (1), separation for failure to accept a directed reassignment to a position outside the commuting area of the employee concerned or to accompany a position outside of such area pursuant to a transfer of function shall not be considered to be a removal for cause on charges of misconduct or delinquency.

Subsec. (k). Pub. L. 98-353, § 116(c), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 98-531 redesignated the subsec. (*l*), which was redesignated by Pub. L. 98-94, as (m).

Pub. L. 98-353, § 116(c)(1), redesignated subsec. (k) as (*l*).

Subsec. (m). Pub. L. 98-531 redesignated the subsec. (*l*), which was redesignated by Pub. L. 98-94, as (m).

1983—Subsecs. (k), (*l*). Pub. L. 98-94 added subsec. (k), and redesignated former subsec. (k) as (*l*).

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-615 effective Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3135 of this title.

Amendment by Pub. L. 98-531 effective Mar. 31, 1984, see section 3(b) of Pub. L. 98-531, set out as a note under section 8331 of this title.

Amendment by Pub. L. 98-353 effective July 10, 1984, and applicable to bankruptcy judges who retire on or after such date, see section 116(e) of Pub. L. 98-353, set out as a note under section 8331 of this title. See, also, section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3381, 3382, 3396, 8335, 8339, 8348 of this title; title 22 sections 3671, 3691; title 24 section 225d; title 25 section 472a; title 45 section 1206.

§ 8337. Disability retirement

(a) An employee who completes 5 years of civilian service and has become disabled shall be retired on the employee's own application or on application by the employee's agency. Any employee shall be considered to be disabled only if the employee if [1] found by the Office of Personnel Management to be unable, because of disease or injury, to render useful and efficient service in the employee's position and is not qualified for reassignment, under procedures prescribed by the Office, to a vacant position which is in the agency at the same grade or level and in which the employee would be able to render useful and efficient service. For the purpose of the preceding sentence, an employee of the United States Postal Service shall be considered not qualified for a reassignment described in that sentence if the reassignment is to a position in a different craft or is inconsistent with the terms of a collective bargaining agreement covering the employee. A judge of the United States Court of Military Appeals who completes 5 years of civilian service and who is found by the Office to be disabled for useful and efficient service as a judge of such court or who is removed for mental or physical disability under section 867(a)(2) of title 10 shall be retired on the judge's own application or upon such removal. A Member who completes 5 years of Member service and is found by the Office to be disabled for useful and efficient service as a Member because of disease or injury shall be retired on the Member's own application. An annuity authorized by this section is computed under section 8339(g) of this title, unless the employee or Member is eligible for a higher annuity computed under section 8339(a)–(e) or (n).

[*See main edition for text of* (*b*) *to* (*h*)]

(As amended Pub. L. 98-94, title XII, § 1256(c), Sept. 24, 1983, 97 Stat. 701.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-94 added provision that a judge of the United States Court of Military Appeals who completes 5 years of civilian service and who is found by the Office to be disabled for useful and efficient service as a judge of such court or who is removed for mental or physical disability under section 867(a)(2) of title 10 shall be retired on the judge's own application or upon such removal.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8339, 8345, 8347, 8706, 8908 of this title; title 38 sections 4109, 4118.

§ 8338. Deferred retirement

[*See main edition for text of* (*a*) *and* (*b*)]

(c) A judge of the United States Court of Military Appeals who is separated from the service after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years. A judge of such court who is separated from the service after completing the

[1] So original. Probably should be "is."

term of service for which he was appointed is entitled to an annuity. If an annuity is elected before the judge becomes 60 years of age, it shall be a reduced annuity.

(d) An annuity or reduced annuity authorized by this section is computed under section 8339 of this title.

(As amended Pub. L. 98-94, title XII, § 1256(d), Sept. 24, 1983, 97 Stat. 702.)

AMENDMENTS

1983—Subsecs. (c), (d). Pub. L. 98-94 added subsec. (c), and redesignated former subsec. (c) as (d).

§ 8339. Computation of annuity

[*See main edition for text of (a) to (c)*]

(d) [*See main edition for text of (1) to (5)*]

(6) The annuity of an employee who is a judge of the United States Court of Military Appeals, or a former judge of such court, retiring under this subchapter is computed under subsection (a) of this section, except, with respect to his service as a judge of such court, his service as a Member, his congressional employee service, and his military service (not exceeding 5 years) creditable under section 8332 of this title, his annuity is computed by multiplying 2½ percent of his average pay by the years of that service.

[*See main edition for text of (e)*]

(f) The annuity computed under subsections (a)-(e) and (n) of this section may not exceed 80 percent of—

[*See main edition for text of (1) and (2)*]

(g) The annuity of an employee or Member retiring under section 8337 of this title is at least the smaller of—

(1) 40 percent of his average pay; or

(2) the sum obtained under subsections (a)-(c) or (n) of this section after increasing his service of the type last performed by the period elapsing between the date of separation and the date he becomes 60 years of age.

However, if an employee or Member retiring under section 8337 of this title is receiving retired pay or retainer pay for military service (except that specified in section 8332(c)(1) of (2) of this title) or Veterans' Administration pension or compensation in lieu of such retired or retainer pay, the annuity of that employee or Member shall be computed under subsection (a), (b), (c), or (n) of this section, as appropriate, excluding credit for military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in section 5532 of this title, or the Veterans' Administration pension or compensation in lieu of such retired or retainer pay, is less than the smaller of the annuity otherwise payable under paragraph (1) or (2) of this subsection, an amount equal to the difference shall be added to the annuity payable under subsection (a), (b), (c), or (n) of this section, as appropriate.

(h) The annuity computed under subsections (a), (b), (d)(5), and (f) of this section for an employee retiring under section 8336(d), (h), or (j) of this title is reduced by ⅙ of 1 percent for each full month the employee is under 55 years of age at the date of separation. The annuity computed under subsections (c) and (f) of this section for a Member retiring under the second or third sentence of section 8336(g) of this title or the third sentence of section 8338(b) of this title is reduced by ½ of 1 percent for each full month not in excess of 60 months, and ⅙ of 1 percent for each full month in excess of 60 months the Member is under 60 years of age at the date of separation. The annuity computed under subsections (a), (d)(6), and (f) of this section for a judge of the United States Court of Military Appeals retiring under the second sentence of section 8336(k) of this title or the third sentence of section 8338(c) of this title is reduced by ½ of 1 percent for each full month not in excess of 60 months, and ⅙ of 1 percent for each full month in excess of 60 months, the judge is under 60 years of age at the date of separation.

[*See main edition for text of (i)*]

(j)(1) The annuity computed under subsections (a)-(i) and (n) of this section (or a portion of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management) for an employee or Member who is married at the time of retiring under this subchapter is reduced as provided in paragraph (4) of this subsection in order to provide a survivor annuity for the spouse under section 8341(b) of this title, unless the employee or Member and the spouse jointly waive the spouse's right to a survivor annuity in a written election filed with the Office at the time that the employee or Member retires. Each such election shall be made in accordance with such requirements as the Office shall, by regulation, prescribe, and shall be irrevocable. The Office shall provide, by regulation, that an employee or Member may waive the survivor annuity without the spouse's consent if the employee or Member establishes to the satisfaction of the Office—

(A) that the spouse's whereabouts cannot be determined, or

(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(2) If an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8341(h) of this title, the annuity of the employee or Member computed under subsections (a)-(i) and (n) of this section (or any designated portion of the annuity, in the event that the former spouse is entitled to less than 55 percent of the employee or Member's annuity) is reduced as provided in paragraph (4) of this subsection.

(3) An employee or Member who has a former spouse may elect, under procedures prescribed by the Office, to have the annuity computed under subsections (a)-(i) and (n) of this section

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or a portion thereof reduced as provided in paragraph (4) of this subsection in order to provide a survivor annuity for such former spouse under section 8341(h) of this title. An election under this paragraph shall be made at the time of retirement or, if later, within 2 years after the date on which the marriage of the former spouse to the employee or Member is dissolved, subject to a deposit in the Fund by the retired employee or Member, within such 2-year period, of an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such employee or Member would have been reduced if the election had been continuously in effect since the date the annuity commenced, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect since the date the annuity commenced shall be 6 percent. If the employee or Member does not make such a deposit, the Office shall collect the amount of the deposit by offset against the employee or Member's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset. An election under this paragraph—

(A) shall not be effective to the extent that it—

(i) conflicts with—

(I) any court order or decree referred to in subsection (h)(1) of section 8341 of this title, which was issued before the date of such election; or

(II) any agreement referred to in such subsection which was entered into before such date; or

(ii) would cause the total of survivor annuities payable under subsections (b), (d), (f), and (h) of section 8341 of this title based on the service of the employee or Member to exceed 55 percent of the annuity to which the employee or Member is entitled under subsections (a)–(i) and (n) of this section; and

(B) shall not be effective, in the case of an employee or Member who is then married, unless it is made with the spouse's written consent.

The Office shall provide by regulation that subparagraph (B) of this paragraph may be waived for either of the reasons set forth in the last sentence of paragraph (1) of this subsection. In the case of a retired employee or Member whose annuity is being reduced in order to provide a survivor annuity for a former spouse, an election to provide or increase a survivor annuity for any other former spouse (and to continue an appropriate reduction) may be made within the same period that, and subject to the same conditions under which, an election could be made under paragraph (5)(B) of this subsection for a current spouse (subject to the provisions of this paragraph relating to consent of a current spouse, if the retired employee or Member is then married). The opportunity to make an election under the preceding sentence is in addition to any opportunity otherwise afforded under this paragraph.

(4) In order to provide a survivor annuity or combination of survivor annuities under subsections (b), (d), (f), and (h) of section 8341 of this title, the annuity of an employee or Member (or any designated portion or portions thereof) is reduced by 2½ percent of the first $3,600 thereof plus 10 percent of so much thereof as exceeds $3,600.

(5)(A) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse of a retired employee or Member shall be terminated for each full month—

(i) after the death of the spouse, or

(ii) after the dissolution of the spouse's marriage to the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse is entitled, as a former spouse, to a survivor annuity under section 8341(h) of this title.

(B)(i) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies, unless the employee or Member elects, within 2 years after the former spouse's death or remarriage, to continue the reduction in order to provide a survivor annuity or increase the survivor annuity for the current spouse of the retired employee or Member.

(ii) Notwithstanding clause (i) of this subparagraph—

(I) a reduction in an annuity shall not be terminated under such clause, and

(II) an election made under such clause with respect to a current spouse after a remarriage before age 55 or the death of a former spouse shall not be effective,

if, and to the extent that, continuation of the reduction is necessary in order to provide for any survivor annuity, or any increase in a survivor annuity, which becomes payable under section 8341(h)(2) of this title to any other former spouse as a result of such remarriage or death.

(C)(i) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the employee or Member's annuity under paragraph (4) of this subsection for the purpose of providing an annuity for such employee or Member's spouse in the event such spouse survives the employee or Member.

(ii) Such election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less

than 9 months after the date of the remarriage, and the retired employee or Member shall, within 2 years after the date of the remarriage or, if later, the death or remarriage of the former spouse (or of the last such surviving former spouse), deposit in the Fund an amount determined by the Office of Personnel Management, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such retired employee or Member would have been reduced if the election had been in effect since the date of retirement or, if later, the date the previous reduction in such retired employee or Member's annuity was terminated under subparagraph (A) or (B) of this paragraph, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which an annuity would have been reduced if the election had been in effect on and after the applicable date referred to in such sentence shall be 6 percent.

(iii) If the employee or Member does not make such deposit, the Office shall collect such amount by offset against the employee or Member's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.

(iv) Notwithstanding any other provision of this subparagraph, an election under this subparagraph may not be made for the purpose of providing an annuity in the case of a spouse by remarriage if such spouse was married to the employee or Member at the time of such employee or Member's retirement, and all rights to survivor benefits for such spouse under this subchapter based on marriage to such employee or Member were then waived under paragraph (1) of this subsection or a similar prior provision of law.

(k)(1) At the time of retiring under section 8336 or 8338 of this title, an employee or Member who is found to be in good health by the Office may elect a reduced annuity instead of an annuity computed under subsections (a)–(i) and (n) of this section and name in writing an individual having an insurable interest in the employee or Member to receive an annuity under section 8341(c) of this title after the death of the retired employee or Member. The annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual named is younger than the retiring employee or Member. However, the total reduction may not exceed 40 percent. An annuity which is reduced under this paragraph or any similar prior provision of law shall, effective the first day of the month following the death of the individual named under this paragraph, be recomputed and paid as if the annuity had not been so reduced.

(2)(A) An employee or Member, who is unmarried at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to such employee or Member's spouse and who later marries, may irrevocably elect, in a signed writing received in the Office within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the retired employee or Member's current annuity as provided in subsection (j) of this section.

(B)(i) The election and reduction shall take effect the first day of the first month beginning 9 months after the date of marriage and shall prospectively void any election previously made under paragraph (1) of this subsection.

(ii) Within 2 years after the date of marriage, the retired employee or Member (other than an employee or Member who made a previous election under paragraph (1) of this subsection) shall deposit in the Fund an amount determined by the Office of Personnel Management, as nearly as may be administratively feasible, to reflect the amount by which the retired employee or Member's annuity would have been reduced under subsection (j)(4) of this section since the commencing date of the annuity, if the employee or Member had been married at the time of retirement and had elected to provide a survivor annuity at that time, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect since the date of the annuity commenced shall be 6 percent.

(C) If the employee or Member does not make such deposit, the Office shall collect such amount by offset against the employee or Member's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.

(*l*) The annuity computed under subsections (a)–(k) and (n) of this section for an employee who is a citizen of the United States is increased by $36 for each year of service in the employ of—

[*See main edition for text of (1) and (2)*]

(m) In computing any annuity under subsections (a)–(e) and (n) of this section, the total service of an employee who retires on an immediate annuity or dies leaving a survivor or survivors entitled to annuity includes, without regard to the limitations imposed by subsection (f) of this section, the days of unused sick leave to his credit under a formal leave system, except that these days will not be counted in determining average pay or annuity eligible under this subchapter. For the purpose of this subsection, in the case of any such employee who is excepted from subchapter I of chapter 63 of this title under section 6301(2)(x)–(xiii) of this title, the days of unused sick leave to his credit include any unused sick leave standing to his credit when he was excepted from such subchapter.

(n) The annuity of an employee who is a bankruptcy judge is computed with respect to service after [1] as a referee in bankruptcy and as

[1] So in original. "After" probably should not appear.

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a bankruptcy judge and his military service (not exceeding five years) creditable under section 8332 of this title by multiplying 2½ percent of his average annual pay by the years of that service.

(As amended Pub. L. 98-94, title XII, § 1256(e), Sept. 24, 1983, 97 Stat. 702; Pub. L. 98-249, § 3(a), Mar. 31, 1984, 98 Stat. 117; Pub. L. 98-271, § 3(a), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98-299, § 3(a), May 25, 1984, 98 Stat. 214; Pub. L. 98-325, § 3(a), June 20, 1984, 98 Stat. 268; Pub. L. 98-353, title I, §§ 112, 116(d), 121(f), July 10, 1984, 98 Stat. 343, 344, 346; Pub. L. 98-531, § 2(c), Oct. 19, 1984, 98 Stat. 2704; Pub. L. 98-615, § 2(3), Nov. 8, 1984, 98 Stat. 3195.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-353, § 112, substituted "and (n)" for "and (o)".

Subsec. (g). Pub. L. 98-353, § 116(d)(1), (2), added "or (n)" after "(c)" in par. (2), and substituted "(c), or (n)" for "or (c)" in two places in provisions following par. (2).

Subsec. (j)(1). Pub. L. 98-615, § 2(3)(A), substituted provisions that at the time of retirement an employee's pension will be reduced to provide survivor benefits to the spouse unless the employee or Member and the spouse jointly waive the spouse's right to the survivor annuity in a written statement filed with the Office of Personnel Management which shall be made in accordance with such requirements as prescribed by the Office by regulation and which shall be irrevocable and that the Office, by regulation, must provide that an employee may waive the survivor annuity without the spouse's consent only when the spouse's whereabouts are unknown to the employee or, due to exceptional circumstances it would be inappropriate to require the employee to seek the spouse's consent for provisions that at the time of retirement an employee's pension would be reduced by 2½ percent of so much thereof as did not exceed $3,600 and by 10 percent of so much thereof as exceeded that amount, unless the employee or member notified the Office of Personnel Management in writing at the time of retirement that he did not desire any surviving spouse to receive an annuity under section 8341(b) of this title, and struck out provisions for the restoration to the employee or Member of his full pension, as if such reduction had not taken place, for each full month in which such employee or Member was not married, and providing the employee or Member a right of irrevocable election of reduction for the benefit of a subsequent spouse, in the event of remarriage, in an amount equal to the prior reduction, to take effect 1 year after remarriage.

Pub. L. 98-353, § 112, substituted "and (n)" for "and (o)".

Subsec. (j)(2). Pub. L. 98-615, § 2(3)(A), substituted provision that if an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8341(h) of this title, the annuity of the employee or Member computed under subsecs. (a)-(i) and (n) (or any designated portion of the annuity, in the event that the former spouse is entitled to less than 55 percent of the employee or Member's annuity) is reduced as provided in par. (4) for provision that any written notification (or designation) by any employee or Member under the first sentence of par. (1) would not be considered valid unless the employee or Member established to the satisfaction of the Office that the spouse had been notified of the loss of or reduction in survivor benefits or that the employee or Member had complied with such notification requirements as the Office would, by regulation, prescribe.

Subsec. (j)(3) to (5). Pub. L. 98-615, § 2(3)(A), added pars. (3) to (5).

Subsec. (k)(1). Pub. L. 98-615, § 2(3)(B), substituted "an employee or Member" for "an unmarried employee or Member".

Pub. L. 98-353, § 112, substituted "and (n)" for "and (o)".

Subsec. (k)(2). Pub. L. 98-615, § 2(3)(C), designated existing provisions as subpar. (A), in subpar. (A) as so designated, substituted "such employee or Member's spouse" for "his spouse" and "within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the retired employee or Member's current annuity as provided in subsection (j) of this section" for "within 1 year after he marries, a reduction in his current annuity as provided in subsection (j) of this section. The reduced annuity shall be effective the first day of the first month beginning 1 year after the date of marriage. The election voids prospectively any election previously made under paragraph (1) of this subsection", and added subpars. (B) and (C).

Subsec. (l). Pub. L. 98-353, § 112, substituted "and (n)" for "and (o)" in provisions preceding par. (1).

Subsec. (m). Pub. L. 98-353, § 112, substituted "and (n)" for "and (o)".

Subsec. (n). Pub. L. 98-531 substituted "as a referee in bankruptcy and" for "March 31, 1979, and before the date of the enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984".

Pub. L. 98-353, § 121(f), substituted "the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984" for "June 28, 1984".

Pub. L. 98-353, § 116(d)(3), substituted "as a referee in bankruptcy and" for "March 31, 1979, and before June 27, 1984,".

Pub. L. 98-325 substituted "June 28, 1984" for "June 21, 1984".

Pub. L. 98-299 substituted "June 21, 1984" for "May 26, 1984".

Pub. L. 98-271 substituted "May 26, 1984" for "April 1, 1984".

Pub. L. 98-249 which purported to amend subsec. (o) by substituting "May 1, 1984" for "April 1, 1984" was probably intended as an amendment of subsec. (n). See amendment of subsec. (n) by Pub. L. 98-271.

1983—Subsec. (d)(6). Pub. L. 98-94, § 1256(e)(1), added par. (6).

Subsec. (h). Pub. L. 98-94, § 1256(e)(2), added provision that the annuity computed under subsections (a), (d)(6), and (f) of this section for a judge of the United States Court of Military Appeals retiring under the second sentence of section 8336(k) of this title or the third sentence of section 8338(c) of this title is reducted by 1/12 of 1 percent for each full month not in excess of 60 months, and 1/4 of 1 percent for each full month in excess of 60 months, the judge is under 60 years of age at the date of separation.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-615 effective 180 days after Nov. 8, 1984, with enumerated exceptions, and applicable to any individual who, on or after such date, is married to an employee or Member who, on or after such date, retires, dies, or applies for a refund of contributions under this subchapter, see section 4(a)(1) of Pub. L. 98-615, set out as a note under section 8341 of this title.

Amendment by Pub. L. 98-531 effective Mar. 31, 1984, see section 3(b) of Pub. L. 98-531, set out as a note under section 8331 of this title.

Amendment by Pub. L. 98-353 effective July 10, 1984, and applicable to bankruptcy judges who retire on or after such date, see section 116(e) of Pub. L. 98-353, set out as a note under section 8331 of this title. See, also, section 122(a) of Pub. L. 98-353, set out

as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

ANNUAL NOTICE TO ANNUITANT OF RIGHTS OF ELECTION UNDER SUBSECS. (j) AND (k)(2) OF THIS SECTION

Section 3 of Pub. L. 95-317, as amended by 1978 Reorg. Plan No. 2, § 102, 43 F.R. 36037, 92 Stat. 3783, provided that: "The Director of the Office of Personnel Management shall, on an annual basis, inform each annuitant of such annuitant's rights of election under sections 8339(j) and 8339(k)(2) of title 5, United States Code."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6129, 8332, 8334, 8336, 8337, 8338, 8341, 8342, 8344, 8348, 8901, 8905 of this title; title 10 sections 1450, 1452; title 22 sections 3671, 3691; title 38 section 4109.

§ 8340. Cost-of-living adjustment of annuities

(a) For the purpose of this section—

(1) the term "base quarter", as used with respect to a year, means the calendar quarter ending on September 30, of such year; and

(2) the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter.

(b) Except as provided in subsection (c) of this section, effective December 1 of each year, each annuity payable from the Fund having a commencing date not later than such December 1 shall be increased by the percent change in the price index for the base quarter of such year over the price index for the base quarter of the preceding year in which an adjustment under this subsection was made, adjusted to the nearest $\frac{1}{10}$ of 1 percent.

(c) Eligibility for an annuity increase under this section is governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase, except as follows:

(1) The first increase (if any) made under subsection (b) of this section to an annuity which is payable from the Fund to an employee or Member who retires, to the widow or widower of a deceased employee or Member, or to the widow or widower of a deceased annuitant whose annuity has not been increased under this subsection or subsection (b) of this section, shall be equal to the product (adjusted to the nearest $\frac{1}{10}$ of 1 percent) of—

(A) $\frac{1}{2}$ of the applicable percent change computed under subsection (b) of this section, multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month)—

[See main edition for text of (i) and (ii), (2) and (3); (d) to (g)]

(As amended Pub. L. 98-270, title II, § 201(a), Apr. 18, 1984, 98 Stat. 157; Pub. L. 98-369, div. B, title II, § 2201(b), July 18, 1984, 98 Stat. 1058.)

REFERENCES IN TEXT

Section 8 of the Act of May 29, 1930, as amended to July 6, 1950, referred to in subsec. (c)(2), is the predecessor of section 8338 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-270 substituted provisions defining the term "base quarter" as meaning the calendar quarter ending Sept. 30 of a year and providing that the price index for a base quarter is the arithmetical mean of such index for the three months comprising such quarter for former provisions which had directed that, effective Dec. 1, 1965, each annuity payable from the Fund having a commencing date before Dec. 2, 1965, was increased by (1) the percent rise in the price index, adjusted to the nearest $\frac{1}{10}$ of 1 percent, determined by the Office of Personnel Management on the basis of the annual average price index for calendar year 1962 and the price index for the base month of July 1965; plus (2) 6$\frac{1}{2}$ percent if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred before Oct. 2, 1956, or 1$\frac{1}{2}$ percent if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred after Oct. 1, 1956, that each annuity payable from the Fund (other than the immediate annuity of an annuitant's survivor or of a child entitled under section 8341(e) of this title) having a commencing date after Dec. 1, 1965, but before Jan. 1, 1966, was increased from its commencing date as if the annuity commencing date were Dec. 1, 1965, and that each survivor annuity authorized by (A) section 8 of the Act of May 29, 1930, as amended to July 6, 1950, or (B) section 2 of the Act of June 25, 1958 (72 Stat. 219), was increased by any additional amount required to make the total increase under this subsection equal to the smaller of 15 percent or $10 a month.

Subsec. (b). Pub. L. 98-270 substituted "Except as provided in subsection (c) of this section, effective December 1 of each year, each annuity payable from the Fund having a commencing date not later than such December 1 shall be increased by the percent change in the price index for the base quarter of such year over the price index for the base quarter of the preceding year in which an adjustment under this subsection was made, adjusted to the nearest $\frac{1}{10}$ of 1 percent" for "Except as provided in subsection (c) of this section, effective March 1 of each year each annuity payable from the Fund having a commencing date not later than such March 1 shall be increased by the percent change in the price index published for December of the preceding year over the price index published for December of the year prior to the preceding year, adjusted to the nearest $\frac{1}{10}$ of 1 percent".

Subsec. (c)(1)(A). Pub. L. 98-369, § 2201(b)(1), substituted "computed" for "computer".

Subsec. (c)(2)(B). Pub. L. 98-369, § 2201(b)(2), substituted "not to exceed 12 months, counting" for "counting".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 201(b) of Pub. L. 98-270 provided that:

"(1) The amendments made by subsection (a) [amending subsecs. (a) and (b) of this section] shall take effect on the date of the enactment of this Act [Apr. 18, 1984], except that no adjustment under section 8340(b) of title 5, United States Code (as amended by such subsection), shall be made during the period beginning on the date of the enactment of this Act and ending November 30, 1984.

"(2)(A) For purposes of the first adjustment under section 8340(b) of title 5, United States Code (as amended by subsection (a)), the base quarter ending September 30, 1983, shall be considered to have been a base quarter in which an adjustment under such section (as so amended) was made.

"(B) As used in subparagraph (A), the term 'base quarter' has the meaning given such term by section 8340(a)(1) of title 5, United States Code (as amended by subsection (a))."

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TIME OF PAYMENT OF ANNUITY OR RETIRED OR RETIREMENT PAY WHICH PRESIDENT ADJUSTS

Section 2201(a) of Pub. L. 98-369 provided that: "Notwithstanding any other provision of law, beginning with the monthly rate payable for December 1984, any annuity or retired or retirement pay payable under any retirement system for Government officers or employees which the President adjusts pursuant to section 8340(b) of title 5, United States Code, shall be paid no earlier than the first business day of the succeeding month."

COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1983, 1984, AND 1985

Section 301(a)-(c) of Pub. L. 97-253, as amended by Pub. L. 98-270, title I, § 201(c), Apr. 18, 1984, 98 Stat. 158; Pub. L. 98-396, title I, § 101, Aug. 22, 1984, 98 Stat. 1403, provided that:

"(a) [*See main edition for text of (1) and (2)*]

"(3) If the percentage increase in the price index for fiscal year 1983, 1984, or 1985 (as determined by the Office of Personnel Management under section 8340(b) of title 5, United States Code) exceeds the assumed increase in the price index for that year, then the increase in the annuity or retired or retainer pay of an early retiree under paragraph (1) taking effect in that fiscal year shall be equal to—

"(A) one-half of the assumed increase in the price index for that year, plus

"(B) the amount by which the percentage increase in the price index exceeds the assumed price index increase.

If the percentage increase in the price index for fiscal year 1985 (as determined by the Office of Personnel Management under section 8340(b) of title 5, United States Code) is less than the assumed increase in the price index for that year, then the increase in the annuity or retired or retainer pay of an early retiree under paragraph (1) taking effect in that fiscal year shall be equal to the percentage increase in the price index for that year (as so determined).

[*See main edition for text of (4) and (5)*]

"(b) [Repealed. Pub. L. 98-270, title II, § 201(c)(2), Apr. 18, 1984, 98 Stat. 158]

[*See main edition for text of (c)*]

§ 8341. Survivor annuities

(a) For the purpose of this section—

(1) "widow" means the surviving wife of an employee or Member who—

(A) was married to him for at least 9 months immediately before his death; or

(B) is the mother of issue by that marriage;

(2) "widower" means the surviving husband of an employee or Member who—

(A) was married to her for at least 9 months immediately before her death; or

[*See main edition for text of (B), (3) and (4)*]

(b)(1) Except as provided in paragraph (2) of this subsection, if an employee or Member dies after having retired under this subchapter and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if retired before October 11, 1962) of an annuity computed under section 8339(a)-(i) and (n) of this title as may apply with respect to the annuitant, or of such portion thereof as may have been designated for this purpose under section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of remarriage, the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be.

[*See main edition for text of (2)*]

(3) A spouse acquired after retirement is entitled to a survivor annuity under this subsection only upon electing this annuity instead of any other survivor benefit to which he may be entitled under this subchapter or another retirement system for Government employees. The annuity of the widow or widower under this subsection commences on the day after the annuitant dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) remarries before becoming 55 years of age.

(4) Notwithstanding the preceding provisions of this subsection, the annuity payable under this subsection to the widow or widower of a retired employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection (determined without regard to any waiver or designation under section 8339(j)(1) of this title or a prior similar provision of law), and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.

[*See main edition for text of (c)*]

(d) If an employee or Member dies after completing at least 18 months of civilian service, his widow or widower is entitled to an annuity equal to 55 percent of an annuity computed under section 8339(a)-(f), (i), and (n) of this title as may apply with respect to the employee or Member, except that, in the computation of the annuity under such section, the annuity of the employee or Member shall be at least the smaller of—

(1) 40 percent of his average pay; or

(2) the sum obtained under such section after increasing his service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age.

Notwithstanding the preceding sentence, the annuity payable under this subsection to the widow or widower of an employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.

The annuity of the widow or widower commences on the day after the employee or Member dies. This annuity and the right there-

to terminate on the last day of the month before the widow or widower—

(i) dies; or

(ii) remarries before becoming 55 years of age.

(e)(1) If an employee or Member dies after completing at least 18 months of civilian service, or an employee or Member dies after retiring under this subchapter, and is survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member, each surviving child is entitled to an annuity equal to the smallest of—

[See main edition for text of (A) to (C)]

subject to section 8340 of this title. If the employee or Member is not survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member, each surviving child is entitled to an annuity equal to the smallest of—

[See main edition for text of (i) to (iii)]

subject to section 8340 of this title.

(2) The annuity of a child under this subchapter or under the Act of May 29, 1930, as amended from and after February 28, 1948, commences on the day after the employee or Member dies, or commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by subsection (a)(3) of this section, if any lump sum paid is returned to the Fund. This annuity and the right thereto terminate on the last day of the month before the child—

[See main edition for text of (A) to (E)]

whichever first occurs. On the death of the surviving spouse or former spouse or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the spouse, former spouse, or child had not survived the employee or Member.

(f) If a Member heretofore or hereafter separated from the service with title to deferred annuity from the Fund hereafter dies before having established a valid claim for annuity and is survived by a spouse to whom married at the date of separation, the surviving spouse—

[See main edition for text of (1) and (2)]

Notwithstanding the preceding sentence, an annuity payable under this subsection to the surviving spouse of a Member may not exceed the difference between—

(A) the annuity which would otherwise be payable to such surviving spouse under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse of such Member under subsection (h) of this section.

(g) In the case of a surviving spouse whose annuity under this section is terminated because of remarriage before becoming 55 years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, if—

[See main edition for text of (1) and (2)]

(h)(1) Subject to paragraphs (2) through (5) of this subsection, a former spouse of a deceased employee, Member, or annuitant is entitled to a survivor annuity under this subsection, if and to the extent expressly provided for in an election under section 8339(j)(3) of this title, or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(2)(A) The annuity payable to a former spouse under this subsection may not exceed the difference between—

(i) the amount applicable in the case of such former spouse, as determined under subparagraph (B) of this paragraph, and

(ii) the amount of any annuity payable under this subsection to any other former spouse of the employee, Member, or annuitant, based on an election previously made under section 8339(j)(3) of this title, or a court order previously issued.

(B) The applicable amount, for purposes of subparagraph (A)(i) of this paragraph in the case of a former spouse, is the amount which would be applicable—

(i) under subsection (b)(4)(A) of this section in the case of a widow or widower, if the deceased was an employee or Member who died after retirement;

(ii) under subparagraph (A) of subsection (d) of this section in the case of a widow or widower, if the deceased was an employee or Member described in the first sentence of such subsection; or

(iii) under subparagraph (A) of subsection (f) of this section in the case of a surviving spouse, if the deceased was a Member described in the first sentence of such subsection.

(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(A) shall not commence before—

(i) the day after the employee, Member, or annuitant dies, or

(ii) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Office may prescribe,

whichever is later, and

(B) shall terminate—

(i) in the case of an annuity computed by reference to clause (i) or (ii) of paragraph (2)(B) of this subsection, no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies; or

(ii) in the case of an annuity computed by reference to clause (iii) of such paragraph, no later than the last day of the month before the former spouse remarries or dies.

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(4) For purposes of this subchapter, a modification in a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective—

(A) if such modification is made after the retirement of the employee or Member concerned, and

(B) to the extent that such modification involves an annuity under this subsection.

(5) For purposes of this subchapter, a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint designation or waiver previously executed with respect to such former spouse under section 8339(j)(1) of this title or a similar prior provision of law.

(6) Any payment under this subsection to a person bars recovery by any other person.

(7) As used in this subsection, "court" means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.

(i) The requirement in subsections (a)(1)(A) and (a)(2)(A) of this section that the surviving spouse of an employee or Member have been married to such employee or Member for at least 9 months immediately before the employee or Member's death in order to qualify as the widow or widower of such employee or Member shall be deemed satisfied in any case in which the employee or Member dies within the applicable 9-month period, if—

(1) the death of the employee or Member was accidental; or

(2) the surviving spouse of such individual had been previously married to the individual and subsequently divorced, and the aggregate time married is at least 9 months.

(As amended Pub. L. 98-353, title I, § 112, July 10, 1984, 98 Stat. 343; Pub. L. 98-615, § 2(4), Nov. 8, 1984, 98 Stat. 3199.)

AMENDMENTS

1984—Subsec. (a)(1)(A). Pub. L. 98-615, § 2(4)(A), substituted "9 months" for "1 year".

Subsec. (a)(2)(A). Pub. L. 98-615, § 2(4)(A), substituted "9 months" for "1 year".

Subsec. (b)(1). Pub. L. 98-615, § 2(4)(B)(i), substituted "by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if retired before October 11, 1962)" for "by a spouse to whom he was married at the time of retirement, or by a widow or widower whom he married after retirement, the spouse, widow, or widower is entitled to an annuity equal to 55 percent, or 50 percent if retired before October 11, 1962" and "section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of remarriage, the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be" for "section 8339(j) of this title, unless the employee or Member has notified the Office in writing at the time of retirement that he does not desire any spouse surviving him to receive his annuity, or in the case of remarriage, he did not file an election under the third sentence of section 8339(j) of this title".

Pub. L. 98-353 substituted "and (n)" for "and (o)".

Subsec. (b)(3). Pub. L. 98-615, § 2(4)(B)(ii), substituted "widow or widower" for "spouse, widow, or widower" wherever appearing in provisions preceding subpar. (A).

Subsec. (b)(3)(B). Pub. L. 98-615, § 2(4)(B)(iii), substituted "55 years of age" for "60 years of age".

Subsec. (b)(4). Pub. L. 98-615, § 2(4)(B)(iv), added par. (4).

Subsec. (d). Pub. L. 98-615, § 2(4)(C)(i), added provision that the annuity payable under this subsection to the widow or widower of an employee or Member may not exceed the difference between the amount which would otherwise be payable to such widow or widower under this subsection and the amount of the survivor annuity payable to any former spouse of such employee or Member under subsec. (h).

Pub. L. 98-353 substituted "and (n)" for "and (o)".

Subsec. (d)(i). Pub. L. 98-615, § 2(4)(C)(ii), redesignated subpar. (A) as cl. (i).

Subsec. (d)(ii). Pub. L. 98-615, § 2(4)(C)(ii), redesignated subpar. (B) as cl. (ii), and in cl. (ii) as so designated substituted "55 years of age" for "60 years of age".

Subsec. (e)(1). Pub. L. 98-615, § 2(4)(D)(i), inserted "or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member" in provisions preceding subpar. (A) and following subpar. (C).

Subsec. (e)(2). Pub. L. 98-615, § 2(4)(D)(ii), substituted "surviving spouse or former spouse" for "surviving spouse" and "spouse, former spouse, or child" for "spouse or child" in provisions following subpar. (E).

Subsec. (f). Pub. L. 98-615, § 2(4)(E), added provision that an annuity payable under this subsection to the surviving spouse of a Member may not exceed the difference between the annuity which would otherwise be payable to such surviving spouse under this subsection and the amount of the survivor annuity payable to any former spouse of such Member under subsec. (h) of this section in provisions following par. (2).

Subsec. (g). Pub. L. 98-615, § 2(4)(F), substituted "55 years of age" for "60 years of age" in provisions preceding par. (1).

Subsecs. (h), (i). Pub. L. 98-615, § 2(4)(G), added subsecs. (h) and (i).

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 4 of Pub. L. 98-615 provided that:

"(a)(1) Except as provided in subsections (b) and (c), the amendments made by section 2 of this Act [amending sections 8331, 8334, 8339, 8341, 8342, 8345, and 8348 of this title] shall take effect one hundred and eighty days after the date of enactment of this Act [Nov. 8, 1984] and shall apply to any individual who, on or after such effective date, is married to an employee or Member who, on or after such effective date, retires, dies, or applies for a refund of contributions under subchapter III of chapter 83 of title 5, United States Code.

"(2) Except as provided in subsection (f), the amendments made by section 3 of this Act [amending sections 8901-8903, 8905, 8907, 8909, and 8913 of this title] shall take effect one hundred and eighty days after the date of enactment of this Act [Nov. 8, 1984] and shall apply to any individual who, on or after such effective date, is married to an employee or annuitant.

"(b)(1) Notwithstanding subsection (a)(1) of this section, a former spouse of an employee or Member who retired before the one hundred and eightieth day after the date of enactment of this Act [Nov. 8, 1984] is entitled to a survivor annuity under section 8341(b) of title 5, United States Code, as amended by this Act, if—

"(A) the retired employee or Member elects, in writing, within eighteen months after the date of enactment of this Act, according to procedures prescribed by the Office of Personnel Management, to have the annuity of such employee or Member reduced under section 8339(j) of title 5, United States Code, as amended by this Act, and, except as provided in paragraph (3) of this subsection, to deposit in

the Civil Service Retirement and Disability Fund an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which such employee or Member's annuity would have been reduced had the reduction been in effect since such employee or Member's annuity commenced, plus interest computed at the annual rate of six percent for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced; or

"(B) where the retired employee or Member dies or died on or before the one hundred and eightieth day after the date of enactment of this Act or does not make the election described in subparagraph (A)—

"(i) the former spouse's marriage to the employee or Member was dissolved after September 14, 1978;

"(ii) the former spouse was married to the employee or Member for at least ten years during periods of creditable service under section 8332 of title 5, United States Code;

"(iii) the former spouse is not entitled to any other retirement or survivor annuity (other than benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] or under section 8345(j) of title 5, United States Code, as amended by this Act) based on any previous employment of the former spouse or of the employee or Member;

"(iv) the former spouse has not remarried before age fifty-five after September 14, 1978;

"(v) the former spouse files an application for the survivor annuity with the Office within thirty months after the date of enactment of this Act; and

"(vi) the former spouse is at least fifty years of age at the time of filing such application.

A survivor annuity under subparagraph (B) shall commence on the day after the employee or Member dies or the first day of the second month after the former spouse's application is received by the Office, whichever occurs later.

"(2) Except as provided in paragraph (3), if a retired employee or Member who makes an election under subparagraph (A) of paragraph (1) does not make the deposit required by such subparagraph, the Office shall collect the amount of the deposit by offset against the employee or Member's annuity, up to a maximum of 25 per centum of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.

"(3) An election made by an individual under subparagraph (A) of paragraph (1) of this subsection to provide a survivor annuity for any person prospectively voids any election previously made by such individual with respect to such person under section 8339(k)(1) of title 5, United States Code, as amended by this Act, or any similar prior provision of law. Notwithstanding the provisions of such subparagraph (A), an individual who made such an election under such section 8339(k)(1) (or prior provision) shall not be required to make the deposit described in such subparagraph.

"(4) A survivor annuity provided under this subsection shall be 55 per centum of the annuity of the retired employee or Member, as determined under section 8339(a)–(i) and (n) of title 5, United States Code, increased by—

"(A) the total percent increase the retired employee or Member was receiving under section 8340 of such title at death, or

"(B) in the case of a retired employee or Member whose date of death precedes the one hundred and eightieth day after the date of enactment of this Act [Nov. 8, 1984], the total percent increase the retired employee or Member would have received under such section 8340 had such individual died on the one hundred and eightieth day after such date of enactment,

and shall not be subject to reduction under section 8341(b)(4) of such title, as amended by this Act.

"(c) Notwithstanding subsection (a)(1) of this section, an employee or Member who retired before the one hundred and eightieth day after the date of enactment of this Act [Nov. 8, 1984] and who is married to a spouse acquired after retirement for whom such employee or Member was unable to provide a survivor annuity because—

"(1) the employee or Member was married at the time of retirement and elected not to provide a survivor annuity for the employee or Member's spouse at the time of retirement, or

"(2) the employee or Member failed to notify the Office of the employee or Member's post-retirement marriage within one year after the marriage,

may elect in writing, within one year after the date of enactment of this Act, in accordance with procedures prescribed by the Office, to provide for a survivor annuity for such spouse under section 8341(b) of title 5, United States Code, as amended by this Act, to have the retired employee or Member's annuity reduced under section 8339(j) of such title, as so amended, and to deposit in the Civil Service Retirement and Disability Fund an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which such employee or Member's annuity would have been reduced had the election been continuously in effect since the annuity commenced, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced shall be 6 percent. If the retired employee or Member does not make such deposit, the Office shall collect such amount by offset against such employee or Member's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to such employee or Member, and such employee or Member is deemed to consent to such offset. The Office shall provide for general public notice of the right to make an election under this subsection. In cases to which paragraph (2) of this subsection applies, the retired employee or Member shall provide the Office with such documentation as the Office shall decide is appropriate, that such employee or Member attempted to elect a reduced annuity with survivor benefit for such employee or Member's current spouse and that such employee or Member's election was rejected by the Office because it was untimely filed.

"(d) A deposit required by subsection (b)(1)(A) or (c) of this section may be made by the surviving former spouse or spouse, as applicable, of the retired employee or Member.

"(e) The Office shall determine at the end of each fiscal year—

"(1) the cost of survivor annuities provided under subsections (b) and (c) of this section, less an amount determined appropriate by the Office to reflect the value of any deposits made under subsection (b)(1)(A), (c), or (d), and

"(2) the cost of administering subsections (b) and (c).

The Office shall notify the Secretary of the Treasury of the amounts so determined. The Secretary of the Treasury, before closing the account for the fiscal year in question, shall credit to the Civil Service Retirement and Disability Fund, out of any money in the Treasury not otherwise appropriated, such amounts, which shall be available in the same manner as provided under subparagraphs (A) and (B) of section 8348(a)(1) of title 5, United States Code, as amended by this Act.

"(f) An individual who is entitled to a survivor annuity under subsection (b) of this section is deemed to be in receipt of annuity payments under section 8341(h) of title 5, United States Code, as amended by this Act, for the purpose of chapter 89 of such title, as so

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amended. Notwithstanding subsection (a)(2) of this section, any such individual who otherwise meets the definition of a former spouse under section 8901 of title 5, United States Code, as so amended, may enroll in an approved health benefits plan described by section 8903 of such title, under the conditions set forth in section 8905(c) of such title, as so amended.

"(g)(1) For purposes of subsections (a)(1), (b), (c), (d), and (e), 'employee', 'Member', and 'former spouse' each has the meaning given that term under section 8331 of title 5, United States Code, as amended by this Act.

"(2) For purposes of subsection (a)(2), 'employee' and 'annuitant' each has the meaning given that term under section 8901 of title 5, United States Code.

"(h) Section 827 of the Foreign Service Act of 1980 [22 U.S.C. 4067] and section 292 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [50 U.S.C. 403 note] shall not apply with respect to either the amendments made by section 2 [amending sections 8331, 8334, 8339, 8341, 8342, 8345, and 8348 of this title] or the preceding provisions of this section."

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8331, 8333, 8339, 8340, 8342, 8344, 8345, 8348, 8901, 8905 of this title; title 10 sections 1450, 1452; title 38 sections 4109, 4118.

§ 8342. Lump-sum benefits; designation of beneficiary; order of precedence

(a) Subject to subsection (j) of this section, an employee or Member who—

[*See main edition for text of (1) to (4)*]

is entitled to be paid the lump-sum credit. The receipt of the payment of the lump-sum credit by the employee or Member voids all annuity rights under this subchapter based on the service on which the lump-sum credit is based, until the employee or Member is reemployed in the service subject to this subchapter.

[*See main edition for text of (b) to (i)*]

(j)(1) Payment of the lump-sum credit under subsection (a) of this section—

(A) may be made only if any current spouse and any former spouse of the employee or Member are notified of the employee or Member's application; and

(B) in any case in which there is a former spouse, shall be subject to the terms of a court order or decree issued with respect to such former spouse if—

(i) the order or decree expressly relates to any portion of the lump-sum credit involved, and

(ii) payment of the lump-sum credit would extinguish entitlement of the former spouse to a survivor annuity under section 8341(h) of this title or to any portion of an annuity under section 8345(j) of this title.

(2)(A) Notification of a spouse or former spouse under this subsection shall be made in accordance with such requirements as the Office shall by regulation prescribe.

(B) Under the regulations, the Office may provide that paragraph (1)(A) of this subsection may be waived with respect to a spouse or former spouse if the employee or Member establishes to the satisfaction of the Office that the whereabouts of such spouse or former spouse cannot be determined.

(3) The Office shall prescribe regulations under which this subsection shall be applied in any case in which the Office receives two or more such orders or decrees.

(As amended Pub. L. 98-615, § 2(5), Nov. 8, 1984, 98 Stat. 3201.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-615, § 2(5)(A), substituted "Subject to subsection (j) of this section, an" for "An" in provisions preceding par. (1).

Subsec. (j). Pub. L. 98-615, § 2(5)(B), added subsec. (j).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective 180 days after Nov. 8, 1984, with enumerated exceptions, and applicable to any individual who, on or after such date, is married to an employee or Member who, on or after such date, retires, dies, or applies for a refund of contributions under this subchapter, see section 4(a)(1) of Pub. L. 98-615, set out as a note under section 8341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8316, 8339, 8343, 8344 of this title; title 16 section 1168; title 26 section 3121; title 42 section 410.

§ 8344. Annuities and pay on reemployment

(a) If an annuitant receiving annuity from the Fund, except—

[*See main edition for text of (1) to (4)*]

becomes employed in an appointive or elective position, his service on and after the date he is so employed is covered by this subchapter. Deductions for the Fund may not be withheld from his pay unless the individual elects to have such deductions withheld under subparagraph (A). An amount equal to the annuity allocable to the period of actual employment shall be deducted from his pay, except for lump-sum leave payment purposes under section 5551 of this title. The amounts so deducted shall be deposited in the Treasury of the United States to the credit of the Fund. If the annuitant serves on a full-time basis, except as President, for at least 1 year, on a part-time basis for periods equivalent to at least 1 year of full-time service, in employment not excluding him from coverage under section 8331(1) (i) or (ii) of this title—

(A) deductions for the Fund may be withheld from his pay (if the employee so elects), and his annuity on termination of employment is increased by an annuity computed under section 8339(a), (b), (d), (e), (h), (i), and (n) of this title as may apply based on the period of employment and the basic pay, before deduction, averaged during that employment; and

(B) his lump-sum credit may not be reduced by annuity paid during that employment.

If the annuitant is receiving a reduced annuity as provided in section 8339(j) or section 8339(k)(2) of this title, the increase in annuity payable under subparagraph (A) of this subsection is reduced by 10 percent and the survivor annuity payable under section 8341(b) of this title is increased by 55 percent of the increase in annuity payable under such subparagraph (A), unless, at the time of claiming the increase payable under such subparagraph (A), the annuitant notifies the Office of Personnel Management in writing that he does not desire the survivor annuity to be increased. If the annuitant dies while still reemployed, the survivor annuity payable is increased as though the reemployment had otherwise terminated. If the described employment of the annuitant continues for at least 5 years, or the equivalent of 5 years in the case of part-time employment, he may elect, instead of the benefit provided by subparagraph (A) of this subsection, to deposit in the Fund (to the extent deposits or deductions have not otherwise been made) an amount computed under section 8334(c) of this title covering that employment and have his rights redetermined under this subchapter. If the annuitant dies while still reemployed and the described employment had continued for at least 5 years, or the equivalent of 5 years in the case of part-time employment, the person entitled to survivor annuity under section 8341(b) of this title may elect to deposit in the Fund and have his rights redetermined under this subchapter.

[*See main edition for text of (b) and (c)*]

(d) If a Member receiving annuity from the Fund becomes employed in an appointive or elective position, annuity payments are discontinued during the employment and resumed on termination of the employment in the amount equal to the sum of the amount of the annuity the member was receiving immediately before the commencement of the employment and the amount of the increases which would have been made in the amount of the annuity under section 8340 of this title during the period of the employment if the annuity had been payable during that period, except that—

[*See main edition for text of (1) to (4); (e) to (g)*]

(h)(1) Subject to paragraph (2) of this subsection, subsections (a), (b), (c), and (d) of this section shall not apply to any annuitant receiving an annuity from the Fund while such annuitant is employed, during any period described in section 5532(f)(2) of this title or any portion thereof, under the administrative authority of the Administrator, Federal Aviation Administration, or the Secretary of Defense to perform duties in the operation of the air traffic control system or to train other individuals to perform such duties: *Provided, however,* That the amount such an annuitant may receive in pay, excluding premium pay, in any pay period when aggregated with the annuity payable during that same period shall not exceed the rate payable for level V of the Executive Schedule.

(2) Paragraph (1) of this subsection shall apply only in the case of any annuitant receiving an annuity from the Fund who, before April 1, 1985, applied for retirement or separated from the service while being entitled to an annuity under this chapter.

(As amended Pub. L. 98-353, title I, § 112, July 10, 1984, 98 Stat. 343; Pub. L. 98-396, title I, § 101, Aug. 22, 1984, 98 Stat. 1403; Pub. L. 98-525, title XV, § 1537(e), 98 Stat. 2636; Pub. L. 99-88, title I, § 100, Aug. 15, 1985, 99 Stat. 351.)

REFERENCES IN TEXT

Level V of the Executive Schedule, referred to in subsec. (h)(1), is set out in section 5316 of this title.

AMENDMENTS

1985—Subsec. (h)(1). Pub. L. 99-88 added proviso directing that the amount an annuitant may receive in pay, excluding premium pay, in any pay period when aggregated with the annuity payable during that same period shall not exceed the rate payable for level V of the Executive Schedule.

Subsec. (h)(2). Pub. L. 99-88 substituted "April 1, 1985" for "August 3, 1981".

1984—Subsec. (a)(A). Pub. L. 98-353 substituted "and (n)" for "and (o)".

Subsec. (d). Pub. L. 98-396 substituted "on termination of the employment in the amount equal to the sum of the amount of the annuity the member was receiving immediately before the commencement of the employment and the amount of the increases which would have been made in the amount of the annuity under section 8340 of this title during the period of the employment if the annuity had been payable during that period" for "in the same amount on termination of the employment".

Subsec. (h)(1). Pub. L. 98-525 inserted "or the Secretary of Defense".

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-525 effective Oct. 1, 1984, see section 1537(f) of Pub. L. 98-525, set out as a note under section 4109 of this title.

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

§ 8345. Payment of benefits; commencement, termination, and waiver of annuity

[*See main edition for text of (a) to (e)*]

(f) [*See main edition for text of (1) to (3)*]

(4) The provisions of this subsection shall not apply—

(A) to any survivor annuity payable under subsection (h) of section 8341 of this title; or

(B) to any survivor annuity payable under subsection (b), (d), or (f) of such section which is reduced on account of any survivor annuity referred to in subparagraph (A) of this paragraph.

[*See main edition for text of (g) to (i)*]

(j) [*See main edition for text of (1) and (2)*]

(3) As used in this subsection, "court" means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.

[*See main edition for text of (k)*]

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(As amended Pub. L. 98-615, § 2(6), Nov. 8, 1984, 98 Stat. 3202.)

AMENDMENTS

1984—Subsec. (f)(4). Pub. L. 98-615, § 2(6)(A), added par. (4).

Subsec. (j)(3). Pub. L. 98-615, § 2(6)(B), added reference to the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and any Indian court.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective 180 days after Nov. 8, 1984, with enumerated exceptions, and applicable to any individual who, on or after such date, is married to an employee or Member who, on or after such date, retires, dies, or applies for a refund of contributions under this subchapter, see section 4(a)(1) of Pub. L. 98-615, set out as a note under section 8341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8342, 8346, 8901, 8905 of this title.

§ 8348. Civil Service Retirement and Disability Fund

(a) There is a Civil Service Retirement and Disability Fund. The Fund—

(1) is appropriated for the payment of—

(A) benefits as provided by this subchapter; and

(B) administrative expenses incurred by the Office of Personnel Management in placing in effect each annuity adjustment granted under section 8340 of this title, in administering survivor annuities and elections providing therefor under sections 8339 and 8341 of this title, and in withholding taxes pursuant to section 3405 of title 26; and

[*See main edition for text of (2); (b) and (c)*]

(d) The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are extended to authorize the issuance at par of public-debt obligations for purchase by the Fund. The obligations issued for purchase by the Fund shall have maturities fixed with due regard for the needs of the Fund and bear interest at a rate equal to the average market yield computed as of the end of the calendar month next preceding the date of the issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of that calendar month. If the average market yield is not a multiple of ⅛ of 1 percent, the rate of interest on the obligations shall be the multiple of ⅛ of 1 percent nearest the average market yield.

[*See main edition for text of (e) to (i)*]

(As amended Pub. L. 98-216, § 3(a)(5), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98-615, § 2(7), Nov. 8, 1984, 98 Stat. 3202.)

AMENDMENTS

1984—Subsec. (a)(1)(B). Pub. L. 98-615 inserted ", in administering survivor annuities and elections providing therefor under sections 8339 and 8341 of this title,".

Subsec. (d). Pub. L. 98-216 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as amended,".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective 180 days after Nov. 8, 1984, with enumerated exceptions, and applicable to any individual who, on or after such date, is married to an employee or Member who, on or after such date, retires, dies, or applies for a refund of contributions under this subchapter, see section 4(a)(1) of Pub. L. 98-615, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97-253 effective Oct. 1, 1982, except that any employee or Member who retired after Sept. 8, 1982, and before Oct. 1, 1985, or is entitled to an annuity under chapter 83 of this title based on a separation from service occurring during such period, or a survivor of such individual, may make a payment under section 8334(j)(1) of this title, and regulations required to be issued under section 8334(j)(1) of this title, to be issued by the Office of Personnel Management within 90 days after such effective date, see section 306(g) of Pub. L. 97-253, as amended, set out as a note under section 8331 of this title.

CHAPTER 85—UNEMPLOYMENT COMPENSATION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 2 section 906; title 18 section 1919; title 19 section 2319; title 28 section 996.

CHAPTER 87—LIFE INSURANCE

Sec.
8706. Termination of insurance; assignment of ownership.

AMENDMENTS

1984—Pub. L. 98-353, title II, § 208(b), July 10, 1934, 98 Stat. 351, inserted "; assignment of ownership" in item 8706.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1103, 1308, 3373, 3374, 3582, 5362, 5948 of this title; title 2 sections 31b-5, 72a; title 20 section 125; title 22 sections 2025, 2391, 3649, 3658, 4606; title 25 section 450l; title 28 sections 332, 627, 634, 996; title 38 sections 4107, 4118; title 39 section 1005; title 42 sections 2996d, 4276, 10704.

§ 8701. Definitions

(a) For the purpose of this chapter, "employee" means—

[*See main edition for text of (1) to (4)*]

(5) a justice or judge of the United States appointed to hold office during good behavior (i) who is in regular active judicial service, or (ii) who is retired from regular active service under section 371(b) or 372(a) of title 28, United States Code, or (iii) who has resigned the judicial office under section 371(a) of title 28 with the continued right during the remainder of his lifetime to receive the salary of the office at the time of his resignation;

(6) an individual employed by the government of the District of Columbia;

(7) an individual employed by Gallaudet College;

(8) an individual employed by a county committee established under section 590h(b) of title 16; and

(9) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

but does not include—

[*See main edition for text of (A) to (C); (b) to (d)*]

(As amended Pub. L. 98-353, title II, § 205, July 10, 1984, 98 Stat. 350.)

REFERENCES IN TEXT

The Act of August 25, 1958 (72 Stat. 838), referred to in subsec. (a)(9), is Pub. L. 85-745 and is set out as a note under section 102 of Title 3, The President.

AMENDMENTS

1984—Subsec. (a)(5) to (9). Pub. L. 98-353 added par. (5) and redesignated former pars. (5) to (8) as (6) to (9), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8706, 8714a, 8714b, 8714c, 8716 of this title.

§ 8706. Termination of insurance; assignment of ownership

[*See main edition for text of (a) to (e)*]

(f) Under regulations prescribed by the Office, each policy purchase under this chapter shall provide that an insured Federal judge may make an irrevocable assignment of the judge's incidents of ownership in the policy.

(g) If the insurance of a former employee receiving a disability annuity under section 8337 of this title stops because of the termination of such annuity, and such annuity is thereafter restored under the second or third sentence of subsection (e) of such section, such former employee may, under regulations prescribed by the Office, elect to resume the insurance coverage which was so stopped.

(As amended Pub. L. 98-353, title II, § 208, July 10, 1984, 98 Stat. 351; Pub. L. 99-53, § 3(b), June 17, 1985, 99 Stat. 95.)

AMENDMENTS

1985—Subsec. (g). Pub. L. 99-53 added subsec. (g).

1984—Pub. L. 98-353, § 208(b), inserted "; assignment of ownership" in section catchline.

Subsec. (f). Pub. L. 98-353, § 208(a), added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 209 of Pub. L. 98-353 provided that:

"(a) Except as provided in subsection (b), the amendments made by this Act to section 8706 of title 5, United States Code, shall apply to policies purchased by judges after the date of enactment of this Act [July 10, 1984].

"(b) If a company which issued a policy which is in effect on the date of the enactment of this Act agrees, the amendments made by this Act [probably should be 'made by this Act to section 8706 of title 5'] shall apply to such policy."

INSURANCE COVERAGE FOR RESTORED DISABILITY ANNUITANTS

Section 3(c) of Pub. L. 99-53 provided that:

"(1) The amendments made by this section [amending sections 8706 and 8908 of this title] shall apply with respect to any individual whose disability annuity is or was restored under section 8337(e) of title 5, United States Code, after December 31, 1983.

"(2)(A) The Office of Personnel Management shall notify each individual under subparagraph (B) of any rights which such individual may have under section 8706(g) or section 8908(c) of title 5, United States Code, as amended by this section, including any procedures or deadlines which may apply with respect to the exercise of those rights.

"(B) Notification under this paragraph shall be provided to any individual who, as of the 90th day after the date of enactment of this Act [June 17, 1985], is receiving a disability annuity which was restored to such individual under section 8337(e) of title 5, United States Code, after December 31, 1983.

"(3)(A) Nothing in this section shall be construed to authorize—

"(i) coverage under chapter 87 of title 5, United States Code, in the case of any individual who makes an election under section 8706(g) of such title (as amended by this Act), for any period before the date of such election; or

"(ii) coverage under chapter 89 of title 5, United States Code, in the case of any individual who becomes enrolled in a health benefits plan under section 8908(c) of such title (as amended by this Act), for any period before the date as of which such individual becomes so enrolled.

"(B) This paragraph applies with respect to any individual receiving a disability annuity which is or was restored under section 8337(e) of title 5, United States Code, after December 31, 1983, and before the expiration of the 90-day period beginning on the date of enactment of this Act [June 17, 1985]."

§ 8714a. Optional insurance

[*See main edition for text of (a) and (b)*]

(c) [*See main edition for text of (1) and (2)*]

(3) Notwithstanding paragraph (c)(1) of this section,[1] a justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert regular optional life insurance coverage issued under this section during his judicial service to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title.

[*See main edition for text of (d) to (f)*]

(As amended Pub. L. 98-353, title II, § 206, July 10, 1984, 98 Stat. 351.)

AMENDMENTS

1984—Subsec. (c)(3). Pub. L. 98-353 added par. (3).

§ 8714b. Additional optional life insurance

[*See main edition for text of (a) and (b)*]

(c)(1) The additional optional insurance elected by an employee pursuant to this section shall stop on separation from service, 12 months after discontinuance of pay, or on entry

[1] So in original. Probably should be "paragraph (1) of this subsection,".

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on active military duty or active duty for training, subject to provision for a 31-day temporary extension of insurance coverage and for conversion to an individual policy, as provided in sections 8706(a) and 8706(c) of this title. A justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert additional optional life insurance coverage issued under this section during his judicial service to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title.

[*See main edition for text of (2); (d) to (f)*]

(As amended Pub. L. 98-353, title II, § 207, July 10, 1984, 98 Stat. 351.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-353 inserted "A justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert additional optional life insurance coverage issued under this section during his judicial service to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title."

CHAPTER 89—HEALTH INSURANCE

Sec.
8903a. Additional health benefits plans.
8907. Information to individuals eligible to enroll.
8908. Coverage of restored employees and survivor or disability annuitants.

AMENDMENTS

1985—Pub. L. 99-53, §§ 1(b)(2), 3(a)(2)(B), June 17, 1985, 99 Stat. 94, 95, added item 8903a and inserted "or disability" after "and survivor" in item 8908.

1984—Pub. L. 98-615, § 3(8), Nov. 8, 1984, 98 Stat. 3204, substituted "Information to individuals eligible to enroll" for "Information to employees" in item 8907.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1308, 3373, 3374, 3582 of this title; title 2 sections 31b-5, 72a; title 22 sections 2391, 3649, 4606; title 25 section 450i; title 28 sections 332, 627, 634, 996; title 39 section 1005; title 42 sections 300e-1, 300e-6, 426a, 1395y, 2996d, 10704.

§ 8901. Definitions

For the purpose of this chapter—

[*See main edition for text of (1) to (7)*]

(8) "employee organization" means—

(A) an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under this chapter and which, after December 31, 1978, and before January 1, 1980, applied to the Office for approval of a plan provided under section 8903(3) of this title; and

(B) an association or other organization which is national in scope, in which membership is open only to employees, annuitants, or former spouses, or any combination thereof, and which, during the 90-day period beginning on the date of enactment of section 8903a of this title, applied to the Office for approval of a plan provided under such section;

(9) "dependent", in the case of any child, means that the employee or annuitant involved is either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office shall prescribe; and

(10) "former spouse" means a former spouse of an employee, former employee, or annuitant—

(A) who has not remarried before age 55 after the marriage to the employee, former employee, or annuitant was dissolved,

(B) who was enrolled in an approved health benefits plan under this chapter as a family member at any time during the 18-month period before the date of the dissolution of the marriage to the employee, former employee, or annuitant, and

(C)(i) who is receiving any portion of an annuity under section 8345(j) of this title or a survivor annuity under section 8341(h) of this title (or benefits similar to either of the aforementioned annuity benefits under a retirement system for Government employees other than the Civil Service Retirement System),

(ii) as to whom a court order or decree referred to in section 8341(h) or 8345(j) of this title (or similar provision of law under any such retirement system other than the Civil Service Retirement System) has been issued, or for whom an election has been made under section 8339(j)(3) of this title (or similar provision of law), or

(iii) who is otherwise entitled to an annuity or any portion of an annuity as a former spouse under a retirement system for Government employees,

except that such term shall not include any such unremarried former spouse of a former employee whose marriage was dissolved after the former employee's separation from the service (other than by retirement).

(As amended Pub. L. 98-615, § 3(1), Nov. 8, 1984, 98 Stat. 3202; Pub. L. 98-53, § 1(a), June 17, 1985, 99 Stat. 93.)

REFERENCES IN TEXT

The date of enactment of section 8903a of this title, referred to in par. (8)(B), means the date of enactment of Pub. L. 99-53, which enacted section 8903a and which was approved June 17, 1985.

AMENDMENTS

1985—Par. (8). Pub. L. 99-53 amended par. (8) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

1984—Par. (10). Pub. L. 98-615 added par. (10).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective 180 days after Nov. 8, 1984, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, set out as a note under section 8341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8903, 8903a, 8906, 8909, 8913 of this title; title 42 section 251.

§ 8902. Contracting authority

(a) The Office of Personnel Management may contract with qualified carriers offering plans described by section 8903 or 8903a of this title, without regard to section 5 of title 41 or other statute requiring competitive bidding. Each contract shall be for a uniform term of at least 1 year, but may be made automatically renewable from term to term in the absence of notice of termination by either party.

[*See main edition for text of (b) to (d)*]

(e) The Office may prescribe reasonable minimum standards for health benefits plans described by section 8903 or 8903a of this title and for carriers offering the plans. Approval of a plan may be withdrawn only after notice and opportunity for hearing to the carrier concerned without regard to subchapter II of chapter 5 and chapter 7 of this title. The Office may terminate the contract of a carrier effective at the end of the contract term, if the Office finds that at no time during the preceding two contract terms did the carrier have 300 or more employees and annuitants, exclusive of family members, enrolled in the plan.

[*See main edition for text of (f)*]

(g) A contract may not be made or a plan approved which does not offer to each employee, annuitant, family member, or former spouse whose enrollment in the plan is ended, except by a cancellation of enrollment, a temporary extension of coverage during which he may exercise the option to convert, without evidence of good health, to a nongroup contract providing health benefits. An employee, annuitant, family member, or former spouse who exercises this option shall pay the full periodic charges of the nongroup contract.

[*See main edition for text of (h)*]

(i) Rates charged under health benefits plans described by section 8903 or 8903a of this title shall reasonably and equitably reflect the cost of the benefits provided. Rates under health benefits plans described by section 8903(1) and (2) of this title shall be determined on a basis which, in the judgment of the Office, is consistent with the lowest schedule of basic rates generally charged for new group health benefit plans issued to large employers. The rates determined for the first contract term shall be continued for later contract terms, except that they may be readjusted for any later term, based on past experience and benefit adjustments under the later contract. Any readjustment in rates shall be made in advance of the contract term in which they will apply and on a basis which, in the judgment of the Office, is consistent with the general practice of carriers which issue group health benefit plans to large employers.

(j) Each contract under this chapter shall require the carrier to agree to pay for or provide a health service or supply in an individual case if the Office finds that the employee, annuitant, family member, or former spouse is entitled thereto under the terms of the contract.

(k) When a contract under this chapter requires payment or reimbursement for services which may be performed by a clinical psychologist or optometrist, licensed or certified as such under Federal or State law, as applicable, an employee, annuitant, family member, or former spouse covered by the contract shall be free to select, and shall have direct access to, such a clinical psychologist or optometrist without supervision or referral by another health practitioner and shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed. The provisions of this subsection shall not apply to group practice prepayment plans.

[*See main edition for text of (l) and (m)*]

(As amended Pub. L. 98-615, § 3(2), Nov. 8, 1984, 98 Stat. 3203; Pub. L. 99-53, § 2(a), June 17, 1985, 99 Stat. 94.)

AMENDMENTS

1985—Subsecs. (a), (e), (l). Pub. L. 99-53 inserted reference to section 8903a of this title.

1984—Subsec. (g). Pub. L. 98-615, § 3(2)(A), substituted "employee, annuitant, family member, or former spouse" for "employee or annuitant" in two places.

Subsecs. (j), (k). Pub. L. 98-615, § 3(2)(B), substituted "family member, or former spouse" for "or family member".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective 180 days after Nov. 8, 1984, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, set out as a note under section 8341 of this title.

§ 8903. Health benefits plans

The Office of Personnel Management may contract for or approve the following health benefits plans:

(1) SERVICE BENEFIT PLAN.—One Government-wide plan, offering two levels of benefits, under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services for benefits of the types described by section 8904(1) of this title given to employees, annuitants, members of their families, or former spouses, or, under certain conditions, payment is made by a carrier to the employee, annuitant, family member, or former spouse.

[*See main edition for text of (2)*]

(3) EMPLOYEE ORGANIZATION PLANS.—Employee organization plans which offer benefits of the types referred to by section 8904(3) of this title, which are sponsored or under-

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written, and are administered, in whole or substantial part, by employee organizations described in section 8901(8)(A) of this title, which are available only to individuals, and members of their families, who at the time of enrollment are members of the organization.

[*See main edition for text of* (4)]

(As amended Pub. L. 98-615, § 3(3), Nov. 8, 1984, 98 Stat. 3203; Pub. L. 99-53, § 2(b), June 17, 1985, 99 Stat. 94.)

AMENDMENTS

1985—Par. (3). Pub. L. 99-53 inserted "described in section 8901(8)(A) of this title" after "employee organizations".

1984—Par. (1). Pub. L. 98-615, § 3(3), substituted "employees, annuitants, members of their families, or former spouses" for "employees or annuitants, or members of their families" and "employee, annuitant, family member, or former spouse" for "employee or annuitant or member of his family".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective 180 days after Nov. 8, 1984, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, set out as a note under section 8341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8901, 8902, 8903a, 8904, 8905, 8907, 8908, 8909, 8913 of this title; title 42 section 1395s.

§ 8903a. Additional health benefits plans

(a) In addition to any plan under section 8903 of this title, the Office of Personnel Management may contract for or approve one or more health benefits plans under this section.

(b) A plan under this section may not be contracted for or approved unless it—

(1) is sponsored or underwritten, and administered, in whole or substantial part, by an employee organization described in section 8901(8)(B) of this title;

(2) offers benefits of the types named by paragraph (1) or (2) of section 8904 of this title or both;

(3) provides for benefits only by paying for, or providing reimbursement for, the cost of such benefits (as provided for under paragraph (1) or (2) of section 8903 of this title) or a combination thereof; and

(4) is available only to individuals who, at the time of enrollment, are full members of the organization and to members of their families.

(c) A contract for a plan approved under this section shall require the carrier—

(1) to enter into an agreement approved by the Office with an underwriting subcontractor licensed to issue group health insurance in all the States and the District of Columbia; or

(2) to demonstrate ability to meet reasonable minimum financial standards prescribed by the Office.

(d) For the purpose of this section, an individual shall be considered a full member of an organization if such individual is eligible to exercise all rights and privileges incident to full membership in such organization (determined without regard to the right to hold elected office).

(Added Pub. L. 99-53, § 1(b)(1), June 17, 1985, 99 Stat. 93.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8901, 8902, 8905, 8907, 8908, 8909, 8913 of this title; title 42 section 1395s.

§ 8904. Types of benefits

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8903, 8903a of this title.

§ 8905. Election of coverage

(a) An employee may enroll in an approved health benefits plan described by section 8903 or 8903a of this title either as an individual or for self and family.

[*See main edition for text of* (b)]

(c)(1) A former spouse may—

(A) within 60 days after the dissolution of the marriage, or

(B) in the case of a former spouse of a former employee whose marriage was dissolved after the employee's retirement, within 60 days after the dissolution of the marriage or, if later, within 60 days after an election is made under section 8339(j)(3) of this title for such former spouse by the retired employee,

enroll in an approved health benefits plan described by section 8903 or 8903a of this title as an individual or for self and family as provided in paragraph (2) of this subsection, subject to agreement to pay the full subscription charge of the enrollment, including the amounts determined by the Office to be necessary for administration and reserves pursuant to section 8909(b) of this title. The former spouse shall submit an enrollment application and make premium payments to the agency which, at the time of divorce or annulment, employed the employee to whom the former spouse was married or, in the case of a former spouse who is receiving annuity payments under section 8341(h) or 8345(j) of this title, to the Office of Personnel Management.

(2) Coverage for self and family under this subsection shall be limited to—

(A) the former spouse; and

(B) unmarried dependent natural or adopted children of the former spouse and the employee who are—

(i) under 22 years of age; or

(ii) incapable of self-support because of mental or physical disability which existed before age 22.

(d) If an employee has a spouse who is an employee, either spouse, but not both, may enroll for self and family, or each spouse may enroll as an individual. However, an individual may

not be enrolled both as an employee or annuitant and as a member of the family.

(e) An employee, annuitant, or former spouse enrolled in a health benefits plan under this chapter may change his coverage or that of himself and members of his family by an application filed within 60 days after a change in family status or at other times and under conditions prescribed by regulations of the Office.

(f) An employee, annuitant, or former spouse may transfer his enrollment from a health benefits plan described by section 8903 or 8903a of this title to another such plan at the times and under the conditions prescribed by regulations of the Office.

(As amended Pub. L. 98-615, § 3(4), Nov. 8, 1984, 98 Stat. 3203; Pub. L. 99-53, § 2(a), (c), June 17, 1985, 99 Stat. 94.)

AMENDMENTS

1985—Subsecs. (a), (c)(1). Pub. L. 99-53, § 2(a), inserted reference to section 8903a of this title.

Subsec. (f). Pub. L. 99-53, § 2(a), (c), inserted reference to section 8903a of this title and substituted "such plan" for "plan described by that section".

1984—Subsec. (c). Pub. L. 98-615, § 3(4)(A), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98-615, § 3(4)(A), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98-615, § 3(4), redesignated former subsec. (d) as (e) and substituted "An employee, annuitant, or former spouse" for "An employee or annuitant". Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 98-615, § 3(4), redesignated former subsec. (e) as (f) and substituted "An employee, annuitant, or former spouse" for "An employee or annuitant".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective 180 days after Nov. 8, 1984, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, set out as a note under section 8341 of this title.

§ 8906. Contributions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8909 of this title; title 42 section 1395s; title 45 section 1212.

§ 8907. Information to individuals eligible to enroll

(a) The Office of Personnel Management shall make available to each individual eligible to enroll in a health benefits plan under this chapter such information, in a form acceptable to the Office after consultation with the carrier, as may be necessary to enable the individual to exercise an informed choice among the types of plans described by sections 8903 and 8903a of this title.

(b) Each individual enrollee in a health benefits plan shall be issued an appropriate document setting forth or summarizing the—

(1) services or benefits, including maximums, limitations, and exclusions, to which the enrollee or the enrollee and any eligible family members are entitled thereunder;

(2) procedure for obtaining benefits; and

(3) principal provisions of the plan affecting the enrollee and any eligible family members.

(As amended Pub. L. 98-615, § 3(5), Nov. 8, 1984, 98 Stat. 3204; Pub. L. 99-53, § 2(d), June 17, 1985, 99 Stat. 94.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-53 inserted reference to section 8903a of this title.

1984—Pub. L. 98-615, § 3(5)(C), substituted "individuals eligible to enroll" for "employees" in section catchline.

Subsec. (a). Pub. L. 98-615, § 3(5)(A), substituted "individual" for "employee" in two places.

Subsec. (b). Pub. L. 98-615, § 3(5)(B)(i), substituted "enrollee" for "employee enrolled" in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98-615, § 3(5)(B)(ii), substituted "enrollee or the enrollee and any eligible family members" for "employee or the employee and members of his family".

Subsec. (b)(3). Pub. L. 98-615, § 3(5)(B)(iii), substituted "the enrollee and any eligible family members" for "the employee or members of his family".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective 180 days after Nov. 8, 1984, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, set out as a note under section 8341 of this title.

§ 8908. Coverage of restored employees and survivor or disability annuitants

[See main edition for text of (a)]

(b) A surviving spouse whose survivor annuity under this title was terminated because of remarriage and is later restored may, under such regulations as the Office of Personnel Management may prescribe, enroll in a health benefits plan described by section 8903 or 8903a of this title if such spouse was covered by any such plan immediately before such annuity was terminated.

(c) A disability annuitant whose disability annuity under section 8337 of this title was terminated and is later restored under the second or third sentence of subsection (e) of such section may, under regulations prescribed by the Office, enroll in a health benefits plan described by section 8903 or 8903a of this title if such annuitant was covered by any such plan immediately before such annuity was terminated.

(As amended Pub. L. 99-53, §§ 2(a), 3(a)(1), (2)(A), 99 Stat. 94, 95.)

AMENDMENTS

1985—Pub. L. 99-53, § 3(a)(2)(A), inserted "or disability" after "and survivor" in section catchline.

Subsec. (b). Pub. L. 99-53, § 2(a), inserted reference to section 8903a of this title.

Subsec. (c). Pub. L. 99-53, § 3(a)(1), added subsec. (c).

INSURANCE COVERAGE FOR RESTORED DISABILITY ANNUITANTS

For provisions directing that subsec. (c) of this section shall apply with respect to any individual whose disability annuity is or was restored under section 8337(e) of this title after December 31, 1983, directing that the Office of Personnel Management notify each individual of any rights which such individual may have under subsec. (c) of this section, including any procedures or deadlines which might apply with re-

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spect to the exercise of those rights, directing that such notification be provided to any individual who, as of the 90th day after June 17, 1985, is receiving a disability annuity which was restored to such individual under section 8337(e) of this title after December 31, 1983, directing that nothing in subsec. (c) of this section be construed to authorize coverage under this chapter in the case of any individual who becomes enrolled in a health benefits plan under subsec. (c) of this section for any period before the date as of which such individual becomes so enrolled, and directing that such rule of construction apply with respect to any individual receiving a disability annuity which is or was restored under section 8337(e) of this title after December 31, 1983, and before the expiration of the 90-day period beginning on June 17, 1985, see section 3(c) of Pub. L. 99-53, set out as a note under section 8706 of this title.

§ 8909. Employees Health Benefits Fund

(a) There is in the Treasury of the United States an Employees Health Benefits Fund which is administered by the Office of Personnel Management. The contributions of enrollees and the Government described by section 8906 of this title shall be paid into the Fund. The Fund is available—

[*See main edition for text of (1) and (2)*]

(b) Portions of the contributions made by enrollees and the Government shall be regularly set aside in the Fund as follows:

[*See main edition for text of (1) and (2)*]

The Office, from time to time and in amounts it considers appropriate, may transfer unused funds for administrative expenses to the contingency reserves of the plans then under contract with the Office. When funds are so transferred, each contingency reserve shall be credited in proportion to the total amount of the subscription charges paid and accrued to the plan for the contract term immediately before the contract term in which the transfer is made. The income derived from dividends, rate adjustments, or other refunds made by a plan shall be credited to its contingency reserve. The contingency reserves may be used to defray increases in future rates, or may be applied to reduce the contributions of employees and the Government to, or to increase the benefits provided by, the plan from which the reserves are derived, as the Office from time to time shall determine.

[*See main edition for text of (c)*]

(d) When the assets, liabilities, and membership of employee organizations sponsoring or underwriting plans approved under section 8903(3) or 8903a of this title are merged, the assets (including contingency reserves) and liabilities of the plans sponsored or underwritten by the merged organizations shall be transferred at the beginning of the contract term next following the date of the merger to the plan sponsored or underwritten by the successor organization. Each employee, annuitant, or former spouse affected by a merger shall be transferred to the plan sponsored or underwritten by the successor organization unless he enrolls in another plan under this chapter. If the successor organization is an organization described in section 8901(8)(B) of this title, any employee, annuitant, or former spouse so transferred may not remain enrolled in the plan after the end of the contract term in which the merger occurs unless that individual is a full member of such organization (as determined under section 8903a(d) of this title).

(e) Except as provided by subsection (d) of this section, when a plan described by section 8903(3) or (4) or 8903a of this title is discontinued under this chapter, the contingency reserve of that plan shall be credited to the contingency reserves of the plans continuing under this chapter for the contract term following that in which termination occurs, each reserve to be credited in proportion to the amount of the subscription charges paid and accrued to the plan for the year of termination.

(As amended Pub. L. 98-615, § 3(6), Nov. 8, 1984, 98 Stat. 3204; Pub. L. 99-53, § 2(e), (f), June 17, 1985, 99 Stat. 94.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-53, § 2(e), substituted "section 8903(3) or 8903a" for "section 8903(3)" and added provision directing that if the successor organization is an organization described in section 8901(8)(B) of this title, any transferred employee, annuitant, or former spouse may not remain enrolled in the plan after the end of the contract term in which the merger occurs unless the individual is a full member of such organization (as determined under section 8903a(d) of this title).

Subsec. (e). Pub. L. 99-53, § 2(f), inserted "or 8903a" before "of this title".

1984—Subsecs. (a), (b). Pub. L. 98-615, § 3(6)(A), substituted "enrollees" for "employees, annuitants," in provisions preceding par. (1).

Subsec. (d). Pub. L. 98-615, § 3(6)(B), substituted "Each employee, annuitant, or former spouse" for "Each employee or annuitant".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective 180 days after Nov. 8, 1984, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, set out as a note under section 8341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8905, 8906 of this title; title 25 section 450i.

§ 8913. Regulations

(a) The Office of Personnel Management may prescribe regulations necessary to carry out this chapter.

(b) The regulations of the Office may prescribe the time at which and the manner and conditions under which an employee is eligible to enroll in an approved health benefits plan described in section 8903 or 8903a of this title. The regulations may exclude an employee on the basis of the nature and type of his employment or conditions pertaining to it, such as short-term appointment, seasonal or intermittent employment, and employment of like nature. The Office may not exclude—

[*See main edition for text of (1) to (3)*]

(c) The regulations of the Office shall provide for the beginning and ending dates of coverage of employees, annuitants, members of their families, and former spouses under health benefit plans. The regulations may permit the coverage to continue, exclusive of the temporary extension of coverage described by section 8902(g) of this title, until the end of the pay period in which an employee is separated from the service, or until the end of the month in which an annuitant or former spouse ceases to be entitled to annuity, and in case of the death of an employee or annuitant, may permit a temporary extension of the coverage of members of his family for not to exceed 90 days.

[*See main edition for text of* (d)]

(As amended Pub. L. 98-615, § 3(7), Nov. 8, 1984, 98 Stat. 3204; Pub. L. 99-53, § 2(a), June 17, 1985, 99 Stat. 94.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-53 inserted reference to section 8903a of this title.

1984—Subsec. (c). Pub. L. 98-615, § 3(7), substituted "employees, annuitants, members of their families, and former spouses" for "employees and annuitants and members of their families", and "in which an annuitant or former spouse" for "in which an annuitant".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective 180 days after Nov. 8, 1984, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98-615, set out as a note under section 8341 of this title.

Subpart H—Access to Criminal History Record Information

CHAPTER 91—ACCESS TO CRIMINAL HISTORY RECORDS FOR NATIONAL SECURITY PURPOSES

Sec.
9101. Criminal history record information for national security purposes.

§ 9101. Criminal history record information for national security purposes

(a) As used in this section:

(1) The term "criminal justice agency" includes Federal, State, and local agencies and means: (A) courts, or (B) a Government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or Executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

(2) The term "criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include those records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.

(3) The term "classified information" means information or material designated pursuant to the provisions of a statute or Executive order as requiring protection against unauthorized disclosure for reasons of national security.

(4) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(5) The term "local" and "locality" means any local government authority or agency or component thereof within a State having jurisdiction over matters at a county, municipal, or other local government level.

(b)(1) Upon request by the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency, criminal justice agencies shall make available criminal history record information regarding individuals under investigation by such department, office or agency for the purpose of determining eligibility for (A) access to classified information or (B) assignment to or retention in sensitive national security duties. Such a request to a State central criminal history record repository shall be accompanied by the fingerprints of the individual who is the subject of the request if required by State law and if the repository uses the fingerprints in an automated fingerprint identification system. Fees, if any, charged for providing criminal history record information pursuant to this subsection shall not exceed the reasonable cost of providing such information, nor shall they in any event exceed those charged to State or local agencies other than criminal justice agencies for such information.

(2) This subsection shall apply notwithstanding any other provision of law or regulation of any State or of any locality within a State, or any other law of the United States.

(3)(A) Upon request by a State or locality, the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency shall enter into an agreement with such State or locality to indemnify and hold harmless such State or locality, and its officers, employees and agents, from any claim against such State or locality, or its officer, employee or agent, for damages, costs and other monetary loss, whether or not suit is instituted, arising from the disclosure or use by such department, office or agency of criminal history record information obtained from the State or locality pursuant to this subsection, if the laws of such State or locality, as of the date of enactment of this section, otherwise have the effect of prohibiting the disclosure of such criminal history record information to such department, office, or agency.

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(B) When the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency and a State or locality have entered into an agreement described in subparagraph (A), and a claim described in such subparagraph is made against such State or locality, or its officer, employee, or agent, the State or locality shall expeditiously transmit notice of such claim to the Attorney General and to the United States Attorney of the district embracing the place wherein the claim is made, and the United States shall have the opportunity to make all determinations regarding the settlement or defense of such claim.

(c) The Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency shall not obtain criminal history record information pursuant to this section unless it has received written consent from the individual under investigation for the release of such information for the purposes set forth in paragraph (b)(1).

(d) Criminal history record information received under this section shall be disclosed or used only for the purposes set forth in paragraph (b)(1) or for national security or criminal justice purposes authorized by law, and such information shall be made available to the individual who is the subject of such information upon request.

(Added Pub. L. 99-169, title VIII, § 801(a), Dec. 4, 1985, 99 Stat. 1009.)

EFFECTIVE DATE

Section 802 of Pub. L. 99-169 provided that: "The amendments made by section 801(a) of this Act [enacting this section] shall become effective with respect to any inquiry which begins after the date of enactment of this Act [Dec. 4, 1985] conducted by the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency, for the purposes specified in paragraph (b)(1) of section 9101 of title 5, United States Code, as added by this Act."

TERMINATION DATE OF SUBSECTION (b)(3) OF THIS SECTION

Section 803(b) of Pub. L. 99-169 provided that: "Three years after the date of enactment of this Act [Dec. 4, 1985], section 9101(b)(3) of title 5, United States Code, shall expire."

REPORT TO CONGRESSIONAL COMMITTEES ON EFFECT OF PROVISIONS FOR INDEMNIFICATION AGREEMENTS

Section 803(a) of Pub. L. 99-169 provided that: "Within two years after the date of enactment of this Act [Dec. 4, 1985], the Department of Justice, after consultation with the Department of Defense, the Office of Personnel Management, and the Central Intelligence Agency, shall report to the appropriate committees of the Congress concerning the effect of section 9101(b)(3) of title 5, United States Code, as added by this Act, including the effect of the absence of indemnification agreements upon States and localities not eligible under section 9101(b)(3) of title 5, United States Code, for such agreements."

TITLE 5—APPENDIX

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FEDERAL ADVISORY COMMITTEE ACT

Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended by Pub. L. 94-409, § 5(c), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 96-523, § 2, Dec. 12, 1980, 94 Stat. 3040; Pub. L. 97-375, title II, § 201(c), Dec. 21, 1982, 96 Stat. 1822

§ 1. Short title

ACT REFERRED TO IN OTHER SECTIONS

This Act is referred to in title 7 sections 87i, 450i, 511d, 2020, 2204b, 2286, 3152; title 10 section 867; title 12 section 2246; title 15 sections 78k-1, 776, 2080; title 16 sections 463, 470q, 541g, 1533, 1612, 1826, 1852, 3602, 3632; title 19 sections 2155, 2605; title 22 sections 2124b, 2194b; title 24 section 225b; title 29 section 1302; title 42 sections 282, 300j-5, 300k-3, 300v-3, 3788, 5816, 6007, 6708, 6838, 7234; title 43 sections 1739, 1753; title 45 sections 431, 1116, 1212; title 46 App. section 1295b; title 47 section 332; title 49 App. section 1903; title 50 App. sections 2158, 2158a, 2169.

§ 3. Definitions

For the purpose of this Act—

(1) The term "Administrator" means the Administrator of General Services.

[See main edition for text of (2) to (4)]

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

TRANSFER OF FUNCTIONS

"'Administrator' means the Administrator of General Services" was substituted for "'Director' means the Director of the Office of Management and Budget" in par. (1) pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, which transferred all functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

§ 7. Responsibilities of the Administrator of General Services; Committee Management Secretariat, establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations

(a) The Administrator shall establish and maintain within the General Services Administration a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Administrator shall, immediately after October 6, 1972, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine—

(1) whether such committee is carrying out its purpose;

(2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(3) whether it should be merged with other advisory committees; or

(4) whether it should be abolished.

The Administrator may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Administrator's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Administrator shall carry out a similar review annually. Agency heads shall cooperate with the Administrator in making the reviews required by this subsection.

(c) The Administrator shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Administrator shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Administrator, after study and consultation with the Director of the Office of Personnel Management, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and

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other relevant factors. Such regulations shall provide that—

[*See main edition for text of (A) to (C)*]

may be provided services pursuant to section 3102 of such title 5 while in performance of their advisory committee duties.

[*See main edition for text of (2)*]

(e) The Administrator shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36067, 92 Stat. 3783; Pub. L. 96-523, § 2, Dec. 12, 1980, 94 Stat. 3040.)

TRANSFER OF FUNCTIONS

"Administrator", "Administrator's", "Administrator of General Services", and "General Services Administration" were substituted for "Director", "Director's", "Director, Office of Management and Budget", and "Office of Management and Budget" in text pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, which transferred all functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 5005; title 12 section 1428a.

§ 8. Responsibilities of agency heads; Advisory Committee Management Officer, designation

(a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Administrator under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

[*See main edition for text of (b)*]

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

TRANSFER OF FUNCTIONS

"Administrator", meaning Administrator of General Services was substituted for "Director", meaning Director of the Office of Management and Budget, in subsec. (a) pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, which transferred all functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

§ 9. Establishment and purpose of advisory committees; publication in Federal Register; charter; filing, contents, copy

(a) No advisory committee shall be established unless such establishment is—

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

[*See main edition for text of (b)*]

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Administrator, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

[*See main edition for text of (A) to (J)*]

A copy of any such charter shall also be furnished to the Library of Congress.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

TRANSFER OF FUNCTIONS

"Administrator", meaning Administrator of General Services was substituted for "Director", meaning Director of the Office of Management and Budget, in subsecs. (a)(2) and (c) pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, which transferred all functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

§ 10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

(a)(1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Administrator shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Administrator may prescribe.

[*See main edition for text of (b) to (f)*]

(As amended Pub. L. 94-409, § 5(c), Sept. 13, 1976, 90 Stat. 1247; 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

TRANSFER OF FUNCTIONS

"Administrator", meaning Administrator of General Services was substituted for "Director", meaning Director of the Office of Management and Budget, in subsec. (a)(2), (3) pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, which transferred all functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 5005; title 19 sections 2155, 2605; title 20 section 1233h; title 30 section 1229; title 42 sections 1395ww, 6273; title 50 App. section 2158a.

§ 11. Availability of transcripts; "agency proceeding"

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 19 sections 2155, 2605; title 42 section 6273; title 50 App. section 2158a.

§ 12. Fiscal and administrative provisions; record-keeping; audit; agency support services

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 5005.

§ 13. Responsibilities of Library of Congress; reports and background papers; depository

Subject to section 552 of title 5, United States Code, the Administrator shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

TRANSFER OF FUNCTIONS

"Administrator", meaning Administrator of General Services was substituted for "Director", meaning Director of the Office of Management and Budget, in text pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, which transferred all functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

§ 14. Termination of advisory committees; renewal; continuation

EXECUTIVE ORDER NO. 12399

Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, which provided for the continuance of certain Federal advisory committees, was superseded by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note below.

EXECUTIVE ORDER NO. 12489

Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, which provided for the continuance of certain Federal advisory committees, was superseded by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note below.

EX. ORD. NO. 12534. CONTINUANCE OF CERTAIN FEDERAL ADVISORY COMMITTEES

Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

SECTION 1. Each advisory committee listed below is continued until September 30, 1987:

(a) Advisory Committee on Small and Minority Business Ownership; Executive Order No. 12190 (Small Business Administration) [15 U.S.C. 636 note].

(b) Committee for the Preservation of the White House; Executive Order No. 11145, as amended (Department of the Interior) [3 U.S.C. 110 note].

(c) Federal Advisory Council on Occupational Safety and Health; Executive Order No. 12196 (Department of Labor) [5 U.S.C. 7902 note].

(d) President's Commission on White House Fellowships; Executive Order No. 11183, as amended (Office of Personnel Management).

(e) President's Committee on the Arts and the Humanities; Executive Order No. 12367 (National Endowment for the Arts).

(f) President's Committee on the International Labor Organization; Executive Order No. 12216 (Department of Labor) [22 U.S.C. 271 note].

(g) President's Committee on Mental Retardation; Executive Order No. 11776 (Department of Health and Human Services) [42 U.S.C. note prec. 6000].

(h) President's Committee on the National Medal of Science; Executive Order No. 11287, as amended (National Science Foundation) [42 U.S.C. 1881 note].

(i) President's Council on Physical Fitness and Sports; Executive Order No. 12345, as amended (Department of Health and Human Services) [42 U.S.C. 300u-5 note].

(j) President's Economic Policy Advisory Board; Executive Order No. 12296 (Office of Policy Development) [15 U.S.C. 1023 note].

(k) President's National Security Telecommunications Advisory Committee; Executive Order No. 12382, as amended (Department of Defense).

(l) President's Export Council; Executive Order No. 12131 (Department of Commerce) [50 App. U.S.C. 2401 note].

SEC. 2. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act [5 U.S.C. App.] that are applicable to the committees listed in Section 1 of this Order, except that of reporting annually to the Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with guidelines and procedures established by the Administrator of General Services.

SEC. 3. The following Executive Orders, which established committees that have terminated or been abolished by statute or whose work is completed, are revoked:

(a) Executive Order No. 12502, establishing the Chemical Warfare Review Commission.

(b) Executive Order No. 12369, establishing the President's Private Sector Survey on Cost Control in the Federal Government.

(c) Executive Order No. 12395, establishing the International Private Enterprise Task Force.

(d) Executive Order No. 12433, establishing the National Bipartisan Commission on Central America.

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(e) Executive Order No. 12335 [42 U.S.C. 401 note], establishing the National Commission on Social Security Reform.

(f) Executive Order No. 12332 [15 U.S.C. 2401 note], establishing the National Productivity Advisory Committee.

(g) Executive Order No. 12412, establishing the Peace Corps Advisory Council.

(h) Executive Order No. 12426, establishing the President's Committee on Women's Business Ownership.

(i) Executive Order No. 12499, establishing the President's Blue Ribbon Task Group on Nuclear Weapons Program Management.

(j) Executive Order No. 12428, establishing the President's Commission on Industrial Competitiveness.

(k) Executive Order No. 12400, establishing the President's Commission on Strategic Forces.

(l) Executive Order No. 12439, establishing the President's Task Force on Food Assistance.

(m) Executive Order No. 12421, establishing the Presidential Commission on the Conduct of United States-Japan Relations.

(n) Executive Order No. 12401, establishing the Presidential Commission on Indian Reservation Economies.

(o) Executive Order No. 12468 [22 U.S.C. 2501 note], establishing the Presidential Advisory Council on the Peace Corps.

SEC. 4. Executive Order No. 12399 and Executive Order No. 12489 are superseded.

SEC. 5. This Order shall be effective September 30, 1985.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 5005; title 29 section 1142; title 42 sections 218, 254j, 292b, 300j-5, 300k-3, 300v-3.

INSPECTOR GENERAL ACT OF 1978

Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended by Pub. L. 96-88, title V, § 508(n), Oct. 17, 1979, 93 Stat. 694; Pub. L. 97-113, title VII, § 705, Dec. 29, 1981, 95 Stat. 1544; Pub. L. 97-252, title XI, § 1117(a)-(c), Sept. 8, 1982, 96 Stat. 750-752; Pub. L. 99-93, title I, § 150(a), Aug. 16, 1985, 99 Stat. 427

§ 1. Short title

Act Referred to in Other Sections

The Inspector General Act of 1978 is referred to in title 20 sections 3412, 3422; title 29 section 1574; title 45 section 231v; title 48 sections 1422d, 1599, 1668, 1681b.

§ 2. Purpose and establishment of Offices of Inspector General; departments and agencies involved

In order to create independent and objective units—

(1) to conduct and supervise audits and investigations relating to programs and operations of the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Education, the Department of Housing and Urban Development, the Department of the Interior, the Department of Labor, the Department of Transportation, the Agency for International Development, the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, the Veterans' Administration, and the Department of State;

[*See main edition for text of (2) and (3)*]

thereby [1] is hereby established in each of such establishments an office of Inspector General.

(As amended Pub. L. 99-93, title I, § 150(a)(1), Aug. 16, 1985, 99 Stat. 427.)

Amendments

1985—Par. (1). Pub. L. 99-93 added reference to the Department of State.

Community Services Administration

The Community Services Administration, which was established by section 601 of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2941), was terminated when the Economic Opportunity Act of 1964, Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97-35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub. L. 97-35, which is classified to 42 U.S.C. 9905.

[1] So in original. Probably should be "there".

Section Referred to in Other Sections

This section is referred to in title 45 section 231v.

§ 9. Transfer of functions

Community Services Administration

The Community Services Administration, which was established by section 601 of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2941), was terminated when the Economic Opportunity Act of 1964, Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97-35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub. L. 97-35, which is classified to 42 U.S.C. 9905.

§ 11. Definitions

As used in this Act—

(1) the term "head of the establishment" means the Secretary of Agriculture, Commerce, Defense, Education, Housing and Urban Development, the Interior, Labor, State, or Transportation or the Administrator of the Agency for International Development, Community Services, Environmental Protection, General Services, National Aeronautics and Space, Small Business, or Veterans' Affairs, as the case may be;

(2) the term "establishment" means the Department of Agriculture, Commerce, Defense, Education, Housing and Urban Development, the Interior, Labor, State, or Transportation or the Agency for International Development, the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, or the Veterans' Administration, as the case may be;

[*See main edition for text of (3) to (5)*]

(As amended Pub. L. 99-93, title I, § 150(a)(2), Aug. 16, 1985, 99 Stat. 427.)

Amendments

1985—Pars. (1), (2). Pub. L. 99-93 inserted "State," after "Labor,".

Community Services Administration

The Community Services Administration, which was established by section 601 of the Economic Opportuni-

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ty Act of 1964, as amended (42 U.S.C. 2941), was terminated when the Economic Opportunity Act of 1964, Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97-35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub. L. 97-35, which is classified to 42 U.S.C. 9905.

EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

Pub. L. 95-521, title II, Oct. 26, 1978, 92 Stat. 1836, as amended Pub. L. 96-19, §§ 2(a)(2), (c)(2), 3(a)(2), (b), 4(a), (d), (g), 5, 6, 7(a)-(c), (d)(2), (e), (f), 8(b), 9(c)(2), (d), (f), (h)-(o), June 13, 1979, 93 Stat. 37-43; Pub. L. 98-150, §§ 6-11, Nov. 11, 1983, 97 Stat. 960-962; Pub. L. 99-190, § 148(b), Dec. 19, 1985, 99 Stat. 1325

§ 201. Persons required to file

(a) Within thirty days of assuming the position of an officer or employee described in subsection (f), an individual shall file a report containing the information described in section 202(b) unless the individual has left another position described in subsection (f) within thirty days prior to assuming such new position or has already filed a report under this title [sections 201 to 212 of this Act] with respect to nomination for the new position or as a candidate for the position.

(b)(1) Within five days of the transmittal by the President to the Senate of the nomination of an individual (other than an individual covered by section 301(b) or an individual nominated for appointment to a grade or rank in the uniformed services for which the pay grade prescribed by section 201 of title 37, United States Code, is O-6 or below) to a position, appointment to which requires the advice and consent of the Senate, such individual shall file a report containing the information described in section 202(b). Such individual shall, not later than the date of the first hearing to consider the nomination of such individual, make current the report filed pursuant to this paragraph by filing the information required by section 202(a)(1)(A) with respect to income and honoraria received as of the date which occurs five days before the date of such hearing. Nothing in this Act shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(2) An individual whom the President or the President-elect has publicly announced he intends to nominate to a position may file the report required by paragraph (1) at any time after that public announcement but not later than is required under the first sentence of such paragraph.

[*See main edition for text of* (c) *to* (i)]

(j)(1) Any individual who performs staff functions in support of an advisory committee which is composed, in whole or in part, of special Government employees shall be subject to the provisions of this title [sections 201 to 212 of this Act] as if that individual were such a special Government employee.

(2) For purposes of paragraph (1)—

(A) the term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group which is established—

(i) by statute or reorganization plan,

(ii) by the President, or

(iii) by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government; such term includes any subcommittee or other subgroup of an advisory committee, but does not include the Advisory Commission on Intergovernmental Relations and the Commission on Government Procurement;

(B) the term "staff functions in support of an advisory committee" means such activities as the Director of the Office of Government Ethics by regulation prescribes which are carried out with respect to those functions for which the advisory committee was established as described in subparagraph (A) of this paragraph;

(C) the term "special Government employee" has the meaning given that term by section 202 of title 18, United States Code; and

(D) the term "agency" has the meaning given that term by section 551(1) of title 5, United States Code.

(3) The Director of the Office of Government Ethics shall prescribe such regulations as may be necessary to carry out this subsection.

(As amended Pub. L. 96-19, §§ 2(a)(2), (c)(2), 4(d), (g), 5, 9(h), (i), June 13, 1979, 93 Stat. 37, 38, 40, 43; Pub. L. 98-150, §§ 8, 11, Nov. 11, 1983, 97 Stat. 961, 962.)

CODIFICATION

Subsec. (a) is set out in this supplement to correct the translation of "this title".

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-150, § 8, designated the existing provisions as par. (1), and in par. (1), as so designated, added provision requiring the nominee, not later than the date of the first hearing to consider the nomination of such individual, make current the report filed pursuant to this paragraph by filing the information required by section 202(a)(1)(A) with respect to income and honoraria received as of the date which occurs five days before the date of such hearing, and added par. (2).

Subsec. (j). Pub. L. 98-150, § 11, added subsec. (j).

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EFFECTIVE DATE OF 1983 AMENDMENT

Section 13 of Pub. L. 98-150 provided that: "The amendments made by this Act [enacting sections 211 and 407 of Pub. L. 95-521, set out in this Appendix, amending sections 201-203, 210, and 401-405 of Pub. L. 95-521, set out in this Appendix, section 702 of Title 2, The Congress, section 302 of Pub. L. 95-521, set out in the Appendix to Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under section 402 of this Appendix] shall take effect on October 1, 1983."

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99-190, § 148(a), Dec. 19, 1985, 99 Stat. 1324, provided that: "This section [amending section 207 of Pub. L. 95-521, set out in this Appendix, and enacting provisions set out as a note under section 207 of Pub. L. 95-521] may be cited as the 'Ethics in Government Act Amendments of 1985'."

§ 202. Contents of reports

(a) Each report filed pursuant to section 201(d) shall include a full and complete statement with respect to the following:

[*See main edition for text of (1) to (5)*]

(6) [*See main edition for text of (A)*]

(B) If any person, other than the United States Government, paid a nonelected reporting individual compensation in excess of $5,000 in any of the two calendar years prior to the calendar year during which the individual files his first report under this title [sections 201 to 212 of this Act], the individual shall include in the report—

(i) the identity of each source of such compensation; and

(ii) a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.

The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

[*See main edition for text of (7); (b) to (e)*]

(f) [*See main edition for text of (1) to (4)*]

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d) of this section.

This subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7) of this subsection.

[*See main edition for text of (B) to (E), (6)*]

(7) Any trust may be considered to be a qualified blind trust if—

(A) the trust instrument is amended to comply with the requirements of paragraph (3) or, in the case of a trust instrument which does not by its terms permit amendment, the trustee, the reporting individual, and any other interested party agree in writing that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); except that in the case of any interested party who is a dependent child, a parent or guardian of such child may execute the agreement referred to in this subparagraph;

(B) a copy of the trust instrument (except testamentary provisions) and a copy of the agreement referred to in subparagraph (A), and a list of the assets held by the trust at the time of approval by the supervising ethics office, including the category of value of each asset as determined under subsection (d) of this section, are filed with such office and made available to the public as provided under paragraph (5)(D) of this subsection; and

(C) the supervising ethics office determines that approval of the trust arrangement as a qualified blind trust is in the particular case appropriate to assure compliance with applicable laws and regulations.

(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title [sections 201 to 212 of this Act].

[*See main edition for text of (h)*]

(As amended Pub. L. 96-19, §§ 3(a)(2), (b), 6, 7(a)-(c), (d)(2), (e), (f), 9(c)(2), (j), June 13, 1979, 93 Stat. 39-43; Pub. L. 98-150, § 10, Nov. 11, 1983, 97 Stat. 962.)

CODIFICATION

Subsecs. (a)(6)(B) and (g) are set out in this supplement to correct the translation of "this title".

AMENDMENTS

1983—Subsec. (f)(5)(A). Pub. L. 98-150, § 10(b), added provision that this subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7) of this subsection.

Subsec. (f)(7). Pub. L. 98-150, § 10(a), amended par. (7) generally. Prior to amendment par. (7) read: "Any trust which is in existence prior to the date of the enactment of this Act [Oct. 26, 1978] shall be considered a qualified blind trust if—

"(A) the supervising ethics office determines that the trust was a good faith effort to establish a blind trust;

"(B) the previous trust instrument is amended or, if such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered

in accordance with the requirements of paragraph (3)(C) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and

"(C) a copy of the trust instrument (except testamentary provisions), a list of the assets previously transferred to the trust by an interested party and the category of value of each such asset at the time it was placed in the trust, and a list of assets previously placed in the trust by an interested party which have been sold is filed and made available to the public as provided under paragraph (5) of this subsection."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-150 effective Oct. 1, 1983, see section 13 of Pub. L. 98-150 set out as a note under section 201 of Pub. L. 95-521 in this Appendix.

§ 203. Filing of reports

[See main edition for text of (a) and (b)]

(c) Copies of the reports required to be filed under this title by the Postmaster General, the Deputy Postmaster General, the Governors of the Board of Governors of the United States Postal Service, designated agency officials, employees described in section 105(a)(2)(A) or (B), 106(a)(1)(A) or (B), or 107(a)(1)(A) or (b)(1)(A)(i), of title 3, United States Code, candidates for the office of President or Vice President and officers and employees in (and nominees to) offices or positions which require confirmation by the Senate or by both Houses of Congress other than those referred to in subsection (f) shall be transmitted to the Director of the Office of Government Ethics. The Director shall forward a copy of the report of each nominee to the congressional committee considering the nomination.

(d) Reports required to be filed under this title [sections 201 to 212 of this Act] by the Director shall be filed in the Office of Government Ethics and, immediately after being filed, shall be made available to the public in accordance with this title.

[See main edition for text of (e) and (f)]

(g) The Office of Government Ethics shall develop and make available forms for reporting the information required by this title [sections 201 to 212 of this Act].

(As amended Pub. L. 96-19, § 9(k), June 13, 1979, 93 Stat. 43; Pub. L. 98-150, § 6, Nov. 11, 1983, 97 Stat. 960.)

CODIFICATION

Subsecs. (d) and (g) are set out in this supplement to correct the translation of "this title".

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-150 inserted "employees described in section 105(a)(2)(A) or (B), 106(a)(1)(A) or (B), or 107(a)(1)(A) or (b)(1)(A)(i), of title 3, United States Code,".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-150 effective Oct. 1, 1983, see section 13 of Pub. L. 98-150 set out as a note under section 201 of Pub. L. 95-521 in this Appendix.

§ 205. Custody of and public access to reports

(a) Each agency shall make each report filed with it under this title [sections 201 to 212 of this Act] available to the public in accordance with the provisions of subsection (b) of this section, together with a copy of the official position description of the Government office or position held by the reporting individual involved (if available) which shall be added to such report by such individual's designated agency official or by the Secretary concerned, except that this section does not require public availability of the report filed by any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds that, due to the nature of the office or position occupied by such individual, public disclosure of such report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States. In addition, such individuals may be authorized, notwithstanding section 204(a), to file such additional reports as are necessary to protect their identity from public disclosure if the President first finds that such filing is necessary in the national interest.

(b)(1) Each agency shall, within fifteen days after any report is received by the agency under this title [sections 201 to 212 of this Act], permit inspection of such report by or furnish a copy of such report to any person requesting such inspection or copy. The agency may require a reasonable fee to be paid in any amount which is found necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. A copy of such report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest.

[See main edition for text of (2); (c)]

(d) Any report filed with an agency, or transmitted to the Director of the Office of Government Ethics, pursuant to this title [sections 201 to 212 of this Act] shall be retained by such agency or the Office of Government Ethics, or both, as the case may be. Such report shall be made available to the public for a period of six years after receipt of the report. After such six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 201(b) and was not subsequently confirmed by the Senate, or who filed the report pursuant to section 201(c) and was not subsequently elected, such reports shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President unless needed in an ongoing investigation.

(As amended Pub. L. 96-19, §§ 8(b), 9(l), June 13, 1979, 93 Stat. 41, 43.)

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CODIFICATION

Subsecs. (a), (b)(1), and (d) are set out in this supplement to correct the translation of "this title".

§ 206. Review of reports

(a) Each designated agency official or Secretary concerned shall make provisions to ensure that each report filed with him under this title [sections 201 to 212 of this Act] is reviewed within sixty days after the date of such filing, except that the Director of the Office of Government Ethics shall review only those reports transmitted to him under this title within sixty days after the date of transmittal.

(b) [*See main edition for text of (1) to (6)*]

(7) For purposes of assisting employees in avoiding situations in which they would not be in compliance with applicable laws and regulations, each Secretary concerned and designated agency official (including the President in the case of the individuals employed in the Executive Office of the President) shall maintain a list of those circumstances or situations which have resulted or may result in noncompliance with such laws or regulations. Such list shall be periodically published, and shall be furnished to those individuals employed within the agency who are required to file reports under this title [sections 201 to 212 of this Act]. The absence of any situation or circumstance from such a list shall not be construed as an indication that an individual in such circumstance or situation would be in compliance with such laws or regulations.

[*See main edition for text of (8)*]

(As amended Pub. L. 96-19, § 9(m), June 13, 1979, 93 Stat. 43.)

CODIFICATION

Subsecs. (a) and (b)(7) are set out in this supplement to correct the translation of "this title".

§ 207. Confidential reports and other additional requirements

(a)(1) The President may require officers and employees in the executive branch (including the United States Postal Service, the Postal Rate Commission, members of the uniformed services, and special Government employees as defined in section 202 of title 18, United States Code) to file a confidential financial disclosure report, in such form as the President may prescribe. The information required to be reported under this subsection by the officers and employees of any department or agency shall be set forth in regulations prescribed by the President, and may be less extensive than otherwise required by this title [sections 201 to 212 of this Act], or more extensive when determined by the President to be necessary and appropriate in light of sections 202 through 209 of title 18, United States Code, regulations promulgated thereunder, or the authorized activities of any such department or agency. Any individual required to file a report pursuant to section 201 shall not be required to file a confidential report pursuant to this subsection, except with respect to information which is more extensive than information otherwise required by this title [sections 201 to 212 of this Act]. Subsections (a), (b), and (d) of section 205 shall not apply with respect to any such report.

(2) Any information required to be provided by an individual under this subsection shall be confidential and shall not be disclosed to the public.

(b) The Director of the Office of Government Ethics may by rule require disclosure, in the reports filed pursuant to subsections (a) and (c) of section 202, of gifts received by a dependent child of a reporting individual if the information required to be disclosed does not exceed that which must be reported by a spouse of a reporting individual under this title [sections 201 to 212 of this Act].

(c) The provisions of this title [sections 201 to 212 of this Act] requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.

[*See main edition for text of (d)*]

(As amended Pub. L. 96-19, § 9(n), June 13, 1979, 93 Stat. 43; Pub. L. 99-190, § 148(b), Dec. 19, 1985, 99 Stat. 1325.)

CODIFICATION

Subsecs. (b) and (c) are set out in this supplement to correct the translation of "this title".

AMENDMENTS

1985—Pub. L. 99-190, § 148(b)(1), substituted "Confidential reports and other additional" for "Additional disclosure" in section catchline.

Subsec. (a). Pub. L. 99-190, § 148(b)(2), (3), designated existing provisions as par. (1), extended disclosure requirements to include the Postal Rate Commission and special Government employees as defined in section 202 of title 18, added provisions that the information required to be reported under this subsection be set forth in regulations prescribed by the President and that individuals required to file a report pursuant to section 201 would not be required to file a confidential report pursuant to this subsection except with respect to information more extensive than otherwise required by this title, and added par. (2).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 148(c) of Pub. L. 99-190 provided that: "The amendments made by this section [amending this section and enacting a provision set out as a note under section 201 of Pub. L. 95-521, set out in this Appendix] shall be effective 90 days after the date of enactment of this section [Dec. 19, 1985]."

§ 208. Authority of Comptroller General

The Comptroller General shall have access to financial disclosure reports filed under this title [sections 201 to 212 of this Act] for the purposes of carrying out his statutory responsibilities.

CODIFICATION

This section is set out in this supplement to correct the translation of "this title".

§ 209. Definitions

For the purposes of this title [sections 201 to 212 of this Act], the term—

[See main edition for text of (1) to (11)]

(As amended Pub. L. 96-19, §§ 4(a), 9(d), (o), June 13, 1979, 93 Stat. 39, 42, 43; Pub. L. 96-88, title V, § 509, Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Provisions of this section preceding par. (1) are set out in this supplement to correct the translation of "this title".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2397a.

§ 210. Outside earned income

Except where the employee's agency or department shall have more restrictive limitations on outside earned income, all employees covered by this title [sections 201 to 212 of this Act]—

(1) who are compensated at a pay grade in the General Schedule of grade GS-16 or above and who occupy nonjudicial full-time positions, appointments to which are required to be made by the President by and with the advice and consent of the Senate, or

(2) who are employees of the White House Office and are compensated at rates equivalent to level II of the Executive Schedule under section 5313 of title 5, United States Code,

may not have in any calendar year outside earned income attributable to such calendar year which is in excess of 15 percent of their salary.

(As amended Pub. L. 98-150, § 7, Nov. 11, 1983, 97 Stat. 961.)

REFERENCES IN TEXT

The General Schedule, referred to in par. (1), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1983—Pub. L. 98-150 amended section generally, designating existing provisions as par. (1) and adding par. (2), extending coverage to include employees of the White House Office who are compensated at rates equivalent to level II of the Executive Schedule.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-150 effective Oct. 1, 1983, see section 13 of Pub. L. 98-150 set out as a note under section 201 of Pub. L. 95-521 in this Appendix.

§ 211. Notice of actions taken to comply with ethics agreements

(a) In any case in which an individual agrees with that individual's designated agency official, the Office of Government Ethics, or a Senate confirmation committee to take any action to comply with this Act or any other law or regulation governing conflicts of interest of, or establishing standards of conduct applicable with respect to, officers or employees of the Government, that individual shall notify in writing the designated agency official, the Office of Government Ethics, or the appropriate committee of the Senate, as the case may be, of any action taken by the individual pursuant to that agreement. Such notification shall be made not later than the date specified in the agreement by which action by the individual must be taken, or not later than three months after the date of the agreement, if no date for action is so specified.

(b) If an agreement described in subsection (a) requires that the individual recuse himself or herself from particular categories of agency or other official action, the individual shall reduce to writing those subjects regarding which the recusal agreement will apply and the process by which it will be determined whether the individual must recuse himself or herself in a specific instance. An individual shall be considered to have complied with the requirements of subsection (a) with respect to such recusal agreement if such individual files a copy of the document setting forth the information described in the preceding sentence with such individual's designated agency official, the Office of Government Ethics, or the appropriate committee of the Senate, as the case may be, within the time prescribed in the last sentence of subsection (a).

(Pub. L. 95-521, title II, § 211, as added Pub. L. 98-150, § 9(2), Nov. 11, 1983, 97 Stat. 961.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824, as amended, known as the Ethics in Government Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 2, The Congress, and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1983, see section 13 of Pub. L. 98-150 set out as an Effective Date of 1983 Amendment note under section 201 of Pub. L. 95-521 in this Appendix.

§ 212. Effective date

The provisions made by this title [sections 201 to 212 of this Act] shall take effect on January 1, 1979, and the reports filed under section 201(d) on May 15, 1979, shall include information for calendar year 1978.

(Pub. L. 95-521, title II, § 212, formerly § 211, Oct. 26, 1978, 92 Stat. 1850, renumbered Pub. L. 98-150, § 9(1), Nov. 11, 1983, 97 Stat. 961.)

CODIFICATION

This section is set out in this supplement to correct the translation of "this title".

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OFFICE OF GOVERNMENT ETHICS

Pub. L. 95-521, title IV, Oct. 26, 1978, 92 Stat. 1862, as amended by Pub. L. 96-19, § 9(e), (s), June 13, 1979, 93 Stat. 43, 44; Pub. L. 98-150, §§ 2, 3(a)-(c), 4, 5, 12, Nov. 11, 1983, 97 Stat. 959, 960, 963

§ 401. Establishment in Office of Personnel Management; appointment of Director

[*See main edition for text of* (a)]

(b) There shall be at the head of the Office of Government Ethics a Director (hereinafter referred to as the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate. Effective with respect to any individual appointed or reappointed by the President as Director on or after October 1, 1983, the term of service of the Director shall be five years.

(As amended Pub. L. 98-150, § 2, Nov. 11, 1983, 97 Stat. 959.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-150 added provision that, effective with respect to any individual appointed or reappointed by the President as Director on or after Oct. 1, 1983, the term of service of the Director shall be five years.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-150 effective Oct. 1, 1983, see section 13 of Pub. L. 98-150 set out as a note under section 201 of Pub. L. 95-521 in this Appendix.

§ 402. Authority and functions

(a) The Director shall provide, in consultation with the Office of Personnel Management, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency, as defined in section 105 of title 5, United States Code.

(b) The responsibilities of the Director shall include—

(1) developing, in consultation with the Attorney General and the Office of Personnel Management, rules and regulations to be promulgated by the President or the Director pertaining to conflicts of interest and ethics in the executive branch, including rules and regulations establishing procedures for the filing, review, and public availability of financial statements filed by officers and employees in the executive branch as required by title II of this Act;

(2) developing, in consultation with the Attorney General and the Office of Personnel Management, rules and regulations to be promulgated by the President or the Director pertaining to the identification and resolution of conflicts of interest;

[*See main edition for text of* (3) *to* (5)]

(6) interpreting rules and regulations issued by the President or the Director governing conflict of interest and ethical problems and the filing of financial statements;

[*See main edition for text of* (7) *to* (11)]

(12) evaluating, with the assistance of the Attorney General and the Office of Personnel Management, the need for changes in rules and regulations issued by the Director and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws;

[*See main edition for text of* (13) *and* (14)]

(15) developing, in consultation with the Office of Personnel Management, and promulgating such rules and regulations as the Director determines necessary or desirable with respect to the evaluation of any item required to be reported by title II of this Act.

[*See main edition for text of* (c)]

(As amended Pub. L. 96-19, § 9(e), (s), June 13, 1979, 93 Stat. 43, 44; Pub. L. 98-150, § 3(a), (b), Nov. 11, 1983, 97 Stat. 959.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-150, § 3(a), substituted "in consultation with" for "under the general supervision of".

Subsec. (b)(1). Pub. L. 98-150, § 3(b)(1), struck out "and recommending to the Office of Personnel Management" after "(1) developing", inserted "and the Office of Personnel Management" after "Attorney General", and substituted "President or the Director" for "President or the Office of Personnel Management".

Subsec. (b)(2). Pub. L. 98-150, § 3(b)(2), struck out "and recommending to the Office of Personnel Management" after "(2) developing", inserted "and the Office of Personnel Management" after "Attorney General", and substituted "President or the Director" for "President or the Office of Personnel Management".

Subsec. (b)(6). Pub. L. 98-150, § 3(b)(3), substituted "Director" for "Office of Personnel Management".

Subsec. (b)(12). Pub. L. 98-150, § 3(b)(4), inserted "and the Office of Personnel Management" after "Attorney General", and substituted "Director" for "Office of Personnel Management".

Subsec. (b)(15). Pub. L. 98-150, § 3(b)(5), substituted ", in consultation with the Office of Personnel Man-

agement, and promulgating" for "and recommending for promulgation by the Office of Personnel Management".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-150 effective Oct. 1, 1983, see section 13 of Pub. L. 98-150 set out as a note under section 201 of Pub. L. 95-521 in this Appendix.

RULES AND REGULATIONS IN EFFECT BEFORE OCTOBER 1, 1983

Section 3(d) of Pub. L. 98-150 provided that:

"(1) Any rules or regulations issued under section 402 of the Ethics in Government Act of 1978 [this section] which are in effect immediately before the effective date of the amendments made by this Act [Oct. 1, 1983] shall remain in effect according to their terms until modified, superseded, set aside, or revoked on or after such effective date.

"(2) The responsibilities of the Director of the Office of Government Ethics under paragraphs (6) and (12), respectively, of section 402(b) of the Ethics in Government Act of 1978 [this section], with respect to rules and regulations issued by the Office of Personnel Management before the effective date of the amendments made by this Act [Oct. 1, 1983] shall not be affected by this Act or any of the amendments made by this Act [see Effective Date of 1983 Amendment note set out under section 201 of Pub. L. 95-521 in this Appendix]."

§ 403. Administrative provisions

Upon the request of the Director, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Director to the greatest practicable extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish to the Director all information and records in its possession which the Director may determine to be necessary for the performance of his duties.

The authority of the Director under this section includes the authority to request assistance from the inspector general of an agency in conducting investigations pursuant to subsections (b)(3) and (b)(4) of section 402.

(As amended Pub. L. 98-150, § 5, Nov. 11, 1983, 97 Stat. 960.)

AMENDMENTS

1983—Pub. L. 98-150 added provision that the authority of the Director under this section includes the authority to request assistance from the inspector general of an agency in conducting the investigations pursuant to subsections (b)(3) and (b)(4) of section 402.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-150 effective Oct. 1, 1983, see section 13 of Pub. L. 98-150 set out as a note under section 201 of Pub. L. 95-521 in this Appendix.

§ 404. Rules and regulations

In promulgating rules and regulations pertaining to financial disclosure, conflict of interest, and ethics in the executive branch, the Director shall issue rules and regulations in accordance with chapter 5 of title 5, United States Code. Any person may seek judicial review of any such rule or regulation.

(As amended Pub. L. 98-150, § 3(c), Nov. 11, 1983, 97 Stat. 960.)

AMENDMENTS

1983—Pub. L. 98-150 substituted "Director" for "Office of Personnel Management".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-150 effective Oct. 1, 1983, see section 13 of Pub. L. 98-150 set out as a note under section 201 of Pub. L. 95-521 in this Appendix.

§ 405. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this title [sections 401 to 407 of this Act], and for no other purpose—

(1) not to exceed $2,000,000 for the fiscal year ending September 30, 1979; and

(2) not to exceed $2,000,000 for each of the nine fiscal years thereafter.

(As amended Pub. L. 98-150, § 12, Nov. 11, 1983, 97 Stat. 963.)

AMENDMENTS

1983—Par. (2). Pub. L. 98-150 substituted "nine" for "four".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-150 effective Oct. 1, 1983, see section 13 of Pub. L. 98-150 set out as a note under section 201 of Pub. L. 95-521 in this Appendix.

§ 406. Annual pay

[Section amended section 5316 of Title 5, Government Organization and Employees.]

§ 407. Submission of budget

(a) In the budget submitted to the Congress pursuant to section 1105(a) of title 31, United States Code, the President shall include estimated expenditures and proposed appropriations the President decides are necessary to support the Office of Government Ethics in the fiscal year for which the budget is submitted and the four fiscal years after that year.

(b) In the statement of changes submitted to Congress with respect to the budget pursuant to section 1106(b) of title 31, United States Code, the President shall specify the effect of such changes on the information submitted pursuant to subsection (a) of this section.

(Pub. L. 95-521, title IV, § 407, as added Pub. L. 98-150, § 4, Nov. 11, 1983, 97 Stat. 960.)

EFFECTIVE DATE

Section effective Oct. 1, 1983, see section 13 of Pub. L. 98-150 set out as an Effective Date of 1983 Amendment note under section 201 of Pub. L. 95-521 in this Appendix.

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REORGANIZATION PLANS

This portion of the Appendix contains Reorganization Plans which took effect in accordance with the provisions of section 901 et seq. of this title or corresponding prior provisions of law.

REORGANIZATION PLAN NO. 3 OF 1970

Eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, as amended Pub. L. 98-80, § 2(a)(2), (b)(2), (c)(2)(C), Aug. 23, 1983, 97 Stat. 485, 486

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, July 9, 1970, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

ENVIRONMENTAL PROTECTION AGENCY

SECTION 1. ESTABLISHMENT OF AGENCY

[*See main edition for text of (a)*]

(b) There shall be at the head of the Agency the Administrator of the Environmental Protection Agency, hereinafter referred to as the "Administrator." The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.

(c) There shall be in the Agency a Deputy Administrator of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Agency not to exceed five Assistant Administrators of the Environmental Protection Agency who shall be appointed by the President, by and with the advice and consent of the Senate. Each Assistant Administrator shall perform such functions as the Administrator shall from time to time assign or delegate. [As amended Pub. L. 98-80, § 2(a)(2), (b)(2), (c)(2)(C), Aug. 23, 1983, 97 Stat. 485, 486.]

[*See main edition for text of Secs. 2 to 7*]

REORGANIZATION PLAN NO. 4 OF 1970

Eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, as amended Pub. L. 94-461, § 4(c)(1), Oct. 8, 1976, 90 Stat. 1969; Pub. L. 95-219, § 3(a)(1), Dec. 28, 1977, 91 Stat. 1613; Pub. L. 98-498, title III, § 320(c)(3), Oct. 19, 1984, 98 Stat. 2309

[*See main edition for text*]

Chap.		Sec.
8A.	Rubber and Other Critical Agricultural Materials	171
76.	Dairy Research and Promotion	4501
77.	Honey Research, Promotion, and Consumer Information	4601
78.	Agricultural Productivity Research	4701
79.	Pork Promotion, Research, and Consumer Information	4801
80.	Watermelon Research and Promotion	4901
81.	National Agricultural Policy Commission	5001

CHAPTER 1—COMMODITY EXCHANGES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 15b, 16a, 499n of this title; title 11 section 761; title 15 sections 78c, 78o, 431; title 26 section 277.

§ 7. Designation of board of trade as "contract market"; conditions and requirements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 8, 13a of this title; title 15 section 78c.

§ 8. Application for designation as "contract market"; time; suspension or revocation of designation; hearing; review by court of appeals

[*See main edition for text of first par.*]

(a) The Commission is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade is not enforcing or has not enforced its rules of government made a condition of its designation as set forth in section 7 of this title or that such board of trade, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this chapter or any of the rules, regulations, or orders of the Commission thereunder. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing on the record: *Provided*, That such suspension or revocation shall be final and conclusive, unless within fifteen days after such suspension or revocation by the Commission such board of trade appeals to the court of appeals for the circuit in which it has its principal place of business, by filing with the clerk of such court a written petition praying that the order of the Commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in section 2112 of title 28. The testimony and evidence taken or submitted before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evidence in the case. Such a court may affirm or set aside the order of the Commission or may direct it to modify its order. No such order of the Commission shall be modified or set aside by the court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of the Commission.

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(3), 98 Stat. 3357.)

AMENDMENTS

1984—Par. (a). Pub. L. 98-620 struck out provisions requiring proceedings in such cases in the court of appeals to be made a preferred cause and expedited in every way.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 21. Registered futures associations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6p, 12a, 16a, 19, 25 of this title; title 15 section 78c.

§ 23. Standardized contracts for certain commodities prohibited

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 12a, 13, 16, 25 of this title; title 11 section 761.

CHAPTER 3—GRAIN STANDARDS

§ 76. Standards and procedures; establishment, amendment, and revocation

[*See main edition for text of (a) and (b)*]

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(c) Moisture content criterion

If the Government of any country requests that moisture content remain a criterion in the official grade designations of grain, such criterion shall be included in determining the official grade designation of grain shipped to such country.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XVI, § 1671, 99 Stat. 1632.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-198 added subsec. (c).

NEW GRAIN CLASSIFICATIONS

Section 1672 of Pub. L. 99-198 provided that:
"(a) The Secretary of Agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to cooperate in developing new means of establishing grain classifications taking into account characteristics other than those visually evident.
"(b) The Secretary shall report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, semiannually, with the first report due not later than December 31, 1985, on the status of cooperative efforts required under subsection (a), as such efforts relate to more accurately classifying types of wheat and other grains currently in use."

§ 79. Official inspection

[*See main edition for text of* (a) *to* (i)]

(j) Fees; establishment, amount, payment, etc.

[*See main edition for text of* (1) *and* (2)]

(3) Any sums collected or received by the Administrator under this chapter and deposited to the fund created in paragraph (1) of this subsection and any late payment penalties collected by the Administrator and credited to such fund may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. The interest earned on such sums and any late payment penalties collected by the Administrator shall be credited to the fund and shall be available without fiscal year limitation for the expenses of the Service incident to providing services under this chapter.

(As amended Oct. 11, 1984, Pub. L. 98-469, § 2(1), 98 Stat. 1831.)

AMENDMENTS

1984—Subsec. (j)(3). Pub. L. 98-469 added par. (3).

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENT

Section 2 of Pub. L. 98-469 provided in part that amendment by Pub. L. 98-469 shall be effective for the period beginning Oct. 11, 1984, and ending Sept. 30, 1988.

EFFECTIVE AND TERMINATION DATES OF 1981 AMENDMENTS

Section 155 of Pub. L. 97-35, as amended by Pub. L. 98-469, § 1, Oct. 11, 1984, 98 Stat. 1831, provided in part that amendment by Pub. L. 97-35 shall be effective for the period beginning Oct. 1, 1981, and ending Sept. 30, 1988.

§ 79a. Weighing authority

EFFECTIVE AND TERMINATION DATES OF 1981 AMENDMENT

Section 155 of Pub. L. 97-35, as amended by Pub. L. 98-469, § 1, Oct. 11, 1984, 98 Stat. 1831, provided in part that amendment by Pub. L. 97-35 shall be effective for the period beginning Oct. 1, 1981, and ending Sept. 30, 1988.

§ 79c. Limitation on administrative and supervisory costs

The total administrative and supervisory costs which may be incurred under this chapter for inspection and weighing (excluding standardization, compliance, and foreign monitoring activities) for each of the fiscal years 1982 through 1984 shall not exceed 35 per centum, and for each of the fiscal years 1985 through 1988 shall not exceed 40 per centum, of the total costs for such activities carried out by the Service for such year.

(As amended Oct. 11, 1984, Pub. L. 98-469, § 2(2), 98 Stat. 1831.)

AMENDMENTS

1984—Pub. L. 98-469 prescribed a 40 per centum limitation on costs for each fiscal year 1985 through 1988.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENT

Section 2 of Pub. L. 98-469 provided in part that amendment by Pub. L. 98-469 shall be effective for the period beginning Oct. 11, 1984, and ending Sept. 30, 1988.

EFFECTIVE AND TERMINATION DATES

Section 155 of Pub. L. 97-35, as amended by Pub. L. 98-469, § 1, Oct. 11, 1984, 98 Stat. 1831, provided in part that section shall be effective for the period beginning Oct. 1, 1981, and ending Sept. 30, 1988.

§ 87h. Authorization of appropriations

There are hereby authorized to be appropriated such sums as are necessary for standardization and compliance activities, monitoring in foreign ports grain officially inspected and weighed under this chapter, and any other expenses necessary to carry out the provisions of this chapter for each of the fiscal years during the period beginning October 1, 1981, and ending September 30, 1988, to the extent that financing is not obtained from fees and sales of samples as provided for in sections 79, 79a, and 87f-1 of this title.

(As amended Oct. 11, 1984, Pub. L. 98-469, § 2(3), 98 Stat. 1832.)

AMENDMENTS

1984—Pub. L. 98-469 substituted "September 30, 1988" for "September 30, 1984".

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENT

Section 2 of Pub. L. 98-469 provided in part that amendment by Pub. L. 98-469 shall be effective for the period beginning Oct. 11, 1984, and ending Sept. 30, 1988.

EFFECTIVE AND TERMINATION DATES OF 1981 AMENDMENT

Section 155 of Pub. L. 97-35, as amended by Pub. L. 98-469, § 1, Oct. 11, 1984, 98 Stat. 1831, provided in part that amendment by Pub. L. 97-35 shall be effective for the period beginning Oct. 1, 1981, and ending Sept. 30, 1988.

§ 87i. Advisory committee

EFFECTIVE AND TERMINATION DATES

Section 155 of Pub. L. 97-35, as amended by Pub. L. 98-469, § 1, Oct. 11, 1984, 98 Stat. 1831, provided in part that section shall be effective for the period beginning Oct. 1, 1981, and ending Sept. 30, 1988.

CHAPTER 6—INSECTICIDES AND ENVIRONMENTAL PESTICIDE CONTROL

SUBCHAPTER II—ENVIRONMENTAL PESTICIDE CONTROL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 150dd, 511r of this title; title 15 sections 1261, 1459, 2052, 2602; title 21 sections 321, 346a; title 42 sections 6905, 9603, 9607.

§ 136a. Registration of pesticides

[See main edition for text of (a) and (b)]

(c) Procedure for registration

(1) Statement required

Each applicant for registration of a pesticide shall file with the Administrator a statement which includes—

[See main edition for text of (A) to (C)]

(D) except as otherwise provided in subsection (c)(2)(D) of this section, if requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based, or alternatively a citation to data that appear in the public literature or that previously had been submitted to the Administrator and that the Administrator may consider in accordance with the following provisions:

(i) With respect to pesticides containing active ingredients that are initially registered under this subchapter after September 30, 1978, data submitted to support the application for the original registration of the pesticide, or an application for an amendment adding any new use to the registration and that pertains solely to such new use, shall not, without the written permission of the original data submitter, be considered by the Administrator to support an application by another person during a period of ten years following the date the Administrator first registers the pesticide: *Provided,* That such permission shall not be required in the case of defensive data;

[See main edition for text of (ii) and (iii), (E) and (F), (2) to (8); (d) to (g); credits]

CODIFICATION

Subsec. (c)(1)(D)(i) is set out in this supplement to correct a typographical error appearing in the main edition.

§ 136d. Administrative review; suspension

[See main edition for text of (a) and (b)]

(c) Suspension

[See main edition for text of (1) to (3)]

(4) Judicial review

A final order on the question of suspension following a hearing shall be reviewable in accordance with section 136n of this title, notwithstanding the fact that any related cancellation proceedings have not been completed. Any order of suspension entered prior to a hearing before the Administrator shall be subject to immediate review in an action by the registrant or other interested person with the concurrence of the registrant in an appropriate district court, solely to determine whether the order of suspension was arbitrary, capricious or an abuse of discretion, or whether the order was issued in accordance with the procedures established by law. The effect of any order of the court will be only to stay the effectiveness of the suspension order, pending the Administrator's final decision with respect to cancellation or change in classification. This action may be maintained simultaneously with any administrative review proceedings under this section. The commencement of proceedings under this paragraph shall not operate as a stay of order, unless ordered by the court.

[See main edition for text of (d) to (f)]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(4)(A), 98 Stat. 3357.)

AMENDMENTS

1984—Subsec. (c)(4). Pub. L. 98-620 struck out provisions requiring petitions to review orders on the issue of suspension to be advanced on the docket of the court of appeals.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 136h. Protection of trade secrets and other information

[See main edition for text of (a) to (c)]

(d) Limitations

[See main edition for text of (1) and (2)]

(3) If the Administrator proposes to disclose information described in clause (A), (B), or (C) of paragraph (1) or in paragraph (2) of this subsection, the Administrator shall notify by certified mail the submitter of such information of the intent to release such information. The Administrator may not release such information, without the submitter's consent, until thirty days after the submitter has been furnished such notice: *Provided,* That where the Administrator finds that disclosure of information described in clause (A), (B), or (C) of paragraph (1) of this subsection is necessary to avoid or

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lessen an imminent and substantial risk of injury to the public health, the Administrator may set such shorter period of notice (but not less than ten days) and such method of notice as the Administrator finds appropriate. During such period the data submitter may institute an action in an appropriate district court to enjoin or limit the proposed disclosure. The court may enjoin disclosure, or limit the disclosure or the parties to whom disclosure shall be made, to the extent that—

[See main edition for text of (A) and (B); (e) to (g)]

(As amended Nov. 8, 1984, Pub. L. 98–620, title IV, § 402(4)(B), 98 Stat. 3357.)

AMENDMENTS

1984—Subsec. (d)(3). Pub. L. 98–620 struck out provisions requiring the court to give expedited consideration to actions involving injunctions or limitations of proposed disclosure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 136n. Administrative procedure; judicial review

[See main edition for text of (a)]

(b) Review by court of appeals

In the case of actual controversy as to the validity of any order issued by the Administrator following a public hearing, any person who will be adversely affected by such order and who had been a party to the proceedings may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has a place of business, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The court shall consider all evidence of record. The order of the Administrator shall be sustained if it is supported by substantial evidence when considered on the record as a whole. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order.

[See main edition for text of (c) and (d)]

(As amended Nov. 8, 1984, Pub. L. 98–620, title IV, § 402(4)(C), 98 Stat. 3357.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–620 struck out provisions requiring the court to advance on the docket and expedite the disposition of all cases filed pursuant to this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 136q. Disposal and transportation

[See main edition for text of (a)]

(b) Advice to Secretary of Transportation

The Administrator shall provide advice and assistance to the Secretary of Transportation with respect to his functions relating to the transportation of hazardous materials under the Department of Transportation Act (49 U.S.C. 1657[1]), the Transportation of Explosives Act (18 U.S.C. 831–835), the Federal Aviation Act of 1958 (49 [App.] U.S.C. 1421–1430, 1472(h)), and the Hazardous Cargo Act (46 U.S.C. 2104, 2106, 3306).

[See main edition for text of (c); credits]

CODIFICATION

In subsec. (b), "(46 U.S.C. 2104, 2106, 3306)" was substituted for "(46 U.S.C. 170, 375, 416)" on authority of Pub. L. 98–89, § 2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

§ 136w. Authority of Administrator

(a) Regulations

[See main edition for text of (1) to (3)]

(4) Rule and regulation review

[See main edition for text of (A) to (D)]

(E) Judicial review

[See main edition for text of (i) and (ii)]

(iii) Repealed. Pub. L. 98–620, title IV, § 402(4)(D), 98 Stat. 3357.

[See main edition for text of (b) and (c)]

(d) Scientific advisory panel

The Administrator shall submit to an advisory panel for comment as to the impact on health and the environment of the action proposed in notices of intent issued under section 136d(b) of this title and of the proposed and final form of regulations issued under subsection (a) of this section within the same time periods as provided for the comments of the Secretary of Agriculture under such section 136d(b) and subsection (a) of this section. The time requirements for notices of intent and proposed and final forms of regulation may not be modified or waived unless in addition to meeting the requirements of section 136d(b) of this title or subsection (a) of this section, as applicable, the advisory panel has failed to comment

[1] So in original. Probably should be "1655".

on the proposed action within the prescribed time period or has agreed to the modification or waiver. The Administrator shall also solicit from the advisory panel comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of scientific analyses made by personnel of the Environmental Protection Agency that lead to decisions by the Administrator in carrying out the provisions of this subchapter. The comments, evaluations, and recommendations of the advisory panel submitted under this subsection and the response of the Administrator shall be published in the Federal Register in the same manner as provided for publication of the comments of the Secretary of Agriculture under such sections. The chairman of the advisory panel, after consultation with the Administrator, may create temporary subpanels on specific projects to assist the full advisory panel in expediting and preparing its evaluations, comments, and recommendations. The subpanels may be composed of scientists other than members of the advisory panel, as deemed necessary for the purpose of evaluating scientific studies relied upon by the Administrator with respect to proposed action. Such additional scientists shall be selected by the advisory panel. The panel referred to in this subsection shall consist of 7 members appointed by the Administrator from a list of 12 nominees, 6 nominated by the National Institutes of Health and 6 by the National Science Foundation, utilizing a system of staggered terms of appointment. Members of the panel shall be selected on the basis of their professional qualifications to assess the effects of the impact of pesticides on health and the environment. To the extent feasible to insure multidisciplinary representation, the panel membership shall include representation from the disciplines of toxicology, pathology, environmental biology, and related sciences. If a vacancy occurs on the panel due to expiration of a term, resignation, or any other reason, each replacement shall be selected by the Administrator from a group of 4 nominees, 2 submitted by each of the nominating entites named in this subsection. The Administrator may extend the term of a panel member until the new member is appointed to fill the vacancy. If a vacancy occurs due to resignation, or reason other than expiration of a term, the Administrator shall appoint a member to serve during the unexpired term utilizing the nomination process set forth in this subsection. Should the list of nominees provided under this subsection be unsatisfactory, the Administrator may request an additional set of nominees from the nominating entities. The Administrator may require such information from the nominees to the advisory panel as he deems necessary, and he shall publish in the Federal Register the name, address, and professional affiliations of each nominee. Each member of the panel shall receive per diem compensation at a rate not in excess of that fixed for GS-18 of the General Schedule as may be determined by the Administrator, except that any such member who holds another office or position under the Federal Government the compensation for which exceeds such rate may elect to receive compensation at the rate provided for such other office or position in lieu of the compensation provided by this subsection. In order to assure the objectivity of the advisory panel, the Administrator shall promulgate regulations regarding conflicts of interest with respect to the members of the panel. The advisory panel established under this subsection shall terminate September 30, 1987. In performing the functions assigned by this subchapter, the panel shall consult and coordinate its activities with the Science Advisory Board established under the Environmental Research, Development, and Demonstration Authorization Act of 1978 [42 U.S.C. 4365]. Whenever the Administrator exercises authority under section 136d(c) of this title to immediately suspend the registration of any pesticide to prevent an imminent hazard, the Administrator shall prompty submit to the advisory panel for comment, as to the impact on health and the environment, the action taken to suspend the registration of such pesticide.

[*See main edition for text of* (e)]

(As amended Dec. 2, 1983, Pub. L. 98-201, § 1, 97 Stat. 1379; Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(4)(D), 98 Stat. 3357.)

AMENDMENTS

1984—Subsec. (a)(4)(E)(iii). Pub. L. 98-620 struck out cl. (iii) requiring the court of appeals and the Supreme Court to advance on the docket and expedite the disposition of any matter certified under cl. (i) of this subparagraph.

1983—Subsec. (d). Pub. L. 98-201 in fourth sentence, inserted "under this subsection" after "submitted"; in eighth sentence, provided for utilization of a system of staggered terms of appointment and substituted "7" and "6" for "seven" and "six", respectively, and inserted ninth through fourteenth sentences respecting basis for selection of members, multidisciplinary representation, appointments to fill vacancies, extension of term pending filling of vacancies, appointment for unexpired term, and request for additional set of nominees from nominating entities; and in present eighteenth, formerly twelfth sentence, extended termination date to Sept. 30, 1987, from Sept. 30, 1981.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 136y. Authorization of appropriations

There is authorized to be appropriated to carry out this subchapter for the period beginning October 1, 1985, and ending September 30, 1986, $68,604,200 of which not more than $11,993,100 shall be available for research under this subchapter.

(As amended Dec. 2, 1983, Pub. L. 98-201, § 2, 97 Stat. 1380; Dec. 23, 1985, Pub. L. 99-198, title XVII, § 1768, 99 Stat. 1656.)

CODIFICATION

Another section 1768 of Pub. L. 99-198 enacted sections 154a and 159 and amended sections 151, 154, and 157 of Title 21, Food and Drugs.

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AMENDMENTS

1985—Pub. L. 99-198 substituted provisions authorizing appropriations of $68,604,200 for fiscal year 1986 of which not more than $11,993,100 shall be available for research for former provisions which had authorized appropriations for fiscal years 1973 through 1984.

1983—Pub. L. 98-201 authorized necessary appropriations for period beginning Oct. 1, 1983, and ending Sept. 30, 1984, not in excess of $64,200,000.

CHAPTER 7—INSECT PESTS GENERALLY

Sec.

148f. Control of grasshoppers and Mormon Crickets on Federal lands.
(a) Authority of Secretary of Agriculture.
(b) Funds for lands subject to jurisdiction of Federal Government or Federal lands subject to jurisdiction of Secretary of the Interior; prompt requests for transferred funds and for replenishing appropriations.
(c) Exhaustion of contingency grasshopper emergency funds before availability of transferred funds for control of outbreaks on Federal lands subject to jurisdiction of Secretary of the Interior.
(d) Time for treatment of lands dependent on determination of economic damage.
(e) Amount of payments for costs of control on Federal, State, and private lands; interrelated participation efforts.
(f) Funding of personnel training program.

§ 148f. Control of grasshoppers and Mormon Crickets on Federal lands

(a) Authority of Secretary of Agriculture

The Secretary of Agriculture shall carry out a program to control grasshoppers and Mormon Crickets on all Federal lands.

(b) Funds for lands subject to jurisdiction of Federal Government or Federal lands subject to jurisdiction of Secretary of the Interior; prompt requests for transferred funds and for replenishing appropriations

(1) Subject to paragraph (2), the Secretary of Agriculture shall expend or transfer, and upon request, the Secretary of the Interior shall transfer to the Secretary of Agriculture, from any no-year appropriations, funds for the prevention, suppression, and control of actual or potential grasshopper and Mormon Cricket outbreaks on lands under the jurisdiction of the Federal Government.

(2)(A) Appropriated funds made available to the Secretary of the Interior shall be available for the payment of obligations incurred on Federal lands subject to the jurisdiction of the Secretary of the Interior.

(B) Funds transferred pursuant to this paragraph shall be requested as promptly as possible by the Secretary of Agriculture.

(C) Funds transferred pursuant to this section shall be replenished by supplemental or regular appropriations which shall be requested as promptly as possible.

(c) Exhaustion of contingency grasshopper emergency funds before availability of transferred funds for control of outbreaks on Federal lands subject to jurisdiction of Secretary of the Interior

(1) Except as provided in paragraph (2), from any funds made available to the Department of the Interior until expended, moneys shall be made available for the transfer by the Secretary of the Interior to the Secretary of Agriculture for the prevention, suppression, and control of grasshoppers and Mormon Cricket outbreaks on Federal lands under the jurisdiction of the Secretary of the Interior.

(2) No funds shall be made available under this authority, until contingency funds specifically available to the Animal and Plant Health Inspection Service for grasshopper emergencies have been exhausted.

(d) Time for treatment of lands dependent on determination of economic damage

On request of the administering agency or the Department of Agriculture of an affected State, the Secretary of Agriculture shall immediately treat Federal, State, or private lands that are infested by grasshoppers or Mormon Crickets at levels of economic infestation, unless the Secretary determines that delaying treatment will optimize biological control and not cause greater economic damage to adjacent landowners.

(e) Amount of payments for costs of control on Federal, State, and private lands; interrelated participation efforts

The Secretary of Agriculture shall—

(1) pay out of appropriated funds made available to the Secretary or transferred to the Secretary by the Secretary of the Interior—100 percent of the cost of grasshopper or Mormon Cricket control on Federal lands;

(2) pay out of appropriated funds made available to the Secretary—

(A) 50 percent of the cost of such control on State lands; and

(B) 33.3 percent of the cost of such control on private rangelands; and

(3) participate in prevention, control, or suppression programs for grasshoppers and Mormon Crickets in conjunction with other Federal, State and private prevention, control or suppression efforts.

(f) Funding of personnel training program

From appropriated funds made available or transferred by the Secretary of the Interior to the Secretary of Agriculture for such purposes, the Secretary of Agriculture shall provide adequate funding for a program to train personnel to effectively accomplish the objective of this section.

(Pub. L. 99-198, title XVII, § 1773, Dec. 23, 1985, 99 Stat. 1658.)

CHAPTER 8A—RUBBER AND OTHER CRITICAL AGRICULTURAL MATERIALS

SUBCHAPTER II—CRITICAL AGRICULTURAL MATERIALS

§ 178. Congressional findings and declaration of policy

(a)(1) Congress recognizes that natural latex rubber is a commodity of vital importance to the economy, the defense, and the general well-being of the Nation. The United States is totally dependent upon foreign sources for its supplies of natural (Hevea) latex, which total about one million tons per year. Synthetic rubber, manufactured from petroleum feedstocks, cannot be substituted for natural rubber.

(2) Congress further recognizes that certain plant species of the genus Parthenium (Guayule), native to Texas and the Republic of Mexico, as well as other plants, are known to contain commercial quantities of extractable rubber. During World War II, through research carried out by the Secretary of Agriculture in the Emergency Rubber Project, the United States demonstrated that Parthenium latex is a promising and realistic substitute for Hevea latex.

(3) Congress further recognizes that additional research and development are needed, especially into methods for increasing latex yields, before commercialization of native Parthenium latex or other hydrocarbon-containing plants by private industry is feasible.

(4) Congress further recognizes that the development of a domestic natural rubber industry, based on Parthenium and other hydrocarbon-containing plants, would not only relieve the Nation's dependence upon foreign latex sources but also convey substantial economic benefits to people living in arid and semiarid regions of the United States. Such an industry would comprise the agricultural production of the hydrocarbon-containing plants and the development of commercial processing and manufacturing facilities to extract the latex and other products.

(5) Congress further recognizes that ongoing research into the development and commercialization of native latex has been conducted by the Department of Agriculture, the Department of Commerce, the National Science Foundation, and other public as well as private and industrial research groups, and that these research efforts should be continued and expanded.

(b) In addition, Congress recognizes that the development of a domestic industry or industries for the production and manufacture from native agricultural crops of products other than rubber which are of strategic and industrial importance but for which the Nation is now dependent upon foreign sources, would benefit the economy, the defense, and the general well-being of the Nation, and that additional research efforts in this area should be undertaken or continued and expanded.

(c) It is therefore the policy of the United States to provide for the development and demonstration of economically feasible means of culturing and manufacturing Parthenium and other hydrocarbon-containing plants, along with other native agricultural crops, for the production of critical agricultural materials to benefit the Nation and promote economic development.

(As amended Pub. L. 98-284, § 2, May 16, 1984, 98 Stat. 181.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-284, § 2(1), redesignated existing provisions of subsec. (a) as par. (1).

Subsec. (a)(2) to (4). Pub. L. 98-284, § 2(2), redesignated subsecs. (b), (c), and (d) as pars. (2), (3), and (4), respectively, of subsec. (a).

Subsec. (a)(5). Pub. L. 98-284, § 2(2), (3), redesignated subsec. (e) as par. (5) of subsec. (a), and in par. (5), as so redesignated, substituted "development and commercialization of native latex has been conducted by the Department of Agriculture, the Department of Commerce, the National Science Foundation, and other public as well as private and industrial research groups," for "commercialization of native latex has been conducted by the Department of Agriculture and by the Department of Commerce through the regional commissions".

Subsec. (b). Pub. L. 98-284, § 2(4), added subsec. (b). Former subsec. (b) redesignated (a)(2).

Subsec. (c). Pub. L. 98-284, § 2(4), added subsec. (c). Former subsec. (c) redesignated (a)(3).

Subsecs. (d) and (e). Pub. L. 98-284, § 2(2), redesignated subsecs. (d) and (e) as (a)(4) and (a)(5), respectively.

Subsec. (f). Pub. L. 98-284, § 2(4), struck out subsec. (f) which provided: "It is the policy of the Congress, therefore, to provide for the development and demonstration of economically feasible means of culturing and manufacturing Parthenium and other hydrocarbon-containing plants for the extraction of natural rubber and other products to benefit the Nation and promote economic development". See subsec. (c).

SHORT TITLE

Section 1 of Pub. L. 95-592, as amended by Pub. L. 98-284, § 1, May 16, 1984, 98 Stat. 181, provided: "That this Act [enacting this subchapter and amending section 1314f of this title] may be cited as the 'Critical Agricultural Materials Act'." As originally enacted Pub. L. 95-592 had been cited as the "Native Latex Commercialization and Economic Development Act of 1978".

§ 178a. Definitions

As used in this subchapter—

[*See main edition for text of* (a) *to* (c)]

(d) The term "native" means hydrocarbon-containing plants and other agricultural crops of strategic and industrial importance which may be cultured in North America, especially plants which are members of the genus Parthenium known as Guayule.

(e) Repealed. Pub. L. 98-284, § 3(b), May 16, 1984, 98 Stat. 181.

(As amended Pub. L. 98-284, § 3, May 16, 1984, 98 Stat. 181.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-284, § 3(a), added "and other agricultural crops of strategic and industrial importance" and "plants which are".

Subsec. (e). Pub. L. 98-284, § 3(b), struck out subsec. (e) which had defined "Regional Commissions" as the Regional Action Planning Commissions established

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pursuant to title V of the Public Works and Economic Development Act of 1965.

§ 178b. Joint Commission on Research and Development of Critical Agricultural Materials

(a) Establishment; function

There is established a Joint Commission on Research and Development of Critical Agricultural Materials, hereinafter referred to as the Joint Commission. The function of the Joint Commission shall be to assist the Secretaries in carrying out the purposes of this subchapter.

(b) Membership

The Joint Commission shall consist of the following members: Three individuals designated by the Secretary of Agriculture from among the staff of the Department of Agriculture; three individuals designated by the Secretary of Commerce from among the staff of the Department of Commerce; a representative of the Bureau of Indian Affairs of the Department of the Interior; a representative of the National Science Foundation; a representative of the Department of State; a representative of the Department of Defense; and a representative of the Federal Emergency Management Agency. Each of the members of the Joint Commission shall be an individual who, on behalf of the Department or agency which such individual represents, is engaged in the support of research, development, demonstration, and commercialization activities involving native latex and the production of other critical agricultural materials from native agricultural crops.

(c) Chairman

The Joint Commission shall be headed by a Chairman who shall be selected by the Secretary of Agriculture from among the three individuals designated by the Secretary as members under subsection (b) of this section.

[*See main edition for text of* (d) *to* (g)]

(h) Advice of scientific, engineering and business communities

To the maximum extent possible, the Secretaries and the Joint Commission shall seek the advice of the scientific, engineering and business communities with respect to the activities carried out under this subchapter. The Secretaries and the Commission shall specifically seek the advice of persons with expertise in appropriate fields of agricultural research in land grant colleges and other universities, in State agricultural experiment stations, and in other appropriate organizations; and, persons with expertise in manufacturing and commerce involving rubber and other critical agricultural materials in private enterprise and other appropriate organizations.

(As amended Pub. L. 98-284, § 4, May 16, 1984, 98 Stat. 181.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-284, § 4(a), substituted "Research and Development of Critical Agricultural Materials" for "Guayule Research and Commercialization".

Subsec. (b). Pub. L. 98-284, § 4(b), deleted provision mandating that two of the designees of the Secretary of Commerce be Federal Cochairmen of Regional Commissions engaged in the support of native latex research, development, demonstration, or commercialization activities, added provisions for the appointment of a representative of the Department of State, a representative of the Department of Defense, and a representative of the Federal Emergency Management Agency, and added provisions that each of the members of the Joint Commission be an individual who, on behalf of the Department or agency which such individual represents, is engaged in the support of research, development, demonstration, and commercialization activities involving native latex and the production of other critical agricultural materials from native agricultural crops.

Subsec. (c). Pub. L. 98-284, § 4(c), substituted "The Joint Commission shall be headed by a Chairman who shall be selected by the Secretary of Agriculture from among the three individuals designated by the Secretary as members under subsection (b) of this section" for "The Joint Commission shall be headed by a Chairman. The Secretary of Agriculture shall designate one of the two members from his Department to serve as Joint Commission Chairman during the first two-year period following November 4, 1978, and the Secretary of Commerce shall designate one of the two members from his Department as Joint Commission Chairman during the second two-year period following November 4, 1978. And the same process of designating Joint Commission Chairmen shall be followed in ensuing years".

Subsec. (h). Pub. L. 98-284, § 4(d), substituted "manufacturing and commerce involving rubber and other critical agricultural materials" for "rubber manufacturing and commerce".

§ 178c. Research and development program by Secretary of Agriculture

(a) Designation of Department as lead agency

The Department of Agriculture shall be the lead agency in carrying out this subchapter.

(b) Scope of program

The Secretary of Agriculture shall conduct, sponsor, promote, and coordinate basic and applied research, technology development, and technology transfer leading to effective and economical methods for large-scale culturing of plantations and the extraction of latex from Parthenium or other hydrocarbon-containing plants, and for the development of other critical agricultural materials from native agricultural crops having strategic and industrial importance. Such research shall include, but not be limited to—

(1) carrying out extensive seed collections from wild plants in Texas, Mexico, and other areas and borrowing or purchasing seeds from other sources;

(2) developing a stockpile of Parthenium seeds, such stockpile to be appropriately classified and stored at a suitable facility;

(3) accelerating present plant breeding, genetics, and selection programs for the purpose of improving and increasing latex yields, expanding insect and disease resistance, broadening the ranges of drought and cold resistance of the Parthenium plant, and providing a system of regional research trials for enhancing and increasing the supply of foundation seed for certified seed production;

(4) establishing a system of large-scale experimental plantings (aggregating ten thousand acres or more) to provide shrub for feed-

stock to process in the developmental rubber processing facility described in paragraph (7);

(5) carrying out specific studies on the effects of irrigation on plant growth and latex yield and survival potential;

(6) developing equipment needed to carry out nursery operations, planting, cultivating, harvesting, transporting the crop, and other necessary agricultural activities;

(7) accelerating the refinement of present extraction and processing technologies and future extraction technologies, including the development and construction of a developmental rubber processing facility for the extraction and production of test quantities of guayule natural rubber;

(8) establishing and maintaining a bank of all pertinent research data on native latex including extant United States Government publications and records from the emergency rubber project. Such data shall be made available to other Federal and State agencies and private persons who are interested or involved in native latex research, development, or manufacture; and

(9) studying the economic feasibility of developing other native agricultural crops (in addition to Parthenium and other hydrocarbon-containing plants) that would supply critical agricultural materials for strategic and industrial purposes,,[1] carrying out demonstration projects to promote the development or commercialization of such crops (including projects designed to expand domestic or foreign markets for such crops), and, to the extent appropriate, carrying out research activities with respect to such crops in the manner specified in paragraphs (1) through (8).

(c) Office of Critical Agricultural Materials

The Secretary of Agriculture shall establish within the Department of Agriculture an Office of Critical Agricultural Materials, as a central location where such Department can address research and development with respect to agricultural crops that have the potential of producing critical materials for strategic and industrial purposes.

(d) Authority of Secretary in carrying out demonstration project

Notwithstanding any other provision of law, in carrying out a demonstration project referred to in subsection (b)(9) of this section, the Secretary may—

(1) enter into a contract or cooperative agreement with, or provide a grant to, any person, or public or private agency or organization, to participate in, carry out, support, or stimulate such project;

(2) make available for purposes of clause (1) agricultural commodities or the products thereof acquired by the Commodity Credit Corporation under price support operations conducted by the Corporation; or

(3) use any funds appropriated pursuant to section 178n(a) of this title, or any funds provided by any person, or public or private agency or organization, to carry out such project or reimburse the Commodity Credit Corporation for agricultural commodities or products that are utilized in connection with such project.

(As amended Pub. L. 98-284, § 5, May 16, 1984, 98 Stat. 182; Pub. L. 99-198, title XIV, § 1439, Dec. 23, 1985, 99 Stat. 1559.)

AMENDMENTS

1985—Subsec. (b)(9). Pub. L. 99-198, § 1439(a), extended the research program to carrying out demonstration projects to promote the development or commercialization of native agricultural crops, including projects designed to expand domestic or foreign markets for such crops.

Subsec. (d). Pub. L. 99-198, § 1439(b), added subsec. (d).

1984—Subsec. (a). Pub. L. 98-284, § 5(1), added subsec. (a).

Subsec. (b). Pub. L. 98-284, § 5(1), designated existing provisions as subsec. (b) and in first sentence of subsec. (b) as so designated added provision relating to the development of other critical agricultural materials from native agricultural crops having strategic and industrial importance.

Subsec. (b)(1), (2). Pub. L. 98-284, § 5(2), redesignated cls. (a) and (b) as pars. (1) and (2) of subsec. (b).

Subsec. (b)(3). Pub. L. 98-284, § 5(2), (3), redesignated cl. (c) as par. (3) of subsec. (b), and in par. (3), as so redesignated, substituted "accelerating present plant breeding, genetics, and selection programs for the purpose of improving and increasing latex yields, expanding insect and disease resistance, broadening the ranges of drought and cold resistance of the Parthenium plant, and providing a system of regional research trials for enhancing and increasing the supply of foundation seed for certified seed production" for "carrying out breeding and selection programs for the purpose of improving latex yields, expanding insect and disease resistance, and broadening the ranges of drought and cold tolerance of the Parthenium plant".

Subsec. (b)(4). Pub. L. 98-284, § 5(2), (4), redesignated cl. (d) as par. (4) of subsec. (b), and in par. (4), as so redesignated, substituted "establishing a system of large-scale experimental plantings (aggregating ten thousand acres or more) to provide shrub for feedstock to process in the developmental rubber processing facility described in paragraph (7)" for "establishing a system of experimental plantings in arid and semiarid regions of the United States having suitable climatic and soil conditions for the culture of Parthenium".

Subsec. (b)(5), (6). Pub. L. 98-284, § 5(2), redesignated cls. (e) and (f) as pars. (5) and (6), respectively, of subsec. (b).

Subsec. (b)(7). Pub. L. 98-284, § 5(2), (5), redesignated cl. (g) as par. (7) of subsec. (b), and in par. (7), as so redesignated, substituted "accelerating the refinement of present extraction and processing technologies and future extraction technologies, including the development and construction of a developmental rubber processing facility for the extraction and production of test quantities of guayule natural rubber;" for "further refining present extraction technologies and future extraction technologies, including technologies which utilize solar energy; and".

Subsec. (b)(8). Pub. L. 98-284, § 5(2), redesignated cl. (h) as par. (8) of subsec. (b).

Subsec. (b)(9). Pub. L. 98-284, § 5(7), added par. (9).

Subsec. (c). Pub. L. 98-284, § 5(8), added subsec. (c).

§ 178d. Research and development program by Secretary of Commerce

The Secretary of Commerce is authorized and directed to initiate and carry out research,

[1] So in original.

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technology development, technology transfer, and demonstration projects to test and demonstrate the economic feasibility of the manufacture and commercialization of natural rubber from Parthenium or other hydrocarbon-containing plants or the manufacture and commercialization of other critical agricultural materials from native agricultural crops having strategic and industrial importance. Such research shall include but not be limited to—

[*See main edition for text of* (a) *to* (d)]

(e) further refining present extraction and manufacturing technologies and future extraction and manufacturing technologies, including technologies which utilize solar energy;

(f) developing pertinent material and records on manufacturing of natural rubber which shall be available to other Federal and State agencies and private persons who are interested in or involved in natural rubber development, or manufacture; and

(g) to the extent appropriate, carrying out research activities with respect to native agricultural crops (other than Parthenium and other hydrocarbon-containing plants) that would supply critical agricultural materials for strategic and industrial purposes, in the manner specified in clauses (a) through (f).

(As amended Pub. L. 98-284, § 6, May 16, 1984, 98 Stat. 183.)

AMENDMENTS

1984—Pub. L. 98-284, § 6(1), (2), added in provisions preceding cl. (a) reference to the manufacture and commercialization of other critical agricultural materials from native agricultural crops having strategic and industrial importance, and struck out "may be carried out through the Regional Commissions or otherwise and" after "Such research".

Cl. (g). Pub. L. 98-284, § 6(5), added cl. (g).

§ 178e. Cooperative projects with Mexico, Australia, and Israel

The Secretaries, in consultation with the Secretary of State, are authorized and encouraged to enter into cooperative projects with the Government of Mexico, the Government of Australia, and the Government of Israel in order to accomplish appropriate aspects of the research and development provided for in this subchapter. Such cooperative projects should include, but not be limited to, projects to determine the economic feasibility of extraction and processing of latex and other critical agricultural materials produced in the United States.

(As amended Pub. L. 98-284, § 7, May 16, 1984, 98 Stat. 183.)

AMENDMENTS

1984—Pub. L. 98-284 inserted ", the Government of Australia, and the Government of Israel", and substituted "extraction and processing of latex and other critical agricultural materials produced in the United States" for "latex extraction and processing".

§ 178f. Assistance from States and public agencies; contracts and agreements

The Secretaries are authorized to accept financial or other assistance from any State or public agency to aid in carrying out the provisions of this subchapter and to enter into contracts with respect to such assistance and to enter into agreements with any State or public agency for the purpose of demonstrating, transferring, or applying results of research or methods of economic development relating to native latex or to other critical agricultural materials.

(As amended Pub. L. 98-284, § 8, May 16, 1984, 98 Stat. 183.)

AMENDMENTS

1984—Pub. L. 98-284 inserted "or to other critical agricultural materials".

§ 178g. Powers of Secretary of Agriculture

In carrying out the provisions of this subchapter, the Secretary of Agriculture is authorized to—

[*See main edition for text of* (a) *to* (g)]

(h) foster and participate in regional, national, and international conferences relating to native latex culture or the culture of other native agricultural crops which could supply critical agricultural materials;

(i) coordinate, correlate, and publish information with a view to advancing the development of native latex technology or the technology of other native agricultural crops which could supply critical agricultural materials; and

[*See main edition for text of* (j)]

(As amended Pub. L. 98-284, § 9, May 16, 1984, 98 Stat. 183.)

AMENDMENTS

1984—Cl. (h). Pub. L. 98-284, § 9(1), inserted, "or the culture of other native agricultural crops which could supply critical agricultural materials".

Cl. (i). Pub. L. 98-284, § 9(2), inserted, "or the technology of other native agricultural crops which could supply critical agricultural materials".

§ 178h. Powers of Secretary of Commerce

In carrying out the provisions of this subchapter, the Secretary of Commerce is authorized to—

(a) make grants to States, education institutions, scientific organizations, and Indian tribes as defined in the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 25 U.S.C. 450), and enter into contracts with such institutions and organizations and with industrial or engineering firms;

(b) acquire the services of biologists, agronomists, foresters, geneticists, engineers, economists, and other personnel having expertise in native agricultural crops which could supply critical agricultural materials by contract or otherwise;

(c) utilize the facilities of Federal and State institutions and other scientific laboratories;

(d) establish and operate necessary facilities and pilot plants to carry out the continuous research, testing, development, and program-

ing necessary to effectuate the purposes of this section;

(e) acquire secret processes, technical data, invention, patent applications, patents, licenses, land and interests in land (including water rights), plants and facilities, and other property or rights by purchase, license, lease, or donation; and

(f) foster and participate in regional, national, and international conferences relating to the activities authorized by this subchapter.

(As amended Pub. L. 98-284, § 10, May 16, 1984, 98 Stat. 184.)

AMENDMENTS

1984—Pub. L. 98-284, § 10(1), (2), in provisions preceding cl. (a) substituted "this subchapter" for "this section" and struck out ", acting through the Regional Commissions or otherwise," after "the Secretary of Commerce".

Cl. (b). Pub. L. 98-284, § 10(3), inserted, "having expertise in native agricultural crops which could supply critical agricultural materials".

Cl. (f). Pub. L. 98-284, § 10(4), substituted "the activities authorized by this subchapter" for "natural rubber manufacture".

§ 178i. Coordination of activities with Federal agencies

In carrying out the provisions of this subchapter, the Secretaries and the Joint Commission shall cooperate with each other in the conduct of their activities under this subchapter, and shall insure that their activities under this subchapter are closely coordinated with the activities of other Federal agencies such as the Department of the Interior, National Science Foundation, Bureau of Indian Affairs, Department of Energy, Department of State, Department of Defense, Treasury Department, Federal Emergency Management Agency, and others, in order to prevent duplication of effort, insure compatibility with ongoing programs and policies, and to fully exploit the opportunities inherent in the culture and manufacture of native latex.

(As amended Pub. L. 98-284, § 11, May 16, 1984, 98 Stat. 184.)

AMENDMENTS

1984—Pub. L. 98-284 substituted "shall cooperate with each other in the conduct of their activities under this subchapter, and shall insure that their activities under this subchapter are closely coordinated with the activities of other Federal agencies" for "shall insure that their activities are closely coordinated with the activities of other Federal agencies" and "Federal Emergency Management Agency, and others," for "Federal Preparedness Agency, and others", and added "Department of State,".

§ 178k. Disposition of byproducts and strategic and industrially important products

The Secretaries may dispose of any latex, resin, wax, pulp, and any other byproducts, as well as products, other than rubber, developed from agricultural crops which are of strategic and industrial importance, resulting from operations under this subchapter. Dispositions under this section may include sales of the materials involved to other Federal departments and agencies for testing purposes. All moneys received from dispositions under this section shall be paid into the Treasury as miscellaneous receipts.

(As amended Pub. L. 98-284, § 12, May 16, 1984, 98 Stat. 184.)

AMENDMENTS

1984—Pub. L. 98-284, substituted "The Secretaries" for "The Secretary of Agriculture and the Secretary of Commerce", and added ", as well as products, other than rubber, developed from agricultural crops which are of strategic and industrial importance," and "Dispositions under this section may include sales of the materials involved to other Federal departments and agencies for testing purposes."

§ 178l. Rules and regulations

The Secretaries may issue rules and regulations necessary to effectuate the purposes of this subchapter.

(As amended Pub. L. 98-284, § 13, May 16, 1984, 98 Stat. 184.)

AMENDMENTS

1984—Pub. L. 98-284 substituted "The Secretaries" for "The Secretary of Agriculture and the Secretary of Commerce".

§ 178m. Report to President and Congress

The Secretaries shall submit to the President and the Congress, no later than December 31, 1980, and each year thereafter through 1987, a report on the status of the research, development, and other work underway under this subchapter. Such report shall (1) recommend specific directions for further research, development and other work, and (2) recommend funding levels for various elements of the overall project.

(As amended Pub. L. 98-284, § 14, May 16, 1984, 98 Stat. 184.)

AMENDMENTS

1984—Pub. L. 98-284 substituted "The Secretaries" for "The Secretary of Agriculture and the Secretary of Commerce" and "1987" for "1982".

§ 178n. Administration and funding

(a) Authorization of appropriations to Secretary of Agriculture

There is authorized to be appropriated to the Secretary of Agriculture $2,500,000 for each of the fiscal years ending September 30, 1980, and September 30, 1981, $5,000,000 for each of the fiscal years ending September 30, 1982, and September 30, 1983, $5,000,000 for the fiscal year ending September 30, 1984, $5,500,000 for the fiscal year ending September 30, 1985, $6,500,000 for the fiscal year ending September 30, 1986, $7,500,000 for the fiscal year ending September 30, 1987, and $8,000,000 for the fiscal year ending September 30, 1988, to carry out the purposes of this subchapter. Funds appropriated under this paragraph shall be available for obligation until the last day of the fiscal year after the year for which such funds are authorized.

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(b) Authorization of appropriations to Secretary of Commerce

There is authorized to be appropriated to the Secretary of Commerce $2,500,000 for each of the fiscal years ending September 30, 1980, and September 30, 1981, $5,000,000 for each of the fiscal years ending September 30, 1982, and September 30, 1983, $2,500,000 for the fiscal year ending September 30, 1984, $3,000,000 for the fiscal year ending September 30, 1985, $3,500,000 for the fiscal year ending September 30, 1986, $4,000,000 for the fiscal year ending September 30, 1987, and $4,500,000 for the fiscal year ending September 30, 1988, to carry out the purposes of this subchapter. Funds appropriated under this paragraph shall be available for obligation until the last day of the fiscal year after the year for which such funds are authorized.

(c) Administration and management

No more than 3 per centum of funds authorized under subsections (a) and (b) of this section shall be available for administration and management of the program.

(d) Contract authority as limited by amounts provided in appropriations acts

Notwithstanding any other provision of this subchapter the authority to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

(e) Activities limited to critical materials other than native latex after fiscal 1988

Notwithstanding any other provision of this subchapter, the Secretaries and the Joint Commission shall limit their activities under this subchapter to critical agricultural materials other than native latex after the close of the fiscal year ending September 30, 1988.

(As amended Pub. L. 98-284, § 15, May 16, 1984, 98 Stat. 184.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-284, § 15(a), added "$5,000,000 for the fiscal year ending September 30, 1984, $5,500,000 for the fiscal year ending September 30, 1985, $6,500,000 for the fiscal year ending September 30, 1986, $7,500,000 for the fiscal year ending September 30, 1987, and $8,000,000 for the fiscal year ending September 30, 1988," and struck out "and" after "1981,".

Subsec. (b). Pub. L. 98-284, § 15(b), added "$2,500,000 for the fiscal year ending September 30, 1984, $3,000,000 for the fiscal year ending September 30, 1985, $3,500,000 for the fiscal year ending September 30, 1986, $4,000,000 for the fiscal year ending September 30, 1987, and $4,500,000 for the fiscal year ending September 30, 1988," and struck out "and" after "1981,".

Subsec. (e). Pub. L. 98-284, § 15(c), added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 178c of this title.

CHAPTER 9—PACKERS AND STOCKYARDS

SUBCHAPTER II—PACKERS GENERALLY

§ 194. Conclusiveness of order; appeal and review; temporary and final injunction

[See main edition for text of (a) to (c)]

(d) The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case.

[See main edition for text of (e) to (h)]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(5), 98 Stat. 3357.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-620 struck out provisions requiring proceedings in such cases in the court of appeals to be made a preferred cause and expedited in every way.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 13—AGRICULTURAL AND MECHANICAL COLLEGES

SUBCHAPTER I—COLLEGE-AID LAND APPROPRIATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 322, 323, 329, 331, 341, 361a, 390b, 1926, 2663, 2664, 3103, 3124a, 3703 of this title; title 16 sections 582a-1, 1672; title 22 section 2220a; title 42 sections 1788, 10303; title 43 section 179.

§ 301. Land grant aid of colleges

CROSS REFERENCES

Water resources research and technology institutes, establishment at colleges or universities founded in accordance with this subchapter, see section 10303(a) of Title 42, The Public Health and Welfare.

SUBCHAPTER II—COLLEGE-AID ANNUAL APPROPRIATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 331, 341, 390b, 450i, 1926, 2663, 2664, 3103, 3124a, 3221, 3222, 3223, 3224, 3261, 3703 of this title; title 16 sections 1672, 1673; title 20 section 3441; title 22 section 2220a; title 42 section 1788; title 43 section 179.

SUBCHAPTER IV—AGRICULTURAL EXTENSION WORK APPROPRIATION

§ 342. Cooperative agricultural extension work; cooperation with Secretary of Agriculture

Cooperative agricultural extension work shall consist of the development of practical applications of research knowledge and giving of instruction and practical demonstrations of existing or improved practices or technologies in agriculture, uses of solar energy with respect to agriculture, home economics, and rural energy and subjects relating thereto to persons not attending or resident in said colleges in the several communities, and imparting information on said subjects through demonstrations, publications, and otherwise and for the necessary printing and distribution of information in connection with the foregoing; and this work shall be carried on in such manner as may be mutually agreed upon by the Secretary of Agricul-

ture and the State agricultural college or colleges or Territory or possession receiving the benefits of this subchapter.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XIV, § 1435(a), 99 Stat. 1557.)

AMENDMENTS

1985—Pub. L. 99-198 substituted "shall consist of the development of practical applications of research knowledge and giving of instruction and practical demonstrations of existing or improved practices or technologies" for "shall consist of the giving of instructions and practical demonstrations".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective Oct. 1, 1985, see section 1435(d) of Pub. L. 99-198, set out as a note under section 343 of this title.

§ 343. Appropriations; distribution; allotment and apportionment; Federal Extension Service

[See main edition for text of (a) to (e)]

(f)(1) The Secretary of Agriculture may conduct educational, instructional, demonstration, and publication distribution programs through the Federal Extension Service and enter into cooperative agreements with private nonprofit and profit organizations and individuals to share the cost of such programs through contributions from private sources as provided in this subsection.

(2) The Secretary may receive contributions under this subsection from private sources for the purposes described in paragraph (1) and provide matching funds in an amount not greater than 50 percent of such contributions.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XIV, § 1435(b), 99 Stat. 1557.)

AMENDMENTS

1985—Subsec. (f). Pub. L. 99-198 added subsec. (f).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1435(d) of Pub. L. 99-198 provided that: "This section and the amendments made by this section [amending sections 342 and 343 of this title] shall become effective on October 1, 1985."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2020, 3175, 3221 of this title.

CHAPTER 14—AGRICULTURAL EXPERIMENT STATIONS

SUBCHAPTER III—RESEARCH FACILITIES

Sec.
390c. Repealed.
390g. Repealed.
390k. Repealed.

SUBCHAPTER I—GENERAL PROVISIONS

§ 361c. Authorization of appropriations and allotments of grants

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 361e, 3222 of this title.

SUBCHAPTER III—RESEARCH FACILITIES

§ 390. Congressional declaration of policy

It is declared to be the policy of the Congress to continue its support of agricultural research at eligible institutions through Federal-grant funds on a matching funds basis, to help finance physical facilities and equipment as required for the effective conduct of agricultural research and related academic programs.

(As amended Pub. L. 99-198, title XIV, § 1411(a), Dec. 23, 1985, 99 Stat. 1547.)

AMENDMENTS

1985—Pub. L. 99-198 substituted "Federal-grant funds on a matching funds basis" for "Federal-grant funds", "facilities and equipment" for "facilities", and "agricultural research and related academic programs" for "an adequate research program".

SHORT TITLE

Section 10 of Pub. L. 88-74, as added by Pub. L. 99-198, title XIV, § 1411(*l*), Dec. 23, 1985, 99 Stat. 1548, provided that: "This Act [enacting this subchapter] may be cited as the 'Research Facilities Act'."

§ 390a. Congressional declaration of purpose

The purpose of this subchapter is to assist eligible institutions in the construction, acquisition, and remodeling of buildings, laboratories, and other capital facilities (including the acquisition of fixtures and equipment) which are necessary to more effectively conduct research in agriculture and sciences related thereto through means of matching grants from the Federal Government.

(As amended Pub. L. 99-198, title XIV, § 1411(b), Dec. 23, 1985, 99 Stat. 1547.)

AMENDMENTS

1985—Pub. L. 99-198 struck out in parenthetical clause "which are to become a part of such buildings" after "equipment" and substituted "matching grants" for "grants".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 390b, 390c, 390h of this title.

§ 390b. Definitions

As used in sections 390a to 390j, inclusive, of this title—

(1) the term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands of the United States;

(2) the term "eligible institution" means a department established under provisions of the Act of March 2, 1887 (24 Stat. 440-442, as amended; 7 U.S.C. 361a-361i), and under the direction of a college or university established in any State in accordance with the Act of July 2, 1862 (12 Stat. 503-505, as amended; 7 U.S.C. 301-305, 307 and 308), a department otherwise established pursuant to standards prescribed by any State the purpose of which

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is to conduct agricultural, forestry, or veterinary medicine research, the Connecticut Agricultural Experiment Station at New Haven, Connecticut, the Ohio Agricultural Experiment Station at Wooster, Ohio, and those colleges, universities, and other legal entities in each State now receiving, or which may hereafter receive, benefits under the Act of August 30, 1890 (26 Stat. 417-419, as amended; 7 U.S.C. 321-326 and 328), including the Tuskegee Institute, or the Act of October 10, 1962 (76 Stat. 806-807, as amended; 16 U.S.C. 582a, 582a-1—582a-7); and

(3) the term "Secretary" shall mean the Secretary of Agriculture.

(As amended Pub. L. 99-198, title XIV, § 1411(c), Dec. 23, 1985, 99 Stat. 1547.)

AMENDMENTS

1985—Par. (1). Pub. L. 99-198, § 1411(c)(1), added par. (1) and struck out former par. (1) which provided "the term 'State' shall include Puerto Rico".

Par. (2). Pub. L. 99-198, § 1411(c)(2), inserted ", forestry, or veterinary medicine" after "to conduct agricultural".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 390h of this title.

§ 390c. Administration

(a) Authorization of appropriations

There are authorized to be appropriated, for grants to eligible institutions under this subchapter to be used for the purpose set out in section 390a of this title, $20,000,000 for each of the fiscal years ending September 30, 1986, through September 30, 1990.

(b) Limitation on amount of grant; funding from non-Federal sources

No grant may be made under section 390a of this title for an amount exceeding a percentage determined by the Secretary of the cost of the project for which such grant is made. The remaining cost of such project shall be paid with funds from non-Federal sources.

[*See main edition for text of* (c)]

(As amended Pub. L. 99-198, title XIV, § 1411(d), Dec. 23, 1985, 99 Stat. 1548.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, § 1411(d)(1), in amending subsec. (a) generally, substituted "grants" for "allocation"; authorized appropriations of $20,000,000 for each of the fiscal years ending Sept. 30, 1986, through Sept. 30, 1990; and struck out appropriations authorization of 15, 19, 23, and 27 million dollars for fiscal years ending Sept. 30, 1978, through Sept. 30, 1981, and 31 million dollars for fiscal years ending Sept. 30, 1982, through Sept. 30, 1985, and such sums as may be authorized for any subsequent fiscal year.

Subsec. (b). Pub. L. 99-198, § 1411(d)(2), amended subsec. (b) generally. Prior to the amendment, subsec. (b) provided for the first $4,000,000 appropriated for any fiscal year to be apportioned equally among eligible institutions and any amount in excess of $4,000,000 to be apportioned by a formula involving the amounts allocated in the preceding fiscal year.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1411(d)(1) of Pub. L. 99-198 provided in part that the amendment by section 1411(d)(1) of Pub. L. 99-198, is effective Oct. 1, 1985.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 390d of this title.

§ 390d. Eligibility for payments; facility proposals

As a condition for receiving funds under section 390c of this title, each eligible institution shall submit, in such form as the Secretary may require, specific proposals for planning, acquisition, construction, repair, rehabilitation, renovation, or remodeling of buildings, laboratories, and other capital facilities including the acquisition of fixtures and equipment, including scientific instrumentation. In a State having more than one eligible institution the Secretary shall devise procedures to insure that the facility proposals of the eligible institutions in such State provide for a coordinated food and agricultural research program among eligible institutions in such State.

(As amended Pub. L. 99-198, title XIV, § 1411(e), Dec. 23, 1985, 99 Stat. 1548.)

AMENDMENTS

1985—Pub. L. 99-198 struck out "apportioned" after "funds" and ", which are to become part of such buildings" after "instrumentation" in first sentence.

§ 390e. Repealed. Pub. L. 99-198, title XIV, § 1411(f), Dec. 23, 1985, 99 Stat. 1548

Section, Pub. L. 88-74, § 6, July 22, 1963, 77 Stat. 91; Pub. L. 95-113, title XIV, § 1416(2), Sept. 29, 1977, 91 Stat. 995, related to continuing availability of unused allotments to eligible institutions for a period of five fiscal years following the fiscal year of initial availability thereof.

§ 390f. Multiple-purpose equipment and physical facilities; fund support basis

With respect to multiple-purpose equipment and physical facilities, the segment or portion thereof which is to be utilized for food and agricultural research and related programs, including forestry and veterinary medicine, shall be the basis for determination of fund support under this subchapter.

(Pub. L. 88-74, § 6, formerly § 7, July 22, 1963, 77 Stat. 91; Pub. L. 95-113, title XIV, § 1416(2), Sept. 29, 1977, 91 Stat. 995; renumbered § 6 and amended Pub. L. 99-198, title XIV, § 1411(g), (k), Dec. 23, 1985, 99 Stat. 1548.)

PRIOR PROVISIONS

A prior section 6 of Pub. L. 88-74 was classified to section 390e of this title and was repealed by section 1411(f) of Pub. L. 99-198.

AMENDMENTS

1985—Pub. L. 99-198, § 1411(g), inserted "equipment and" after "multi-purpose" and "and related programs, including forestry and veterinary medicine," after "research".

§ 390g. Repealed. Pub. L. 99-198, title XIV, § 1411(h), Dec. 23, 1985, 99 Stat. 1548

Section, Pub. L. 88-74, § 8, July 22, 1963, 77 Stat. 91; Pub. L. 95-113, title XIV, § 1416(2), Sept. 29, 1977, 91 Stat. 995, related to ascertainment of the amount of the allocation to which each institution was entitled and written notification to each such institution.

§ 390h. Fiscal accountability

(a) Chief administrative officers; fiscal officers; duties, reports

Any eligible institution that receives payments under the provisions of section 390a of this title shall have a chief administrative officer and a duly designated fiscal officer, who shall be the persons responsible for receipt of payments under the Acts referred to in section 390b(2) of this title, to whom payments can be directed by the Secretary. Such fiscal officer shall receive and account for all funds paid to such institution pursuant to the provisions of this subchapter, and shall submit a report, approved by the chief administrative officer of such institution, to the Secretary on or before the first day of December of each year. Such report shall contain a detailed statement of the amount received under the provisions of this subchapter during the preceding fiscal year, and of its disbursements on schedules prescribed by the Secretary.

(b) Diminution, loss, or misapplication of funds

If any portion of the funds received under this subchapter by the duly authorized fiscal officer of any eligible institution shall by any action or contingency be diminished, lost, or misapplied, it shall be repaid by the institution concerned, and until repaid no part of any subsequent appropriation shall be paid to such institution.

(Pub. L. 88-74, § 7, formerly § 9, July 22, 1963, 77 Stat. 91; Pub. L. 94-273, § 7(1), Apr. 21, 1976, 90 Stat. 378; Pub. L. 95-113, title XIV, § 1416(2), Sept. 29, 1977, 91 Stat. 995; renumbered § 7 and amended Pub. L. 99-198, title XIV, § 1411(i), (k), Dec. 23, 1985, 99 Stat. 1548.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, § 1411(i)(1), substituted "that receives" for "authorized to receive" and references to section "390a" and "390b(2)" for "390c" and "390c(b)" of this title, respectively.

Subsec. (b). Pub. L. 99-198, § 1411(i)(2), substituted "funds received under this subchapter" for "allotted funds received" and "shall be paid" for "shall be allocated or paid".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 390i of this title.

§ 390i. Reports to Congress

The Secretary shall make an annual report to Congress during the first regular session of each year with respect to (1) payments made under this subchapter, (2) the facilities, by institution, for which such payments were made, and (3) those eligible institutions, if any, that were prevented, because of failure to repay funds as required by section 390h(b) of this title, from receiving any grant under this subchapter.

(Pub. L. 88-74, § 8, formerly § 10, July 22, 1963, 77 Stat. 92; Pub. L. 95-113, title XIV, § 1416(2), Sept. 29, 1977, 91 Stat. 995; renumbered § 8 and amended Pub. L. 99-198, title XIV, § 1411(j), (k), Dec. 23, 1985, 99 Stat. 1548.)

PRIOR PROVISIONS

A prior section 8 of Pub. L. 88-74 was classified to section 390g of this title and was repealed by section 1411(h) of Pub. L. 99-198.

AMENDMENTS

1985—Pub. L. 99-198, § 1411(j), amended cl. (3) generally. Prior to amendment, cl. (3) read as follows: "whether any portion of the appropriation available for allotment to any of the eligible institutions has been withheld and, if so, the reasons therefor".

§ 390j. Availability of appropriated funds for administration

Three per centum of funds appropriated under this subchapter shall be available to the Secretary for administration of this subchapter.

(Pub. L. 88-74, § 9, formerly § 11, July 22, 1963, 77 Stat. 92; Pub. L. 95-113, title XIV, § 1416(2), Sept. 29, 1977, 91 Stat. 995; renumbered § 9, Pub. L. 99-198, title XIV, § 1411(k), Dec. 23, 1985, 99 Stat. 1548.)

PRIOR PROVISIONS

A prior section 9 of Pub. L. 88-74 was renumbered section 7 and is classified to section 390h of this title.

CHAPTER 17—MISCELLANEOUS MATTERS

§ 450i. Agricultural research program

[*See main edition for text of* (a)]

(b) Competitive grants

The Secretary of Agriculture is authorized to make competitive grants, for periods not to exceed five years, to State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals, for research to further the programs of the Department of Agriculture. To the greatest extent possible the Secretary shall allocate these grants to high priority research taking into consideration, when available, the determinations made by the Joint Council on Food and Agricultural Sciences and the National Agricultural Research and Extension Users Advisory Board identifying high priority research areas. For purposes of the preceding sentence, high priority research shall include—

(1) basic research aimed at the discovery of new scientific principles and techniques that may be applicable in agriculture and forestry;

(2) research, with emphasis on biotechnology, aimed at the development of new and innovative products, methods, and technologies relating to biological nitrogen fixation, photosynthesis, and other processes which will improve and increase the production of agricultural and forestry resources;

(3) basic and applied research in the fields of animal productivity and health;

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(4) basic and applied research in the fields of soil and water;

(5) basic and applied research in the field of human nutrition;

(6) research to develop new strains of crops and new promising crops, including guayule, jojoba, and others;

(7) research to reduce farm input costs through the collection of national and international data and the transfer of appropriate technology relating to sustainable agricultural systems, soil, energy, and water conservation technologies, rural and farm resource management, and the diversification of farm product processing and marketing systems; and

(8) research to develop new and alternative industrial uses for agricultural crops.

In seeking research proposals and in performing peer review evaluations of such proposals under this subsection, the Secretary shall seek the widest participation of qualified scientists in the Federal Government, all colleges and universities, State agricultural experiment stations, and the private sector. No grant may be made under this subsection for any purpose for which a grant may be made under subsection (d) of this section or for the planning, repair, rehabilitation, acquisition, or construction of a building or a facility. The research grants shall be made without regard to matching funds by the recipient or recipients of such grants. There are authorized to be appropriated, for the purpose of carrying out this subsection, $70,000,000 for each of the fiscal years ending September 30, 1986, through September 30, 1990. Four percent of the amount appropriated for each of such fiscal years to carry out this subsection may be retained by the Secretary to pay administrative costs incurred by the Secretary to carry out this subsection.

(c) Special grants

The Secretary of Agriculture is authorized to make grants, for periods not to exceed five years in duration—

[*See main edition for text of (1) and (2)*]

No grant may be made under this subsection for any purpose for which a grant may be made under subsection (d) of this section or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility. These grants shall be made without regard to matching funds. Four percent of the amount appropriated for any fiscal year to carry out this subsection may be retained by the Secretary to pay administrative costs incurred by the Secretary to carry out this subsection.

[*See main edition for text of (d) to (h)*]

(i) Applicability of other laws

The Federal Advisory Committee Act and title XVIII of the Food and Agriculture Act of 1977 (7 U.S.C. 2281 et seq.) shall not apply to a panel or board created for the purpose of reviewing applications or proposals submitted under this section.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XIV, § 1409, 99 Stat. 1546.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (i), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Food and Agriculture Act of 1977, referred to in subsec. (i), is Pub. L. 95-113, Sept. 29, 1977, 91 Stat. 913, as amended. Title XVIII of the Act is classified generally to chapter 55A (§ 2281 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 1281 of this title and Tables.

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-198, § 1409(a)(1), (2), substituted in third sentence par. "(2) research, with emphasis on biotechnology," for "(2) research" and added pars. (7) and (8), and prohibited any grant under subsec. (b) for any purpose for which a grant may be made under subsec. (d) or for the planning, repair, rehabilitation, acquisition, or construction of a building or a facility.

Pub. L. 99-198, § 1409(a)(3), in concluding provisions substituted appropriations authorization of $70,000,000 annually for fiscal years ending Sept. 30, 1986, through Sept. 30, 1990 for prior authorization of 25, 30, 35, and 40 million dollars for fiscal years ending Sept. 30, 1978, through Sept. 30, 1981, and 50 million dollars annually for fiscal years ending Sept. 30, 1982, through Sept. 30, 1985, and for any subsequent fiscal year not in excess of such sums as may be authorized by law; and authorized retention of four percent of appropriated funds for payment of administrative costs.

Subsec. (c). Pub. L. 99-198, § 1409(b)(1), prohibited any grant under subsec. (c) for any purpose for which a grant may be made under subsec. (d) or for the planning, repair, rehabilitation, acquisition, or construction of a building or a facility.

Pub. L. 99-198, § 1409(b)(2), authorized retention of four percent of appropriated funds for payment of administrative costs.

Subsec. (i). Pub. L. 99-198, § 1409(c), added subsec. (i).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1409(a)(3) of Pub. L. 99-198 provided in part that the amendment by section 1409(a)(3) of Pub. L. 99-198 is effective Oct. 1, 1985.

Section 1409(b)(2) of Pub. L. 99-198 provided in part that the amendment by section 1409(b)(2) of Pub. L. 99-198 is effective Oct. 1, 1985.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3122, 3222, 3241, 3311, 3315, 3319 of this title.

§ 450*l*. Expiration of dairy farmer indemnity program

The authority granted under sections 450j to 450*l* of this title shall expire on September 30, 1990.

(As amended Pub. L. 99-198, title I, § 152, Dec. 23, 1985, 99 Stat. 1377.)

AMENDMENTS

1985—Pub. L. 99-198 substituted "September 30, 1990" for "September 30, 1985".

CHAPTER 19—COTTON STATISTICS AND ESTIMATES

§ 471. Statistics and estimates of grades and staple length of cotton; collection and publication

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2276 of this title.

§ 473a. Cotton classification services; fees for costs of services; sales of samples; disposition of moneys

Effective for the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988, the Secretary of Agriculture shall make cotton classification services available to producers of cotton and shall provide for the collection of classification fees from participating producers, or from agents who voluntarily agree to collect and remit the fees on behalf of producers. Such fees, together with the proceeds from the sales of samples submitted under this section, shall cover as nearly as practicable the cost of the services provided under this section, including administrative and supervisory costs: *Provided*, That (1) the uniform per bale classification fee to be collected from producers, or their agents, for such classification service in any year shall not exceed the uniform fee collected in the previous year by more than the percentage increase in the Implicit Price Deflator for Gross National Product as indexed during the most recent twelve-month period for which official statistics are available, and (2) the uniform per bale classification fee shall not be increased for any year if the accumulated reserve exceeds 20 per centum of the cost of the classification program in the previous year. Special classification services provided at the request of the producer shall not be subject to the restrictions specified in clauses (1) and (2) of the preceding sentence. All samples of cotton submitted for classification under this section shall become the property of the United States, and shall be sold: *Provided*, That such cotton samples shall not be subject to the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.). Any fees collected under this section and under section 473d of this title, late payment penalties, the proceeds from the sales of samples, and interest earned from the investment of such funds shall be credited to the current appropriation account that incurs the cost of services provided under this section and section 473d of this title and shall remain available without fiscal year limitation to pay the expenses of the Secretary incident to providing such services. Such funds may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section to the extent that financing is not available from fees and the proceeds from the sales of samples.

(As amended Aug. 28, 1984, Pub. L. 98-403, § 1, 98 Stat. 1479.)

AMENDMENTS

1984—Pub. L. 98-403 substituted provisions effective for fiscal years ending Sept. 30, 1985, 1986, 1987, and 1988, requiring the Secretary to make classification service available to producers and to set and collect fees for provisions establishing similar requirements effective for fiscal years ending Sept. 30, 1982, 1983, and 1984.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENT

Section 1 of Pub. L. 98-403 provided in part that the amendment to this section by Pub. L. 98-403 is effective for the period beginning Oct. 1, 1984 and ending Sept. 30, 1988.

CHAPTER 20A—PERISHABLE AGRICULTURAL COMMODITIES

§ 499b. Unfair conduct

It shall be unlawful in or in connection with any transaction in interstate or foreign commerce—

[*See main edition for text of (1) to (3)*]

(4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold, or contracted to be bought, sold, or consigned, in such commerce by such dealer, or the purchase or sale of which in such commerce is negotiated by such broker; or to fail or refuse truly and correctly to account and make full payment promptly in respect of any transaction in any such commodity to the person with whom such transaction is had; or to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction; or to fail to maintain the trust as required under section 499e(c) of this title;

[*See main edition for text of (5) to (7)*]

(As amended May 7, 1984, Pub. L. 98-273, § 2, 98 Stat. 166.)

AMENDMENTS

1984—Par. (4). Pub. L. 98-273 inserted "or to fail to maintain the trust as required under section 499e(c) of this title;".

§ 499e. Liability to persons injured

[*See main edition for text of (a) and (b)*]

(c) Trust on commodities and sales proceeds for benefit of unpaid suppliers, sellers, or agents; preservation of trust; jurisdiction of courts

(1) It is hereby found that a burden on commerce in perishable agricultural commodities is caused by financing arrangements under which commission merchants, dealers, or brokers, who have not made payment for perishable agricultural commodities purchased, contracted to be purchased, or otherwise handled by them on behalf of another person, encumber or give lenders a security interest in, such commodities,

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or on inventories of food or other products derived from such commodities, and any receivables or proceeds from the sale of such commodities or products, and that such arrangements are contrary to the public interest. This subsection is intended to remedy such burden on commerce in perishable agricultural commodities and to protect the public interest.

(2) Perishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by such commission merchant, dealer, or broker in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers, or agents. Payment shall not be considered to have been made if the supplier, seller, or agent receives a payment instrument which is dishonored. The provisions of this subsection shall not apply to transactions between a cooperative association (as defined in section 1141j(a) of title 12,[1] and its members.

(3) The unpaid supplier, seller, or agent shall lose the benefits of such trust unless such person has given written notice of intent to preserve the benefits of the trust to the commission merchant, dealer, or broker and has filed such notice with the Secretary within thirty calendar days (i) after expiration of the time prescribed by which payment must be made, as set forth in regulations issued by the Secretary, (ii) after expiration of such other time by which payment must be made, as the parties have expressly agreed to in writing before entering into the transaction, or (iii) after the time the supplier, seller, or agent has received notice that the payment instrument promptly presented for payment has been dishonored. When the parties expressly agree to a payment time period different from that established by the Secretary, a copy of any such agreement shall be filed in the records of each party to the transaction and the terms of payment shall be disclosed on invoices, accountings, and other documents relating to the transaction.

(4) The several district courts of the United States are vested with jurisdiction specifically to entertain (i) actions by trust beneficiaries to enforce payment from the trust, and (ii) actions by the Secretary to prevent and restrain dissipation of the trust.

(As amended May 7, 1984, Pub. L. 98-273, § 1, 98 Stat. 165.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-273 added subsec. (c).

CROSS REFERENCES

Failure to maintain trust as required under subsec. (c) of this section as unlawful, see section 499b of this title.

[1] So in original. Probably should be preceded by a closing parenthesis.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 499b of this title.

§ 499n. Inspection of perishable agricultural commodities

POTATO INSPECTION

Pub. L. 99-198, title XVII, § 1704, Dec. 23, 1985, 99 Stat. 1635, provided that: "The Secretary of Agriculture shall perform random spot checks of potatoes entering through ports of entry in the northeastern United States. The Secretary of Agriculture shall report to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives the results of such spot checks."

CHAPTER 21—TOBACCO STATISTICS

§ 501. Collection and publication; facts required; deteriorated tobacco

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 2276 of this title.

CHAPTER 21A—TOBACCO INSPECTION

Sec.
511r. Imported tobacco.
(a) Inspection for grade and quality; exception.
(b) Establishment of grade and quality standards.
(c) Certification necessary for excepted tobacco; false statements.
(d) Place of inspection; fees and charges.
(e) Tobacco pesticide residues; certification, etc., requirements.
(f) End users of imported tobacco; certification, identification, etc., requirements.

§ 511r. Imported tobacco

(a) Inspection for grade and quality; exception

Notwithstanding any other provision of law—

(1) All tobacco offered for importation into the United States, except tobacco described in paragraph (2), shall be inspected, insofar as practicable, for grade and quality as tobacco marketed through a warehouse in the United States is inspected for grade and quality.

(2) Cigar tobacco and oriental tobacco (both as provided for in Schedule 1, Part 13, Tariff Schedules of the United States) offered for importation into the United States shall be accompanied by a certification by the importer, in such form as the Secretary of Agriculture may prescribe, stating the kind and type of such tobacco, and, in the case of cigar tobacco, that such tobacco will be used solely in the manufacture or production of cigars.

(b) Establishment of grade and quality standards

The Secretary of Agriculture shall establish grade and quality standards for the purposes of subsection (a)(1) of this section that are, insofar as practicable, the same as those applicable to tobacco marketed through a warehouse in the United States.

(c) Certification necessary for excepted tobacco; false statements

Any tobacco described in subsection (a)(2) of this section that is not accompanied by the certification required by that subsection shall not be permitted entry into the United States. The provisions of section 1001 of title 18 shall be applicable with respect to any certification made by an importer under such subsection.

(d) Place of inspection; fees and charges

The Secretary of Agriculture shall enforce the provisions of subsection (a) of this section at the point of entry of tobacco offered for importation into the United States. The Secretary shall by regulation fix and collect from the importer fees and charges for inspection under subsection (a)(1) and subsection (e) of this section which shall, as nearly as practicable, cover the costs of such services, including the administrative and supervisory costs customarily included by the Secretary in user fee calculations. The fees and charges, when collected, shall be credited to the current appropriation account that incurs the cost and shall be available without fiscal year limitation to pay the expenses of the Secretary incident to providing services under subsection (a)(1) of this section.

(e) Tobacco pesticide residues; certification, etc., requirements

Notwithstanding any other provision of law:

(1)(A) All flue-cured or burley tobacco offered for importation into the United S[1]ates shall be accompanied by a certification by the importer, in such form as the Secretary of Agriculture shall prescribe, that the tobacco does not contain any prohibited residue of any pesticide that has been cancelled, suspended, revoked, or otherwise prohibited under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]. Any flue-cured or burley tobacco that is not accompanied by such certification shall be inspected by the Secretary at the point of entry to determine whether that tobacco meets the pesticide residue requirements. Subsection (d) of this section shall apply with respect to fees and charges imposed to cover the costs of such inspection.

(B) Any tobacco that is determined by the Secretary not to meet the pesticide residue requirements shall not be permitted entry into the United States.

(C) The customs fraud provisions under section 1592 of title 19 and criminal fraud provisions under section 1001 of title 18 shall apply with respect to the certification requirement in subparagraph (A).

(2) The Secretary shall by regulation provide for pesticide residue standards with respect to pesticides that are cancelled, suspended, revoked, or otherwise prohibited under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], that shall apply to flue-cured and burley tobacco, whether domestically produced or imported.

(3) The Secretary, to such extent and at such times as the Secretary determines appropriate, shall sample and test flue-cured and burley tobacco offered for importation or for sale in the United States to determine whether it conforms with the pesticide residue requirements. The Secretary shall by regulation impose fees and charges for such inspections.

(4) If the Secretary determines, as a result of tests conducted under paragraph (3), that certain flue-cured or burley tobacco offered for importation does not meet the requirements of this subsection, then such tobacco shall not be permitted entry into the United States.

(5)(A) Subject to subparagraph (B), if the Secretary determines that domestically produced Flue-cured [2] or Burley [2] tobacco does not meet the requirements of this section, such tobacco may not be moved in commerce among the States and shall be destroyed by the Secretary.

(B) This paragraph shall apply only to tobacco produced after December 23, 1985, that receives price support under the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.) or the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.).

(f) End users of imported tobacco; certification, identification, etc., requirements

(1) The certification required under subsection (e)(1) of this section shall also include the identification of any and all end users of such tobacco of which the importer has knowledge. Any flue cured [3] or burley tobacco permitted entry into the United States must be accompanied by a written identification of any and all end users of such tobacco. In cases in which the importer has no knowledge of the identity of an end user, the importer shall identify any and all purchasers to whom the importer expects to transfer such imported tobacco. The importer shall file with the Department of Agriculture an amended statement if, at any time after the time of entry of such tobacco imports, the importer has knowledge of any additional purchaser or end user. In those cases in which the importer has not identified all end users of such imported tobacco, the Secretary of Agriculture shall take all steps available to ascertain the identity of any and all such end users, including requesting such information from purchasers of such imported tobacco. Domestic purchasers of imported tobacco shall be required to supply any relevant information to the Department of Agriculture upon demand under this subsection.

(2) The Secretary shall provide to the Senate Committee on Agriculture, Nutrition, and Forestry, and the House Committee on Agriculture, on or before April 1, 1986, a report on the implementation of this authority to identify each end user and purchaser of imported tobacco. Such report shall identify the end users and purchasers of imported tobacco and the quantity, in pounds, bought by such end user or purchaser, as well as all steps taken by the Department of Agriculture to ascertain such identities. The Secretary shall provide an additional

[1] So in original. Probably should not be capitalized.
[2] So in original. Probably should be "flue-cured".

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report, beginning November 15, 1986, and annual reports thereafter, on the implementation of this authority.

(3) As used in this subsection, the term "end user of imported tobacco" means—

(A) a domestic manufacturer of cigarettes or other tobacco products;

(B) an entity that mixes, blends, processes, alters in any manner, or stores, imported tobacco for export; and

(C) any other individual that the Secretary may identify as making use of imported tobacco for the production of tobacco products.

(Pub. L. 98-180, title II, § 213, Nov. 29, 1983, 97 Stat. 1149; Pub. L. 99-198, title XI, §§ 1161, 1166, Dec. 23, 1985, 99 Stat. 1498, 1501.)

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in subsec. (a)(2), are not set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of Title 19, Customs Duties.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (e)(1)(A), (2), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (section 136 et seq.) of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 136 of this title and Tables.

The Agricultural Adjustment Act of 1938, referred to in subsec. (e)(5)(B), is act Feb. 16, 1938, ch. 30, 52 Stat. 31, as amended, which is classified principally to chapter 35 (§ 1281 et seq.) of this title. For complete classification of this Act to the Code, see section 1281 of this title and Tables.

The Agricultural Act of 1949, referred to in subsec. (e)(5)(B), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§ 1421 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

CODIFICATION

Section was enacted as part of the Tobacco Adjustment Act of 1983, and not as part of The Tobacco Inspection Act which comprises this chapter.

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-198, § 1161(b), inserted "and subsection (e)" after "subsection (a)(1)" in second sentence.

Subsec. (e). Pub. L. 99-198, § 1161(a), added subsec. (e).

Subsec. (f). Pub. L. 99-198, § 1166, added subsec. (f).

CHAPTER 26—AGRICULTURAL ADJUSTMENT

SUBCHAPTER III—COMMODITY BENEFITS

Sec.
625. Review of Burley tobacco imports by Secretary of Agriculture; price-support levels; excessive stocks.

SUBCHAPTER I—DECLARATION OF CONDITIONS AND POLICY

§ 602. Declaration of policy; establishment of price basing period; marketing standards; orderly supply flow; circumstances for continued regulation

It is declared to be the policy of Congress—

[*See main edition for text of (1) and (2)*]

(3) Through the exercise of the powers conferred upon the Secretary of Agriculture under this chapter, to establish and maintain such production research, marketing research, and development projects provided in section 608c(6)(I) of this title, such container and pack requirements provided in section 608c(6)(H) of this title [1] such minimum standards of quality and maturity and such grading and inspection requirements for agricultural commodities enumerated in section 608c (2) of this title, other than milk and its products, in interstate commerce as will effectuate such orderly marketing of such agricultural commodities as will be in the public interest.

[*See main edition for text of (4) and (5); credits*]

CODIFICATION

Par. (3) is set out in this supplement to correct a typographical error appearing in the main edition.

SUBCHAPTER II—COTTON OPTION CONTRACTS

§ 604. Borrowing money; expenditures; authority of Secretary

[*See main edition for text of (a)*]

(b) The Secretary of the Treasury is authorized to advance, in his discretion, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000, to the Secretary of Agriculture, for paying off any debt or debts which may have been or may be incurred by the Secretary of Agriculture and discharging any lien or liens which may have arisen or may arise pursuant to sections 603, 604, and 607 of this title, for protecting title to any cotton which may have been or may be acquired by the Secretary of Agriculture under authority of said sections, and for paying any expenses (including, but not limited to, warehouse charges, insurance, salaries, interest, costs, and commissions) incident to carrying, handling, insuring, and marketing of said cotton and for the purposes described in subsection (e) of this section. This sum shall be available until the cotton acquired by the Secretary of Agriculture under authority of this chapter including cotton futures, shall have been finally marketed by any agency which may have been or may be established by the Secretary of Agriculture for the handling, carrying, insuring, or marketing of any cotton acquired by the Secretary of Agriculture.

[*See main edition for text of (c) to (f); credits*]

CODIFICATION

Subsec. (b) is set out in this supplement to correct a typographical error appearing in the main edition.

SUBCHAPTER III—COMMODITY BENEFITS

§ 608c. Orders regulating handling of commodity

[*See main edition for text of (1)*]

[1] So in original. Probably should be followed by a comma.

(2) Commodities to which applicable; single commodities and separate agricultural commodities

Orders issued pursuant to this section shall be applicable only to (A) the following agricultural commodities and the products thereof (except canned or frozen pears, grapefruit, cherries, apples, or cranberries, the products of naval stores, and the products of honeybees), or to any regional, or market classification of any such commodity or product: Milk, fruits (including filberts, almonds, pecans, and walnuts but not including apples, other than apples produced in the States of Washington, Oregon, Idaho, New York, Michigan, Maryland, New Jersey, Indiana, California, Maine, Vermont, New Hampshire, Rhode Island, Massachusetts, Connecticut, Colorado, Utah, New Mexico, Illinois, and Ohio, and not including fruits for canning or freezing other than pears, olives, grapefruit, cherries, cranberries, and apples produced in the States named above except Washington, Oregon, and Idaho), tobacco, vegetables (not including vegetables, other than asparagus, for canning or freezing and not including potatoes for canning, freezing, or other processing), hops, honeybees, and naval stores as included in the Naval Stores Act [7 U.S.C. 91 et seq.] and standards established thereunder (including refined or partially refined oleoresin): *Provided*, That no order issued pursuant to this section shall be effective as to any grapefruit for canning or freezing unless the Secretary of Agriculture determines, in addition to other findings and determinations required by this chapter, that the issuance of such order is approved or favored by the processors who, during a representative period determined by the Secretary, have been engaged in canning or freezing such commodity for market and have canned or frozen for market more than 50 per centum of the total volume of such commodity canned or frozen for market during such representative period; and (B) any agricultural commodity (except honey, cotton, rice, wheat, corn, grain sorghums, oats, barley, rye, sugarcane, sugarbeets, wool, mohair, livestock, soybeans, cottonseed, flaxseed, poultry (but not excepting turkeys and not excepting poultry which produce commercial eggs), fruits and vegetables for canning or freezing, including potatoes for canning, freezing, or other processing [1] and apples), or any regional or market classification thereof, not subject to orders under (A) of this subdivision, but not the products (including canned or frozen commodities or products) thereof. No order issued pursuant to this section shall be effective as to cherries, apples, or cranberries for canning or freezing unless the Secretary of Agriculture determines, in addition to other required findings and determinations, that the issuance of such order is approved or favored by processors who, during a representative period determined by the Secretary, have engaged in canning or freezing such commodity for market and have frozen or canned more than 50 per centum of the total volume of the commodity to be regulated which was canned or frozen within the production area, or marketed within the marketing area, defined in such order, during such representative period. No order issued pursuant to this section shall be applicable to peanuts produced in more than one of the following production areas: the Virginia-Carolina production area, the Southeast production area, and the Southwest production area. If the Secretary determines that the declared policy of this chapter will be better achieved thereby (i) the commodities of the same general class and used wholly or in part for the same purposes may be combined and treated as a single commodity and (ii) the portion of an agricultural commodity devoted to or marketed for a particular use or combination of uses, may be treated as a separate agricultural commodity. All agricultural commodities and products covered hereby shall be deemed specified herein for the purposes of subsections (6) and (7) of this section.

[*See main edition for text of (3) and (4)*]

(5) Milk and its products; terms and conditions of orders

In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) of this section) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers. Throughout the 2-year period beginning on the effective date of this sentence (and subsequent to such 2-year period unless modified by amendment to the order involved), the minimum aggregate amount of the adjustments, under clauses (1) and (2) of the preceding sentence, to prices for milk of the highest use classification under orders that are in effect under this section on December 23, 1985, shall be as follows:

Marketing Area Subject to Order	Minimum Aggregate Dollar Amount of Such Adjustments Per Hundredweight of Milk Having 3.5 Percent Milkfat
New England	$3.24
New York-New Jersey	3.14
Middle Atlantic	3.03
Georgia	3.08
Alabama-West Florida	3.08
Upper Florida	3.58
Tampa Bay	3.88
Southeastern Florida	4.18
Michigan Upper Peninsula	1.35
Southern Michigan	1.75
Eastern Ohio-Western Pennsylvania	1.95
Ohio Valley	2.04

[1] So in original. Probably should be followed by a comma.

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Indiana	2.00
Chicago Regional	1.40
Central Illinois	1.61
Southern Illinois	1.92
Louisville-Lexington-Evansville	2.11
Upper Midwest	1.20
Eastern South Dakota	1.50
Black Hills, South Dakota	2.05
Iowa	1.55
Nebraska-Western Iowa	1.75
Greater Kansas City	1.92
Tennessee Valley	2.77
Nashville, Tennessee	2.52
Paducah, Kentucky	2.39
Memphis, Tennessee	2.77
Central Arkansas	2.77
Fort Smith, Arkansas	2.77
Southwest Plains	2.77
Texas Panhandle	2.49
Lubbock-Plainview, Texas	2.49
Texas	3.28
Greater Louisiana	3.28
New Orleans-Mississippi	3.85
Eastern Colorado	2.73
Western Colorado	2.00
Southwestern Idaho-Eastern Oregon	1.50
Great Basin	1.90
Lake Mead	1.60
Central Arizona	2.52
Rio Grande Valley	2.35
Puget Sound-Inland	1.85
Oregon-Washington	1.95

Effective at the beginning of such two-year period, the minimum prices for milk of the highest use classification shall be adjusted for the locations at which delivery of such milk is made to such handlers.

[*See main edition for text of* (*B*) *to* (*I*)]

(J) Providing for the payment, from the total sums payable by all handlers for milk (irrespective of the use classification of such milk) and before computing uniform prices under paragraph (A) and making adjustments in payments under paragraph (C), to handlers that are cooperative marketing associations described in paragraph (F) and to handlers with respect to which adjustments in payments are made under paragraph (C), for services of marketwide benefit, including but not limited to—

(i) providing facilities to furnish additional supplies of milk needed by handlers and to handle and dispose of milk supplies in excess of quantities needed by handlers;

(ii) handling on specific days quantities of milk that exceed the quantities needed by handlers; and

(iii) transporting milk from one location to another for the purpose of fulfilling requirements for milk of a higher use classification or for providing a market outlet for milk of any use classification.

(6) Other commodities; terms and conditions of orders

In the case of the agricultural commodities and the products thereof, other than milk and its products, specified in subsection (2) of this section orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) of this section), no others:

[*See main edition for text of* (*A*) *to* (*H*)]

(I) Establishing or providing for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of any such commodity or product, the expense of such projects to be paid from funds collected pursuant to the marketing order: *Provided,* That with respect to orders applicable to almonds, filberts (otherwise known as hazelnuts), California-grown peaches, cherries, papayas, carrots, citrus fruits, onions, Tokay grapes, pears, dates, plums, nectarines, celery, sweet corn, limes, olives, pecans, eggs, avocados, apples, raisins, walnuts, or tomatoes [1] such projects may provide for any form of marketing promotion including paid advertising and with respect to almonds, filberts (otherwise known as hazelnuts), raisins, walnuts, olives, and Florida Indian River grapefruit may provide for crediting the pro rata expense assessment obligations of a handler with all or any portion of his direct expenditures for such marketing promotion including paid advertising as may be authorized by the order and when the handling of any commodity for canning or freezing is regulated, then any such projects may also deal with the commodity or its products in canned or frozen form: *Provided further,* That the inclusion in a Federal marketing order of provisions for research and marketing promotion, including paid advertising, shall not be deemed to preclude, preempt or supersede any such provisions in any State program covering the same commodity.

[*See main edition for text of* (*J*); (*7*) *to* (*13*)]

(14) Violation of order; penalty

Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than $50 or more than $5,000 for each such violation, and each day during which such violation continues shall be deemed a separate violation: *Provided,* That if the court finds that a petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15) of this section.

[*See main edition for text of* (*15*)]

(16) Termination of orders and marketing agreements

(A)(i) Except as provided in clause (ii), the Secretary of Agriculture shall, whenever he finds that any order issued under this section,

[1] So in original. Probably should be followed by a comma.

or any provision thereof, obstructs or does not tend to effectuate the declared policy of this chapter, terminate or suspend the operation of such order or such provision thereof.

(ii) The Secretary may not terminate any order issued under this section for a commodity for which there is no Federal program established to support the price of such commodity unless the Secretary gives notice of, and a statement of the reasons relied upon by the Secretary for, the proposed termination of such order to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives not later than 60 days before the date such order will be terminated.

[*See main edition for text of (B)*]

(C) Except as otherwise provided in this subsection with respect to the termination of an order issued under this section, the termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within the meaning of this section.

[*See main edition for text of (17) to (19)*]

(As amended Nov. 29, 1983, Pub. L. 98-171, § 1, 97 Stat. 1117; Nov. 29, 1983, Pub. L. 98-180, title III, § 304, 97 Stat. 1151; Dec. 23, 1985, Pub. L. 99-198, title I, §§ 131(a), 133, title XVI, §§ 1661(a), 1662(a), 99 Stat. 1372, 1373, 1630, 1631.)

REFERENCES IN TEXT

For the effective date of this sentence, referred to in subsec. (5)(A), see Effective Date of 1985 Amendment note below.

CODIFICATION

Subsec. (5)(A) is set out in this supplement to correct typographical error appearing in the main edition.

AMENDMENTS

1985—Subsec. (5)(A). Pub. L. 99-198, § 131(a), added provisions, with accompanying table, establishing the minimum aggregate amounts of the adjustments under cls. (1) and (2) to prices for milk of the highest use classification under orders in effect on Dec. 23, 1985, and requiring that such prices be adjusted for the locations at which delivery of such milk is made to such handlers.

Subsec. (5)(J). Pub. L. 99-198, § 133, added par. (J).

Subsec. (14). Pub. L. 99-198, § 1661(a), substituted "$5,000" for "$500".

Subsec. (16)(A)(i). Pub. L. 99-198, § 1662(a)(1)(A), designated existing provisions of par. (A) as cl. (i) thereof and in cl. (i) as so designated substituted "Except as provided in clause (ii), the Secretary" for "The Secretary".

Subsec. (16)(A)(ii). Pub. L. 99-198, § 1662(a)(1)(B), added cl. (ii).

Subsec. (16)(C). Pub. L. 99-198, § 1662(a)(2), substituted "Except as otherwise provided in this subsection with respect to the termination of an order issued under this section, the termination" for "The termination".

1983—Subsec. (2). Pub. L. 98-180, § 304(1), substituted "poultry (but not excepting turkeys and not excepting poultry which produce commercial eggs)," for "poultry (but not excepting turkeys), eggs (but not excepting turkey hatching eggs),".

Subsec. (6)(I). Pub. L. 98-180, § 304(2), inserted "eggs," after "pecans,".

Pub. L. 98-171 inserted "filberts (otherwise known as hazelnuts)," after "almonds," in two places.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 131(b) of Pub. L. 99-198 provided that: "The amendment made by this section [amending subsec. (5)(A) of this section] shall take effect on the first day of the first month beginning more than 120 days after the date of the enactment of this Act [Dec. 23, 1985]."

Section 133 of Pub. L. 99-198 provided in part that the amendment by section 133 of Pub. L. 99-198 is effective Jan. 1, 1986.

Section 1661(b) of Pub. L. 99-198 provided that: "The amendment made by subsection (a) [amending subsec. (14) of this section] shall not apply with respect to any violation described in section 8c(14) of the Agricultural Adjustment Act [subsec. (14) of this section] occurring before the date of the enactment of this Act [Dec. 23, 1985]."

EFFECTIVE AND TERMINATION DATES OF 1981 AMENDMENT

Section 101(b) of Pub. L. 97-98, as amended by Pub. L. 99-198, title I, § 132, Dec. 23, 1985, 99 Stat. 1373, provided that: "The provisions of subsection (a) [amending subsecs. (5)(B), (17), and (18) of this section] shall become effective January 1, 1982, and shall terminate December 31, 1990."

TERMINATION OF MARKETING ORDERS

Section 1662(b) of Pub. L. 99-198 provided that: "The Secretary of Agriculture may not terminate any marketing order under section 8c(16) of the of the [so in original] Agricultural Adjustment Act (7 U.S.C. 608c(16)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, if such termination becomes effective before January 16, 1986."

RETENTION OF STATUS OF PRODUCER HANDLERS OF MILK AT PRE-1985 AMENDMENT STATUS

Section 134 of Pub. L. 99-198 provided that: "The legal status of producer handlers of milk under the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, shall be the same after the amendments made by this title [probably means this subtitle, subtitle C (§§ 131-134) of title I of Pub. L. 99-198, amending subsec. (5) of this section and provisions set out as a note above] take effect as it was before the effective date of such amendments."

§ 608d. Books and records; disclosure of information; notification of Congressional committees

[*See main edition for text of (1)*]

(2) Notwithstanding the provisions of section 607 of this title, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section, as well as information for marketing order programs that is categorized as trade secrets and commercial or financial information exempt under section 552(b)(4) of title 5 from disclosure under section 552 of such title, shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Notwithstanding the

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preceding sentence, any such information relating to a marketing agreement or order applicable to milk may be released upon the authorization of any regulated milk handler to whom such information pertains. The Secretary shall notify the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives not later than 10 legislative days before the contemplated release under law, of the names and addresses of producers participating in such marketing agreements and orders, and shall include in such notice a statement of reasons relied upon by the Secretary in making the determination to release such names and addresses. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a number of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XVI, § 1663, 99 Stat. 1631.)

AMENDMENTS

1985—Subsec. (2). Pub. L. 99-198, § 1663(1), extended the confidentiality requirement to include information for marketing order programs that is categorized as trade secrets and commercial or financial information that is exempt from disclosure under section 552 of title 5.

Pub. L. 99-198, § 1663(2), added provisions directing that confidential information relating to a marketing agreement or order applicable to milk may be released upon the authorization of any regulated milk handler to whom such information pertains and that the Secretary notify the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives not later than 10 legislative days before the contemplated release under law, of the names and addresses of producers participating in such marketing agreements and orders, and include in such notice a statement of reasons relied upon by the Secretary in making the determination to release such names and addresses.

§ 609. Processing tax; methods of computation; rate; what constitutes processing; publicity as to tax to avoid profiteering

[*See main edition for text of* (a) *to* (c)]

(d) As used in this chapter—

(1) In case of wheat, rye, barley and corn, the term "processing" means the milling or other processing (except cleaning and drying) of wheat, rye, barley or corn for market, including custom milling for toll as well as commercial milling, but shall not include the grinding or cracking thereof not in the form of flour for feed purposes only.

[*See main edition for text of* (2) *to* (8); (e) *to* (g); *credits*]

CODIFICATION

Subsec. (d)(1) is set out in this supplement to correct a typographical error appearing in the main edition.

§ 611. "Basic agricultural commodity" defined; exclusion of commodities

As used in this chapter, the term "basic agricultural commodity" means wheat, rye, flax, barley, cotton, field corn, grain sorghums, hogs, cattle, rice, potatoes, tobacco, sugar beets and sugarcane, peanuts, and milk and its products, and any regional or market classification, type, or grade thereof; but the Secretary of Agriculture shall exclude from the operation of the provisions of this chapter, during any period, any such commodity or classification, type, or grade thereof if he finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that the conditions of production, marketing, and consumption are such that during such period this chapter can not be effectively administered to the end of effectuating the declared policy with respect to such commodity or classification, type, or grade thereof. As used in this chapter, the term "potatoes" means all varieties of potatoes included in the species Solanum tuberosum.

(May 12, 1933, ch. 25, title I, § 11, 48 Stat. 38; Apr. 7, 1934, ch. 103, §§ 1, 3(b), 4, 5, 48 Stat. 528; May 9, 1934, ch. 263, § 1, 48 Stat. 670; Aug. 24, 1935, ch. 641, § 61, 49 Stat. 782.)

CODIFICATION

Section is set out in this supplement to correct error appearing in the main edition.

§ 612c. Appropriation to encourage exportation and domestic consumption of agricultural products

There is appropriated for each fiscal year beginning with the fiscal year ending June 30, 1936 an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws during the period January 1 to December 31, both inclusive, preceding the beginning of each such fiscal year. Such sums shall be maintained in a separate fund and shall be used by the Secretary of Agriculture only to (1) encourage the exportation of agricultural commodities and products thereof by the payment of benefits in connection with the exportation thereof or of indemnities for losses incurred in connection with such exportation or by payments to producers in connection with the production of that part of any agricultural commodity required for domestic consumption; (2) encourage the domestic consumption of such commodities or products by diverting them, by the payment of benefits or indemnities or by other means, from the normal channels of trade and commerce or by increasing their utilization through benefits, indemnities, donations or by other means, among persons in low income groups as determined by the Secretary of Agriculture; and (3) reestablish farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption. Determinations by the Secretary as to what constitutes diversion and what constitutes

normal channels of trade and commerce and what constitutes normal production for domestic consumption shall be final. The sums appropriated under this section shall be expended for such one or more of the above-specified purposes, and at such times, in such manner, and in such amounts as the Secretary of Agriculture finds will effectuate substantial accomplishment of any one or more of the purposes of this section. Notwithstanding any other provision of this section, the amount that may be devoted, during any fiscal year after June 30, 1939, to any one agricultural commodity or the products thereof in such fiscal year, shall not exceed 25 per centum of the funds available under this section for such fiscal year. The sums appropriated under this section shall be devoted principally to perishable nonbasic agricultural commodities (other than those receiving price support under section 1446 of this title) and their products. The sums appropriated under this section shall, notwithstanding the provisions of any other law, continue to remain available for the purposes of this section until expended; but any excess of the amount remaining unexpended at the end of any fiscal year over $300,000,000 shall, in the same manner as though it had been appropriated for the service of such fiscal year, be subject to the provisions of sections 712 and 713 of title 31. A public or private nonprofit organization that receives agricultural commodities or the products thereof under clause (2) of the second sentence may transfer such commodities or products to another public or private nonprofit organization that agrees to use such commodities or products to provide, without cost or waste, nutrition assistance to individuals in low-income groups.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XV, § 1561, 99 Stat. 1589.)

AMENDMENTS

1985—Pub. L. 99-198 added sentence authorizing a public or private nonprofit organization that receives agricultural commodities or the products thereof under clause (2) of the second sentence to transfer such commodities or products to another public or private nonprofit organization that agrees to use such commodities or products to provide, without cost or waste, nutrition assistance to individuals in low-income groups.

CONTINUATION OF DISTRIBUTION OF AGRICULTURAL COMMODITIES TO LOW-INCOME ELDERLY AT EXISTING LEVELS

Section 1562(d) of Pub. L. 99-198 provided that: "Notwithstanding any other provision of law, in implementing the commodity supplemental food program under section 4 of the Agriculture and Consumer Protection Act of 1973 [Pub. L. 93-86, set out as a note below], the Secretary of Agriculture shall allow agencies distributing agricultural commodities to low-income elderly people under such programs on the date of enactment of this Act [Dec. 23, 1985] to continue such distribution at levels no lower than existing caseloads."

REPORT TO CONGRESS ON ACTIVITIES OF PROGRAM CONDUCTED UNDER TEMPORARY EMERGENCY FOOD ASSISTANCE ACT OF 1983

Section 1571 of Pub. L. 99-198 provided that: "Not later than April 1, 1987, the Secretary of Agriculture shall report to Congress on the activities of the program conducted under the Temporary Emergency Food Assistance Act of 1983 [title II of Pub. L. 98-8, set out as a note below]. Such report shall include information on—

"(1) the volume and types of commodities distributed under the program;

"(2) the types of State and local agencies receiving commodities for distribution under the program;

"(3) the populations served under the program and their characteristics;

"(4) the Federal, State, and local costs of commodity distribution operations under the program (including transportation, storage, refrigeration, handling, distribution, and administrative costs); and

"(5) the amount of Federal funds provided to cover State and local costs under the program."

TEMPORARY EMERGENCY FOOD ASSISTANCE ACT OF 1983; EXTENSION OF CERTAIN PROVISIONS

Pub. L. 99-88, title I, § 100, Aug. 15, 1985, 99 Stat. 297, provided that: "Notwithstanding section 212 of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) [set out as a note below], section 203 of such Act [set out as a note below], shall remain in effect through June 30, 1986."

TEMPORARY EMERGENCY FOOD ASSISTANCE ACT OF 1983

Pub. L. 98-8, title II, Mar. 24, 1983, 97 Stat. 35, as amended Pub. L. 98-92, § 2, Sept. 2, 1983, 97 Stat. 608; Pub. L. 99-198, title XV, §§ 1562(e)(1), 1563-1566, 1567(c), 1568-1570, Dec. 23, 1985, 99 Stat. 1590-1594, provided that:

"SEC. 201. This title may be cited as the 'Temporary Emergency Food Assistance Act of 1983', and is hereinafter in this title referred to as 'this Act'.

"ELIGIBLE RECIPIENT AGENCIES

"SEC. 201A. As used in this Act, the term 'eligible recipient agencies', means public or nonprofit organizations that administer—

"(1) activities and projects providing nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons (including the activities and projects of charitable institutions, food banks, hunger centers, soup kitchens, and similar public or private nonprofit eligible recipient agencies) hereinafter in this title referred to as 'emergency feeding organizations';

"(2) school lunch programs, summer camps for children, and other child nutrition programs providing food service;

"(3) nutrition projects operating under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.], including congregate nutrition sites and providers of home-delivered meals;

"(4) activities and projects that are supported under section 4 of the Agriculture and Consumer Protection Act of 1973 [Pub. L. 93-86, set out as a note below];

"(5) activities of charitable institutions, including hospitals and retirement homes, to the extent that needy persons are served; or

"(6) disaster relief programs;

and that have been designated by the appropriate State agency, or by the Secretary, and approved by the Secretary for participation in the program established under this Act.

"AVAILABILITY OF CCC COMMODITIES

"SEC. 202. [(a)] Notwithstanding any other provision of law, in order to complement the domestic nutrition programs, make maximum use of the Nation's agricultural abundance, and expand and improvde the domestic distribution of price-supported commodities, commodities acquired by the Commodity Credit Corporation that the Secretary of Agriculture (hereinafter re-

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ferred to as the 'Secretary') determines, in his discretion, are in excess of quantities needed to—

"(1) carry out other domestic donation programs,

"(2) meet other domestic obligations (including quantities needed to carry out a payment-in-kind acreage diversion program),

"(3) meet international market development and food aid commitments, and

"(4) carry out the farm price and income stabilization purposes of the Agricultural Adjustment Act of 1938 [7 U.S.C. 1281 et seq.], the Agricultural Act of 1949 [7 U.S.C. 1421 et seq.], and the Commodity Credit Corporation Charter Act [15 U.S.C. 714 et seq.],

shall be made available by the Secretary, without charge or credit for such commodities, for use by eligible recipient agencies for food assistance.

"[(b) Repealed. Pub. L. 99-198, title XV, § 1565(a)(2), Dec. 23, 1985, 99 Stat. 1591]

"(c) In addition to any commodities described in subsection (a), in carrying out this Act, the Secretary may use agricultural commodities and the products thereof made available under clause (2) of the second sentence of section 32 of the Act entitled 'An Act to amend the Agricultural Adjustment Act, and for other purposes', approved August 24, 1935 (7 U.S.C. 612c).

"(d) Commodities made available under this Act shall include, but not be limited to, dairy products, wheat or the products thereof, rice, honey, and cornmeal.

"(e) Effective April 1, 1986, the Secretary shall submit semiannually to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the types and amounts of commodities made available for distribution under this Act.

"PROCESSING AGREEMENTS

"[SEC. 203. Repealed. Pub. L. 99-198, title XV, § 1567(c), Dec. 23, 1985, 99 Stat. 1592]

"INITIAL PROCESSING COSTS

"SEC. 203A. The Secretary may use funds of the Commodity Credit Corporation to pay costs of initial processing and packaging of commodities to be distributed under the program established under this Act into forms, and in quantities, suitable, as determined by the Secretary, for use in individual households when such commodities are to be consumed by individual households or for institutional use, as applicable. The Secretary may pay such costs in the form of Corporation-owned commodities equal in value to such costs. The Secretary shall ensure that any such payments in kind will not displace commercial sales of such commodities.

"FEDERAL AND STATE RESPONSIBILITIES

"SEC. 203B. (a) The Secretary shall, as expeditiously as possible, provide the commodities made available under this Act in such quantities as can be used without waste to State agencies designated by the Governor or other appropriate State official for distribution to eligible recipient agencies, except that the Secretary may provide such commodities directly to eligible recipient agencies and to private companies that process such commodities for eligible recipient agencies under sections 203 and 203A of this Act.

"(b) State agencies receiving commodities under this Act shall, as expeditiously as possible, distribute such commodities, in the quantities requested (to the extent practicable), to eligible recipient agencies within their respective States. However, if a State agency cannot meet all requests for a particular commodity under this Act, the State agency shall give priority in the distribution of such commodity to eligible recipient agencies providing nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons. Each State agency shall encourage distribution of such commodities in rural areas.

"(c) Each State agency receiving commodities for individual household use under this Act shall distribute such commodities to eligible recipient agencies in the State that serve needy persons, and shall, with the approval of the Secretary, determine those persons in the State that shall qualify as needy persons eligible for such commodities.

"(d) Each State agency receiving commodities under this title may—

"(1) enter into cooperative agreements with State agencies of other States for joint provision of such commodities to an emergency feeding organization that serves needy persons in a single geographical area part of which is situated in each of such States; or

"(2) transfer such commodities to any such emergency feeding organization in the other State under such agreement.

"ASSURANCES; ANTICIPATED USE

"SEC. 203C. (a) The Secretary shall take such precautions as the Secretary deems necessary to assure that any eligible recipient agency receiving commodities under this act will provide such commodities to persons served by the eligible recipient agency and will not diminish its normal expenditures for food by reason of the receipt of such commodities. The Secretary shall also take such precautions as the Secretary deems necessary to assure that commodities made available under this Act will not displace commercial sales of such commodities or the products thereof. The Secretary shall not make commodities available for donation in any quantity or manner that the Secretary, in the Secretary's discretion, determines may, substitute for the same or any other agricultural produce that would otherwise be purchased in the market. The Secretary shall submit to Congress each year a report as to whether and to what extent such displacements or substitutions are occurring.

"(b) Commodities provided under this Act shall be distributed only in quantities that can be consumed without waste. No eligible recipient agency may receive commodities under this Act in excess of anticipated use, based on inventory records and controls, or in excess of its ability to accept and store such commodities.

"AUTHORIZATION AND APPROPRIATIONS

"SEC. 204. (a) There is appropriated for the period ending September 30, 1983, $50,000,000 for the Secretary to make available to the States for storage and distribution costs, of which not less than $10,000,000 shall be made available for paying the actual costs incurred by charitable institutions, food banks, hunger centers, soup kitchens, and similar nonprofit organizations providing nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons, provided that in no case shall such payments exceed five per centum of the value of commodities distributed by any such agency.

"(b) There are hereby authorized to be appropriated $50,000,000 for each of the fiscal years ending September 30, 1984, and September 30, 1985, for the Secretary to make available to the States for storage and distribution costs of which not less than twenty per centum of the amount appropriated under this subsection in any fiscal year shall be made available for paying or providing advance payments to cover the actual costs incurred by charitable institutions, food banks, hunger centers, soup kitchens, and similar nonprofit eligible recipient agencies providing nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons: *Provided*, That in no case shall such payments exceed five per centum of

the value of commodities distributed by any such agency.

"(c)(1) There are authorized to be appropriated $50,000,000 for each of the fiscal years ending September 30, 1986, and September 30, 1987, for the Secretary to make available to the States for State and local payments for costs associated with the distribution of commodities by emergency feeding organizations under this title. Funds appropriated under this paragraph for any fiscal year shall be allocated to the States on an advance basis, dividing such funds among the States in the same proportions as the commodities distributed under this title for such fiscal year are divided among the States. If a State agency is unable to use all of the funds so allocated to it, the Secretary shall reallocate such unused funds among the other States.

"(2) Each State shall make available to emergency feeding organizations in the State not less than 20 per centum of the funds provided as authorized in paragraph (1) that it has been allocated for a fiscal year, as necessary to pay for, or provide advance payments to cover, the direct expenses of the emergency feeding organizations for distributing commodities to needy persons, but only to the extent such expenses are actually so incurred by such organizations. As used in this paragraph, the term 'direct expenses' includes costs of transporting, storing, handling, and distributing commodities incurred after they are received by the organization; costs associated with determinations of eligibility, verification, and documentation; costs involved in publishing announcements of times and locations of distribution; and costs of recordkeeping, auditing, and other administrative procedures required for participation in the program under this title. If a State makes a payment, using State funds, to cover direct expenses of emergency feeding organizations, the amount of such payment shall be counted toward the amount a State must make available for direct expenses of emergency feeding organizations under this paragraph.

"(3) States to which funds are allocated for a fiscal year under this subsection shall submit financial reports to the Secretary, on a regular basis, as to the use of such funds. No such funds may be used by States or emergency feeding organizations for costs other than those involved in covering the expenses related to the distribution of commodities by emergency feeding organizations.

"(4)(A) Except as provided in subparagraph (B), effective January 1, 1987, to be eligible to receive funds under this subsection, a State shall provide in cash or in kind (according to procedures approved by the Secretary for certifying these in-kind contributions) from non-Federal sources a contribution equal to the difference between—

"(i) the amount of such funds so received; and

"(ii) any part of the amount allocated to the State and paid by the State—

"(I) to emergency feeding organizations; or

"(II) for the direct expenses of such organizations;

for use in carrying out this title.

"(B)(i) Except as provided in clause (ii), subparagraph (A) shall apply to States beginning on January 1, 1987.

"(ii) If the legislature of a State does not convene in regular session before January 1, 1987, paragraph (1) shall apply to such State beginning on October 1, 1987.

"(C) Funds allocated to a State under this section may, upon State request, be allocated before States satisfy the matching requirement specified in subparagraph (A), based on the estimated contribution required. The Secretary shall periodically reconcile estimated and actual contributions and adjust allocations to the State to correct for overpayments and underpayments.

"(5) States may not charge for commodities made available to emergency feeding organizations, and may not pass on to such organizations the cost of any matching requirements, under this Act.

"(d) The value of the commodities made available under this Act and the funds of the Corporation used to pay the costs of initial processing, packaging (including forms suitable for home use), and delivering commodities to the States shall not be charged against appropriations made or authorized under this section.

"RELATIONSHIPS TO OTHER PROGRAMS

"SEC. 205. (a) Section 4(b) of the Food Stamp Act of 1977 [7 U.S.C. 2013(b)] shall not apply with respect to the distribution of commodities under this Act.

"(b) Except as otherwise provided in section 203A of this Act, none of the commodities distributed under this Act shall be sold or otherwise disposed of in commercial channels in any form.

"COMMODITIES NOT INCOME

"SEC. 206. Notwithstanding any other provision of law, commodities distributed under this Act shall not be considered income or resources for any purposes under any Federal, State, or local law.

"PENALTIES

"SEC. 207. Section 4(c) of the Agriculture and Consumer Protection Act of 1973 [Pub. L. 93-86, set out as a note below] is amended by—

"(1) striking out 'or section 709' and inserting in lieu thereof 'section 709'; and

"(2) inserting after '(7 U.S.C. 1446a-1)' the phrase 'or the Emergency Food Assistance Act of 1983'.

"PROHIBITION AGAINST CERTAIN STATE CHARGES

"SEC. 208. Whenever a commodity is made available without charge or credit under any nutrition program administered by the Secretary for distribution within the States to eligible recipient agencies, the State may not charge recipient agencies any amount that is in excess of the State's direct costs of storing and transporting the commodities to recipient agencies minus any amount the Secretary provides the State for the costs of storing and transporting such commodities.

"COMMODITY SUPPLEMENTAL FOOD PROGRAM ADMINISTRATIVE EXPENSES

"[SEC. 209. Repealed. Pub. L. 99-198, title XV, § 1562(e)(1), Dec. 23, 1985, 99 Stat. 1590]

"REGULATIONS

"SEC. 210(a). The Secretary shall issue regulations within 30 days to implement this Act.

"(b) In administering this Act, the Secretary shall minimize, to the maximum extent practicable, the regulatory, recordkeeping, and paperwork requirements imposed on eligible recipient agencies.

"(c) With respect to the commodity distribution program under this Act in effect during the period beginning October 1, 1983, and ending September 30, 1987, the Secretary shall, not later than October 1, 1983, publish in the Federal Register an estimate of the types and quantities of commodities that the Secretary anticipates are likely to be made available during the first twelve months of the program; and, as early as feasible but not later than the beginning of the fiscal year ending September 30, 1987, the Secretary shall publish in the Federal Register an estimate of the types and quantities of commodities that the Secretary anticipates are likely to be made available during the [sic] such fiscal year of the program under this Act: *Provided*, that the actual types and quantities of commodities made available by the Secretary under this Act may differ from the estimates.

"(d) The regulations issued by the Secretary under this section shall include provisions that set standards with respect to liability for commodity losses under the program under this title in situations in which

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there is no evidence of negligence or fraud, and conditions for payment to cover such losses. Such provisions shall take into consideration the special needs and circumstances of emergency feeding organizations[.]

"FINALITY OF DETERMINATIONS

"SEC. 211. Determinations made by the Secretary of Agriculture under this Act and the facts constituting the basis for any donation of commodities under this Act, or the amount thereof, when officially determined in conformity with the applicable regulations prescribed by the Secretary, shall be final and conclusive and shall not be reviewable by any other officer or agency of the Government.

"PROGRAM TERMINATION

"SEC. 212. Except for section 207, this Act shall terminate on September 30, 1987."

AGRICULTURAL EXPORT PROMOTION

Amendments made by section 405(d) of Pub. L. 98-623, amending sections 1707a and 1732 of this title and section 714c(f) of Title 15, Commerce and Trade, to be considered as having taken effect before Sept. 8, 1982, for purposes of section 135 of Pub. L. 97-253, set out above, see section 405(d) of Pub. L. 98-623, set out as an Effective Date of 1984 Amendment note under section 1707a of this title.

COMMODITY DISTRIBUTION PROGRAM; PURCHASE OF AGRICULTURAL COMMODITIES; FURNISHING COMMODITIES TO SUMMER CAMPS

Pub. L. 93-86, § 4, Aug. 10, 1973, 87 Stat. 249, as amended by Pub. L. 93-347, § 1, July 12, 1974, 88 Stat. 340; Pub. L. 94-273, § 2(1), Apr. 21, 1976, 90 Stat. 375; Pub. L. 95-113, title XIII, §§ 1302(a)(1), 1304(a), Sept. 29, 1977, 91 Stat. 979, 980, Pub. L. 97-98, title XIII, § 1334, Dec. 22, 1981, 95 Stat. 1292; Pub. L. 98-8, title II, § 207, Mar. 24, 1983, 97 Stat. 36; Pub. L. 98-92, § 3, Sept. 2, 1983, 97 Stat. 612; Pub. L. 99-198, title XV, § 1562(a), Dec. 23, 1985, 99 Stat. 1590, provided that:

"(a) Notwithstanding any other provision of law, the Secretary may, during fiscal years 1986, 1987, 1988, 1989, and 1990, purchase and distribute sufficient agricultural commodities with funds appropriated from the general fund of the Treasury to maintain the traditional level of assistance for food assistance programs as are authorized by law, including but not limited to distribution to institutions, supplemental feeding programs wherever located, disaster areas, summer camps for children, the United States Trust Territory of the Pacific Islands, and Indians, whenever a tribal organization requests distribution of federally donated foods pursuant to section 4(b) of the Food Stamp Act of 1977 [section 2013(b) of this title]. In providing for commodity distribution to Indians, the Secretary shall improve the variety and quantity of commodities supplied to Indians in order to provide them an opportunity to obtain a more nutritious diet.

"(b) The Secretary may furnish commodities to summer camps for children in which the number of adults participating in camp activities as compared with the number of children 18 years of age and under so participating is not unreasonable in light of the nature of such camp and the characteristics of the children in attendance."

"(c) Whoever embezzles, willfully misapplies, steals or obtains by fraud any agricultural commodity or its products (or any funds, assets, or property deriving from donation of such commodities) provided under this section, or under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1) or the Temporary Emergency Food Assistance Act of 1983 [set out as a note above], whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such commodities, products, funds, assets, or property for personal use or gain, knowing such commodities, products, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such commodities, products, funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or if such commodities, products, funds, assets, or property are of value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both."

COMMODITY SUPPLEMENTAL FOOD PROGRAM

Section 5 of Pub. L. 93-86, as added Pub. L. 95-113, title XIII, § 1304(b)(2), Sept. 29, 1977, 91 Stat. 980, and amended by Pub. L. 97-98, title XIII, § 1335, Dec. 22, 1981, 95 Stat. 1293; Pub. L. 98-8, title II, § 209, Mar. 24, 1983, 97 Stat. 36, as amended Pub. L. 98-92, § 2(8), Sept. 2, 1983, 97 Stat. 611; Pub. L. 99-198, title XV, § 1562(b), (c), (e)(2), Dec. 23, 1985, 99 Stat. 1590, provided that:

"(a) In carrying out the supplemental feeding program (hereinafter referred to as the 'commodity supplemental food program') under section 4 of this Act [set out as a note above], the Secretary (1) may institute two pilot projects directed at low-income elderly persons, including, where feasible, distribution of commodities to such persons in their homes; and (2) shall provide to the State agencies administering the commodity supplemental food program, for each of the fiscal years 1986 through 1990, funds appropriated from the general fund of the Treasury in amounts equal to the administrative costs of State and local agencies in operating the program, except that the funds provided to State agencies each fiscal year may not exceed 15 per centum of the sum of (A) the amount appropriated for the commodity supplemental food program and (B) the value of all additional commodities donated by the Secretary to State and local agencies that are provided without charge or credit for distribution to program participants.

[See main edition for text of (b) to (e)]

"(f) The Secretary shall, in any fiscal year, approve applications of additional sites for the program in areas in which the program currently does not operate to the full extent that this can be done within the appropriations available for the program for the fiscal year and without reducing actual participation levels (including participation of elderly persons under subsection (g)) in areas in which the program is in effect.

"(g) If a local agency that administers the commodity supplemental food program determines that the amount of funds made available to the agency to carry out this section exceeds the amount of funds necessary to provide assistance under such program to women, infants, and children, the agency, with the approval of the Secretary, may permit low-income elderly persons (as defined by the Secretary) to participate in and be served by such program."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 624, 1392, 1421, 1424, 1431b, 1641, 1736m, 1736v, 1855, 2627, 4004 of this title; title 12 section 1150a; title 15 sections 713c, 713c-2, 713c-3; title 22 section 1922; title 31 section 1511; title 40 section 474; title 42 sections 1755, 1758, 1761, 1762, 1762a, 1777, 1786, 3030a, 3045f, 5180.

§ 612c-3. Export sales reports; Presidential control of agricultural commodity exports

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12d, 87f-2 of this title; title 50 App. sections 2406, 2413, 2416.

§ 616. Stock on hand when tax takes effect or terminates

[See main edition for text of (a) and (b)]

(c)(1) Any sugar, imported prior to the effective date of a processing tax on sugar beets and sugarcane, with respect to which it is established (under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury) that there was paid at the time of importation a duty at the rate in effect on January 1, 1934, and (2) any sugar held on April 25, 1934, by, or to be delivered under a bona fide contract of sale entered into prior to April 25, 1934, to, any manufacturer or converter, for use in the production of any article (except sugar) and not for ultimate consumption as sugar, and (3) any article (except sugar) processed wholly or in chief value from sugar beets, sugarcane, or any product thereof, shall be exempt from taxation under subsection (a) of this section, but sugar held in customs custody or control on April 25, 1934, shall not be exempt from taxation under subsection (a) of this section, unless the rate of duty paid upon the withdrawal thereof was the rate of duty in effect on January 1, 1934.

[See main edition for text of (d) to (f); credits]

CODIFICATION

Subsec. (c) is set out in this supplement to correct error appearing in the main edition.

§ 624. Limitation on imports; authority of President

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 625, 672, 673, 1392, 1852, 1854 of this title; title 19 sections 1360, 1366, 1887, 2581, 2703.

§ 625. Review of Burley tobacco imports by Secretary of Agriculture; price-support levels; excessive stocks

The Secretary of Agriculture shall review, pursuant to section 624 of this title, the effects of imports of Burley tobacco on the Department of Agriculture's Burley tobacco price-support program whenever (1) the level of price support for any crop of Burley tobacco is increased by less than 65 per centum of the amount that it would have otherwise been increased if the level of price support would have been determined in accordance with section 1445(b) of this title, or (2) stocks of Burley tobacco held by producer-owned cooperative marketing associations having loan agreements with the Commodity Credit Corporation exceed 20 per centum of the national marketing quota proclaimed by the Secretary for any such crop of Burley tobacco.

(Pub. L. 98-59, § 3, July 25, 1983, 97 Stat. 296.)

CODIFICATION

Section was not enacted as part of the Agricultural Adjustment Act which comprises this chapter.

CHAPTER 31—RURAL ELECTRIFICATION AND TELEPHONE SERVICE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 16 section 590z-7; title 43 sections 485h, 1464.

CHAPTER 32—PEANUT STATISTICS

§ 951. Collection and publication; facts required; submission of report

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2276 of this title.

CHAPTER 33—FARM TENANCY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1006a, 1981 of this title; title 12 section 1150a; title 16 sections 241e, 441h, 441i; title 18 section 433; title 25 section 621; title 26 section 126; title 38 section 1811; title 43 section 451f.

SUBCHAPTER I—TENANT PURCHASE LOANS AND MORTGAGE INSURANCE

§§ 1001 to 1006. Repealed. Pub. L. 87-128, title III, § 341(a), Aug. 8, 1961, 75 Stat. 318

SHORT TITLE

Act Aug. 14, 1946, ch. 964, § 1, 60 Stat. 1062, provided: "This Act [enacting section 1032a of this title and amending this chapter and section 371 of Title 12, Banks and Banking] may be cited as the 'Farmers' Home Administration Act of 1946'."

CHAPTER 35—AGRICULTURAL ADJUSTMENT ACT OF 1938

SUBCHAPTER II—LOANS, PARITY PAYMENTS, CONSUMER SAFEGUARDS, MARKETING QUOTAS, AND MARKETING CERTIFICATES

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PART B—MARKETING QUOTAS

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1335. Marketing penalties.
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(b) Persons liable.
(c) Payments by producers for wheat deemed marketed in excess of farm marketing quota.
(d) Joint and several liability of producers.
(e) Carryover wheat penalty-free.
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(g) Proportional collections upon proofless dispositions of excess wheat prior to marketing; special account in the Treasury; administration by Secretary and finality of payments.
(h) Lien in favor of United States.
(i) Persons liable for interest.
(j) Termination of marketing quotas without effect on penalties incurred or subject to remittance.
1336. Referendum.
(a) Proclamation of national marketing quota; mail ballots.
(b) Eligible voters.
(c) Proclamation of results.
(d) Proclamation of marketing quotas for marketing quota period.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 511r, 1428, 1442, 1444a, 1446c, 1745 of this title.

GENERAL PROVISIONS

§ 1281. Short title

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99-198, title XVIII, § 1801, Dec. 23, 1985, 99 Stat. 1660, provided that: "Except as otherwise provided in this Act, this Act and the amendments made by this Act [see Tables for classification] shall become effective on the date of the enactment of this Act [Dec. 23, 1985]."

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99-198, § 1, Dec. 23, 1985, 99 Stat. 1354, provided that: "This Act [see Tables for classification] may be cited as the 'Food Security Act of 1985'."

SUBCHAPTER II—LOANS, PARITY PAYMENTS, CONSUMER SAFEGUARDS, MARKETING QUOTAS, AND MARKETING CERTIFICATES

PART A—DEFINITIONS, LOANS, PARITY PAYMENTS, AND CONSUMER SAFEGUARDS

§ 1301. Definitions

[*See main edition for text of* (a)]

(b) Definitions applicable to one or more commodities

For the purposes of this subchapter—

[*See main edition for text of* (1) *to* (6)]

(7) "Marketing year" means, in the case of the following commodities, the period beginning on the first and ending with the second date specified below:

Corn, September 1–August 31;
Cotton, August 1–July 31;
Rice, August 1–July 31;
Tobacco (flue-cured), July 1–June 30;
Tobacco (other than flue-cured), October 1–September 30;
Wheat, June 1–May 31.

[*See main edition for text of* (8) *to* (12)]

(13) [*See main edition for text of* (A) *to* (J)]

(K) "Projected farm yield" for any crop of wheat shall be determined on the basis of the yield per harvested acre of such commodity in the farm during each of the three calendar years immediately preceding the year in which such projected farm yield is determined, adjusted for abnormal weather conditions affecting such yield, for trends in yields and for any significant changes in production practices, but in no event shall such projected farm yield be less than the normal yield for such farm as provided in subparagraph (E) of this paragraph.

[*See main edition for text of* (L) *and* (M); (14) *to* (16); (c) *and* (d)]

(As amended Dec. 23, 1985, Pub. L. 99-198, title X, § 1020, 99 Stat. 1459.)

AMENDMENTS

1985—Subsec. (b)(7). Pub. L. 99-198 substituted "Corn, September 1-August 31" for "Corn, October 1-September 30".

1973—Subsec. (b)(13)(K). Pub. L. 91-524, § 405(b), as added by Pub. L. 93-86 temporarily inserted "(five calendar years in the case of wheat)" after "three calendar years". See Effective and Termination Dates of 1973 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1973 AMENDMENT

Section 405(b) of Pub. L. 91-524, as added by section 1(12) of Pub. L. 93-86, provided in part that the amendment by section 405(b) of Pub. L. 91-524, is effective with respect to the 1974 through 1977 crops.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 1111, 1301a, 1340, 1445, 1445-2, 1782 of this title; title 43 section 620c.

§ 1305. Transfer of acreage allotments or feed grain bases on public lands upon request of State agencies

Notwithstanding any other provision of law, the Secretary, upon the request of any agency of any State charged with the administration of the public lands of the State, may permit the transfer of acreage allotments or feed grain bases together with relevant production histories which have been determined pursuant to

this chapter, or section 590p of title 16, from any farm composed of public lands to any other farm or farms in the same county composed of public lands: *Provided*, That as a condition for the transfer of any allotment or base an acreage equal to or greater than the allotment or base transferred prior to adjustment, if any, shall be devoted to and maintained in permanent vegetative cover on the farm from which the transfer is made. The Secretary shall prescribe regulations which he deems necessary for the administration of this section, which may provide for adjusting downward the size of the allotment or base transferred if the farm to which the allotment or base is transferred normally has a higher yield per acre for the commodity for which the allotment or base is determined, for reasonable limitations on the size of the resulting allotments and bases on farms to which transfers are made, taking into account the size of the allotments and bases on farms of similar size in the community, and for retransferring allotments or bases and relevant histories if the conditions of the transfers are not fulfilled.

(Pub. L. 89-321, title VII, § 706, Nov. 3, 1965, 79 Stat. 1210; Pub. L. 91-524, title IV, § 405, title VI, § 606, Nov. 30, 1970, 84 Stat. 1366, 1378; Pub. L. 93-86, § 1(12), Aug. 10, 1973, 87 Stat. 229.)

AMENDMENTS

1970—Pub. L. 91-524 temporarily inserted reference to the Agricultural Act of 1949, as amended, and provided that the term "acreage allotments" includes the farm base acreage allotments for upland cotton and the domestic allotment for wheat. See Effective and Termination Dates of 1970 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1970 AMENDMENT

Sections 405 and 606 of Pub. L. 91-524, as amended by section 1(12), (22) of Pub. L. 93-86 provided in part that the amendments by Pub. L. 91-524 are effective only with respect to the 1971 through 1977 crops.

§ 1306. Projected yields; determination; base period

Notwithstanding any other provision of law, in the determination of farm yields the Secretary may use projected yields in lieu of normal yields. In the determination of such yields the Secretary shall take into account the actual yield proved by the producer for the base period used in determining the projected yield, and the projected yield shall not be less than such actual yield proved by the producer.

(Pub. L. 89-321, title VII, § 708, Nov. 3, 1965, 79 Stat. 1211; Pub. L. 91-524, title IV, § 405(b), as added Pub. L. 93-86, § 1(12), Aug. 10, 1973, 87 Stat. 229.)

AMENDMENTS

1973—Pub. L. 91-524, § 405(b), as added by Pub. L. 93-86 temporarily inserted "(except that in the case of wheat, if the yield is abnormally low in any one of the calendar years of the base period because of drought, flood, or other natural disaster, the Secretary shall take into account the actual yield proved by the producer in the other four years of such base period)" after "determining the projected yield". See Effective and Termination Dates of 1973 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1973 AMENDMENT

Section 405(b) of Pub. L. 91-524, as added by section 1(12) of Pub. L. 93-86, provided in part that the amendment by section 405(b) of Pub. L. 91-524 is effective with respect to the 1974 through 1977 crops.

§ 1307. Limitation on payments under wheat, feed grains, and cotton programs for 1974 through 1977 crops

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1308 of this title; title 16 section 3834.

§ 1308. Limitation on payments under wheat, feed grains, upland cotton, and rice programs for 1986 through 1990 crops

Notwithstanding any other provision of law:

(1) For each of the 1986 through 1990 crops, the total amount of payments (excluding disaster payments) that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for wheat, feed grains, upland cotton, extra long staple cotton, and rice may not exceed $50,000.

(2) For each of the 1986 through 1990 crops, the total amount of disaster payments that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 for wheat, feed grains, upland cotton, and rice may not exceed $100,000.

(3) As used in this section, the term "payments" does not include—

(A) loans or purchases;

(B) any part of any payment that is determined by the Secretary of Agriculture to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

(C) any gain realized by a producer from repaying a loan for a crop of wheat, feed grains, upland cotton, or rice at the rate permitted under section 107D(a)(5), 105C(a)(4), 103A(a)(5), or 101A(a)(5), respectively, of the Agricultural Act of 1949 [7 U.S.C. 1445b-3(a)(5), 1444e(a)(4), 1444-1(a)(5), or 1441-1(a)(5)];

(D) any deficiency payment received for a crop of wheat or feed grains under section 107D(c)(1) or 105C(c)(1), respectively, of such Act [7 U.S.C. 1445b-3(c)(1) or 1444e(c)(1)] as the result of a reduction of the loan level for such crop under section 107D(a)(4) or 105C(a)(3) of such Act [7 U.S.C. 1445b-3(a)(4) or 1444e(a)(3)];

(E) any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(b), 105C(b), 103A(b), or 101A(b), respectively, of such Act [7 U.S.C. 1445b-3(b), 1444e(b), 1444-1(b), or 1441-1(b)];

(F) any inventory reduction payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(g), 105C(g), 103A(g), or 101A(g), re-

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spectively, of such Act [7 U.S.C. 1445b-3(g), 1444e(g), 1444-1(g), or 1441-1(g)];

(G) any increased established price payments under section 105C(c)(1)(E) or 107D(c)(1)(E), respectively, of such Act [7 U.S.C. 1444e(c)(1)(E) or 1445b-3(c)(1)(E)]; or

(H) any benefit received as a result of any cost reduction action by the Secretary under section 1308a of this title.

(4) If the Secretary determines that the total amount of payments that will be earned by any person under the program in effect for any crop will be reduced under this section, any acreage requirement established under a set-aside or acreage limitation program for the farm or farms on which such person will be sharing in payments earned under such program shall be adjusted to such extent and in such manner as the Secretary determines will be fair and reasonable in relation to the amount of the payment reduction.

(5)(A) The Secretary shall issue regulations—

(i) defining the term "person"; and

(ii) prescribing such rules as the Secretary determines necessary to assure a fair and reasonable application of the limitation established under this section.

(B) The regulations issued by the Secretary on December 18, 1970, under section 1307 of this title shall be used to establish the percentage ownership of a corporation by the stockholders of such corporation for the purpose of determining whether such corporation and stockholders are separate persons under this section.

(6) The provisions of this section that limit payments to any person shall not be applicable to lands owned by States, political subdivisions, or agencies thereof, so long as such lands are farmed primarily in the direct furtherance of a public function, as determined by the Secretary.

(Pub. L. 99-198, title X, § 1001, Dec. 23, 1985, 99 Stat. 1444.)

REFERENCES IN TEXT

The Agricultural Act of 1949, referred to in pars. (1) and (2), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§ 1421 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Adjustment Act of 1938 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1308, Pub. L. 97-98, title XI, § 1101, Dec. 22, 1981, 95 Stat. 1263; Pub. L. 98-88, § 6, Aug. 26, 1983, 97 Stat. 499, related to programs for 1982 through 1985 crops.

Another prior section 1308, Pub. L. 95-113, title I, § 101, Sept. 29, 1977, 91 Stat. 917; Pub. L. 96-213, § 5, Mar. 18, 1980, 94 Stat. 120 related to programs for 1978 through 1981 crops.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1308a, 1441, 1444d, 1445b-1 of this title.

§ 1308a. Cost reduction options

(a) Authority of Secretary to take action

Notwithstanding any other provision of law, whenever the Secretary of Agriculture determines that an action authorized under subsection (c), (d), or (e) of this section will reduce the total of the direct and indirect costs to the Federal Government of a commodity program administered by the Secretary without adversely affecting income to small- and medium-sized producers participating in such program, the Secretary shall take such action with respect to the commodity program involved.

(b) Reservation of Secretary's right to reopen or change contracts if producer agrees

In the announcement of the specific provisions of any commodity program administered by the Secretary of Agriculture, the Secretary shall include a statement setting forth which, if any, of the actions are to be initially included in the program, and a statement that the Secretary reserves the right to initiate at a later date any action not previously included but authorized by this section, including the right to reopen and change a contract entered into by a producer under the program if the producer voluntarily agrees to the change.

(c) Purchase from other sources of commodities covered by nonrecourse loans

When a nonrecourse loan program is in effect for a crop of a commodity, the Secretary may enter the commercial market to purchase such commodity if the Secretary determines that the cost of such purchases plus appropriate carrying charges will probably be less than the comparable cost of later acquiring the commodity through defaults on nonrecourse loans under the program.

(d) Reduction in settlement price of nonrecourse loans

When the domestic market price of a commodity for which a nonrecourse loan program is in effect is insufficient to cover the principal and accumulated interest on a loan made under such program, thereby encouraging default by a producer, the Secretary may provide for settlement of such loan and redemption by the producer of the commodity securing such loan for less than the total of the principal and all interest accumulated thereon if the Secretary determines that such reduction in the settlement price will yield savings to the Federal Government due to—

(1) receipt by the Federal Government of a portion rather than none of the accumulated interest;

(2) avoidance of default; or

(3) elimination of storage, handling, and carrying charges on the forfeited commodity,

but the Secretary may not reduce the settlement price to less than the principal due on the loan.

(e) Reopening of production control or loan programs to allow for payment in kind

When a production control or loan program is in effect for a crop of a major agricultural com-

modity, the Secretary may at any time prior to harvest reopen the program to participating producers for the purpose of accepting bids from producers for the conversion of acreage planted to such crop to diverted acres in return for payment in kind from Commodity Credit Corporation surplus stocks of the commodity to which the acreage was planted, if the Secretary determines that (1) changes in domestic or world supply or demand conditions have substantially changed after announcement of the program for that crop, and (2) without action to further adjust production, the Federal Government and producers will be faced with a burdensome and costly surplus. Such payments in kind shall not be included within the payment limitation of $50,000 per person established under section 1308 of this title, but shall be limited to a total $20,000 per year per producer for any one commodity.

(f) Other authorities of Secretary not affected

The authority provided in this section shall be in addition to, and not in place of, any authority granted to the Secretary under any other provision of law.

(Pub. L. 99-198, title X, § 1009, Dec. 23, 1985, 99 Stat. 1453.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Adjustment Act of 1938 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1308 of this title.

§ 1309. Normally planted acreage and target prices

(a) Authorized planted acreage for 1982 through 1990 crops of wheat and feed grains as prerequisite for loan, etc.; eligibility; determinations; records

Notwithstanding any other provision of law, whenever a set-aside program is in effect for one or more of the 1982 through 1990 crops of wheat and feed grains, the Secretary of Agriculture may require, as a condition of eligibility for loans, purchases, and payments for such crops under the Agricultural Act of 1949 [7 U.S.C. 1421 et seq.], that producers not exceed the acreage on the farm normally planted to crops designated by the Secretary, adjusted as deemed necessary by the Secretary to be fair and equitable among producers and reduced by any set-aside or diverted acreage. Such normal crop acreage for any crop year shall be determined as provided by the Secretary. The Secretary may require producers participating in the program to keep such records as the Secretary determines necessary to assist in making such determination.

(b) Established price payments

Notwithstanding any other provision of law—

(1) Whenever the Secretary, for one or more of the 1982 through 1990 crops of wheat and feed grains, requires that producers not exceed the acreage on the farm normally planted to crops designated by the Secretary in accordance with subsection (a) of this section, the Secretary may increase the established price payments for any such commodity by such amount (or if there are no such payments in effect for such crop by providing for payments in such amount) as the Secretary determines appropriate to compensate producers for not exceeding the acreage on the farm normally planted to crops designated by the Secretary and participation in any required set-aside with respect to such commodity.

[See main edition for text of (2) to (4)]

(c) Marketing quotas in effect for 1987 through 1990 crops of wheat; reduction in normally planted acreage as condition prerequisite for loan, etc.

Notwithstanding any other provision of law, whenever marketing quotas are in effect for any of the 1987 through 1990 crops of wheat, the Secretary of Agriculture may require, as a condition of eligibility for loans, purchases, and payments on any commodity under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), that the acreage normally planted to crops designated by the Secretary, adjusted as considered necessary by the Secretary to be fair and equitable among producers, shall be reduced by a quantity equal to—

(1) the acreage that the Secretary determines would normally be planted to wheat on a farm; minus

(2) the individual farm program acreage for the farm under section 107D(d)(3)(A) of such Act [7 U.S.C. 1445b-3(d)(3)(A)].

(As amended Pub. L. 99-198, title X, § 1014, Dec. 23, 1985, 99 Stat. 1456.)

REFERENCES IN TEXT

The Agricultural Act of 1949, referred to in subsecs. (a) and (c), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§ 1421 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

AMENDMENTS

1985—Subsecs. (a), (b)(1). Pub. L. 99-198 substituted "1982 through 1990" for "1982 through 1985".

Subsec. (c). Pub. L. 99-198 added subsec. (c).

§ 1310a. Normal supply of commodity for 1986 through 1990 crops

Notwithstanding any other provision of law, if the Secretary of Agriculture determines that the supply of wheat, corn, upland cotton, or rice for the marketing year for any of the 1986 through 1990 crops of such commodity is not likely to be excessive and that program measures to reduce or control the planted acreage of the crop are not necessary, such a decision shall constitute a determination that the total supply of the commodity does not exceed the normal supply and no determination to the contrary shall be made by the Secretary with respect to such commodity for such marketing year.

(Pub. L. 99-198, title X, § 1019, Dec. 23, 1985, 99 Stat. 1459.)

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CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Adjustment Act of 1938 which comprises this chapter.

PRIOR PROVISIONS

A prior section 1310a, Pub. L. 97-98, title XI, § 1107, Dec. 22, 1981, 95 Stat. 1266, provided for a normal supply of commodities for the 1982 through 1985 crops.

PART B—MARKETING QUOTAS

SUBPART I—MARKETING QUOTAS—TOBACCO

§ 1314b. Lease or sale of acreage allotments

(a) Conditions for permission from Secretary; false statements; exceptions

(1) Notwithstanding any other provision of law—

(A)(i) The Secretary, if the Secretary determines that it will not impair the effective operation of the tobacco marketing quota or price support program, may permit the owner and operator of any farm for which a tobacco acreage allotment (other than a Burley, Flue-cured, dark air-cured, Fire-cured, Virginia sun-cured and cigar-binder, type 54 or 55 tobacco acreage allotment) is established under this chapter to lease and transfer all or any part of such allotment to any other owner or operator of a farm in the same county for use in such county on a farm having a current tobacco allotment of the same kind.

(ii) The Secretary shall, only with respect to the 1984 through 1986 crops of Flue-cured tobacco, permit the owner of a farm to which a Flue-cured tobacco acreage allotment or quota is assigned under this chapter to lease and transfer all or any part of such allotment or quota to any other owner or operator of a farm in the same county for use in such county on a farm having a current Flue-cured tobacco acreage allotment or quota except that for the 1985 and 1986 crops such lease and transfer shall be permitted only if (except as otherwise provided in paragraph (2)(A)) the parties to the lease file a copy of the lease agreement with the county committee for the county in which the farms are located, together with a written statement certifying that none of the consideration for the lease has been or will be paid to the lessor, either directly or indirectly in any form including a loan by the lessee to the lessor, the endorsement of a note by the lessee for the lessor, or any other similar arrangement which represents the anticipated income for the lease, prior to the marketing of the tobacco produced under the lease and that the lease and transfer is otherwise in compliance with the provisions of this section. Beginning with the 1985 crop, the Secretary shall promulgate regulations establishing, insofar as is reasonably practicable, a similar requirement providing that none of the consideration for the lease of any Flue-cured tobacco acreage allotment and quota may be paid to the lessor prior to the marketing of the tobacco produced under the lease. The Secretary shall also require that any seller of a Flue-cured tobacco allotment and quota grant to the buyer an option to make payment therefore in equal annual installments payable each fall for a period not to exceed five years from the year in which the sale is made. With respect to the 1987 and subsequent crops of Flue-cured tobacco, the Secretary shall not permit the lease and transfer of Flue-cured tobacco acreage allotments and quotas.

(B) If, after notice and opportunity for a hearing, the county committee determines that the lessee or the lessor of a Flue-cured tobacco acreage allotment or quota knowingly made a false statement in the written statement filed under subparagraph (A), (i) in the case of a false statement knowingly made by the lessee, the lease agreement for purposes of the Flue-cured tobacco marketing quota program with respect to the lessee's farm shall be considered null and void as of the date approved by the county committee or (ii) in the case of a false statement knowingly made by the lessor, the Flue-cured tobacco allotment and quota next established for the farm of the lessor shall be reduced by the percentage which the leased allotment or quota was of the total Flue-cured tobacco allotment or quota for the farm. Notice of any determination made by the county committee under the preceding provision shall be mailed as soon as practicable to the lessee or lessor involved. If the lessee or lessor is dissatisfied with such determination, the lessee or lessor may request, within fifteen days after notice of such determination is mailed, a review of such determination by a local review committee under section 1363 of this title.

[*See main edition for text of* (2); (b)]

(c) Filing with county committees; calculation of normal yield for transfer

The lease and transfer or sale and transfer of any allotment shall not be effective until a copy of the lease or sale agreement, as the case may be, is filed with and determined by the county committee of the county in which the farms involved are located to be in compliance with the provisions of this section. If the normal yield established by the county committee for the farm to which the allotment is transferred by lease or sale does not exceed the normal yield established by the county committee for the farm from which the allotment is transferred by more than 10 per centum, the transfer shall be approved acre for acre. If the normal yield for the farm to which the allotment is transferred exceeds the normal yield for the farm from which the allotment is transferred by more than 10 per centum, the county committee shall make a downward adjustment in the amount of the acreage allotment transferred by multiplying the normal yield established for the farm from which the allotment is transferred by the acreage being transferred and dividing the result by the normal yield established by the farm to which the allotment is transferred.

[*See main edition for text of* (d) *to* (h)]

(As amended Nov. 29, 1983, Pub. L. 98-180, title II, §§ 205(a), 206(a), 97 Stat. 1145, 1147.)

AMENDMENT OF SECTION

Pub. L. 98-180, title II, § 206(b), Nov. 29, 1983, 97 Stat. 1147, provided that, effective for the 1987 and subsequent crops of tobacco, this section is amended as follows:

(1) in subsection (a), striking out paragraph (2);

(2) in subsection (e)(1), striking out "or, in the case of Flue-cured tobacco," and inserting in lieu thereof "or, in the case of the sale of a Flue-cured tobacco acreage allotment or poundage quota,"; and

(3) in subsection (g)(2), striking out the second sentence.

REFERENCES IN TEXT

The written statement described in subsection (c) of this section, referred to in subsec. (a)(2)(A), was eliminated by the amendment to subsec. (c) by section 206(a) of Pub. L. 98-180. See 1983 Amendment note below.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-180, § 205(a), designated existing provision as subpar. (A)(i), and in subpar. (A)(i) as so designated, substituted "The Secretary, if the Secretary" for "the Secretary, if he", "Fire-cured" for "fire-cured", and "lease and transfer all" for ", to lease all" and struck out "shall permit the owner of any farm to which a Flue-cured tobacco acreage allotment or quota is assigned under this chapter and" before "may permit" and "or quota" after "such allotment" and "tobacco allotment" and added subpars. (A)(ii) and (B).

Subsec. (c). Pub. L. 98-180, § 206(a), struck out provisions requiring the lessor and lessee, in addition to a copy of the lease, to file with the county committee a written statement certifying compliance with the provisions of this section, authorizing the county committee, after notice and opportunity for hearing, to determine that a knowingly false statement was made in such written statement, specifying penalties for such false statement, directing that notice of the determination be mailed to the lessor or lessee, and permitting the lessor or lessee, if dissatisfied with such determination, to review such determination under section 1363 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 205(a) of Pub. L. 98-180 provided in part that the amendment of this section by section 205(a) of Pub. L. 98-180 is effective for the 1984 and subsequent crops of tobacco.

Section 206(a) of Pub. L. 98-180 provided in part that the amendment of this section by section 206(a) of Pub. L. 98-180 is effective for the 1984 and subsequent crops of tobacco.

§ 1314b-1. Mandatory sale of certain Flue-cured tobacco acreage allotments and marketing quotas

(a) Sale or forfeiture of acreage allotment or marketing quota by institutional farmowners not later than the later of December 1, 1984, or December 1 of year after year in which farm acquired

Any person (including, but not limited to, any governmental entity, public utility, educational institution, or religious institution, but not including any individual, any partnership, any family farm corporation, any trust, estate or similar fiduciary account with respect to which the beneficial interest is in one or more individuals, or any educational institution that uses a Flue-cured acreage allotment or quota for instructional or demonstration purposes) which, on or after July 20, 1982—

(1) owns a farm for which a Flue-cured acreage allotment or marketing quota is established under this chapter; and

(2) is not significantly involved in the management or use of land for agricultural purposes;

shall sell such allotment or quota in accordance with section 1314b(g) of this title not later than December 1, 1984, or December 1 of the year after the year in which the farm is acquired, whichever is later, or shall forfeit such allotment or quota under the procedure specified in subsection (c) of this section.

[*See main edition for text of (b) and (c)*]

(As amended Nov. 29, 1983, Pub. L. 98-180, title II, § 207(a), 97 Stat. 1148.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-180 inserted ", any partnership, any family farm corporation, any trust, estate or similar fiduciary account with respect to which the beneficial interest is in one or more individuals, or any educational institution that uses a Flue-cured acreage allotment or quota for instructional or demonstration purposes" after "any individual" and substituted "1984" for "1983".

§ 1314b-2. Mandatory sale of certain Burley tobacco acreage allotments and marketing quotas

(a) Sale or forfeiture of marketing quota by institutional farmowners not later than the later of December 1, 1984, or December 1 of year after year in which farm acquired

Any person (including, but not limited to, any governmental entity, public utility, educational institution, or religious institution, but not including any individual) which, on or after July 20, 1982—

(1) owns a farm for which a Burley tobacco marketing quota is established under this chapter; and

(2) does not use the land on the farm for agricultural purposes, or does not use its Burley marketing quota for educational, instructional, or demonstration purposes;

shall sell, not later than December 1, 1984, or December 1 of the year after the year in which the farm is acquired, whichever is later, such quota to an active Burley tobacco producer or any person who intends to become an active Burley tobacco producer, as defined by the Secretary, for use on another farm in the same county or shall forfeit such quota under the procedure specified in subsection (b) of this section. Notwithstanding the foregoing provisions of this subsection, any person to whom this subsection, as in effect prior to November 29, 1983, applies and who—

(A) is required to sell or forfeit the marketing quota by December 1, 1983, because the person was not significantly involved in the management or use of the land for agricultural purposes, but

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(B) would be eligible to retain the marketing quota under this subsection, as amended by the Tobacco Adjustment Act of 1983,

may, if the person elects to do so, sell such person's marketing quota if a record of the transfer is filed with the county committee by February 1, 1984.

[*See main edition for text of* (b) *and* (c)]

(As amended Nov. 29, 1983, Pub. L. 98-180, title II, § 207(b), 97 Stat. 1148.)

REFERENCES IN TEXT

The Tobacco Adjustment Act of 1983, referred to in subsec. (a), is title II of Pub. L. 98-180, Nov. 29, 1983, 97 Stat. 1143. For amendment of subsec. (a) of this section by section 207(b) of Pub. L. 98-180, see 1983 Amendment note below.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-180 substituted in par. (2) "does not use the land on the farm for agricultural purposes, or does not use its Burley marketing quota for educational, instructional, or demonstration purposes" for "is not significantly involved in the management or use of land for agricultural purposes" and in provision following par. (2) "1984" for "1983" and inserted in provision following par. (2) provision permitting any person subject to this subsection as in effect prior to Nov. 29, 1983, who would be required to sell or forfeit the marketing quota by Dec. 1, 1983, but would be eligible to retain the marketing quota under this subsection, as amended by the Tobacco Adjustment Act of 1983, to elect to sell the marketing quota if a record of the transfer is filed with the county committee by Feb. 1, 1984.

§ 1314c. Acreage-poundage quotas

[*See main edition for text of* (a) *to* (c)]

(d) Proclamation of national marketing quota for three years following last year of three years of acreage-poundage quotas; referendum; notice of farm marketing quota to farm operators

If marketing quotas have been made effective for a kind of tobacco on an acreage-poundage basis pursuant to subsections (b) or (c) of this section the Secretary shall, not later than December 15 of any marketing year with respect to Flue-cured tobacco, and March 1 with respect to other kinds of tobacco, proclaim a national marketing quota for that kind of tobacco for the next three succeeding marketing years if the marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect. Notwithstanding the foregoing sentence, the proclamation of the national marketing quota for the 1986 crop of Flue-cured tobacco may be made not later than December 31, 1985. The Secretary, in his discretion, may proclaim the quota on an acreage-poundage basis as provided in this section or on an acreage allotment basis, whichever he determines would result in a more effective marketing quota for that kind of tobacco, and shall conduct a referendum in accordance with the provisions of section 1312(c) of this title. If the Secretary determines that more than one-third of the farmers voting oppose the national marketing quotas the results shall be proclaimed and the national marketing quota so proclaimed shall not be in effect. If the Secretary proclaims the quotas on an acreage-poundage basis he shall determine and proclaim at the same time the national marketing quota, national acreage allotment, and national average yield goal for the first year of the three years for which quotas are proclaimed. Notice of the farm marketing quota which will be in effect for his farm for the first marketing year covered by the referendum insofar as practicable shall be mailed to the farm operator prior to the holding of any special referendum under subsection (b) of this section or a referendum on acreage-poundage quotas under this subsection, and at least 15 days prior to the holding of any special referendum under subsection (c) of this section. The Secretary shall determine and announce the national marketing quota, national acreage allotment and national average yield goal for the second and third marketing years of any three-year period for which national marketing quotas on an acreage-poundage basis are in effect on or before the December 15 with respect to Flue-cured tobacco and the March 1 with respect to other kinds of tobacco immediately preceding the beginning of the marketing year to which they apply. Whenever a national marketing quota, national acreage allotment, and national average yield goal are determined and announced, the Secretary shall provide for the determination of farm acreage allotments and farm marketing quotas under the provisions of this section for the crop and marketing year covered by the determinations.

(e) Nonestablishment of farm acreage allotment or farm yield for farms without tobacco production for five years; reserve; "new farms" defined; acreage allotment and farm yield basis of new farms

No farm acreage allotment or farm yield shall be established for a farm on which no tobacco was produced or considered produced under applicable provisions of law for the immediately preceding five years. For each marketing year for which acreage-poundage quotas are in effect under this section the Secretary in his discretion may establish a reserve from the national acreage allotment in an amount equivalent to not more than 3 per centum of the national acreage allotment to be available for making corrections of errors in farm acreage allotments, adjusting inequities, and for establishing acreage allotments for new farms, which are farms on which tobacco was not produced or considered produced during the immediately preceding five years (except that not less than two-thirds of such reserve shall be for new farms). The part of the reserve held for apportionment to new farms shall be allotted on the basis of land, labor, and equipment available for the production of tobacco, crop rotation practices, soil and other physical factors affecting the production of tobacco and the past tobacco-producing experience of the farm operator. The farm yield for any farm for which a new farm acreage allotment is established shall be determined on the basis of available productivity data for the land involved and farm yields for similar farms.

[*See main edition for text of* (f) *to* (j)]

(k) Forfeiture of allotment and quota

(1) Notwithstanding any other provision of law, any person who, on or after January 1, 1986, owns a farm for which a Flue-cured tobacco acreage allotment or marketing quota is established under this chapter shall, subject to paragraph (2) of this subsection, forfeit such allotment or quota after February 15 of any year immediately following the last year of the three-year period immediately preceding the year for which the determination is being made in which Flue-cured tobacco has not been planted or considered planted on such farm during at least two years out of such three-year period.

(2) The allotment or quota specified in paragraph (1) of this subsection shall be forfeited if, after notice and opportunity for a hearing, the appropriate county committee determines that the conditions for forfeiture specified in such paragraph exist. Any allotment or quota so forfeited shall be reallocated by such county committee for use by active Flue-cured tobacco prducers (as defined in section 1314b(g)(1) of this title) in the county involved.

(3) Notice of any determination made by the county committee under paragraph (2) of this subsection shall be mailed, as soon as practicable, to the person involved. If such person is dissatisfied with such determination, such person may request, within fifteen days after notice of such determination is mailed, a review of such determination by a local review committee under section 1363 of this title.

(*l*) Determination of Flue-cured tobacco planted acreage

The Secretary shall determine the acreage planted to Flue-cured tobacco on each farm whenever an acreage-poundage program for Flue-cured tobacco is in effect under this section.

(As amended Nov. 29, 1983, Pub. L. 98-180, title II, §§ 205(b), 208-210, 97 Stat. 1147-1149; Dec. 13, 1985, Pub. L. 99-182, § 4, 99 Stat. 1173.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-182 inserted "Notwithstanding the foregoing sentence, the proclamation of the national marketing quota for the 1986 crop of Flue-cured tobacco may be made not later than December 31, 1985."

1983—Subsec. (d). Pub. L. 98-180, § 208, substituted "December 15" for "December 1" and "March 1" for "February 1" wherever appearing.

Subsec. (e). Pub. L. 98-180, § 209, substituted "3 per centum" for "1 per centum" and "five years (except that not less than two-thirds of such reserve shall be for new farms)" for "five years" and struck out ", and shall not exceed the community average yield" after "similar farms".

Subsec. (k). Pub. L. 98-180, § 205(b), added subsec. (k).

Subsec. (*l*). Pub. L. 98-180, § 210, added subsec. (*l*).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 205(b) of Pub. L. 98-180 provided in part that the amendment of this section by section 205(b) of Pub. L. 98-180 is effective for the 1984 and subsequent crops of tobacco.

§ 1314d. Fire-cured, dark air-cured, and Virginia sun-cured tobacco

[*See main edition for text of* (*a*)]

(b) Conditions for transfers

Transfers under this section shall be subject to the following conditions: (1) except as provided in section 1379(b) of this title, no allotment or quota shall be transferred to a farm in another county: *Provided,* That in the case of Virginia fire-cured tobacco type 21 and Virginia sun-cured tobacco type 37, any such transfer may be made to a farm in another county in the same State; (2) no transfer other than by annual lease of an allotment or quota from a farm subject to a mortgage or other lien shall be permitted unless the transfer is agreed to by the lienholders; (3) no sale of a farm allotment or quota from a farm shall be permitted if any sale of allotment or quota to the same farm has been made within the three immediately preceding crop years; and (4) no transfer of allotment or quota shall be effective until a record thereof is filed with the county committee of the county to which such transfer is made and such committee determines that the transfer complies with the provisions of this section.

[*See main edition for text of* (*c*) *to* (*j*)]

(As amended Nov. 29, 1983, Pub. L. 98-180, title II, § 212(a), 97 Stat. 1149.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-180 inserted "except as provided in section 1379(b) of this title," after "(1)".

§ 1314e. Farm poundage quotas for certain kinds of tobacco

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Amount of national marketing quota, determination; national reserve, establishment

The national marketing quota determined under this section for any kind of tobacco for which poundage quotas may be established for any marketing year shall be the amount of such kind of tobacco produced in the United States which the Secretary estimates will be utilized in the United States and will be exported during such marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. With respect to burley tobacco, any such downward adjustment shall not exceed 10 per centum of such estimated utilization and exports. For each marketing year for which marketing quotas are in effect for a kind of tobacco under this section, the Secretary in his discretion may establish a reserve with respect to such kind of tobacco (hereinafter referred to as the "national reserve") from the national marketing quota for such kind of tobacco in an amount not in excess of 1 per centum of such national marketing quota to be available for making corrections and adjusting inequities in farm marketing quotas, and for establishing

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marketing quotas for new farms (that is, farms for which farm marketing quotas are not otherwise established).

[*See main edition for text of (d)*]

(e) Farm marketing quotas; preliminary quotas, determination, limitation; succeeding years, quota computation, limitations, increase and reduction of quotas; new farms, limitation

[*See main edition for text of first par.*]

The farm marketing quota for each succeeding year shall be determined by multiplying the previous year's farm marketing quota by a national factor obtained by dividing the national marketing quota determined under subsection (c) of this section (less the national reserve) by the sum of the farm marketing quotas for the immediately preceding year for all farms for which marketing quotas for the kind of tobacco involved will be determined for such succeeding marketing year: *Provided,* That such national factor shall not be less than 90 per centum: *Provided further,* That for the marketing years beginning October 1, 1972, and October 1, 1973, the farm marketing quota for any farm shall not be less than the smaller of (1) one-half acre times the farm yield times one-half the sum of the figure one and the national factor for the current year, or (2) the farm marketing quota for the immediately preceding marketing year times one-half the sum of the figure one and the national factor for the current year. The farm marketing quota so computed for any farm for any year shall be increased by the number of pounds by which marketings from the farm during the immediately preceding year were less than the farm marketing quota (after adjustments): *Provided,* That any such increase shall not exceed the amount of the farm marketing quota (including leased pounds) for the immediately preceding marketing year prior to any increase for undermarketings or decrease for overmarketings. The farm marketing quota so computed for each farm for any year shall be reduced by the number of pounds by which marketing from the farm during the immediately preceding year exceeded the farm marketing quota (after adjustments): *Provided,* That if, on account of excess marketings in the preceding year, the farm marketing quota is reduced to zero pounds without reflecting the entire reduction required, the additional reduction required shall be made in subsequent marketing years.

[*See main edition for text of third par.; (f)*]

(g) Leases and transfers of farm quotas; limitations

When a poundage program is in effect for any kind of tobacco under this section, farm marketing quotas (after adjustments) for such kind of tobacco may be leased and transferred to other farms in the same county under the terms and conditions contained in section 1314d of this title: *Provided,* That such leases and transfers shall be on a pound for pound basis: *Provided further,* That any adjustment for undermarketings or overmarketings shall be attributed to the farm to which leased and transferred: *Provided further,* That not more than fifteen thousand pounds of Burley tobacco quota may be leased and transferred to any farm under this section: *Proivded further,* That a lease and transfer of Burley tobacco quota shall not be effective for any crop year unless a record of the transfer is filed with the county committee not later than July 1 of that crop year: *And provided further,* That the marketing quota determined for any farm subsequent to such lease and transfer shall not exceed an amount determined by multiplying the farm yield established under subsection (d) of this section by 50 per centum of the acreage of cropland in the farm.

[*See main edition for text of (h) to (j)*]

(As amended July 25, 1983, Pub. L. 98-59, § 2, 97 Stat. 296; Nov. 29, 1983, Pub. L. 98-180, title II, § 211, 97 Stat. 1149.)

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-59, § 2(1), substituted "10 per centum" for "5 per centum" after "downward adjustment shall not exceed".

Subsec. (e). Pub. L. 98-59, § 2(2), substituted in the second par. "90 per centum" for "95 per centum" after "*Provided,* That such national factor shall not be less than".

Subsec. (g). Pub. L. 98-180 substituted provisos that not more than fifteen thousand pounds of Burley tobacco quota be leased and transferred to any farm under this section and that a lease or transfer of Burley tobacco quota not be effective for any crop year unless a record of the transfer is filed with the county committee not later than July 1 of that crop year for proviso that not more than thirty thousand pounds of burley tobacco be leased and transferred to any farm under this section.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 211 of Pub. L. 98-180 provided in part that the amendment of this section by Pub. L. 98-180 is effective for the 1984 and subsequent crops of tobacco.

SUBPART II—ACREAGE ALLOTMENTS—CORN

§ 1326. Adjustment of farm marketing quotas

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1340 of this title.

§§ 1327 to 1329. Omitted

CODIFICATION

Sections provided for establishment of a commercial corn-producing area and corn acreage allotments, which were discontinued. See sections 1329a, 1444a, and 1444b of this title.

Section 1327, acts Feb. 16, 1938, ch. 30, title III, § 327, 52 Stat. 51; Aug. 28, 1954, ch. 1041, title III, § 304, 68 Stat. 903, provided for proclamation of commercial corn-producing area not later than February 1 of each year.

Section 1328, acts Feb. 16, 1938, ch. 30, title III, § 328, 52 Stat. 52; Apr. 7, 1938, ch. 107, § 6, 52 Stat. 202; July 3, 1948, ch. 827, title II, § 207(a), 62 Stat. 1257; Oct. 31, 1949, ch. 792, title IV, § 409(f), 63 Stat. 1057; Aug. 28, 1954, ch. 1041, title III, § 305, 68 Stat. 903, provided for establishment of acreage allotment of corn for each calendar year and proclamation of such acreage allotment not later than February 1 of each year.

Section 1329, acts Feb. 16, 1938, ch. 30, title III, § 329, 52 Stat. 52; Aug. 28, 1954, ch. 1041, title III,

§ 306, 68 Stat. 903, provided for apportionment of acreage allotment for corn.

§ 1330. Omitted

CODIFICATION

Section, acts May 26, 1941, ch. 133, 55 Stat. 203; Dec. 26, 1941, ch. 626, § 2, 55 Stat. 860; Dec. 26, 1941, ch. 636, 55 Stat. 872; Aug. 29, 1949, ch. 518, § 3(b), 63 Stat. 676; July 14, 1953, ch. 194, § 3, 67 Stat. 151; Aug. 28, 1954, ch. 1041, title III, § 313, 68 Stat. 905, initially contained supplemental provisions relating to wheat and corn marketing quotas; marketing penalty for cotton and rice; crop loans on cotton, corn, wheat, rice, tobacco, and peanuts, but was amended generally in 1954 to make it inapplicable to corn. See section 1340 of this title.

Section was not enacted as part of the Agricultural Adjustment Act of 1938 which comprises this chapter.

SUBPART III—MARKETING QUOTAS—WHEAT

§ 1331. Legislative finding of effect on interstate and foreign commerce and necessity of regulation

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF WHEAT

Pub. L. 99-198, title III, § 310(b), Dec. 23, 1985, 99 Stat. 1395, provided that: "Sections 331, 339, 379b, and 379c of such Act [the Agricultural Adjustment Act of 1938] (7 U.S.C. 1331, 1339, 1379b, and 1379c) shall not be applicable to the 1986 through 1990 crops of wheat."

§ 1332. Proclamation of marketing quotas

(a) Definitions

As used in sections 1332 through 1334, 1334b, and 1335 through 1338 of this title:

(1) The term "base period" means the 1981 through 1985 crop years for wheat.

(2) The term "marketing quota period" means the 1987 through 1990 marketing years for wheat.

(b) Date of proclamation and referendum; quantity considerations

(1) The Secretary may—

(A) proclaim national marketing quotas for wheat for each marketing year of the marketing quota period not later than June 15, 1986; and

(B) conduct, by mail ballot, a marketing quota referendum not later than August 1, 1986.

(2) The quantity of the national marketing quota for wheat for any marketing year shall be a quantity of wheat that the Secretary estimates is required to meet anticipated needs during such marketing year, taking into consideration domestic requirements, export demand, emergency food aid needs, and adequate carryover stocks.

(c) Adjustment or termination

If, after the proclamation of a national marketing quota for wheat for any marketing year, the Secretary determines that the national marketing quota should be terminated or adjusted to meet a national emergency or a material change in the demand for wheat, the Secretary shall adjust or terminate the national marketing quota.

(As amended Dec. 23, 1985, Pub. L. 99-198, title III, § 302, 99 Stat. 1378.)

REFERENCES IN TEXT

Section 1337 of this title, included within the reference to sections 1335 through 1338 of this title in subsec. (a), was repealed by Pub. L. 87-703, title III, § 317, Sept. 27, 1962, 76 Stat. 622.

AMENDMENTS

1985—Pub. L. 99-198 temporarily substituted "Proclamation of marketing quotas" for "National marketing quota" in section catchline. See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (a). Pub. L. 99-198 amended subsec. (a) generally, temporarily substituting provisions defining the terms "base period" and "marketing quota period" for provisions which authorized the Secretary to proclaim a national marketing quota for wheat for either a two- or three-year period. See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (b). Pub. L. 99-198 amended subsec. (b) generally, temporarily substituting provisions authorizing the proclamation of a national marketing quota for each marketing year, not later than June 15, 1986, in an amount which the Secretary determines is required to meet anticipated needs during such marketing year, and the conducting of a marketing quota referendum not later than Aug. 1, 1986 for provisions which had authorized the proclamation of a national marketing quota upon a determination made between Jan. 1 and Apr. 15 of the calendar year preceding the year in which the marketing year began, which determination had to provide a minimum of one billion bushels for any marketing year, and investigation of stocks to adjust for imports and excessive or insufficient amounts generally. See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (c). Pub. L. 99-198 amended subsec. (c) generally, temporarily substituting provisions requiring the Secretary to adjust or terminate the national marketing quota in the event of a national emergency or material change in the demand for wheat for provisions which had required the Secretary to cause an immediate investigation to be made to determine whether termination or increase in the quota was necessary in order to meet such emergency or increase in demand, and struck out provisions requiring the Secretary to proclaim such findings and the amount of any increase, with any such increase to be based on a uniform percentage. See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (d). Pub. L. 99-198 amended section generally, temporarily striking out subsec. (d) which provided for farm marketing quotas for wheat crops planted in calendar years 1969-1970. See Effective and Termination Dates of 1985 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 302 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 is effective only for the 1987 through 1990 crops of wheat.

INAPPLICABILITY TO 1986 CROP OF WHEAT

Section 310(a) of Pub. L. 99-198 provided that: "Sections 332, 333, 334, 335, 336, and 338 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1332-1336 and 1338) [7 U.S.C. 1332-1334, 1335, 1336, 1338] shall not be applicable to the 1986 crop of wheat."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1333, 1334 of this title.

§ 1333. Marketing quota apportionment factor

(a) The Secretary shall establish a marketing quota apportionment factor for each crop of

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wheat for which a national marketing quota is proclaimed under section 1332 of this title.

(b) The apportionment factor shall be determined by dividing—

(1) the national marketing quota for such crop of wheat; by

(2) the average number of bushels of wheat the Secretary determines was produced in the United States during the base period, adjusted to reflect the quantity of wheat that would have been produced during such years except for—

(A) drought, flood, or other natural disaster, or other conditions beyond the control of producers; and

(B) participation in any acreage reduction, set-aside, or diversion programs for wheat during such crop years,

as determined by the Secretary.

(As amended Dec. 23, 1985, Pub. L. 99-198, title III, § 303, 99 Stat. 1379.)

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, temporarily substituting provisions relating to the establishment and determination of a marketing quota apportionment factor for each crop of wheat for which a national marketing quota is proclaimed under section 1332 of this title for provisions relating to the proclamation and determination of a national acreage allotment for each crop of wheat. See Effective and Termination Dates of 1985 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 303 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 is effective only for the 1987 through 1990 crops of wheat.

INAPPLICABILITY TO 1986 CROP OF WHEAT

Section inapplicable to 1986 crop of wheat, see Pub. L. 99-198, title III, § 310(a), Dec. 23, 1985, 99 Stat. 1395, set out as a note under section 1332 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1332 of this title.

§ 1334. Farm marketing quotas

(a) Establishment for farms with wheat planted for harvest

For each crop of wheat for which a national marketing quota has been proclaimed under section 1332 of this title, the Secretary shall establish a farm marketing quota for each farm on which wheat was planted for harvest, or considered planted for harvest, during the base period.

(b) Computation

The farm marketing quota shall be equal to the product obtained by multiplying—

(1) the average number of acres of wheat planted for harvest, or considered planted for harvest, on the farm during the base period; by

(2) the average yield of wheat planted for harvest, or considered planted for harvest, on the farm during such base period, as determined by the Secretary on such basis as the Secretary determines will provide a fair and equitable yield; by

(3) the marketing quota apportionment factor.

(c) Wheat planted for harvest

For purposes of this section, wheat shall be considered to have been planted for harvest on the farm in any crop year to the extent that the Secretary determines that wheat was not planted for harvest on the farm because—

(1) of drought, flood, or other natural disaster, or other condition beyond the control of the producer, as determined by the Secretary; or

(2) the producer on the farm participated in any acreage reduction, set-aside, or diversion program for wheat during such crop years.

(d) Date for establishment

Farm marketing quotas shall be established by the Secretary under this section by June 1 of the calendar year preceding each marketing year for which a national marketing quota has been proclaimed under section 1332 of this title.

(As amended Dec. 23, 1985, Pub. L. 99-198, title III, § 304, 99 Stat. 1379.)

AMENDMENTS

1985—Pub. L. 99-198, in amending section generally, temporarily substituted "Farm marketing quotas" for "Apportionment of national acreage allotment" in section catchline. See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (a). Pub. L. 99-198 amended subsec. (a) generally, temporarily substituting provisions requiring the Secretary to establish, for each crop of wheat for which a national marketing quota under section 1332 of this title has been proclaimed, a farm marketing quota for each farm on which wheat was planted, or considered planted, for harvest during the base period for provisions which required the Secretary to apportion the national acreage allotment for wheat, less a national acreage reserve and a special reserve which were provided for herein, among the States on the basis of each State's allotment for the preceding year, adjusted to the extent deemed necessary by the Secretary to establish a fair and equitable apportionment base for each State. See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (b). Pub. L. 99-198 amended subsec. (b) generally, temporarily substituting provisions establishing a formula for determination of the farm marketing quota for provisions which required the Secretary to apportion each State's acreage allotment for wheat among the counties of the State, less a reserve not to exceed 3 per centum thereof, on the basis of the preceding year's wheat allotment in each such county, adjusted to the extent deemed necessary by the Secretary in order to establish a fair and equitable apportionment base for each county. See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (c). Pub. L. 99-198 amended subsec. (c) generally, temporarily substituting provisions defining the circumstances under which wheat shall be considered to have been planted for harvest on the farm in any crop year for provisions relating to the apportionment among farms of each county's allotment under this section. See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (d). Pub. L. 99-198, in amending section generally, temporarily added subsec. (d).

Subsecs. (e) to (k). Pub. L. 99-198, in amending section generally, temporarily struck out subsecs. (e) to (k) as follows:

Subsec. (e) related to increase in acreage allotments and marketing quotas for class II durum wheat.

Subsec. (f) related to voluntary surrender of acreage allotments for the 1955, 1956, and 1957 crops of wheat.

Subsec. (g) related to plantings in excess of allotments or where no allotment was established, in the case of 1958 and subsequent crops of wheat.

Subsec. (h). There is no subsec. (h) for 1964 and subsequent crop years. Subsec. (h) was omitted pursuant to the 1963 amendment to this section by Pub. L. 88-64. See 1963 Amendments note set out under this section.

Subsec. (i) related to an increase in acreage allotments for any kind of wheat in short supply, and enumerated provisions of law inapplicable to such wheat.

Subsec. (j) related to increased durum wheat acreage allotments to the Tulelake area in California for 1970 and subsequent crops of wheat.

Subsec. (k) related to transfer of farm wheat acreage allotments in case of natural disasters.

See Effective and Termination Dates of 1985 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 304 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 is effective only for the 1987 through 1990 crops of wheat.

INAPPLICABILITY TO 1986 CROP OF WHEAT

Section inapplicable to 1986 crop of wheat, see Pub. L. 99-198, title III, § 310(a), Dec. 23, 1985, 99 Stat. 1395, set out as a note under section 1332 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1332, 1445b-3 of this title.

§ 1334b. Designation of States outside commercial wheat-producing areas

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1332 of this title.

§ 1335. Marketing penalties

(a) Rate per bushel

The marketing of wheat produced on a farm in excess of a farm marketing quota shall be subject to a penalty at a rate per bushel equal to 75 percent of the national average market price for wheat during the immediately preceding marketing year.

(b) Persons liable

The penalty provided for in subsection (a) of this section shall be paid—

(1) in the case of wheat marketed by sale to a person within the United States, by the person who acquired the wheat from the producer, except that an amount equivalent to the penalty may be deducted by the buyer from the price paid to the producer;

(2) in the case of wheat marketed through a warehouseman or agent, by the warehouseman or agent, who may deduct an amount equivalent to the penalty from the price paid to the producer; or

(3) in the case of wheat marketed directly to any person outside the United States, by the producer.

(c) Payments by producers for wheat deemed marketed in excess of farm marketing quota

If any producer falsely identifies, or fails to certify, the acreage planted to wheat for harvest or fails to account for the disposition of any wheat produced on such planted acreage in accordance with regulations issued by the Secretary—

(1) a quantity of wheat equal to the product obtained by multiplying—

(A) the farm program payment yield, as determined by the Secretary under title V of the Agricultural Act of 1949 [7 U.S.C. 1461 et seq.]; by

(B) the planted acreage,

shall be deemed to have been marketed in excess of the farm marketing quota; and

(2) the penalty provided for in subsection (a) of this section on such quantity of wheat shall be paid by the producer.

(d) Joint and several liability of producers

Each producer having an interest in the crop of wheat on any farm for which a penalty is determined shall be jointly and severally liable for the entire amount of the penalty.

(e) Carryover wheat penalty-free

Wheat subject to a farm marketing quota may be carried over by the producer from one marketing year to the succeeding marketing year, and may be marketed without incurring a penalty under this section in the succeeding marketing year, to the extent that—

(1) the total quantity of wheat available for marketing from the farm in the marketing year from which the wheat is carried over does not exceed the farm marketing quota; or

(2) the total quantity of wheat available for marketing in the succeeding marketing year (including any quantity of wheat carried over) does not exceed the farm marketing quota for the succeeding marketing year.

(f) Marketing quotas applicable to wheat marketed before marketing year

Wheat produced in a calendar year in which marketing quotas are in effect for the marketing year beginning therein shall be subject to such quotas even though it is marketed prior to the date on which such marketing year begins.

(g) Proportional collections upon proofless dispositions of excess wheat prior to marketing; special account in the Treasury; administration by Secretary and finality of payments

(1) The Secretary shall require collection of the penalty provided for in this section on a proportion of each unit of wheat marketed from the farm equal to the proportion that the wheat available for marketing from the farm in excess of the farm marketing quota is of the total quantity of wheat available for marketing from the farm, if satisfactory proof is not furnished to the Secretary as to the disposition to be made of the excess wheat, in accordance with regulations issued by the Secretary, prior to the marketing of any wheat from the farm.

(2) All funds collected under this section during a marketing year shall be deposited in a special account established in the Treasury of the United States until the end of the next succeeding marketing year. On certification of the Secretary, there shall be paid out of such special account to a person designated by the Sec-

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retary the amount by which the penalty collected exceeds that amount of penalty due on wheat marketed in excess of the farm marketing quota for a farm. Such special account shall be administered by the Secretary. The basis for, the amount of, and the person entitled to receive a payment from such account, when determined in accordance with regulations prescribed by the Secretary, shall be final and conclusive.

(h) Lien in favor of United States

Until the amount of the penalty provided by this section is paid, a lien on—

(1) the wheat with respect to which such penalty is incurred; and

(2) any subsequent wheat subject to marketing quotas in which the person liable for the payment of such penalty has an interest,

shall be in effect in favor of the United States for the amount of the penalty.

(i) Persons liable for interest

A person liable for the payment or collection of a penalty on any quantity of wheat shall be liable also for interest thereon from the date the penalty becomes due until the date of payment of such penalty at a rate per annum equal to the rate of interest that was charged the Commodity Credit Corporation by the Treasurer of the United States on the date such penalty became due.

(j) Termination of marketing quotas without effect on penalties incurred or subject to remittance

(1) If marketing quotas for wheat are not in effect for any marketing year, all previous marketing quotas applicable to wheat shall be terminated, effective as of the first day of such marketing year.

(2) Such termination shall not—

(A) abate any penalty previously incurred by a producer; or

(B) relieve any buyer of the duty to remit penalties previously collected.

(As amended Dec. 23, 1985, Pub. L. 99-198, title III, § 305, 99 Stat. 1380.)

REFERENCES IN TEXT

The Agricultural Act of 1949, referred to in subsec. (c)(1)(A), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended. Title V of that Act is classified generally to subchapter IV (§ 1461 et seq.) of chapter 35A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, temporarily substituting provisions relating to marketing penalties for provisions for small-farm exemptions from marketing quotas. See Effective and Termination Dates of 1985 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 305 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 is effective only for the 1987 through 1990 crops of wheat.

INAPPLICABILITY TO 1986 CROP OF WHEAT

Section inapplicable to 1986 crop of wheat, see Pub. L. 99-198, title III, § 310(a), Dec. 23, 1985, 99 Stat. 1395, set out as a note under section 1332 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1332, 1339, 1379c, 1441, 1445a of this title; title 16 section 590p.

§ 1336. Referendum

(a) Proclamation of national marketing quota; mail ballots

If a national marketing quota for wheat for the marketing quota period is proclaimed, not later than August 1, 1986, the Secretary shall conduct, by mail ballot, a referendum of eligible producers to determine whether they favor or oppose marketing quotas for such period.

(b) Eligible voters

Any producer who produced wheat on a farm during at least one of the crop years of the base period shall be eligible to vote in the referendum.

(c) Proclamation of results

Not later than 30 days after the conduct of such referendum, the Secretary shall proclaim the results of such referendum.

(d) Proclamation of marketing quotas for marketing quota period

If the Secretary determines that 60 percent or more of the producers voting in the referendum approve marketing quotas, the Secretary shall proclaim that marketing quotas will be in effect for the marketing quota period.

(As amended July 11, 1985, Pub. L. 99-63, 99 Stat. 119; Dec. 23, 1985, Pub. L. 99-198, title III, § 306, 99 Stat. 1382.)

AMENDMENTS

1985—Pub. L. 99-198, temporarily amended section generally. Prior to amendment, section read as follows: "If a national marketing quota for wheat for one, two, or three marketing years is proclaimed, the Secretary shall, not later than August 1 of the calendar year in which such national marketing quota is proclaimed, conduct a referendum, by secret ballot, of farmers to determine whether they favor or oppose marketing quotas for the marketing year or years for which proclaimed. Any producer who has a farm acreage allotment shall be eligible to vote in any referendum held pursuant to this section, except that a producer who has a farm acreage allotment of less than fifteen acres shall not be eligible to vote unless the farm operator elected pursuant to section 1335 of this title to be subject to the farm marketing quota. The Secretary shall proclaim the results of any referendum held hereunder within thirty days after the date of such referendum, and if the Secretary determines that more than one-third of the farmers voting in the referendum voted against marketing quotas, the Secretary shall proclaim that marketing quotas will not be in effect with respect to the crop of wheat produced for harvest in the calendar year following the calendar year in which the referendum is held. If the Secretary determines that two-thirds or more of the farmers voting in a referendum approve marketing quotas for a period of two or three marketing years, no referendum shall be held for the subsequent year or years of such period. Notwithstanding any other provision hereof, the referendum with respect to the national marketing quota for wheat for the marketing year beginning June 1, 1986, may be conducted not later than thirty-one days after adjournment sine die of the first session of the Ninety-ninth Congress. See Effective and Termination Dates of 1985 Amendment note below.

Pub. L. 99-63 substituted "year beginning June 1, 1986, may be conducted not later than thirty-one days after adjournment sine die of the first session of the Ninety-ninth Congress" for "year beginning June 1, 1982, may be conducted not later than the earlier of the following: (1) thirty days after adjournment sine die of the first session of the Ninety-seventh Congress, or (2) January 1, 1982".

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 306 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 is effective only for the 1987 through 1990 crops of wheat.

INAPPLICABILITY TO 1986 CROP OF WHEAT

Section inapplicable to 1986 crop of wheat, see Pub. L. 99-198, title III, § 310(a), Dec. 23, 1985, 99 Stat. 1395, set out as a note under section 1332 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1332 of this title.

§ 1338. Transfer of farm marketing quotas

(a) Except as provided in subsection (b) of this section, farm marketing quotas shall not be transferable.

(b) In accordance with regulations prescribed by the Secretary for such purpose—

(1) the farm marketing quota for a farm for any marketing year, or any portion thereof, may be voluntarily surrendered to the Secretary by the producer; and

(2) the Secretary may reallocate any farm marketing quotas so surrendered to other farms having farm marketing quotas on such basis as the Secretary may determine.

(As amended Dec. 23, 1985, Pub. L. 99-198, title III, § 307, 99 Stat. 1382.)

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, temporarily substituting provisions for voluntary surrender of any part of a farm marketing quota by the producer and reallocation by the Secretary to other farms having farm marketing quotas for provisions authorizing allocation of excess quotas to other farms on which the acreage allotment had not been exceeded. See Effective and Termination Dates of 1985 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 307 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 is effective only for the 1987 through 1990 crops of wheat.

INAPPLICABILITY TO 1986 CROP OF WHEAT

Section inapplicable to 1986 crop of wheat, see Pub. L. 99-198, title III, § 310(a), Dec. 23, 1985, 99 Stat. 1395, set out as a note under section 1332 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1332 of this title.

§ 1339. Land use

(a) Penalties: computation, lien, joint and several liability and interest; exceptions: nonsurplus supply crops, substantial impairment, and nonproduction of wheat; diverted acreage: amount, annual identity, and grazing; crops available for marketing

(1) During any year in which marketing quotas for wheat are in effect, the producers on any farm (except a new farm receiving an allotment from the reserve for new farms) on which any crop is produced on acreage required to be diverted from the production of wheat shall be subject to a penalty on such crop, in addition to any marketing quota penalty applicable to such crops, as provided in this subsection unless (1) the crop is designated by the Secretary as one which is not in surplus supply and will not be in surplus supply if it is permitted to be grown on the diverted acreage, or as one the production of which will not substantially impair the purpose of the requirements of this section, or (2) no wheat is produced on the farm, and the producers have not filed an agreement or a statement of intention to participate in the payment program formulated pursuant to subsection (b) of this section. The acreage required to be diverted from the production of wheat on the farm shall be an acreage of cropland equal to the number of acres determined by multiplying the farm acreage allotment by the diversion factor determined by dividing the number of acres by which the national acreage allotment (less an acreage equal to the increased acreage allotted for 1966 pursuant to section 1335 of this title) is reduced below fifty-five million acres by the number of acres in the national acreage allotment (less an acreage equal to the increased acreage allotted for 1966 pursuant to section 1335 of this title). The actual production of any crop subject to penalty under this subsection shall be regarded as available for marketing and the penalty on such crop shall be computed on the actual acreage of such crop at the rate of 65 per centum of the parity price per bushel of wheat as of May 1 of the calendar year in which such crop is harvested, multiplied by the normal yield of wheat per acre established for the farm. Until the producers on any farm pay the penalty on such crop, the entire crop of wheat produced on the farm and any subsequent crop of wheat subject to marketing quotas in which the producer has an interest shall be subject to a lien in favor of the United States for the amount of the penalty. Each producer having an interest in the crop or crops on acreage diverted or required to be diverted from the production of wheat shall be jointly and severally liable for the entire amount of the penalty. The persons liable for the payment or collection of the penalty under this section shall be liable also for interest thereon at the rate of 6 per centum per annum from the date the penalty becomes due until the date of payment of such penalty.

[See main edition for text of (2) and (3); (b) to (h)]

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(Feb. 16, 1938, ch. 30, title III, § 339, as added Sept. 27, 1962, Pub. L. 87-703, title III, § 318, 76 Stat. 622, and amended Apr. 11, 1964, Pub. L. 88-297, title II, § 202 (7)-(9), 78 Stat. 179; Nov. 3, 1965, Pub. L. 89-321, title V, §§ 501(9), (10), 507, 79 Stat. 1201, 1204; Oct. 11, 1968, Pub. L. 90-559, § 1(1), 82 Stat. 996.)

AMENDMENTS

1965—Subsec. (a)(1). Pub. L. 89-321, § 507, inserted "(less an acreage equal to the increased acreage allotted for 1966 pursuant to section 1335 of this title)" after "national acreage allotment" wherever appearing.

1964—Subsec. (a)(1). Pub. L. 88-297, § 202(7), temporarily suspended land-use penalties and made the diversion of land from the production of wheat only a condition of eligibility for receiving wheat marketing certificates. See Effective and Termination Dates of 1964 Amendment note below.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 507 of Pub. L. 89-321 provided in part that the amendment of subsec. (a)(1) of this section was effective beginning with the crop planted for harvest in the calendar year 1967.

Amendment by section 501 of Pub. L. 89-321 effective beginning with the crop planted for harvest in the calendar year 1966, see section 501 of Pub. L. 89-321, set out as a note under section 1332 of this title.

EFFECTIVE AND TERMINATION DATES OF 1964 AMENDMENT

Section 202(7) of Pub. L. 88-297, as amended by Pub. L. 89-321, title V, § 505(1), Nov. 3, 1965, 79 Stat. 1203; Pub. L. 90-559, § 1(1), Oct. 11, 1968, 82 Stat. 996, provided in part that the amendment of subsec. (a) (1) of this section by section 202(7) shall be effective only with respect to the crops planted for harvest in the calendar years 1964 through 1970.

EFFECTIVE DATE

Section effective only with respect to programs applicable to the crops planted for harvest in the calendar year 1964, or any subsequent year and the marketing years beginning in the calendar year 1954, or any subsequent year, see section 323 of Pub. L. 87-703, set out as an Effective Date of 1962 Amendment note under section 1301 of this title.

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF WHEAT

Section inapplicable to 1986 through 1990 crops of wheat, see Pub. L. 99-198, title III, § 310(b), Dec. 23, 1985, 99 Stat. 1395, set out as a note under section 1331 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1379c, 1445a of this title.

§ 1339c. Feed grains diversion programs for 1964 and subsequent years; feed grain acreage considered wheat acreage and wheat acreage considered feed grain acreage

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 590p.

§ 1340. Supplemental provisions relating to wheat marketing quotas; marketing penalty for rice; crop loans on cotton, wheat, rice, tobacco, and peanuts

INAPPLICABILITY TO CROPS OF WHEAT PLANTED FOR HARVEST IN CALENDAR YEARS 1986 THROUGH 1990

Pub. L. 99-198, title III, § 311, Dec. 23, 1985, 99 Stat. 1395, provided that: "The joint resolution entitled 'A joint resolution relating to corn and wheat marketing quotas under the Agricultural Adjustment Act of 1938, as amended', approved May 26, 1941 (7 U.S.C. 1330 and 1340), shall not be applicable to the crops of wheat planted for harvest in the calendar years 1986 through 1990."

INAPPLICABILITY TO CROPS OF WHEAT PLANTED FOR HARVEST IN CALENDAR YEARS 1982 THROUGH 1985

Pub. L. 97-98, title III, § 304, Dec. 22, 1981, 95 Stat. 1227, provided that: "Public Law 74, Seventy-seventh Congress (55 Stat. 203, as amended) [this section] shall not be applicable to the crops of wheat planted for harvest in the calendar years 1982 through 1985."

INAPPLICABILITY TO CROPS OF WHEAT PLANTED FOR HARVEST IN CALENDAR YEARS 1978 THROUGH 1981

Pub. L. 95-113, title IV, § 406, Sept. 29, 1977, 91 Stat. 927, provided that: "Public Law 74, Seventy-seventh Congress (55 Stat. 203, as amended) [this section] shall not be applicable to the crops of wheat planted for harvest in the calendar years 1978 through 1981."

INAPPLICABILITY TO CROPS OF WHEAT PLANTED FOR HARVEST IN CALENDAR YEARS 1971 THROUGH 1977

Pub. L. 91-524, title IV, § 406, Nov. 30, 1970, 84 Stat. 1367, as amended by Pub. L. 93-86, § 1(13), Aug. 10, 1973, 87 Stat. 229, provided that: "Public Law 74, Seventy-seventh Congress (68 Stat. 905) [this section], shall not be applicable to the crops of wheat planted for harvest in the calendar years 1971 through 1977."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 590p.

SUBPART IV—MARKETING QUOTAS—COTTON

§ 1342. National marketing quota; proclamation; amount; date of proclamation

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF UPLAND COTTON

Pub. L. 99-198, title V, § 502, Dec. 23, 1985, 99 Stat. 1418, provided that: "Sections 342, 343, 344, 345, 346, and 377 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1342-1346 and 1377) [7 U.S.C. 1342, 1343, 1344, 1345, 1346, and 1377] shall not be applicable to any of the 1986 through 1990 crops of upland cotton."

INAPPLICABILITY TO 1984 AND SUBSEQUENT CROPS OF EXTRA LONG STAPLE COTTON

Pub. L. 98-88, § 3, Aug. 26, 1983, 97 Stat. 494, provided that: "Sections 342, 343, 344, 344a, 345, 346, and 377 of the Agricultural Adjustment Act of 1938, as amended [sections 1342, 1343, 1344, 1344b, 1345, 1346, and 1377 of this title], shall not be applicable to the 1984 and subsequent crops of extra long staple cotton."

PRELIMINARY ALLOTMENTS FOR 1991 CROP OF UPLAND COTTON

Pub. L. 99-198, title V, § 506, Dec. 23, 1985, 99 Stat. 1418, provided that: "Notwithstanding any other provision of law, the permanent State, county, and farm base acreage allotments for the 1977 crop of upland cotton, adjusted for any underplantings in 1977 and reconstituted as provided in section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379), shall be the preliminary allotments for the 1991 crop."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1343, 1344, 1427 of this title.

§ 1343. Referendum

Not later than December 15 following the issuance of the marketing quota proclamation

provided for in section 1342 of this title, the Secretary shall conduct a referendum, by secret ballot, of farmers engaged in the production of cotton in the calendar year in which the referendum is held, to determine whether such farmers are in favor of or opposed to the quota so proclaimed. If more than one-third of the farmers voting in the referendum oppose the national marketing quota, such quota shall become ineffective upon proclamation of the results of the referendum. The Secretary shall proclaim the results of any referendum held hereunder within thirty days after the date of such referendum. Notwithstanding any other provision hereof, the referendum with respect to the national marketing quota for cotton for the marketing year beginning August 1, 1986, may be conducted not later than thirty-one days after adjournment sine die of the first session of the Ninety-ninth Congress.

(As amended Nov. 15, 1985, Pub. L. 99-157, § 4, 99 Stat. 818.)

AMENDMENTS

1985—Pub. L. 99-157 amended last sentence generally, substituting "August 1, 1986, may be conducted not later than thirty-one days after adjournment sine die of the first session of the Ninety-ninth Congress" for "August 1, 1982, may be conducted not later than the earlier of the following: (1) thirty days after adjournment sine die of the first session of the Ninety-seventh Congress, or (2) January 1, 1982".

INAPPLICABILITY TO 1984 AND SUBSEQUENT CROPS OF EXTRA LONG STAPLE COTTON

Section inapplicable to the 1984 and subsequent crops of extra long staple cotton, see section 3 of Pub. L. 98-88, set out as a note under section 1342 of this title.

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF UPLAND COTTON

Section inapplicable to the 1986 through 1990 crops of upland cotton, see Pub. L. 99-198, title V, § 502, Dec. 23, 1985, 99 Stat. 1418, set out as a note under section 1342 of this title.

§ 1344. Apportionment of national acreage allotments

REFERENCES IN TEXT

Section 1347 of this title, referred to in subsec. (m)(1) and (2), was repealed by Pub. L. 98-88, § 2, Aug. 26, 1983, 97 Stat. 494.

INAPPLICABILITY TO 1984 AND SUBSEQUENT CROPS OF EXTRA LONG STAPLE COTTON

Section inapplicable to the 1984 and subsequent crops of extra long staple cotton, see section 3 of Pub. L. 98-88, set out as a note under section 1342 of this title.

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF UPLAND COTTON

Section inapplicable to the 1986 through 1990 crops of upland cotton, see Pub. L. 99-198, title V, § 502, Dec. 23, 1985, 99 Stat. 1418, set out as a note under section 1342 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1346, 1349, 1350, 1377, 1428, 1444 of this title.

§ 1344b. Sale, lease, or transfer of cotton acreage allotments

(a) Authority for calendar years 1966 through 1970; transfer periods

Notwithstanding any other provision of law, the Secreary, if he determines that it will not impair the effective operation of the program involved, (1) may permit the owner and operator of any farm for which a cotton acreage allotment is established to sell or lease all or any part or the right to all or any part of such allotment (excluding that part of the allotment which the Secretary determines was apportioned to the farm from the national acreage reserve) to any other owner or operator of a farm for transfer to such farm; (2) may permit the owner of a farm to tranfer all or any part of such allotment to any other farm owned or controlled by him; *Provided*, That the authority granted under this section may be exercised for the calendar years 1966 through 1970, but all transfers hereunder shall be for such period of years as the parties thereto may agree.

[*See main edition for text of* (b) *to* (i); *credits*]

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-524 temporarily directed the Secretary to permit certain types of transfers of all or part of farm base acreage allotments between farms in the same State. See Effective and Termination Dates of 1970 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1970 AMENDMENT

Section 601(3) of Pub. L. 91-524, as amended by section 1(19)(A) of Pub. L. 93-86, provided in part that the amendment by Pub. L. 91-524 is effective only with respect to the 1971 through 1977 crops.

INAPPLICABILITY TO THE 1984 AND SUBSEQUENT CROPS OF EXTRA LONG STAPLE COTTON

Section inapplicable to the 1984 and subsequent crops of extra long staple cotton, see section 3 of Pub. L. 98-88, set out as a note under section 1342 of this title.

§ 1345. Farm marketing quotas; farm marketing excess

INAPPLICABILITY TO 1984 AND SUBSEQUENT CROPS OF EXTRA LONG STAPLE COTTON

Section inapplicable to the 1984 and subsequent crops of extra long staple cotton, see section 3 of Pub. L. 98-88, set out as a note under section 1342 of this title.

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF UPLAND COTTON

Section inapplicable to the 1986 through 1990 crops of upland cotton, see Pub. L. 99-198, title V, § 502, Dec. 23, 1985, 99 Stat. 1418, set out as a note under section 1342 of this title.

§ 1346. Penalties

INAPPLICABILITY TO 1984 AND SUBSEQUENT CROPS OF EXTRA LONG STAPLE COTTON

Section inapplicable to the 1984 and subsequent crops of extra long staple cotton, see section 3 of Pub. L. 98-88, set out as a note under section 1342 of this title.

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INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF UPLAND COTTON

Section inapplicable to the 1986 through 1990 crops of upland cotton, see Pub. L. 99-198, title V, § 502, Dec. 23, 1985, 99 Stat. 1418, set out as a note under section 1342 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1349 of this title.

§ 1347. Repealed. Pub. L. 98-88, § 2, Aug. 26, 1983, 97 Stat. 494

Section, acts Feb. 16, 1938, ch. 30, title III, § 347, 52 Stat. 59; Aug. 29, 1949, ch. 518, § 1, 63 Stat. 670; July 17, 1952, ch. 933, § 4, 66 Stat. 759; Aug. 28, 1958, Pub. L. 85-835, title I, § 103(3), 72 Stat. 990; Sept. 21, 1959, Pub. L. 86-341, title II, § 203, 73 Stat. 611; June 30, 1960, Pub. L. 86-566, 74 Stat. 295; Aug. 11, 1968, Pub. L. 90-475, §§ 4, 6, 82 Stat. 701, 702, set out a program for long staple cotton. See section 1444(h) of this title.

EFFECTIVE DATE OF REPEAL

Section 2 of Pub. L. 98-88 provided in part that the repeal of this section is effective beginning with the 1984 crop of extra long staple cotton.

SUBPART VI—MARKETING QUOTAS—PEANUTS

§ 1353. National marketing quota

[See main edition for text of (a)]

(b) Referendum

Not later than December 15 of each calendar year the Secretary shall conduct a referendum of farmers engaged in the production of peanuts in the calendar year in which the referendum is held to determine whether such farmers are in favor of or opposed to marketing quotas with respect to the crops of peanuts produced in the three calendar years immediately following the year in which the referendum is held, except that, if as many as two-thirds of the farmers voting in any referendum vote in favor of marketing quotas, no referendum shall be held with respect to quotas for the second and third years of the period. The Secretary shall proclaim the results of the referendum within thirty days after the date on which it is held, and, if more than one-third of the farmers voting in the referendum vote against marketing quotas, the Secretary also shall proclaim that marketing quotas will not be in effect with respect to the crop of peanuts produced in the calendar year immediately following the calendar year in which the referendum is held. Notwithstanding any other provisions of this section, the Secretary shall proclaim a national marketing quota with respect to the crop of peanuts produced in the calendar year 1941 equal to the minimum quota provided for said year in subsection (a) of this section and shall provide for the holding of a referendum on such quota within thirty days after April 3, 1941, and the State and farm acreage allotments established under the 1941 agricultural conservation program shall be the State and farm acreage allotments for the 1941 crop of peanuts. Notwithstanding any other provision hereof, the referendum with respect to marketing quotas for the crops of peanuts produced in the 1986, 1987, and 1988 calendar years may be conducted not later than thirty-one days after adjournment sine die of the first session of the Ninety-ninth Congress.

(c) Apportionment of national acreage allotment

(1) The national acreage allotment for 1951, less the acreage to be allotted to new farms under subsection (f) of this section, shall be apportioned among the States on the basis of the larger of the following for each State: (a) The acreage allotted to the State as its share of the 1950 national acreage allotment of two million one hundred thousand acres, or (b) the State's share of two million one hundred thousand acres apportioned to States on the basis of the average acreage harvested for nuts in each State in the five years 1945-1949: *Provided*, That any allotment so determined for any State which is less than the 1951 State allotment announced by the Secretary prior to February 16, 1938, shall be increased to such announced allotment and the acreage required for such increases shall be in addition to the 1951 national acreage allotment and shall be considered in determining State acreage allotments in future years. For any year subsequent to 1951, the national acreage allotment for that year shall be apportioned among the States on the basis of their share of the national acreage allotment for the most recent year in which such apportionment was made.

[See main edition for text of (2); (d) to (o)]

(p) Definitions

For the purposes of this subpart and title I of the Agricultural Act of 1949 [7 U.S.C. 1441 et seq.]—

[See main edition for text of (1) to (4)]

(q) Establishment of national poundage quotas for 1986 through 1990 marketing years

(1) The national poundage quota for peanuts for each of the 1986 through 1990 marketing years shall be established by the Secretary at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each such marketing year to domestic edible, seed, and related uses, except that the national poundage quota for any such marketing year shall not be less than 1,100,000 tons.

(2) The national poundage quota for a marketing year shall be announced by the Secretary not later than December 15 preceding such marketing year.

(r) Apportionment of poundage quotas among States

The national poundage quota established under subsection (q) of this section shall be apportioned among the States so that the poundage quota allocated to each State shall be equal to the percentage of the national poundage quota allocated to farms in the State for 1985.

(s) Establishment of farm poundage quotas

(1)(A) A farm poundage quota for each of the 1986 through 1990 marketing years shall be established—

(i) for each farm that had a farm poundage quota for peanuts for the 1985 marketing year; and

(ii) if the poundage quota apportioned to a State under subsection (r) of this section for any such marketing year is larger than such quota for the immediately preceding marketing year, for each other farm on which peanuts were produced for marketing in at least 2 of the 3 immediately preceding crop years, as determined by the Secretary.

(B) The farm poundage quota for each of the 1986 through 1990 marketing years for each farm described in subparagraph (A)(i) of the preceding sentence shall be the same as the farm poundage quota for such farm for the immediately preceding marketing year, as adjusted under paragraph (2), but not including—

(i) any increases for undermarketings from previous years; or

(ii) any increases resulting from the allocation of quotas voluntarily released for 1 year under paragraph (7).

The farm poundage quota, if any, for each of the 1986 through 1990 marketing years for each farm described in subparagraph (A)(ii) shall be equal to the quantity of peanuts allocated to such farm for such year under paragraph (2).

(C) For purposes of this paragraph, if the farm poundage quota, or any part thereof, is permanently transferred in accordance with section 1358a of this title, the receiving farm shall be considered as possessing the farm poundage quotas (or portion thereof) of the transferring farm for all subsequent marketing years.

(2)(A) If the poundage quota apportioned to a State under subsection (r) of this section for any of the 1986 through 1990 marketing years is increased over the poundage quota apportioned to the State for the immediately preceding marketing year, such increase shall be allocated equally among—

(i) all farms in the State for each of which a farm poundage quota was established for the marketing year immediately preceding the marketing year for which the allocation is being made; and

(ii) all other farms in the State on each of which peanuts were produced in at least 2 of the 3 immediately preceding crop years, as determined by the Secretary.

(B) If the poundage quota apportioned to a State under subsection (r) of this section for any of the 1987 through 1990 marketing years is decreased from the poundage quota apportioned to the State under such subsection for the immediately preceding marketing year, such decrease shall be allocated among all the farms in the State for each of which a farm poundage quota was established for the marketing year immediately preceding the marketing year for which the allocation is being made.

(3)(A) Insofar as practicable and on such fair and equitable basis as the Secretary may by regulation prescribe, the farm poundage quota established for a farm for any of the 1986 through 1990 marketing years shall be reduced to the extent that the Secretary determines that the farm poundage quota established for the farm for any 2 of the 3 marketing years preceding the marketing year for which the determination is being made was not produced, or considered produced, on the farm.

(B) For the purposes of this paragraph, the farm poundage quota for any such preceding marketing year shall not include—

(i) any increases for undermarketing of quota peanuts from previous years; or

(ii) any increase resulting from the allocation of quotas voluntarily released for one year under paragraph (7).

(4) For purposes of this subsection, the farm poundage quota shall be considered produced on a farm if—

(A) the farm poundage quota was not produced on the farm because of drought, flood, or any other natural disaster, or any other condition beyond the control of the producer, as determined by the Secretary; or

(B) the farm poundage quota for the farm was released voluntarily under paragraph (7) for only 1 of the 3 marketing years immediately preceding the marketing year for which the determination is being made.

(5) Notwithstanding any other provision of law—

(A) the farm poundage quota established for a farm under this subsection, or any part of such quota, may be permanently released by the owner of the farm, or the operator with the permission of the owner; and

(B) the poundage quota for the farm for which such quota is released shall be adjusted downward to reflect the quota that is so released.

(6)(A) Except as provided in subparagraph (B), the total amount of the farm poundage quotas reduced or voluntarily released from farms in a State for any marketing year under paragraphs (3) and (5) shall be allocated, as the Secretary may by regulation prescribe, to other farms in the State on which peanuts were produced in at least 2 of the 3 crop years immediately preceding the year for which such allocation is being made.

(B) Not less than 25 percent of such total amount of farm poundage quota in the State shall be allocated to farms for which no farm poundage quota was established for the immediately preceding year's crop.

(7)(A) The farm poundage quota, or any portion thereof, established for a farm for a marketing year may be voluntarily released to the Secretary to the extent that such quota, or any part thereof, will not be produced on the farm for the marketing year. Any farm poundage quota so released in a State shall be allocated to other farms in the State on such basis as the Secretary may by regulation prescribe.

(B) Any adjustment in the farm poundage quota for a farm under subparagraph (A) shall be effective only for the marketing year for which it is made and shall not be taken into consideration in establishing a farm poundage quota for the farm from which such quota was released for any subsequent marketing year.

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(8)(A) Except as provided in subparagraph (B), the farm poundage quota for a farm for any marketing year shall be increased by the number of pounds by which the total marketings of quota peanuts from the farm during previous marketing years (excluding any marketing year before the marketing year for the 1984 crop) were less than the total amount of applicable farm poundage quotas (disregarding adjustments for undermarketings from previous marketing years) for such marketing years.

(B) For purposes of subparagraph (A), no increase for undermarketings in previous marketing years shall be made to the poundage quota for any farm to the extent that the poundage quota for such farm for the marketing year was reduced under paragraph (3) for failure to produce.

(C) Any increases in farm poundage quotas under this paragraph shall not be counted against the national poundage quota for the marketing year involved.

(D) Any increase in the farm poundage quota for a farm for a marketing year under this paragraph may be used during the marketing year by the transfer of additional peanuts produced on the farm to the quota loan pool for pricing purposes on such basis as the Secretary shall by regulation prescribe.

(9) Notwithstanding the foregoing provisions of this subsection, if the total of all increases in individual farm poundage quotas under paragraph (8) exceeds 10 percent of the national poundage quota for the marketing year in which such increases shall be applicable, the Secretary shall adjust such increases so that the total of all such increases does not exceed 10 percent of the national poundage quota.

(t) Farm yields

(1) For each farm for which a farm poundage quota is established under subsection (s) of this section, and when necessary for purposes of this chapter, a farm yield of peanuts shall be determined for each such farm.

(2) Such yield shall be equal to the average of the actual yield per acre on the farm for each of the 3 crop years in which yields were highest on the farm out of the 5 crop years 1973 through 1977.

(3) If peanuts were not produced on the farm in at least 3 years during such 5-year period or there was a substantial change in the operation of the farm during such period (including, but not limited to, a change in operator, lessee who is an operator, or irrigation practices), the Secretary shall have a yield appraised for the farm. The appraised yield shall be that amount determined to be fair and reasonable on the basis of yields established for similar farms that are located in the area of the farm and on which peanuts were produced, taking into consideration land, labor, and equipment available for the production of peanuts, crop rotation practices, soil and water, and other relevant factors.

(u) Referendum respecting poundage quotas

(1) Not later than December 15 of each calendar year, the Secretary shall conduct a referendum of producers engaged in the production of quota peanuts in the calendar year in which the referendum is held to determine whether such producers are in favor of or opposed to poundage quotas with respect to the crops of peanuts produced in the five calendar years immediately following the year in which the referendum is held, except that, if as many as two-thirds of the producers voting in any referendum vote in favor of poundage quotas, no referendum shall be held with respect to quotas for the second, third, fourth, and fifth years of the period.

(2) The Secretary shall proclaim the result of the referendum within 30 days after the date on which it is held.

(3) If more than one-third of the producers voting in the referendum vote against quotas, the Secretary also shall proclaim that poundage quotas will not be in effect with respect to the crop of peanuts produced in the calendar year immediately following the calendar year in which the referendum is held.

(v) Definitions

For the purposes of this subpart and title I of the Agricultural Act of 1949 [7 U.S.C. 1441 et seq.]:

(1) The term "additional peanuts" means, for any marketing year—

(A) any peanuts that are marketed from a farm for which a farm poundage quota has been established and that are in excess of the marketings of quota peanuts from such farm for such year; and

(B) all peanuts marketed from a farm for which no farm poundage quota has been established in accordance with subsection (s) of this section.

(2) The term "crushing" means the processing of peanuts to extract oil for food uses and meal for feed uses, or the processing of peanuts by crushing or otherwise when authorized by the Secretary.

(3) The term "domestic edible use" means use for milling to produce domestic food peanuts (other than those described in paragraph (2)) and seed and use on a farm, except that the Secretary may exempt from this definition seeds of peanuts that are used to produce peanuts excluded under section 1359(c) of this title, are unique strains, and are not commercially available.

(4) The term "quota peanuts" means, for any marketing year, any peanuts produced on a farm having a farm poundage quota, as determined in subsection (s) of this section, that—

(A) are eligible for domestic edible use as determined by the Secretary;

(B) are marketed or considered marketed from a farm; and

(C) do not exceed the farm poundage quota of such farm for such year.

(As amended Nov. 15, 1985, Pub. L. 99-157, § 5, 99 Stat. 818; Dec. 23, 1985, Pub. L. 99-198, title VII, § 702, 99 Stat. 1430.)

REFERENCES IN TEXT

The Agricultural Act of 1949, as amended, referred to in subsecs. (p) and (v), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051 as amended. Title I of the Agricultural

Act of 1949, as amended, is classified generally to subchapter II (§ 1441 et seq.) of chapter 35A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-157 added "Notwithstanding any other provision hereof, the referendum with respect to marketing quotas for the crops of peanuts produced in the 1986, 1987, and 1988 calendar years may be conducted not later than thirty-one days after adjournment sine die of the first session of the Ninety-ninth Congress."

Subsecs. (q) to (v). Pub. L. 99-198 temporarily added subsecs. (q) to (v). See Effective and Termination Dates of 1985 Amendment note below.

1977—Subsec. (c)(1). Pub. L. 95-113, § 801(b), temporarily added proviso that the peanut acreage allotment for the State of New Mexico not be reduced below the 1977 acreage allotment as increased pursuant to subsec. (c)(2) of this section. See Effective and Termination Dates of 1977 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 702 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 [adding subsecs. (q) to (v) of this section] is effective only for the 1986 through 1990 crops of peanuts.

EFFECTIVE AND TERMINATION DATES OF 1977 AMENDMENT

Section 801(b) of Pub. L. 95-113 provided in part that the amendment of subsec. (c)(1) is effective for the 1978 through 1981 crops of peanuts.

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF PEANUTS

Section 701(1) of Pub. L. 99-198 provided in part that subsecs. (a) through (j) of this section are inapplicable to 1986 through 1990 peanut crops.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1359, 1445c-1, 1445c-2 of this title.

§ 1358a. Transfer of peanut acreage allotments

(a) Authority to permit transfers

Notwithstanding any other provision of law for the 1968 and succeeding crop years, the Secretary, if he determines that it will not impair the effective operation of the peanut marketing quota or price-support program, (1) may permit the owner and operator of any farm for which a peanut acreage allotment is established under this chapter to sell or lease all or any part or the right to all or any part of such allotment to any other owner or operator of a farm in the same county for transfer to such farm; and (2) may permit the owner of a farm to transfer all or any part of such allotment to any other farm owned or controlled by him.

[*See main edition for text of (b) to (j)*]

(k) Sale or lease of farm poundage quotas; limitations

(1) Subject to such terms, conditions, or limitations as the Secretary may prescribe, the owner, or the operator with permission of the owner, of any farm for which a farm poundage quota has been established under this chapter may sell or lease all or any part of such poundage quota to any other owner or operator of a farm within the same county for transfer to such farm, except that any such lease of poundage quota may be entered into in the fall or after the normal planting season but only—

(A) if the quota has been planted on the farm from which the quota is to be leased; and

(B) under such terms and conditions as the Secretary may by regulation prescribe.

(2) The owner or operator of a farm may transfer all or any part of the farm poundage quota for such farm to any other farm owned or controlled by such owner or operator that is in the same county or in a county contiguous to such county in the same State and that had a farm poundage quota for the preceding year's crop.

(3) Notwithstanding paragraphs (1) and (2), in the case of any State for which the poundage quota allocated to the State was less than 10,000 tons for the preceding year's crop, all or any part of a farm poundage quota may be transferred by sale or lease or otherwise from a farm in one county to a farm in another county in the same State.

(*l*) Applicable conditions to transfers of farm poundage quotas

Transfers (including transfer by sale or lease) of farm poundage quotas under this section shall be subject to all of the following conditions:

(1) No transfer of the farm poundage quota from a farm subject to a mortgage or other lien shall be permitted unless the transfer is agreed to by the lienholders.

(2) No transfer of the farm poundage quota shall be permitted if the county committee established under section 590h(b) of title 16 determines that the receiving farm does not have adequate tillable cropland to produce the farm poundage quota.

(3) No transfer of the farm poundage quota shall be effective until a record thereof is filed with the county committee of the county to which such transfer is made and such committee determines that the transfer complies with this section.

(4) Such other terms and conditions that the Secretary may by regulation prescribe.

(As amended Dec. 23, 1985, Pub. L. 99-198, title VII, § 703, 99 Stat. 1434.)

AMENDMENTS

1985—Subsecs. (k), (*l*). Pub. L. 99-198 temporarily added subsecs. (k) and (*l*). See Effective and Termination Dates of 1985 Amendment note below.

1977—Subsec. (a). Pub. L. 95-113, § 803(1), temporarily struck out ", if he determines that it will not impair the effective operation of the peanut marketing quota or price support program," after "the Secretary" and substituted "shall" for "may" wherever appearing. See Effective and Termination Dates of 1977 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 703 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 [adding subsecs. (k) and (*l*) of this section] is effective only for the 1986 through 1990 crops of peanuts.

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EFFECTIVE AND TERMINATION DATES OF 1977 AMENDMENT

Section 803 of Pub. L. 95-113 provided in part that the amendment by Pub. L. 95-113 is effective for the 1978 through 1981 crops of peanuts.

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF PEANUTS

Section 701(2) of Pub. L. 99-198 provided in part that subsecs. (a) through (h) of this section are inapplicable to the 1986 through 1990 crops of peanuts.

§ 1359. Marketing penalties

(a) The marketing of any peanuts in excess of the marketing quota for the farm on which such peanuts are produced, or the marketing of peanuts from any farm for which no acreage allotment was determined, shall be subject to a penalty at a rate equal to 75 per centum of the support price for peanuts for the marketing year (August 1 to July 31). Such penalty shall be paid by the person who buys or otherwise acquires the peanuts from the producer, or, if the peanuts are marketed by the producer through an agent, the penalty shall be paid by such agent, and such person or agent may deduct an amount equivalent to the penalty from the price paid to the producer. The Secretary may require collection of the penalty upon a portion of each lot of peanuts marketed from the farm equal to the proportion which the acreage of peanuts in excess of the farm-acreage allotment is of the total acreage of peanuts on the farm. If the person required to collect the penalty fails to collect such penalty, such person and all persons entitled to share in the peanuts marketed from the farm or the proceeds thereof shall be jointly and severally liable for the amount of the penalty. All funds collected pursuant to this section shall be deposited in a special deposit account with the Treasurer of the United States and such amounts as are determined, in accordance with regulations prescribed by the Secretary, to be penalties incurred shall be transferred to the general fund of the Treasury of the United States. Amounts collected in excess of determined penalties shall be paid to such producers as the Secretary determines, in accordance with regulations prescribed by him, bore the burden of the payment of the amount collected. Such special account shall be administered by the Secretary and the basis for, the amount of, and the producer entitled to receive a payment from such account, when determined in accordance with regulations prescribed by the Secretary, shall be final and conclusive. Peanuts produced in a calendar year in which marketing quotas are in effect for the marketing year beginning therein shall be subject to such quotas even though the peanuts are marketed prior to the date on which such marketing year begins. If any producer falsely identifies or fails to account for the disposition of any peanuts, an amount of peanuts equal to the normal yield of the number of acres harvested in excess of the farm acreage allotment shall be deemed to have been marketed in excess of the marketing quota for the farm, and the penalty in respect thereof shall be paid and remitted by the producer. If any amount of peanuts produced on one farm is falsely identified by a representation that such peanuts were produced on another farm, the acreage allotments next established for both such farms shall be reduced by that percentage which such amount was of the respective farm marketing quotas, except that such reduction for any such farm shall not be made if the Secretary through the local committees finds that no person connected with such farm caused, aided, or acquiesced in such marketing; and if proof of the disposition of any amount of peanuts is not furnished as required by the Secretary, the acreage allotment next established for the farm on which such peanuts are produced shall be reduced by a percentage similarly computed. Notwithstanding any other provisions of this subpart, no refund of any penalty shall be made because of peanuts kept on the farm for seed or for home consumption.

[*See main edition for text of (b) to (l)*]

(m)(1)(A) The marketing of any peanuts for domestic edible use in excess of the farm poundage quota for the farm on which such peanuts are produced shall be subject to penalty at a rate equal to 140 percent of the support price for quota peanuts for the marketing year in which such marketing occurs.

(B) For purposes of this section, the marketing year for peanuts shall be the 12-month period beginning August 1 and ending July 31.

(C) The marketing of any additional peanuts from a farm shall be subject to the same penalty unless such peanuts, in accordance with regulations established by the Secretary, are—

(i) placed under loan at the additional loan rate in effect for such peanuts under section 1445c-2 of this title and not redeemed by the producers;

(ii) marketed through an area marketing association designated pursuant to section 1445c-2(3)(A) of this title; or

(iii) marketed under contracts between handlers and producers pursuant to subsection (q) of this section.

(2) Such penalty shall be paid by the person who buys or otherwise acquires the peanuts from the producer or, if the peanuts are marketed by the producer through an agent, the penalty shall be paid by such agent. Such person or agent may deduct an amount equivalent to the penalty from the price paid to the producer.

(3) If the person required to collect the penalty fails to collect such penalty, such person and all persons entitled to share in the peanuts marketed from the farm or the proceeds thereof shall be jointly and severally liable for the amount of the penalty.

(4) Peanuts produced in a calendar year in which farm poundage quotas are in effect for the marketing year beginning therein shall be subject to such quotas even though the peanuts are marketed prior to the date on which such marketing year begins.

(5) If any producer falsely identifies or fails to certify planted acres or fails to account for the disposition of any peanuts produced on such planted acres, an amount of peanuts equal

to the farm's average yield, as determined under section 1358(t) of this title, times the planted acres, shall be deemed to have been marketed in violation of permissible uses of quota and additional peanuts. Any penalty payable under this paragraph shall be paid and remitted by the producer.

(6) The Secretary shall authorize, under such regulations as the Secretary shall issue, the county committees established under section 590h(b) of title 16 to waive or reduce marketing penalties provided for under this subsection in cases in which such committees determine that the violations that were the basis of the penalties were unintentional or without knowledge on the part of the parties concerned.

(7) Errors in weight that do not exceed one-tenth of 1 percent in the case of any one marketing document shall not be considered to be marketing violations except in cases of fraud or conspiracy.

(n)(1) Only quota peanuts may be retained for use as seed or for other uses on a farm. When so retained, quota peanuts shall be considered as marketings of quota peanuts, except that the Secretary may exempt from consideration as marketings of quota peanuts seeds of peanuts that are used to produce peanuts excluded under subsection (c) of this section, are unique strains, and are not commercially available.

(2) Additional peanuts shall not be retained for use on a farm and shall not be marketed for domestic edible use, except as provided in subsection (r) of this section.

(3) Seed for planting of any peanut acreage in the United States shall be obtained solely from quota peanuts marketed or considered marketed for domestic edible use.

(o) On a finding by the Secretary that the peanuts marketed from any crop for domestic edible use by a handler are larger in quantity or higher in grade or quality than the peanuts that could reasonably be produced from the quantity of peanuts having the grade, kernel content, and quality of the quota peanuts acquired by such handler from such crop for such marketing, such handler shall be subject to a penalty equal to 140 percent of the loan level for quota peanuts on the quantity of peanuts that the Secretary determines are in excess of the quantity, grade, or quality of the peanuts that could reasonably have been produced from the peanuts so acquired.

(p)(1) Except as provided in paragraph (2), the Secretary shall require that the handling and disposal of additional peanuts be supervised by agents of the Secretary or by area marketing associations designated pursuant to section 1445c-2(3)(A) of this title.

(2)(A) Supervision of the handling and disposal of additional peanuts by a handler shall not be required under paragraph (1) if the handler agrees in writing, prior to any handling or disposal of such peanuts, to comply with regulations that the Secretary shall issue.

(B) The regulations issued by the Secretary under subparagraph (A) shall include, but need not be limited to, the following provisions:

(i) Handlers of shelled or milled peanuts may export peanuts classified by type in all of the following quantities (less such reasonable allowance for shrinkage as the Secretary may prescribe):

(I) Sound split kernel peanuts in an amount equal to twice the poundage of such peanuts purchased by the handler as additional peanuts.

(II) Sound mature kernel peanuts in an amount equal to the poundage of such peanuts purchased by the handler as additional peanuts less the amount of sound split kernel peanuts purchased by the handler as additional peanuts.

(III) The remaining quantity of total kernel content of peanuts purchased by the handler as additional peanuts and not crushed domestically.

(ii) Handlers shall ensure that any additional peanuts exported are evidenced by onboard bills of lading, other appropriate documentation as may be required by the Secretary, or both.

(iii) If a handler suffers a loss of peanuts as a result of fire, flood, or any other condition beyond the control of the handler, the portion of such loss allocated to contracted additional peanuts shall not be greater than the portion of the handler's total peanut purchases for the year attributable to contracted additional peanuts purchased for export by the handler during such year.

(3) A handler shall submit to the Secretary adequate financial guarantees, as well as evidence of adequate facilities and assets, to ensure the handler's compliance with the obligation to export peanuts.

(4) Quota and additional peanuts of like type and segregation or quality may, under regulations issued by the Secretary, be commingled and exchanged on a dollar value basis to facilitate warehousing, handling, and marketing.

(5)(A) Except as provided in subparagraph (B), the failure by a handler to comply with regulations issued by the Secretary governing the disposition and handling of additional peanuts shall subject the handler to a penalty at a rate equal to 140 percent of the loan level for quota peanuts on the quantity of peanuts involved in the violation.

(B) A handler shall not be subject to a penalty for failure to export additional peanuts if such peanuts were not delivered to the handler.

(6) If any additional peanuts exported by a handler are reentered into the United States in commercial quantities as determined by the Secretary, the importer thereof shall be subject to a penalty at a rate equal to 140 percent of the loan level for quota peanuts on the quantity of peanuts reentered.

(q)(1) Handlers may, under such regulations as the Secretary may issue, contract with producers for the purchase of additional peanuts for crushing, export, or both.

(2) Any such contract shall be completed and submitted to the Secretary (or if designated by the Secretary, the area marketing association) for approval before August 1 of the year in which the crop is produced.

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(3) Each such contract shall contain the final price to be paid by the handler for the peanuts involved and a specific prohibition against the disposition of such peanuts for domestic edible or seed use.

(r)(1) Subject to section 1427 of this title, any peanuts owned or controlled by the Commodity Credit Corporation may be made available for domestic edible use, in accordance with regulations issued by the Secretary, so long as doing so does not result in substantially increased cost to the Commodity Credit Corporation. Additional peanuts received under loan shall be offered for sale for domestic edible use at prices not less than those required to cover all costs incurred with respect to such peanuts for such items as inspection, warehousing, shrinkage, and other expenses, plus—

(A) not less than 100 percent of the loan value of quota peanuts if the additional peanuts are sold and paid for during the harvest season on delivery by and with the written consent of the producer;

(B) not less than 105 percent of the loan value of quota peanuts if the additional peanuts are sold after delivery by the producer but not later than December 31 of the marketing year; or

(C) not less than 107 percent of the loan value of quota peanuts if the additional peanuts are sold later than December 31 of the marketing year.

(2)(A) Except as provided in subparagraph (B), for the period from the date additional peanuts are delivered for loan to March 1 of the calendar year following the year in which such additional peanuts were harvested, the area marketing association designated pursuant to section 1445c-2(3)(A) of this title shall have sole authority to accept or reject lot list bids when the sales price, as determined under this subsection, equals or exceeds the minimum price at which the Commodity Credit Corporation may sell its stocks of additional peanuts.

(B) The area marketing association and the Commodity Credit Corporation may agree to modify the authority granted by subparagraph (A) to facilitate the orderly marketing of additional peanuts.

(s)(1) The person liable for payment or collection of any penalty provided for in this section shall be liable also for interest thereon at a rate per annum equal to the rate per annum of interest that was charged the Commodity Credit Corporation by the Treasury of the United States on the date such penalty became due.

(2) This section shall not apply to peanuts produced on any farm on which the acreage harvested for nuts is one acre or less if the producers who share in the peanuts produced on such farm do not share in the peanuts produced on any other farm.

(3) Until the amount of the penalty provided by this section is paid, a lien on the crop of peanuts with respect to which such penalty is incurred, and on any subsequent crop of peanuts subject to farm poundage quotas in which the person liable for payment of the penalty has an interest, shall be in effect in favor of the United States.

(4)(A) Notwithstanding any other provision of law, the liability for and the amount of any penalty assessed under this section shall be determined in accordance with such procedures as the Secretary by regulation may prescribe. The facts constituting the basis for determining the liability for or amount of any penalty assessed under this section, when officially determined in conformity with the applicable regulations prescribed by the Secretary, shall be final and conclusive and shall not be reviewable by any other officer or agency of the Government.

(B) Nothing in this section shall be construed as prohibiting any court of competent jurisdiction from reviewing any determination made by the Secretary with respect to whether such determination was made in conformity with the applicable law and regulations.

(C) All penalties imposed under this section shall for all purposes be considered civil penalties.

(5)(A) Notwithstanding any other provision of law and except as provided in subparagraph (B), the Secretary may reduce the amount of any penalty assessed against handlers under this section if the Secretary finds that the violation on which the penalty is based was minor or inadvertent, and that the reduction of the penalty will not impair the operation of the peanut program.

(B) The amount of any penalty imposed on a handler under this section that resulted from the failure to export contracted additional peanuts may not be reduced by the Secretary.

(As amended Dec. 23, 1985, Pub. L. 99-198, title VII, § 704, 99 Stat. 1435.)

AMENDMENTS

1985—Subsecs. (m) to (s). Pub. L. 99-198 temporarily added subsecs. (m) to (s). See Effective and Termination Dates of 1985 Amendment note below.

1977—Subsec. (a). Pub. L. 95-113, § 804(1)-(3), temporarily substituted "penalty at a rate equal to 120 per centum of the support price for quota peanuts" for "penalty at a rate equal to 75 per centum of the support price for peanuts" and "farm yield" for "normal yield" and added provision that the marketing of any additional peanuts from a farm be subject to the 120 per centum penalty unless the peanuts, in accordance with regulations established by the Secretary, are placed under loan at the additional loan rate under the loan program made available under section 1445c(b) of this title and not redeemed by the producers or are marketed under contracts between handlers and producers pursuant to the provisions of subsection (i) of this section. See Effective and Termination Dates of 1977 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 704 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 [adding subsecs. (m) to (s) of this section] is effective only for the 1986 through 1990 crops of peanuts.

EFFECTIVE AND TERMINATION DATES OF 1977 AMENDMENT

Section 804 of Pub. L. 95-113 provided in part that the amendment by Pub. L. 95-113 is effective for the 1978 through 1981 crops of peanuts.

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF PEANUTS

Section 701(3) of Pub. L. 99-198 provided in part that subsecs. (a), (b), (d), and (e) of this section are inapplicable to 1986 through 1990 crops of peanuts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1358, 1445c-1, 1445c-2 of this title.

PART C—ADMINISTRATIVE PROVISIONS

SUBPART I—PUBLICATION AND REVIEW OF QUOTAS

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF PEANUTS

Pub. L. 99-198, title VII, § 701(4), Dec. 23, 1985, 99 Stat. 1430, provided in part that subpart I of Part C of this subchapter (§ 1361 et seq.) is inapplicable to 1986 through 1990 crops of peanuts.

§ 1363. Review of quota; review committee

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1314b, 1314b-1, 1314b-2, 1314c of this title.

§ 1366. Court review

The review by the court shall be limited to questions of law, and the findings of fact by the review committee, if supported by evidence shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the review committee, the court may direct such additional evidence to be taken before the review committee in such manner and upon such terms and conditions as to the court may seem proper. The review committee may modify its findings of fact or its determination by reason of the additional evidence so taken, and it shall file with the court such modified findings or determination, which findings of fact shall be conclusive. The court shall hear and determine the case upon the original record of the hearing before the review committee, and upon such record as supplemented if supplemented, by further hearing before the review committee pursuant to direction of the court. The court shall affirm the review committee's determination, or modified determination, if the court determines that the same is in accordance with law. If the court determines that such determination or modified determination is not in accordance with law, the court shall remand the proceeding to the review committee with direction either to make such determination as the court shall determine to be in accordance with law or to take such further proceedings as, in the court's opinion, the law requires.

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(6), 98 Stat. 3357.)

AMENDMENTS

1984—Pub. L. 98-620 substituted "The court" for "At the earliest convenient time, the court, in term time or vacation,".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

SUBPART II—ADJUSTMENT OF QUOTAS AND ENFORCEMENT

§ 1371. General adjustment of quotas

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF PEANUTS

Pub. L. 99-198, title VII, § 701(5), Dec. 23, 1985, 99 Stat. 1430, provided in part that this section is inapplicable to 1986 through 1990 crops of peanuts.

§ 1373. Reports and records

(a) Persons reporting

This subsection shall apply to warehousemen, processors, and common carriers of corn, wheat, cotton, rice, peanuts, or tobacco, and all ginners of cotton, all persons engaged in the business of purchasing corn, wheat, cotton, rice, peanuts, or tobacco from producers, all persons engaged in the business of redrying, prizing, or stemming tobacco for producers, all producers engaged in the production of peanuts, all brokers and dealers in peanuts, all agents marketing peanuts for producers, or acquiring peanuts for buyers and dealers, and all peanut growers' cooperative associations, all persons engaged in the business of cleaning, shelling, crushing, and salting of peanuts and the manufacture of peanut products, and all persons owning or operating peanut-picking or peanut-threshing machines. Any such person shall, from time to time on request of the Secretary, report to the Secretary such information and keep such records as the Secretary finds to be necessary to enable him to carry out the provisions of this subchapter. Such information shall be reported and such records shall be kept in accordance with forms which the Secretary shall prescribe. For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining information required to be furnished in any report, but not so furnished, the Secretary is authorized to examine such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as he has reason to believe are relevant and are within the control of such person. Any such person failing to make any report or keep any record as required by this subsection or making any false report or record shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500; and any tobacco warehouseman or dealer who fails to remedy such violation by making a complete and accurate report or keeping a complete and accurate record as required by this subsection within fifteen days after notice to him of such violation shall be subject to an additional fine of $100 for each ten thousand pounds of tobacco, or fraction thereof, bought or sold by him after the date of such violation: *Provided*, That such fine shall not exceed $5,000; and notice of such violation shall be served upon the tobacco warehouseman or dealer by mailing the same to him

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by registered mail or by certified mail or by posting the same at any established place of business operated by him, or both.

[*See main edition for text of* (b) *and* (c)]

(As amended Dec. 23, 1985, Pub. L. 99-198, title VII, § 706, 99 Stat. 1441.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198 temporarily inserted "all producers engaged in the production of peanuts," before "all brokers and dealers in peanuts". See Effective and Termination Dates of 1985 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 706 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 is effective only for the 1986 through 1990 crops of peanuts.

§ 1374. Measurement of farms and report of plantings; remeasurement

(a) The Secretary shall provide for ascertaining, by measurement or otherwise, the acreage of any agricultural commodity or land use on farms for which the ascertainment of such acreage is necessary to determine compliance under any program administered by the Secretary. Insofar as practicable, the acreage of the commodity and land use shall be ascertained prior to harvest, and, if any acreage so ascertained is not in compliance with the requirements of the program the Secretary, under such terms and conditions as he prescribes, may provide a reasonable time for the adjustment of the acreage of the commodity or land use to the requirements of the program. Where cotton is planted in skiprow patterns, the same rules that were in effect for the 1971 through 1973 crops for classifying the acreage planted to cotton and the area skipped shall also apply to the 1974 through 1990 crops.

[*See main edition for text of* (b) *and* (c)]

(As amended Dec. 23, 1985, Pub. L. 99-198, title V, § 505, 99 Stat. 1418.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198 substituted "1990 crops" for "1985 crops".

§ 1377. Preservation of unused acreage allotments

In any case in which, during any year beginning with 1956, the acreage planted to a commodity on any farm is less than the acreage allotment for such farm, the entire acreage allotment for such farm (excluding any allotment released from the farm or reapportioned to the farm and any allotment provided for the farm pursuant to subsection (f)(7)(A) of section 1344 of this title) shall, except as provided herein, be considered for the purpose of establishing future State, county and farm acreage allotments, to have been planted to such commodity in such year on such farm, but the 1956 acreage allotment of any commodity shall be regarded as planted under this section only if the owner or operator on such farm notified the county committee prior to the sixtieth day preceding the beginning of the marketing year for such commodity of his desire to preserve such allotment: *Provided,* That beginning with the 1960 crop, except for federally owned land, the current farm acreage allotment established for a commodity shall not be preserved as history acreage pursuant to the provisions of this section unless for the current year or either of the two preceding years as acreage equal to 75 per centum or more of the farm acreage allotment for such year or, in the case of upland cotton on a farm which qualified for price support on the crop produced in any such year under section 1444(b) of this title, 75 per centum of the farm domestic allotment established under section 1350 of this title for any such year, whichever is smaller was actually planted or devoted to the commodity on the farm (or was regarded as planted under provisions of the Soil Bank Act or the Great Plains program): *Provided further,* That this section shall not be applicable in any case, within the period 1956 to 1959, in which the amount of the commodity required to be stored to postpone or avoid payment of penalty has been reduced because the allotment was not fully planted. Acreage history credits for released or reapportioned acreage shall be governed by the applicable provisions of this subchapter pertaining to the release and reapportionment of acreage allotments.

(Feb. 16, 1938, ch. 30, title III, § 377, as added May 28, 1956, ch. 327, title III, § 307, 70 Stat. 206, and amended Sept. 2, 1957, Pub. L. 85-266, 71 Stat. 592; Aug. 18, 1959, Pub. L. 86-172, § 1, 73 Stat. 393; Apr. 11, 1964, Pub. L. 88-297, title I, § 106(4), 78 Stat. 177; Sept. 29, 1977, Pub. L. 95-113, title VIII, § 806, 91 Stat. 947.)

AMENDMENTS

1977—Pub. L. 95-113 temporarily inserted "or, in the case of peanuts, an acreage sufficient to produce 75 per centum of the farm poundage quota" after "of the farm acreage allotment for such year". See Effective and Termination Dates of 1977 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1977 AMENDMENT

Section 806 of Pub. L. 95-113 provided in part that the amendment by Pub. L. 95-113 is effective for the 1978 through 1981 crops of peanuts.

INAPPLICABILITY TO 1984 AND SUBSEQUENT CROPS OF EXTRA LONG STAPLE COTTON

Section inapplicable to the 1984 and subsequent crops of extra long staple cotton, see section 3 of Pub. L. 98-88, set out as a note under section 1342 of this title.

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF UPLAND COTTON

Section inapplicable to the 1986 through 1990 crops of upland cotton, see Pub. L. 99-198, title V, § 502, Dec. 23, 1985, 99 Stat. 1418, set out as a note under section 1342 of this title.

§ 1378. Transfer of acreage allotments ensuing from agency acquisition of farmlands

[*See main edition for text of* (a) *to* (c)]

(d), (e) Omitted [1]

[See main edition for text of (f); credits]

CODIFICATION

Part of subsec. (d) of section 378 of act Feb. 16, 1938, as originally enacted, is set out as a Savings Clause note below. The remainder of such subsec. (d) repealed sections 1313(h), 1334(d), a prior section 1353(f), and section 1358(h) of this title.

AMENDMENTS

1970—Subsec. (d). Pub. L. 91-524, § 605(1), temporarily added subsec. (d). See Effective and Termination Dates of 1970 Amendment note below.

Subsec. (e). Pub. L. 91-524, § 404(3), temporarily added subsec. (e). See Effective and Termination Dates of 1970 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1970 AMENDMENT

Sections 404 and 605 of Pub. L. 91-524, as amended by Pub. L. 93-86, § 1(11), (22), Aug. 10, 1973, 87 Stat. 229, 235, provided in part that the amendments by sections 404(3) and 605(1) of Pub. L. 91-524 are effective only with respect to the 1971 through 1977 crops.

§ 1379. Reconstitution of farms

(a) In any case in which the ownership of a tract of land is transferred from a parent farm, the acreage allotments, history acreages, and base acreages for the farm shall be divided between such tract and the parent farm in the same proportion that the cropland acreage in such tract bears to the cropland acreage in the parent farm, except that the Secretary shall provide by regulation the method to be used in determining the division, if any, of the acreage allotments, histories, and bases in any case in which—

(1) the tract of land transferred from the parent farm has been or is being transferred to any agency having the right to acquire it by eminent domain;

(2) the tract of land transferred from the parent farm is to be used for nonagricultural purposes;

(3) the parent farm resulted from a combination of two or more tracts of land and records are available showing the contribution of each tract to the allotments, histories, and bases of the parent farm;

(4) the appropriate county committee determines that a division based on cropland proportions would result in allotments and bases not representative of the operations normally carried out on any transferred tract during the base period; or [2]

(5) the parent farm is divided among heirs in settling an estate.[3]

(6) neither the tract transferred from the parent farm nor the remaining portion of the parent farm receives allotments in excess of allotments for similar farms in the community having allotments of the commodity or commodities involved and such allotments are consistent with good land uses, but this clause (6) shall not be applicable in the case of burley tobacco.

(b) In any case in which two or more tracts of land are located in contiguous counties in the same State and are owned by the same person, the Secretary shall permit such tracts to be combined as one farm if (1) a Burley tobacco poundage quota is established for one or more of such tracts, and (2) the relevant county committees determine that such tracts will be operated as a single farming unit.

(Feb. 16, 1938, ch. 30, title III, § 379, as added Nov. 3, 1965, Pub. L. 89-321, title VII, § 707, 79 Stat. 1211, and amended Nov. 30, 1970, Pub. L. 91-524, title IV, § 404(4), title VI, § 605(2), 84 Stat. 1366, 1378; Nov. 29, 1983, Pub. L. 98-180, title II, § 212(b), 97 Stat. 1149.)

AMENDMENTS

1983—Pub. L. 98-180 designated existing provisions as subsec. (a) and added subsec. (b).

1970—Pub. L. 91-524 temporarily added provisions that the term "acreage allotments" include the farm base acreage allotments for upland cotton and the domestic allotment for wheat. See Effective and Termination Dates of 1970 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1970 AMENDMENT

Sections 404 and 605 of Pub. L. 91-524, as amended by Pub. L. 93-86, § 1(11), (22), Aug. 10, 1973, 87 Stat. 229, 235, provided in part that the amendments by Pub. L. 91-524 are effective only with respect to the 1971 through 1977 crops.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1314d of this title.

PART D—WHEAT MARKETING ALLOCATION

§ 1379b. Wheat marketing allocation; amount; national allocation percentage; commercial and noncommercial wheat-producing areas

During any marketing year for which a marketing quota is in effect for wheat, beginning with the marketing year for the 1964 crop, a wheat marketing allocation program shall be in effect as provided in this part. Whenever a wheat marketing allocation program is in effect for any marketing year the Secretary shall determine (1) the wheat marketing allocation for such year which shall be the amount of wheat which in determining the national marketing quota for such marketing year he estimated would be used during such year for food products for consumption in the United States, and that portion of the amount of wheat which in determining such quota he estimated would be exported in the form of wheat or products thereof during the marketing year on which the Secretary determines that marketing certificates shall be issued to producers in order to achieve, insofar as practicable, the price and

[1] See 1970 Amendment note below.

[2] So in original. The word "or" probably should appear at the end of par. (5).

[3] So in original. The period probably should be "; or".

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income objectives of this part, and (2) the national allocation percentage which shall be the percentage which the national marketing allocation is of the national marketing quota. Each farm shall receive a wheat marketing allocation for such marketing year equal to the number of bushels obtained by multiplying the number of acres in the farm acreage allotment for wheat by the projected farm yield, and multiplying the resulting number of bushels by the national allocation percentage. If a noncommercial wheat-producing area is established for any marketing year, farms in such area shall be given wheat marketing allocations which are determined by the Secretary to be fair and reasonable in relation to the wheat marketing allocation given producers in the commercial wheat-producing area.

(Feb. 16, 1938, ch. 30, title III, § 379b, as added Sept. 27, 1962, Pub. L. 87-703, title III, § 324(2), 76 Stat. 626, and amended Apr. 11, 1964, Pub. L. 88-297, title II, § 202(10), (11), 78 Stat. 179, 180; Nov. 3, 1965, Pub. L. 89-321, title V, §§ 502, 503, 79 Stat. 1202; Oct. 11, 1968, Pub. L. 90-559, § 1(1), 82 Stat. 996; Nov. 30, 1970, Pub. L. 91-524, title IV, § 402(a), (b)(B), (C), 84 Stat. 1362; Aug. 10, 1973, Pub. L. 93-86, § 1(9), 87 Stat. 225-227.)

AMENDMENTS

1973—Subsec. (c)(1). Pub. L. 91-524, § 402(b)(B)(i) to (vi), as added by Pub. L. 93-86 temporarily substituted "payments authorized by section 1445a(c) of this title" for "certificates on wheat", "wheat allotment" for "domestic wheat allotment", "thirteen and three-tenths million" for "13.3 million", "1971 crop; plus, if required by the Secretary, (ii) the acreage" for "1971 crop or 15 million acres in the case of the 1972 or 1973 crop, plus (ii) the acreage", "The Secretary is authorized for the 1974 through 1977 crops to limit" for "The Secretary is authorized for the 1971, 1972, and 1973 crops to limit", "such percentage of the acreage allotment" for "such percentage of the domestic wheat allotment as he determines necessary to provide an orderly transition to the program provided for under this section", "The Secretary shall permit producers to plant and graze on set-aside acreage sweet sorghum, and the Secretary may permit, subject to such terms and conditions as he may prescribe, all or any of the set-aside acreage to be devoted to hay and" for "Grazing shall not be permitted during any of the five principal months of the normal growing season as determined by the county committee established pursuant to section 590h(b) of Title 16 and subject to this limitation (1) the Secretary shall permit producers to plant and graze on the set-aside acreage sweet sorghum, and (2) the Secretary may permit, subject to such terms and conditions as he may prescribe, all or any of the set-aside acreage to be devoted to", and "flaxseed, triticale, oats, rye, or other commodity" for "flaxseed, or other commodity". See Effective and Termination Dates of 1973 Amendment note below.

Subsec. (c)(2). Pub. L. 91-524, § 402(b)(B)(i), as added by Pub. L. 93-86 temporarily substituted "payments authorized by section 1445a(c) of this title" for "certificates authorized in subsection (b) of this section". See Effective and Termination Dates of 1973 Amendment note below.

Subsec. (c)(3). Pub. L. 91-524, § 402(b)(B)(vii), as added by Pub. L. 93-86 temporarily added provisions authorizing the Secretary, in the case of programs for the 1974 through 1977 crops, to pay an appropriate share of the cost of practices designated to protect set-aside acreage against erosion, insects, weeds, and rodents and to devote such acreage to wildlife food plots or wildlife habitat. See Effective and Termination Dates of 1973 Amendment note below.

Subsec. (c)(4). Pub. L. 91-524, § 402(b)(B)(i), as added by Pub. L. 93-86 temporarily substituted "payments authorized by section 1445a(c) of this title" for "marketing certificates". See Effective and Termination Dates of 1973 Amendment note below.

Subsec. (d). Pub. L. 91-524, § 402(b)(C), as added by Pub. L. 93-86 temporarily struck out "certificates issued and of" before "payments made". See Effective and Termination Dates of 1973 Amendment note below.

Subsec. (e). Pub. L. 91-524, § 402(b)(C), as added by Pub. L. 93-86 temporarily struck out references to the issuance of certificates. See Effective and Termination Dates of 1973 Amendment note below.

Subsec. (g). Pub. L. 91-524, § 402(b)(C), as added by Pub. L. 93-86 temporarily re-enacted subsec. (g) without change. See Effective and Termination Dates of 1973 Amendment note below.

Subsec. (i). Pub. L. 91-524, § 402(b)(C), as added by Pub. L. 93-86 temporarily re-enacted subsec. (i) without change. See Effective and Termination Dates of 1973 Amendment note below.

1970—Pub. L. 91-524, § 402(a), formerly § 402, temporarily substituted provisions covering the issuance of domestic certificates to producers and a voluntary set-aside program for wheat for provisions for a wheat marketing allocation program for the 1964 to 1970 crops. See Effective and Termination Dates of 1970 Amendment note below.

1968—Pub. L. 90-559 temporarily provided for a one year extension through 1970.

1965—Pub. L. 89-321, § 502, temporarily amended section generally and, among other changes, extended the wheat marketing allocation program from 1964 and 1965 to 1966 through 1969, put a minimum limitation of five hundred million bushels on the amount of wheat included in the marketing allocation for food products for consumption in the United States, and required the cost of any domestic marketing certificates issued to producers in excess of the number of certificates acquired by processors as a result of the application of the five hundred million bushel minimum or an overestimate of the amount of wheat used during such year for food products for consumption in the United States to be borne by the Commodity Credit Corporation. See Effective and Termination Dates of 1965 Amendment note below.

Pub. L. 89-321, § 503, substituted "projected farm yield" for "normal wheat for the farm as projected by the Secretary".

1964—Pub. L. 88-297, § 202(10), temporarily deleted introductory phrase "During any marketing year for which a marketing quota is in effect for wheat", reduced the national allocation percentage by the expected production on the acreage allotments for farms which will not be in compliance with the requirements of the program, and deleted provisions for wheat marketing allocations to non-commercial wheat-producing areas reasonably related to such allocations to producers in commercial wheat-producing areas. See Effective and Termination Dates of 1964 Amendment note below.

Pub. L. 88-297, § 202(11), substituted "food products for consumption in the United States" for "human consumption in the United States, as food, food products, and beverages, composed wholly or partly of wheat" in the second sentence.

EFFECTIVE AND TERMINATION DATES OF 1973 AMENDMENT

Section 402(b)(B) of Pub. L. 91-524, as added by section 1(9) of Pub. L. 93-86, provided in part that the amendment of subsec. (c) by section 402(b)(B)(i) to (vii) of Pub. L. 91-524, as added by section 1(9) of Pub. L. 93-86, shall be effective with respect to the 1974 through 1977 crops of wheat.

Section 402(b)(C) of Pub. L. 91-524, as added by section 1(9) of Pub. L. 93-86, provided in part that the amendment of subsecs. (d), (e), (g), and (i) by section

402(b)(C) of Pub. L. 91-524, as added by section 1(9) of Pub. L. 93-86, shall be effective for the 1974 through 1977 crops.

EFFECTIVE AND TERMINATION DATES OF 1970 AMENDMENT

Section 402(a), formerly section 402 of Pub. L. 91-524 provided in part that the amendment by Pub. L. 91-524 is effective only with respect to the 1971, 1972, and 1973 crops of wheat.

EFFECTIVE AND TERMINATION DATES OF 1965 AMENDMENT

Section 502 of Pub. L. 89-321, as amended by Pub. L. 90-559, § 1(1), Oct. 11, 1968, 82 Stat. 996, provided in part that the amendment of this section by section 502 of Pub. L. 89-321 shall be effective only with respect to the crops of wheat planted for harvest in the calendar years 1966 through 1970, and the marketing years for such crops.

Section 503 of Pub. L. 89-321 provided in part that the amendment by section 503 is effective beginning with the 1970 crop.

EFFECTIVE AND TERMINATION DATES OF 1964 AMENDMENT

Section 202(10) of Pub. L. 88-297 provided that the amendment of this section by section 202(10) shall be effective only with respect to crops planted for harvest in 1964 and 1965.

Section 202(11) of Pub. L. 88-297 provided in part that the amendment by section 202(11) is effective with respect to the crops planted for harvest in the calendar year 1966 and any subsequent year.

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF WHEAT

Section inapplicable to the 1986 through 1990 crops of wheat, see Pub. L. 99-198, title III, § 310(b), Dec. 23, 1985, 99 Stat. 1395, set out as a note under section 1331 of this title.

§ 1379c. Marketing certificates

(a) Issuance; amount; reduction; sharing among producers; domestic and export certificates

The Secretary shall provide for the issuance of wheat marketing certificates for each marketing year for which a wheat marketing allocation program is in effect for the purpose of enabling producers on any farm with respect to which certificates are issued to receive, in addition to the other proceeds from the sale of wheat, an amount equal to the value of such certificates. The wheat marketing certificates issued with respect to any farm for any marketing year shall be in the amount of the farm wheat marketing allocation for such year, but not to exceed (i) the actual acreage of wheat planted on the farm for harvest in the calendar year in which the marketing year begins multiplied by the normal yield of wheat for the farm, plus (ii) the amount of wheat stored under subsection (b) of this section or to avoid or postpone a marketing quota penalty, which is released from storage during the marketing year on account of underplanting or underproduction, and if this limitation operates to reduce the amount of wheat marketing certificates which would otherwise be issued with respect to the farm, such reduction shall be made first from the amount of export certificates which would otherwise be issued. The Secretary shall provide for the sharing of wheat marketing certificates among producers on the farm on the basis of their respective shares in the wheat crop produced on the farm, or the proceeds therefrom; except that in any case in which the Secretary determines that such basis would not be fair and equitable, the Secretary shall provide for such sharing on such other basis as he may determine to be fair and equitable. The Secretary shall, in accordance with such regulation as he may prescribe, provide for the issuance of domestic marketing certificates for the portion of the wheat marketing allocation representing wheat used for food products for consumption in the United States. The Secretary shall also provide for the issuance of export marketing certificates to eligible producers at the end of the marketing year on a pro rata basis. For such purposes, the value per bushel of export marketing certificates shall be an average of the total net proceeds from the sale of export marketing certificates during the marketing year after deducting the total amount of wheat export subsidies paid to exporters. An acreage on the farm which the Secretary finds was not planted to wheat for harvest in 1965 because of drought, flood, or other natural disaster shall be deemed by the Secretary to be an actual acreage of wheat planted for harvest for purposes of this subsection, provided such acreage is not subsequently planted to any other price supported crop for 1965. An acreage on the farm not planted to wheat because of drought, flood, or other natural disaster shall be deemed to be an actual acreage of wheat planted for harvest for purposes of this subsection provided such acreage is not subsequently planted to any crop for which there are marketing quotas or voluntary adjustment programs in effect. Producers on any farm who have planted not less than 90 per centum of the acreage of wheat required to be planted in order to earn the full amount of marketing certificates for which the farm is eligible shall be deemed to have planted the entire acreage required to be planted for that purpose.

(b) Producers eligible for certificates; storage conditions

No producer shall be eligible to receive wheat marketing certificates with respect to any farm for any marketing year in which a marketing quota penalty is assessed for any commodity on such farm or in which the farm has not complied with the land-use requirements of section 1339 of this title to the extent prescribed by the Secretary, or in which, except as the Secretary may by regulation prescribe, the producer exceeds the farm acreage allotment on any other farm for any commodity in which he has an interest as a producer. No producer shall be deemed to have exceeded a farm acreage allotment for wheat if the entire amount of the farm marketing excess is delivered to the Secretary or stored in accordance with applicable regulations to avoid or postpone payment of the penalty. No producer shall be deemed to have exceeded the farm acreage allotment for wheat on any other farm if such farm is exempt from the farm marketing quota for such crop under section 1335 of this title. Any wheat delivered to the Secretary hereunder

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shall become the property of the United States and shall be disposed of by the Secretary for relief purposes in the United States or in foreign countries or in such other manner as he shall determine will divert it from the normal channels of trade and commerce. Notwithstanding any other provision of this chapter, the Secretary may provide that a producer shall not be eligible to receive marketing certificates, or may adjust the amount of marketing certificates to be received by the producer, with respect to any farm for any year in which a variety of wheat is planted on the farm which has been determined by the Secretary, after consultation with State Agricultural Experiment Stations, agronomists, cereal chemists and other qualified technicians, to have undesirable milling or baking qualities and has made public announcement thereof.

(c) Face value

The Secretary shall determine and proclaim for each marketing year the face value per bushel of wheat marketing certificates. The face value per bushel of domestic certificates shall be the amount by which the level of price support for wheat accompanied by domestic certificates exceeds the level of price support for wheat not accompanied by certificates (non-certificate wheat).

(d) Statement or form of certificates and transfers

Marketing certificates and transfers thereof shall be represented by such documents, marketing cards, records, accounts, certifications, or other statements or forms as the Secretary may prescribe.

(e) Failure of producer to comply with programs; issuance of certificates

In any case in which the failure of a producer to comply fully with the term and conditions of the programs formulated under this chapter preclude the issuance of marketing certificates, the Secretary may, nevertheless, issue such certificates in such amounts as he determines to be equitable in relation to the seriousness of the default.

(Feb. 16, 1938, ch. 30, title III, § 379c, as added Sept. 27, 1962, Pub. L. 87-703, title III, § 324(2), 76 Stat. 627, and amended Apr. 11, 1964, Pub. L. 88-297, title II, § 202(12)-(14), 78 Stat. 180, 181; Aug. 6, 1965, Pub. L. 89-112, § 3, 79 Stat. 447; Nov. 3, 1965, Pub. L. 89-321, title V, §§ 508, 510(a), 513(b), (c), 515, 517, 79 Stat. 1204-1206; June 17, 1966, Pub. L. 89-451, § 3, 80 Stat. 202; Nov. 30, 1970, Pub. L. 91-524, title IV, § 402(a), (b)(D), 84 Stat. 1364; Aug. 10, 1973, Pub. L. 93-86, § 1(9), 87 Stat. 227.)

AMENDMENTS

1973—Subsec. (a)(1). Pub. L. 91-524, § 402(b)(D), as added by Pub. L. 93-86 temporarily substituted references to a farm acreage allotment for references to the farm domestic allotment wherever appearing, struck out provisions limiting the impact of the section to the 1972 and 1973 crops of wheat, substituted "estimated national average yield for the crop for which the determination is being made will produce the quantity (less imports) that he estimates will be utilized domestically and for export during the marketing year for such crop. If the Secretary determines that carryover stocks are excessive or an increase in stocks is needed to assure a desirable carryover, he may adjust the allotment by the amount he determines will accomplish the desired decrease or increase in carryover stocks" for "estimated national yield will result in marketing certificates being issued to producers participating in the program in an amount equal to the amount of wheat which he estimates will be used for food products for consumption in the United States during the marketing year for the crop (not less than 535 million bushels)" in the provisions covering the determination of the estimated national yield, and inserted "(1973 national domestic allotment in the case of apportionment of the 1974 national acreage allotment)" before "adjusted to the extent deemed necessary". See Effective and Termination Dates of 1973 Amendment note below.

Subsec. (a)(2). Pub. L. 91-524, § 402(b)(D), as added by Pub. L. 93-86 temporarily struck out "domestic" before "acreage allotment" and before "wheat allotment". See Effective and Termination Dates of 1973 Amendment note below.

Subsec. (a)(3). Pub. L. 91-524, § 402(b)(D), as added by Pub. L. 93-86 temporarily struck out "domestic" before "allotment" and "wheat allotment" wherever appearing and struck out provisions establishing special requirements to be met in determining the allotment for the 1971 crop of wheat. See Effective and Termination Dates of 1973 Amendment note below.

Subsec. (a)(4). Pub. L. 91-524, § 402(b)(D), as added by Pub. L. 93-86 temporarily struck out "domestic" before "allotment" wherever appearing. See Effective and Termination Dates of 1973 Amendment note below.

Subsec. (a)(5). Pub. L. 91-524, § 402(b)(D), as added by Pub. L. 93-86 temporarily struck out "domestic" before "allotment" wherever appearing. See Effective and Termination Dates of 1973 Amendment note below.

Subsec. (a)(6). Pub. L. 91-524, § 402(b)(D), as added by Pub. L. 93-86 temporarily re-enacted par. (6) without change. See Effective and Termination Dates of 1973 Amendment note below.

Subsec. (b)(1). Pub. L. 91-524, § 402(b)(D), as added by Pub. L. 93-86 temporarily struck out "domestic" before "allotment" wherever appearing and inserted ", guar, castor beans, cotton, triticale, oats, rye, or such other crops as the Secretary may deem appropriate" after "feed grains for which there is a set-aside program in effect". See Effective and Termination Dates of 1973 Amendment note below.

Subsec. (b)(2). Pub. L. 91-524, § 402(b)(D), as added by Pub. L. 93-86 temporarily struck out "domestic" before "allotment" wherever appearing and substituted "payments" for "certificates" and "section 1445a(c) of this title" for "this chapter". See Effective and Termination Dates of 1973 Amendment note below.

1970—Pub. L. 91-524, § 402(a), formerly § 402, temporarily substituted provisions for the apportionment of the farm domestic allotment for each crop of wheat among the states for provisions covering the marketing certificates program. See Effective and Termination Dates of 1970 Amendment note below.

1964—Subsec. (a). Pub. L. 88-297, § 202(12), inserted "under subsection (b) of this section or" after "stored" in the second sentence, added to such sentence provision for reduction of wheat marketing certificates from amount of export certificates, and added provision for issuance of domestic marketing certificates for wheat used for domestic consumption and export marketing certificates for wheat used for export.

Subsec. (b). Pub. L. 88-297, § 202(13), temporarily authorized producers who exceeded their wheat allotments to store their excess wheat in accordance with regulations issued by the Secretary and be eligible for wheat marketing certificates, prohibited wheat stored under this provision from being removed from storage until a subsequent year when acreage allotment was underplanted or the production on the acreage allotment was less than normal, required the producer (for

removal of the wheat contrary to these conditions) to pay an amount one and one-half times the value of the wheat marketing certificates issued with respect to the farm for the year in which the wheat on the acreage in excess of the allotment was produced, and made producers who exceeded their allotment and stored their excess wheat ineligible for diversion payments. See Effective and Termination Dates of 1964 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1973 AMENDMENT

Section 402(b)(D) of Pub. L. 91-524, as added by section 1(9) of Pub. L. 93-86, provided in part that the amendment by section 402(b)(D) of Pub. L. 91-524, as added by section 1(9) of Pub. L. 93-86, shall be effective only with respect to the 1974 through 1977 crops of wheat.

EFFECTIVE AND TERMINATION DATES OF 1970 AMENDMENT

Section 402(a), formerly section 402, of Pub. L. 91-524 provided in part that the amendment by Pub. L. 91-524 is effective only with respect to the 1971, 1972, and 1973 crops of wheat.

EFFECTIVE AND TERMINATION DATES OF 1964 AMENDMENT

Section 202(13) of Pub. L. 88-297, as amended by Pub. L. 89-321, title V, § 505(2), Nov. 3, 1965, 79 Stat. 1203; Pub. L. 90-559, § 1(1), Oct. 11, 1968, 82 Stat. 996, provided that the amendment of subsec. (b) of this section by section 202(13) shall be effective with respect to the crops planted for harvest in the calendar years 1965 through 1970.

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF WHEAT

Section inapplicable to the 1986 through 1990 crops of wheat, see Pub. L. 99-198, title III, § 310(b), Dec. 23, 1985, 99 Stat. 1395, set out as a note under section 1331 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1445a of this title.

§ 1379d. Marketing restrictions

INAPPLICABILITY TO WHEAT PROCESSORS OR EXPORTERS DURING THE PERIOD JUNE 1, 1986, THROUGH MAY 31, 1991

Pub. L. 99-198, title III, § 309, Dec. 23, 1985, 99 Stat. 1394, provided that: "Sections 379d, 379e, 379f, 379g, 379h, 379i, and 379j of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379d–1379j) (relating to marketing certificate requirements for processors and exporters) shall not be applicable to wheat processors or exporters during the period June 1, 1986, through May 31, 1991."

§ 1379e. Assistance in purchase and sale of marketing certificates; regulations; administrative expenses; interest

CODIFICATION

The sentence added by Pub. L. 89-321, as amended by Pub. L. 90-559, which directed the Commodity Credit Corporation to sell marketing certificates for the marketing years for the 1966 through 1970 wheat crops to persons processing food products at the face value thereof less any amount by which price support for wheat accompanied by domestic certificates exceeded $2 per bushel, was omitted as executed.

INAPPLICABILITY TO WHEAT PROCESSORS OR EXPORTERS DURING THE PERIOD JUNE 1, 1986, THROUGH MAY 31, 1991

Section inapplicable to wheat processors or exporters during the period June 1, 1986, through May 31, 1991, see Pub. L. 99-198, title III, § 309, Dec. 23, 1985, 99 Stat. 1394, set out as a note under section 1379d of this title.

§ 1379f. Conversion factors

INAPPLICABILITY TO WHEAT PROCESSORS OR EXPORTERS DURING THE PERIOD JUNE 1, 1986, THROUGH MAY 31, 1991

Section inapplicable to wheat processors or exporters during the period June 1, 1986, through May 31, 1991, see Pub. L. 99-198, title III, § 309, Dec. 23, 1985, 99 Stat. 1394, set out as a note under section 1379d of this title.

§ 1379g. Authority to facilitate transition

INAPPLICABILITY TO WHEAT PROCESSORS OR EXPORTERS DURING THE PERIOD JUNE 1, 1986, THROUGH MAY 31, 1991

Section inapplicable to wheat processors or exporters during the period June 1, 1986, through May 31, 1991, see Pub. L. 99-198, title III, § 309, Dec. 23, 1985, 99 Stat. 1394, set out as a note under section 1379d of this title.

§ 1379h. Applicability of provisions to designated persons; reports and records; examinations by the Secretary

INAPPLICABILITY TO WHEAT PROCESSORS OR EXPORTERS DURING THE PERIOD JUNE 1, 1986, THROUGH MAY 31, 1991

Section inapplicable to wheat processors or exporters during the period June 1, 1986, through May 31, 1991, see Pub. L. 99-198, title III, § 309, Dec. 23, 1985, 99 Stat. 1394, set out as a note under section 1379d of this title.

§ 1379i. Penalties

INAPPLICABILITY TO WHEAT PROCESSORS OR EXPORTERS DURING THE PERIOD JUNE 1, 1986, THROUGH MAY 31, 1991

Section inapplicable to wheat processors or exporters during the period June 1, 1986, through May 31, 1991, see Pub. L. 99-198, title III, § 309, Dec. 23, 1985, 99 Stat. 1394, set out as a note under section 1379d of this title.

§ 1379j. Regulations

INAPPLICABILITY TO WHEAT PROCESSORS OR EXPORTERS DURING THE PERIOD JUNE 1, 1986, THROUGH MAY 31, 1991

Section inapplicable to wheat processors or exporters during the period June 1, 1986, through May 31, 1991, see Pub. L. 99-198, title III, § 309, Dec. 23, 1985, 99 Stat. 1394, set out as a note under section 1379d of this title.

PART E—RICE CERTIFICATES

§§ 1380a to 1380p. Omitted

CODIFICATION

Sections 1380a to 1380p of this title were effective only with respect to the 1957 and 1958 rice crops.

Section 1380a, act Feb. 16, 1938, ch. 30, title III, § 380a, as added May 28, 1956, ch. 327, title V, § 501(3), 70 Stat. 208, provided legislative findings for this part.

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Section 1380b, act Feb. 16, 1938, ch. 30, title III, § 380b, as added May 28, 1956, ch. 327, title V, § 501(3), 70 Stat. 208, related to effective date and termination of program.

Section 1380c, act Feb. 16, 1938, ch. 30, title III, § 380c, as added May 28, 1956, ch. 327, title V, § 501(3), 70 Stat. 208, related to determination of primary market quota for rice.

Section 1380d, act Feb. 16, 1938, ch. 30, title III, § 380d, as added May 28, 1956, ch. 327, title V, § 501(3), 70 Stat. 209, related to apportionment of the primary market quota by the Secretary among the States and among farms.

Section 1380e, act Feb. 16, 1938, ch. 30, title III, § 380e, as added May 28, 1956, ch. 327, title V, § 501(3), 70 Stat. 209, provided that a farm operator to which a primary market quota applied could have such quota reviewed.

Section 1380f, act Feb. 16, 1938, ch. 30, title III, § 380f, as added May 28, 1956, ch. 327, title V, § 501(3), 70 Stat. 209, related to price supports made available to cooperators on crops of rice.

Section 1380g, act Feb. 16, 1938, ch. 30, title III, § 380g, as added May 28, 1956, ch. 327, title V, § 501(3), 70 Stat. 209, related to certificates issued to cooperators.

Section 1380h, act Feb. 16, 1938, ch. 30, title III, § 380h, as added May 28, 1956, ch. 327, title V, § 501(3), 70 Stat. 210, related to inventory adjustment payments to persons owning rough rice located in the continental United States, for the purpose of facilitating transition from the price support program formerly in effect.

Section 1380i, act Feb. 16, 1938, ch. 30, title III, § 380i, as added May 28, 1956, ch. 327, title V, § 501(3), 70 Stat. 210, related to set-aside of certain rough and processed rice.

Section 1380j, act Feb. 16, 1938, ch. 30, title III, § 380j, as added May 28, 1956, ch. 327, title V, § 501(3), 70 Stat. 210, related to exemptions from provisions of this part.

Section 1380k, act Feb. 16, 1938, ch. 30, title III, § 380k, as added May 28, 1956, ch. 327, title V, § 501(3), 70 Stat. 210, related to rice processing restrictions.

Section 1380*l*, act Feb. 16, 1938, ch. 30, title III, § 380*l*, as added May 28, 1956, ch. 327, title V, § 501(3), 70 Stat. 211, related to rice import restrictions.

Section 1380m, act Feb. 16, 1938, ch. 30, title III, § 380m, as added May 28, 1956, ch. 327, title V, § 501(3), 70 Stat. 211, directed the Secretary to prescribe regulations governing the issuance, redemption, acquisition, use, transfer, and disposition of certificates.

Section 1380n, act Feb. 16, 1938, ch. 30, title III, § 380n, as added May 28, 1956, ch 327, title V, § 501(3), 70 Stat. 211, related to penalties for violations of the import and processing restrictions of this part or regulations prescribed by the Secretary for enforcing such provisions.

Section 1380o, act Feb. 16, 1938, ch. 30, title III, § 380o, as added May 28, 1956, ch. 327, title V, § 501(3), 70 Stat. 211, related to reports and records.

Section 1380p, act Feb. 16, 1938, ch. 30, title III, § 380p, as added May 28, 1956, ch. 327, title V, § 501(3), 70 Stat. 211, defined "cooperator", "processing of rough rice", "processed rice", "United States", "exporter", "rough rice equivalent", and "import", for purposes of this part.

PART F—MISCELLANEOUS PROVISIONS AND APPROPRIATIONS

SUBPART 1—MISCELLANEOUS

§ 1385. Finality of payments and loans; substitution of beneficiaries

The facts constituting the basis for any chapter 3B of title 16 payment, any payment under the wheat, feed grain, upland cotton, extra long staple cotton, and rice programs authorized by chapter 35A of this title and this chapter, any loan, or price support operation, or the amount thereof, when officially determined in conformity with the applicable regulations prescribed by the Secretary or by the Commodity Credit Corporation, shall be final and conclusive and shall not be reviewable by any other officer or agency of the Government. In case any person who is entitled to any such payment dies, becomes incompetent, or disappears before receiving such payment, or is succeeded by another who renders or completes the required performance, the payment shall, without regard to any other provisions of law, be made as the Secretary of Agriculture may determine to be fair and reasonable in all the circumstances and provide by regulations. This section also shall be applicable to payments provided for under section 1348 of this title.

(As amended Dec. 23, 1985, Pub. L. 99-198, title X, § 1017(a), 99 Stat. 1459.)

AMENDMENTS

1985—Pub. L. 99-198 inserted "extra long staple cotton," after "upland cotton,".

DETERMINATION OF RATE OF LOANS, PAYMENTS, AND PURCHASES UNDER PRICE SUPPORT PROGRAM FOR 1986 THROUGH 1990 CROPS; NOTICE AND PUBLIC PARTICIPATION IN RULEMAKING NOT REQUIRED

Section 1017(b) of Pub. L. 99-198 provided that: "The Secretary of Agriculture shall determine the rate of loans, payments, and purchases under a program established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for any of the 1986 through 1990 crops of a commodity without regard to the requirements for notice and public participation in rulemaking prescribed in section 553 of title 5, United States Code, or in any directive of the Secretary."

§ 1388. Utilization of local agencies

[*See main edition for text of* (a)]

(b) Payments to county committees for administrative expenses

(1) The Secretary is authorized and directed, from any funds made available for the purposes of this chapter and chapter 3B of title 16 in connection with which county committees are utilized, to make payments to county committees of farmers to cover the estimated administrative expenses incurred or to be incurred by them in cooperating in carrying out the provisions of this chapter and chapter 3B of title 16. All or part of such estimated administrative expenses of any such committee may be deducted pro rata from chapter 3B of title 16 payments, parity payments, or loans, or other payments under this chapter and chapter 3B of title 16, made unless payment of such expenses is otherwise provided by law. The Secretary may make such payments to such committees in advance of determination of performance by farmers.

(2)(A) The Secretary shall provide compensation to members of such county committees (at not less than the level in effect on December 31, 1985 for county committees) for work actually performed by such persons in cooperating in carrying out this chapter and chapter 3B of

title 16 in connection with which such committees are used.

(B) The rate of compensation received by such persons for such work on December 23, 1985, shall be increased at the discretion of the Secretary.

(c) Travel expenses

(1) The Secretary shall make payments to members of local, county, and State committees to cover expenses for travel incurred by such persons (including, in the case of a member of a local or county committee, travel between the home of such member and the local county office of the Agricultural Stabilization and Conservation Service) in cooperating in carrying out this chapter and chapter 3B of title 16 in connection with which such Committees [1] are used.

(2) Such travel expenses shall be paid in the manner authorized under section 5703 of title 5 for the payment of expenses and allowances for individuals employed intermittently in the Federal Government service.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XVII, § 1713(a), (b), 99 Stat. 1636, 1637.)

AMENDMENTS

1985—Subsecs. (b), (c). Pub. L. 99-198 designated the existing provisions of subsec. (b) as par. (1), added par. (2), and added subsec. (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1713(c) of Pub. L. 99-198 provided that: "The amendments made by this section [amending this section] shall become effective on January 1, 1986."

CHAPTER 35A—PRICE SUPPORT OF AGRICULTURAL COMMODITIES

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
1423c. Advance recourse commodity loans.

SUBCHAPTER II—BASIC AGRICULTURAL COMMODITIES

1441-1. Loan rates, target prices, disaster payments, acreage limitation program, and land diversion for 1986 through 1990 crops of rice.
- (a) Loans and purchases; computation; levels; term; repayment; regulations; marketing certificates; redemption or marketing.
- (b) Payments to producers otherwise eligible for loans or purchase agreements; computation; amount of eligible crop; loan payment rate; negotiable marketing certificates.
- (c) Payments; computation; acreage limitation; conservation uses; nonprogram crops; established price; disaster payments; crop insurance; adjustments.

[1] So in original. Probably should not be capitalized.

Sec.
- (d) Program acreages; proclamation; revision; adjustments; program allocation factor.
- (e) Payment yields.
- (f) Acreage limitation program; determination; announcement; conservation uses; regulations; nonprogram crops; land diversion payments; wildlife food plots or habitats; agreements.
- (g) Payments in kind; eligibility.
- (h) Defaults; waiver of deadlines.
- (i) Regulations.
- (j) Commodity Credit Corporation.
- (k) Assignment of payments.
- (l) Sharing of payments.
- (m) Protection of interests of tenants and sharecroppers.
- (n) Eligibility preconditions; other commodity programs; acreage limitations for other crops; compliance with respect to other farms.

1441-1a. Marketing certificates for rice.
- (a) Authority of Commodity Credit Corporation to issue negotiable marketing certificates.
- (b) Determination of value of certificates.
- (c) Commodity Credit Corporation assistance in redemption, marketing, or exchange of certificates.
- (d) Exchange of certificates for commodities and products.
- (e) Prevention of adverse effects.
- (f) Transfer of certificates.

1444-1. Loan rates, target prices, disaster payments, acreage limitation program, and land diversion for 1986 through 1990 upland cotton crops.
- (a) Nonrecourse loans; computation; loan levels; increase or decrease; extension of loan periods; repayment when market price less than loan level; negotiable marketing certificates; value; redemption; marketing exchange or other transfer; regulations, prevailing world market price.
- (b) Payments to producers otherwise eligible for loans; computation; amount of eligible crop; loan payment rate; negotiable marketing certificates.
- (c) Payments; computation; acreage limitation; established prices; disaster payments; crop insurance.
- (d) Program acreages; proclamation; revision; adjustments; program allocation factor.
- (e) Payment yields.
- (f) Acreage limitation programs; determination; announcement; conservation uses; regulations; nonprogram crops; land diversion payments; wildlife food plots or habitats; agreements.
- (g) Payments in kind; eligibility.
- (h) Defaults; waiver of deadlines.
- (i) Regulations.
- (j) Commodity Credit Corporation.
- (k) Assignment of payments.
- (l) Sharing of payments.
- (m) Protection of interests of tenants and sharecroppers.

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Sec.
(n) Eligibility preconditions; other commodity programs; acreage limitations for other crops; compliance with respect to other farms.
(o) Special limited global import quotas; conditions.

1444e. Loan rates, target prices, disaster payments, acreage limitation and set-aside programs, and land diversion for 1986 through 1990 feed grain crops.
(a) Loans and purchases; reduction; repayment.
(b) Payments to producers otherwise eligible for loans; computation; amount of eligible crop; loan payment rate.
(c) Payments; computation; acreage limitation; established prices; adjustments; conservation uses; nonprogram crops; emergency compensation; disaster payments; crop insurance.
(d) Program acreages; proclamation; revision; adjustments; program allocation factor.
(e) Payment yields.
(f) Acreage limitation and set-aside programs; determination; announcement; adjustments; land diversion payments; necessity of compliance; conservation uses; regulations; nonprogram crops; wildlife food plots or habitats; agreements; production targets.
(g) Payments in kind; eligibility.
(h) Defaults; waiver of deadlines.
(i) Regulations.
(j) Commodity Credit Corporation.
(k) Assignment of payments.
(l) Sharing of payments.
(m) Protection of interests of tenants and sharecroppers.
(n) Eligibility preconditions; acreage limitations for other crops; compliance with other commodity programs.

1444e-1. Loans and purchases for 1986 through 1990 crops of corn.

1445b-2. Advance deficiency and diversion payments.
(a) Advance deficiency payments; 1986 through 1990 crops.
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1445b-3. Loan rates and target prices for 1986 through 1990 wheat crops.
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(b) Payments in lieu of loan or purchase agreements; computation.
(c) Payments; computation; amount; conservation use or nonprogram crop acreage; quarantine; emergency compensation; disaster payments; "nonprogram crop" defined; prevented planting or reduced yield disaster or crop insurance payments; economic emergency payments.
(d) National program acreage; proclamation; revision; adjustments; program allocation factor; individual program acreage.
(e) Payment yields.

Sec.
(f) Acreage limitation or set-aside programs; conservation acreage reserve factor; announcements; adjustments; loss of eligibility for loans, purchases, and payments; acreage bases determinations; reduced acreage for conservation uses; individual program, other commodity, and land diversion acreage; wildlife food plots or habitat; costs of soil and water conservation practices; general public accessibility payments; participation agreements: execution, modification, or termination; production targets.
(g) Payments in form of wheat; terms and conditions.
(h) Defaults; waiver of deadlines.
(i) Regulations.
(j) Commodity Credit Corporation.
(k) Assignment of payments.
(l) Fair and equitable sharing of payments.
(m) Tenant and sharecropper safeguards.
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(a) In-kind payments by Secretary.
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1445c-2. Price support for 1986 through 1990 crops of peanuts; loans, purchases, and other operations; national average quota support rate.

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1446c-2. Domestic casein industry.
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SUBCHAPTER IV—ACREAGE BASE AND PROGRAM YIELD SYSTEM FOR WHEAT, FEED GRAIN, UPLAND COTTON, AND RICE PROGRAMS

1461. Congressional declaration of purpose.
1462. Definitions.
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(a) Maximum adjustment; offsetting equivalent downward adjustment of other bases.
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1466. Program payment yields.
(a) Establishment of yields for each farm.
(b) 1986 and 1987 crop years; national, State, or county program payment yields.
(c) 1988 and subsequent crop years.
(d) Unavailability of actual yield per harvested acre.
1467. Five-year planting and production history of farms.
1468. Establishment of bases and yields not otherwise capable of establishment by county committee for farms administratively located within county.
1469. Administrative appeal procedures.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 511r, 1301, 1308, 1309, 1310, 1314, 1314f, 1334b, 1385, 1435, 1446c, 1508, 1736j, 1745 of this title; title 15 section 3391a; title 16 sections 3811, 3821, 3834; title 21 section 881a; title 26 section 451; title 43 section 620c.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1421. Price support

[See main edition for text of (a) to (d)]

(e) Processors' assurances; payment if assurances inadequate

(1) Whenever any price support or surplus removal operation for any agricultural commodity is carried out through purchases from or loans or payments to processors, the Secretary shall, to the extent practicable, obtain from the processors such assurances as he deems adequate that the producers of the agricultural commodity involved have received or will receive maximum benefits from the price support or surplus removal operation.

(2)(A) If the assurances under paragraph (1) are not adequate to cause the producers of sugar beets and sugarcane, because of the bankruptcy or other insolvency of the processor, to receive maximum benefits from the price support program within 30 days after the final settlement date provided for in the contract between such producers and processor, the Secretary, on demand made by such producers and on such assurances as to nonpayment as the Secretary shall require, shall pay such producers such maximum benefits less benefits previously received by such producers.

(B) On such payment, the Secretary shall—

(i) be subrogated to all claims of such producers against the processor and other persons responsible for nonpayment; and

(ii) have authority to pursue such claims as necessary to recover the benefits not paid to the producers.

(C) The Secretary shall carry out this paragraph through the Commodity Credit Corporation.

(As amended Dec. 23, 1985, Pub. L. 99-198, title IX, § 903(a), 99 Stat. 1444.)

AMENDMENTS

1985—Subsec. (e). Pub. L. 99-198 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 903(b) of Pub. L. 99-198 provided that: "The amendments made by this section [amending this section] shall apply to nonpayments occurring after January 1, 1985."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-258, § 1, Apr. 10, 1984, 98 Stat. 130, provided: "That this Act [enacting section 1981b of this title, amending sections 1431, 1441, 1444, 1444d, 1445b-1, 1943, 1946, 1961, 1964, 1986, and 1994 of this title, enacting provisions set out as notes under sections 1921, 1961, and 1981 of this title, and amending provisions set out as a note preceding section 1961 of this title] may be cited as the 'Agricultural Programs Adjustment Act of 1984'."

SHORT TITLE OF 1983 AMENDMENTS

Pub. L. 98-180, § 1, Nov. 29, 1983, 97 Stat. 1128, provided: "That this Act [enacting sections 511r, 4501 to 4514, and 4531 to 4538 of this title, amending section 608c, 1314b, 1314b-1, 1314b-2, 1314c, 1314d, 1314e, 1379, 1445, 1445-1, 1445-2, and 1446 of this title, and enacting provisions set out as notes under sections 1314b, 1314c, 1314e, 1421, 1427, 1445, 1446, and 1727g of this title] may be cited as the 'Dairy and Tobacco Adjustment Act of 1983'."

Pub. L. 98-180, title I, § 101, Nov. 29, 1983, 97 Stat. 1128, provided that: "This title [enacting sections 4501 to 4513 of this title, amending section 1446 of this title, and enacting provisions set out as notes under section 1446 of this title] may be cited as the 'Dairy Production Stabilization Act of 1983'."

Pub. L. 98-180, title II, § 201, Nov. 29, 1983, 97 Stat. 1143, provided that: "This title [enacting section 511r of this title, amending sections 1314b, 1314b-1, 1314b-2, 1314c, 1314d, 1314e, 1379, 1445, 1445-1, and 1445-2 of this title, and enacting provisions set out as notes under sections 1314b, 1314c, 1314e, and 1445 of this title] may be cited as the 'Tobacco Adjustment Act of 1983'."

Pub. L. 98-88, § 1, Aug. 26, 1983, 97 Stat. 494, provided: "That this Act [amending sections 1308, 1427, 1441, and 1444 of this title, repealing section 1347 of this title, and enacting provisions set out as notes under sections 1342, 1347, and 1444 of this title] may be cited as the 'Extra Long Staple Cotton Act of 1983'."

SEPARABILITY PROVISION FOR PUB. L. 98-180

Pub. L. 98-180, title III, § 305, Nov. 29, 1983, 97 Stat. 1152, provided that: "Except as otherwise provided in this Act [see Short Title of 1983 Amendment note above], if any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this Act and of the application of such provision to other persons and circumstances shall not be affected thereby."

SPECIAL STUDY AND PILOT PROJECTS ON FUTURES TRADING

Pub. L. 99-198, title XVII, subtitle E, §§ 1741-1743, Dec. 23, 1985, 99 Stat. 1643, 1644, provided that:

"FINDINGS AND DECLARATION OF POLICY

"SEC. 1741. (a) Congress finds that there is a need for investigation and development of alternative price support programs carried out by the Department of Agriculture; that agricultural producers and others have insufficient knowledge concerning the nature and extent of price stabilization available in the private sector; and that more information is needed to accurately assess the Federal budgetary impact of producer participation in such private sector risk avoidance services.

"(b) It is declared to be the policy of the United States that the Department of Agriculture conduct economic research to develop more information con-

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cerning the manner in which producers might utilize agricultural commodity futures markets and options markets in connection with their marketing of the agricultural commodities of their own production; and to determine the nature and effect widespread utilization of such markets by producers would have on the prices they receive for their agricultural commodities, and to determine the feasibility of interfacing traditional Federal price support programs with private sector risk avoidance services.

"STUDY BY THE DEPARTMENT OF AGRICULTURE

"SEC. 1742. The Secretary of Agriculture shall conduct a study utilizing the services of the various agencies of the United States, including, but not limited to, the United States Department of Agriculture and the Commodity Futures Trading Commission, to determine the manner in which agricultural commodity futures markets and agricultural commodity options markets might be used by producers of agricultural commodities traded on such markets to provide such producers with price stability and income protection; the extent of the price stability and income protection producers might reasonably expect to receive from such participation; and of the Federal budgetary impact of such participation compared with the cost of the applicable established price support programs for agricultural commodities. The Secretary shall report the results of such study to the Committee on Agriculture, Nutrition and Forestry of the Senate and to the Committee on Agriculture of the House of Representatives on or before December 31, 1988.

"PILOT PROGRAM

"SEC. 1743. In connection with the study to be undertaken by the Secretary as required by section 1742 of this subtitle, the Secretary shall conduct a pilot program with respect to the crops of wheat, feed grains, soybean, and cotton in at least 40 counties which actively produce reasonable quantities of such major agricultural commodities traded on the commodity futures markets and the commodity options markets. The Secretary shall, in cooperation with the futures and options industry and the chairman of the commodity futures trading commission, conduct an extensive educational program for producers in the counties selected for the pilot program. The program shall, among other things, provide that a reasonable number of producers, as determined by the Secretary, may at their election and in accordance with pilot program requirements developed by the Secretary, participate in the trading of designated agricultural commodities on a futures market or options market in a manner designed to protect and maximize the return on agricultural commodities of their own production marketed by them in accordance with program requirements. Participating producers shall be assured by the Secretary under the terms of the program, using funds of the Commodity Credit Corporation, that the net return received for the agricultural commodities that such producers allocate to the program in the manner specified by the Secretary is no less than the price support loan level for such agricultural commodity in the county where it is produced. In the formulation of the pilot program the Secretary shall utilize the services of an advisory panel selected by the Secretary consisting of producers, processors, exporters, and futures and options traders on organized futures exchanges."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1428, 1444, 1444b, 1444d, 1444e, 1445a, 1448 of this title.

§ 1422. Increase of price support levels

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1428, 1441, 1444 of this title.

§ 1423. Adjustment of support prices

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1428, 1444, 1445, 1445c-1, 1445c-2 of this title.

§ 1425. Producer rights and liabilities

(a) Liability for deficiencies

No producer shall be personally liable for any deficiency arising from the sale of the collateral securing any loan made under authority of this Act unless such loan was obtained through fraudulent representations by the producer. This provision shall not, however, be construed to prevent the Commodity Credit Corporation or the Secretary from requiring producers to assume liability for deficiencies in the grade, quality, or quantity of commodities stored on the farm or delivered by them, for failure properly to care for and preserve commodities, or for failure or refusal to deliver commodities in accordance with the requirements of the program. There is authorized to be included in the terms and conditions of any such nonrecourse loan a provision whereby on and after the maturity of the loan or any extension thereof Commodity Credit Corporation shall have the right to acquire title to the unredeemed collateral without obligation to pay for any market value which such collateral may have in excess of the loan indebtedness.

(b) Interest payment certificates

(1) Notwithstanding any other provision of law, the Secretary may provide a negotiable certificate to any producer who repays, together with interest, a price support loan made available to such producer under any of the annual programs, for wheat, feed grains, upland cotton, or rice established under this Act.

(2) The amount of such certificates shall be equal to the amount of the interest paid by the producer on such loan.

(3) Such certificate shall be redeemable in wheat, feed grains, upland cotton, or rice, as the case may be, owned by the Commodity Credit Corporation.

(4) The issuance of such certificate shall be subject to the availability of commodities owned by the Corporation.

(As amended Dec. 23, 1985, Pub. L. 99-198, title X, § 1004, 99 Stat. 1447.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (b)(1), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, known as the Agricultural Act of 1949, which is classified principally to this chapter (§ 1421 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

AMENDMENTS

1985—Pub. L. 99-198 temporarily designated existing provisions as subsec. (a) and added subsec. (b). See Effective and Termination Dates of 1985 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 1004 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 is effective only for the 1986 through 1990 crops.

§ 1426. Advance announcement of price support levels

(a) Time of announcement; maximum levels; reduction of levels

The Secretary shall, insofar as practicable, announce the level of price support for field crops in advance of the planting season and for other agricultural commodities in advance of the beginning of the marketing year or season (January 1 in the case of commodities not marketed on a marketing year or season basis), but the level of price support so announced shall not exceed the estimated maximum level of price support specified in this Act, based upon the latest information and statistics available to the Secretary when such level of price support is announced; and the level of price support so announced shall not be reduced if the maximum level of price support when determined, is less than the level so announced.

(b) Optional program for producers of 1987 through 1991 crops of wheat, feed grains, upland cotton, and rice

(1) Notwithstanding any other provision of this Act, the Secretary of Agriculture may offer an option to producers of the 1987 through 1991 crops of wheat, feed grains, upland cotton and rice with respect to participation in commodity price support, production adjustment, and payment programs as provided in this subsection.

(2) With respect to the 1987 through 1991 crops of wheat, feed grains, upland cotton, and rice, in any county in the United States, if the Secretary has not made final announcement of the terms of the commodity price support production adjustment, and payment program for wheat, feed grains, upland cotton, or rice on or before the later of—

(A) 60 days prior to the normal planting date of such commodity in such county, as determined by the Secretary; or

(B)(1) [1] in the case of wheat, June 1 of the calendar year prior to the crop year for which such program is announced;

(ii) in the case of feed grains, September 30 of the calendar year prior to the crop year for which such program is announced;

(iii) in the case of upland cotton, November 1 of the calendar year prior to the crop year for which such program is announced; and

(iv) in the case of rice, January 31 of the calendar year that is the same as the crop year for which such program is announced,

than [2] the Secretary may permit producers of any such commodity in such county to elect to receive price support, payments, or other program benefits as provided in (I) the program announced for such commodity for the current crop year or (II) paragraph (3).

(3)(A)(i) [3] The Secretary may permit producer [4] eligible to make the election provided by this subsection to participate in the program described in this paragraph or, at the discretion of the Secretary, the program announced for the commodity for the current crop year, by complying with the terms of the program announced for the preceding crop of the commodity.

(B)(i) Except as provided in clause (ii), the Secretary may make available to producers of a commodity who exercise the election provided by this subsection and who comply fully with the terms and conditions of any acreage reduction program established for the preceding year's crop of the commodity—

(I) loans and purchases at the level established for the crop for which the election is made;

(II) deficiency payments calculated on the same basis as the deficiency payments which were calculated for the crop immediately preceding the crop with respect to which the election is made; and

(III) payments equal to the difference between the level of loans and purchases for the crop with respect to which the election is made and the level of loans and purchases for the crop immediately preceding the crop with respect to which the election is made.

Payments authorized by subclause (III) of the preceding sentence shall be made in the form of cash or in-kind commodities.

(ii) In the case of the 1991 crop, the Secretary shall make available to producers of a commodity who exercise the election provided by this section and who comply fully with the terms and conditions of any acreage reduction program established for the 1990 crop of the commodity—

(I) loans and purchases at the level established for the 1991 crop under legislation enacted subsequent to December 23, 1985, except that if legislation is enacted subsequent to December 23, 1985, which provides that loans and purchases shall not be made with respect to the 1991 crop of a commodity, the Secretary may make available to producers of such commodity eligible for the election provided by this subsection loans and purchases at the level determined for the 1990 crop, or if legislation is not enacted subsequent to December 23, 1985, which provides that loans and purchases shall be made with respect to the 1991 crop of any such commodity, and if loans and purchases are available to producers of such commodity under laws previously enacted, none of the provisions of this section shall apply to the 1991 crop;

(II) deficiency payments calculated on the basis of the established price for the commodity determined for the 1990 crop; and

[1] So in original. Probably should be "(i)".
[2] So in original. Probably should be "then".
[3] So in original. Probably should be "(3)(A)".
[4] So in original. Probably should be "producers".

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(III) payments equal to the difference between the level of loans and purchases that the producer is eligible to receive under subclause (I) for such commodity for the 1991 crop and the level of loans and purchases determined for such commodity for the 1990 crop.

Payments authorized by subclause (III) of the preceding sentence shall be made in cash or in the form of in-kind commodities.

(C) The Secretary shall consider the crop acreage base and farm program payment yield for any farm with respect to which a producer exercises the election provided by this section to be equal to the crop acreage base and farm program payment yield that was established, or would have been established, for such farm for the year preceding the year for which the election is made.

(As amended Dec. 23, 1985, Pub. L. 99-198, title X, § 1016, 99 Stat. 1457.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (b)(1), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, known as the Agricultural Act of 1949, which is classified principally to this chapter (§ 1421 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

AMENDMENTS

1985—Pub. L. 99-198 designated existing provisions as subsec. (a) and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1428, 1444 of this title.

§ 1427. Sale of farm commodities; policies and rates of sale; exceptions; use of commodities to relieve distress

The Commodity Credit Corporation may sell any farm commodity owned or controlled by it at any price not prohibited by this section. In determining sales policies for basic agricultural commodities or storable nonbasic commodities, the Corporation should give consideration to the establishing of such policies with respect to prices, terms, and conditions as it determines will not discourage or deter manufacturers, processors, and dealers from acquiring and carrying normal inventories of the commodity of the current crop. The Corporation shall not sell any basic agricultural commodity or storable nonbasic commodity at less than 5 per centum above the current support price for such commodity, plus reasonable carrying charges: *Provided*, That effective with the beginning of the marketing year for the 1961 crop, the Corporation shall not sell any any upland or extra long staple cotton for unrestricted use at less than 15 per centum above the current support price for cotton plus reasonable carrying charges, except that the Corporation may, in an orderly manner and so as not to affect market prices unduly, sell for unrestricted use at the market price at the time of sale a number of bales of cotton equal to the number of bales by which the national marketing quota for such marketing year is reduced below the estimated domestic consumption and exports for such marketing year pursuant to the provisions of section 1342 of this title: *Provided further*, That beginning August 1, 1964, the Commodity Credit Corporation may sell upland cotton for unrestricted use at not less than 105 per centum of the current loan rate for such cotton under section 1444(a) of this title plus reasonable carrying charges: *Provided*, That, notwithstanding any other provision of law, the Corporation may not sell any of its stocks of wheat, corn, grain sorghum, barley, oats, and rye, respectively, at less than (A) 115 percent of the current national average loan rate for the commodity, adjusted for such current market differentials reflecting grade, quality, location, and other value factors as the Secretary determines appropriate plus reasonble [5] carrying charges, or (B) if the Secretary permits the repayment of loans made for a crop of the commodity at a rate that is less than the loan level determined for such crop, 115 percent of the averge [6] loan repayment rate that is determined for such crop during the period of such loans. The foregoing restrictions shall not apply to (A) sales for new or byproduct uses; (B) sales of peanuts and oilseeds for the extraction of oil; (C) sales for seed or feed if such sales will not substantially impair any price-support program; (D) sales of commodities which have substantially deteriorated in quality or as to which there is a danger of loss or waste through deterioration or spoilage; (E) sales for the purpose of establishing claims arising out of contract or against persons who have committed fraud, misrepresentation, or other wrongful acts with respect to the commodity; (F) sales for export; (G) sales of wool; and (H) sales for other than primary uses. Notwithstanding the foregoing, the Corporation, on such terms and conditions as the Secretary may deem in the public interest, may make available any farm commodity or product thereof owned or controlled by it for use in relieving distress (1) in any area in the United States including the Virgin Islands declared by the President to be an acute distress area because of unemployment or other economic cause if the President finds that such use will not displace or interfere with normal marketing of agricultural commodities and (2) in connection with any major disaster determined by the President to warrant assistance by the Federal Government under Public Law 875, Eighty-first Congress, as amended, and may make feed owned or controlled by it available at any price not less than 75 per centum of the current basic county loan rate (or a comparable price if there is no current basic county loan rate) for assistance in the preservation and maintenance of foundation herds of cattle (including producing dairy cattle), sheep and goats, and their offspring, in any area of the United States including the Virgin Islands where, because of flood, drought, fire, hurricane, earthquake, storm, disease, insect infestation, or other catastrophe in such areas, the Secretary determines that an emergency exists

[5] So in original. Probably should be reasonable".
[6] So in original. Probably should be "average".

which warrants such assistance, such feed to be made available only to persons who do not have, and are unable to obtain through normal channels of trade without undue financial hardship, sufficient feed for such lifestock: *Provided*, That the Secretary may provide for the furnishing of feed or mixed feed, in accordance with regulations prescribed by him, to such persons by feed dealers under an arrangement whereby the feed grains (or other feed being sold by the Corporation) in the feed so furnished would be replaced with feed owned or controlled by the Corporation and sold to such persons at a price determined as provided above. Notwithstanding the foregoing provisions of this section relating to the authority of the Commodity Credit Corporation to make available to certain persons in certain areas during emergencies feed for livestock, the Commodity Credit Corporation (1) may make such feed available to such persons in areas in which feed grains are normally produced and normally available for feed purposes, but in which they are unavailable because of a catastrophe described in the fourth sentence of this section, (2) may make such feed available to such persons through feed dealers in the areas, (3) shall make such feed available at a price not less than the price prescribed in the fourth sentence of this section, and (4) shall bear any expenses incurred in connection with making such feed available to such persons under this sentence, including transportation and handling costs. Except on a reimbursable basis, the Corporation shall not bear any costs in connection with making such commodity available beyond the cost of the commodities to the Corporation in store and the handling and transportation costs in making delivery of the commodity to designated agencies at one or more central locations in each State or other area. Nor shall the foregoing restrictions apply to sales or commodities the disposition of which is desirable in the interest of the effective and efficient conduct of the Corporation's operations because of the small quantities involved, or because of age, location or questionable continued storability, but such sales shall be offset by such purchases of commodities as the Corporation determines are necessary to prevent such sales from substantially impairing any price-support program or unduly affecting market prices, but in no event shall the purchase price exceed the Corporation's minimum sales price for such commodities for unrestricted use. For the purposes of this section, sales for export shall not only include sales made on condition that the identical commodities sold be exported, but shall also include sales made on condition that commodities of the same kind and of comparable value or quantity be exported, either in raw or processed form. Notwithstanding any other provision of law, (1) the Commodity Credit Corporation shall sell upland cotton for unrestricted use at the same prices as it sells upland cotton for export, in no event, however, at less than (A) 115 percent of the loan rate for Strict Low Middling one and one-sixteenth inch upland cotton (micronaire 3.5 through 4.9) adjusted for such current market differentials reflecting grade, quality, location, and other value factors as the Secretary determines appropriate plus reasonable carrying charges, or (B) if the Secretary permits the repayment of loans made for a crop of cotton at a rate that is less than the loan level determined for such crop, 115 percent of the average loan repayment rate that is determined for such crop during the period of such loans, and (2) the Commodity Credit Corporation shall sell or make available for unrestricted use at current market prices in each marketing year a quantity of upland cotton equal to the amount by which the production of upland cotton is less than the estimated requirements for domestic use and for export for such marketing year. The Secretary may make such estimates and adjustments therein at such times as he determines will best effectuate the provisions of part (2) of the foregoing sentence and such quantities of cotton as are required to be sold under such sentence shall be offered for sale in an orderly manner and so as not to affect market prices unduly. Notwithstanding any other provision of this section, effective August 1, 1968, the Commodity Credit Corporation shall make available during each marketing year for sale for unrestricted use at market prices at the time of sale, a quantity of American grown extra long staple cotton equal to the amount by which the production of such cotton in the calendar year in which such marketing year begins is less than the estimated requirements of American grown extra long staple cotton for domestic use and for export for such marketing year: *Provided*, That no sales shall be made at less than 115 per centum of the loan rate for extra long staple cotton under section 1441(f) of this title beginning with the marketing year for the first crop for which the national marketing quota for extra long staple cotton is not established under paragraph (3) of section 1347(b) of this title. The Secretary may make such estimates and adjustments therein at such times as he determines will best effectuate the provisions of the foregoing sentence and such quantities of cotton as are required to be sold under such sentence shall be offered for sale in an orderly manner and so as not to affect market prices unduly. Notwithstanding any other provision of law, beginning August 26, 1983, the Commodity Credit Corporation may sell extra long staple cotton for unrestricted use at such price levels as the Secretary determines appropriate to maintain and expand export and domestic markets for such cotton.

(As amended Aug. 26, 1983, Pub. L. 98-88, § 5, 97 Stat. 499; Dec. 23, 1985, Pub. L. 99-198, title V, § 503, title X, § 1007, title XVII, § 1763(b), 99 Stat. 1418, 1451, 1651.)

REFERENCES IN TEXT

Sections 1347 and 1441(f) of this title, referred to in text, were repealed by Pub. L. 98-88, § 2, Aug. 26, 1983, 97 Stat. 494.

CODIFICATION

"August 26, 1983" was substituted in text for "upon the enactment of the Extra Long Staple Cotton Act of 1983", meaning the enactment of Pub. L. 98-88 which was approved Aug. 26, 1983.

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AMENDMENTS

1985—Pub. L. 99-198, § 1007, reenacted substantially without change the amendments made in 1981 by section 1103 of Pub. L. 97-98, which had established a floor for sales of wheat and feed grains in inventory for unrestricted use at 115 per centum of the current national average loan rate for the commodity adjusted for current market differentials reflecting grade, quality, location, and other value factors, plus reasonable carrying charges; designated such provisions as thus reenacted as cl. (A) of the proviso involved and added cl. (B) relating to the Secretary's permitting the repayment of loans at a loan rate less than the loan level determined for such crop; and reenacted, also without change, the amendments by Pub. L. 97-98 which had the price at which purchases had to be made to offset sales in the interest of the efficient conduct of the Corporation's operations to an amount not exceeding the minimum sales price for the commodity for unrestricted use. See Effective and Termination Dates of 1981 Amendment note below.

Pub. L. 99-198, § 1763(b), added provision giving the Commodity Credit Corporation authority to (1) make available feed for livestock to certain persons during emergencies in areas in which feed grains are normally produced and normally available for feed purposes, but in which they are unavailable because of a catastrophe described in the fourth sentence of this section, (2) make such feed available to such persons through feed dealers in the areas, (3) make such feed available at a price not less than the price prescribed in the fourth sentence of this section, and (4) bear any expenses incurred in connection with making such feed available to such persons under this sentence, including transportation and handling costs.

Pub. L. 99-198, § 503, reenacted substantially without change the amendments made in 1981 by section 503 of Pub. L. 97-98, which provided that the Commodity Credit Corporation sell upland cotton for unrestricted use at the same prices as it sells cotton for export, but in no event at less than 115 per centum of the loan rate for Strict Low Middling one and one-sixteenth inch upland cotton, micronaire 3.5 through 4.9, adjusted for such current market differentials reflecting grade, quality, location, and other value factors as the Secretary determines appropriate plus reasonable carrying charges, see Effective and Termination Dates of 1981 Amendment note below, and substituted "as it sells upland cotton" for "as it sells cotton" and "percent" for "per centum"; designated such provisions as thus reenacted as cl. (A), and added cl. (B) relating to the Secretary's permitting the repayment of loans at a loan rate less than the loan level determined for such crop.

1983—Pub. L. 98-88 added provision that, beginning Aug. 26, 1983, the Commodity Credit Corporation may sell extra long staple cotton for unrestricted use at such price levels as the Secretary determines appropriate to maintain and expand export and domestic markets for such cotton.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 503 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 with respect to Commodity Credit Corporation sales price restrictions for upland cotton is effective only with respect to the period beginning Aug. 1, 1978, and ending July 31, 1991.

Section 1007 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 with respect to Commodity Credit Corporation sales price restrictions for wheat and feed grains is effective only for the marketing years for the 1986 through 1990 crops.

EMERGENCY FEED ASSISTANCE

Pub. L. 98-180, title III, § 303, Nov. 29, 1983, 97 Stat. 1151, provided that:

"(a) As used in this section—

"(1) the term 'damaged corn' means corn that is classified as U.S. No. 4, U.S. No. 5, or U.S. Sample grade under section 810.353 of title 7, Code of Federal Regulations; and

"(2) the term 'eligible farmers and ranchers' means farmers and ranchers who are eligible to receive loans under section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961).

"(b) To assist eligible farmers and ranchers in areas that have been adversely affected by the drought, hot weather, or related disaster to preserve and maintain foundation herds of livestock and poultry (including their offspring), the Secretary of Agriculture shall make damaged corn held by the Commodity Credit Corporation available to such farmers and ranchers in accordance with section 407 of the Agricultural Act of 1949 (7 U.S.C. 1427).

"(c) In making damaged corn available to such farmers and ranchers under this section, the Secretary shall offer the damaged corn held by the Corporation at a price that is equal to 75 per centum of the current basic county loan rate for such corn in effect under the Agricultural Act of 1949 [this chapter] (or a comparable price if there is no such current basic county loan rate).

"(d) The Secretary shall make damaged corn available for sale, as provided under this section, until September 30, 1984, or the date, as determined by the Secretary, on which any emergency created by the drought, hot weather, or related disaster no longer exists."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1359, 1427a, 1428, 1433, 1444, 1445e, 1446, 1744, 1853 of this title; title 50 App. section 2093.

§ 1428. Definitions

For the purposes of this Act—

[*See main edition for text of* (a) *to* (j)]

(k)(1) Reference made in sections 1422, 1423, 1426, 1427, and 1431 of this title to the terms "support price", "level of support", and "level of price support" shall be considered to apply as well to the loan and purchase level for wheat, feed grains, upland cotton, and rice under this Act.

(2) References made to the terms "price support", "price support operations", and "price support program" in such sections and in section 1421(a) of this title shall be considered as applying as well to loan and purchase operations for wheat, feed grains, upland cotton, and rice under this Act.

(*l*), (m) Omitted [1]

(As amended Dec. 23, 1985, Pub. L. 99-198, title X, § 1018, 99 Stat. 1459.)

REFERENCES IN TEXT

Section 1441(g) of this title, referred to in subsec. (b), was omitted from the Code.

AMENDMENTS

1985—Subsec. (k). Pub. L. 99-198 amended subsec. (k) generally, designating provisions before the semicolon as par. (1) and substituting "loan and purchase level" for "level of loans and purchases", and designating provisions after the semicolon as par. (2).

1977—Subsec. (b). Pub. L. 95-113, §§ 604(a), 704, added proviso defining cooperator for purposes of the

[1] See 1977 Amendment note below.

1978 through 1981 crops of upland cotton as a producer on a farm who has set aside the acreage required under section 1444(f) of this title and substituted "1976 through 1981 crops of rice" for "1976 and 1977 crops of rice" in the proviso defining cooperator for purposes of specific crops of rice.

Subsec. (k). Pub. L. 95-113, § 407, reenacted subsec. (k) without change.

Subsec. (*l*). Pub. L. 95-113, § 604(b), temporarily reenacted subsec. (*l*) without change. See Effective and Termination Dates of 1977 Amendment note below.

Subsec. (m). Pub. L. 95-113, § 705, temporarily reenacted subsec. (m) without change. See Effective and Termination Dates of 1977 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 1018 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 is effective only for 1986 through 1990 crops of wheat, feed grains, upland cotton, and rice.

EFFECTIVE AND TERMINATION DATES OF 1977 AMENDMENT

Section 604(b) of Pub. L. 95-113 provided in part that the re-enactment of subsec. (*l*) without change by Pub. L. 95-113 is effective for the 1978 through 1981 crops.

Section 705 of Pub. L. 95-113 provided in part that the re-enactment of subsec. (m) without change by Pub. L. 95-113 is effective for the 1978 through 1981 crops.

§ 1431. Disposition of commodities to prevent waste

(a) Eligible recipients; barter; estimates; reprocessing and other charges

In order to prevent the waste of commodities whether in private stocks or acquired through price-support operations by the Commodity Credit Corporation before they can be disposed of in normal domestic channels without impairment of the price-support program or sold abroad at competitive world prices, the Commodity Credit Corporation is authorized, on such terms and under such regulations as the Secretary of Agriculture may deem in the public interest: (1) upon application, to make such commodities available to any Federal agency for use in making payment for commodities not produced in the United States; (2) to barter or exchange such commodities for strategic or other materials as authorized by law; (3) in the case of food commodities to donate such commodities to the Bureau of Indian Affairs and to such State, Federal, or private agency or agencies as may be designated by the proper State or Federal authority and approved by the Secretary, for use in the United States in nonprofit school-lunch programs, in nonprofit summer camps for children, in the assistance of needy persons, and in charitable institutions, including hospitals, to the extent that needy persons are served. In the case of clause (3) the Secretary shall obtain such assurance as he deems necessary that the recipients thereof will not diminish their normal expenditures for food by reason of such donation. In order to facilitate the appropriate disposal of such commodities, the Secretary may from time to time estimate and announce the quantity of such commodities which he anticipates will become available for distribution under clause (3). The Commodity Credit Corporation may pay, with respect to commodities disposed of under this subsection, reprocessing, packaging, transporting, handling, and other charges accruing up to the time of their delivery to a Federal agency, or to the designated State or private agency. In addition, in the case of food commodities disposed of under this subsection, the Commodity Credit Corporation may pay the cost of processing such commodities into a form suitable for home or institutional use, such processing to be accomplished through private trade facilities to the greatest extent possible. For the purpose of this subsection the terms "State" and "United States" include the District of Columbia and any Territory or possession of the United States. Dairy products acquired by the Commodity Credit Corporation through price support operations may, insofar as they can be used in the United States in nonprofit school lunch and other nonprofit child feeding programs, in the assistance of needy persons, and in charitable institutions, including hospitals, to the extent that needy persons are served, be donated for any such use prior to any other use or disposition. Notwithstanding any other provision of law, such dairy products may be donated for distribution to needy households in the United States and to meet the needs of persons receiving nutrition assistance under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.].

(b) Furnishing of eligible commodities for carrying out programs of assistance in developing and friendly countries

(1) The Secretary, subject to the requirements of paragraph (10), may furnish eligible commodities for carrying out programs of assistance in developing countries and friendly countries under title II of the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1721 et seq.] and under the Food for Progress Act of 1985 [7 U.S.C. 1736*o*], as approved by the Secretary, and for such purposes as are approved by the Secretary. To ensure that the furnishing of commodities under this subsection is coordinated with and complements other United States foreign assistance, assistance under this subsection shall be coordinated through the mechanism designated by the President to coordinate assistance under the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1691 et seq.].

(2) As used in this subsection, the term "eligible commodities" means—

(A) dairy products, grains, and oilseeds acquired by the Commodity Credit Corporation through price support operations that the Secretary determines meet the criteria specified in subsection (a) of this section; and

(B) such other edible agricultural commodities as may be acquired by the Secretary or the Commodity Credit Corporation in the normal course of operations and that are available for disposition under this subsection, except that no such commodities may be acquired for the purpose of their use under this subsection.

(3)(A) Commodities may not be made available for disposition under this subsection in

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amounts that (i) will, in any way, reduce the amounts of commodities that traditionally are made available through donations to domestic feeding programs or agencies, or (ii) will prevent the Secretary from fulfilling any agreement entered into by the Secretary under a payment-in-kind program under this Act or other Acts administered by the Secretary.

(B)(i) The requirements of section 401(b) of the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1731(b)] shall apply with respect to commodities furnished under this subsection. Commodities may not be furnished for disposition to any country under this subsection except on determinations by the Secretary that—

(I) the receiving country has the absorptive capacity to use the commodities efficiently and effectively; and

(II) such disposition of the commodities will not interfere with usual marketings of the United States, nor disrupt world prices of agricultural commodities and normal patterns of commercial trade with developing countries.

(ii) The requirement for safeguarding usual marketings of the United States shall not be used to prevent the furnishing under this subsection of any eligible commodity for use in countries that—

(I) have not traditionally purchased the commodity from the United States; or

(II) do not have adequate financial resources to acquire the commodity from the United States through commercial sources or through concessional sales arrangements.

(C) The Secretary shall take reasonable precautions to ensure that—

(i) commodities furnished under this subsection will not displace or interfere with sales that otherwise might be made; and

(ii) sales or barter under paragraph (7) will not unduly disrupt world prices of agricultural commodities nor normal patterns of commercial trade with friendly countries.

(4) Agreements may be entered into under this subsection to provide eligible commodities in installments over an extended period of time.

(5)(A) Section 203 of the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1723] shall apply to the commodities furnished under this subsection.

(B) The Commodity Credit Corporation may pay the processing and domestic handling costs incurred, as authorized under this subsection, in the form of eligible commodities, as defined in paragraph (2)(A), if the Secretary determines that such in-kind payment will not disrupt domestic markets.

(6) The cost of commodities furnished under this subsection, and expenses incurred under section 203 of the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1723] in connection with those commodities, shall be in addition to the level of assistance programmed under that Act [7 U.S.C. 1691 et seq.] and shall not be considered expenditures for international affairs and finance.

(7) Eligible commodities, and products thereof, furnished under this subsection may be sold or bartered only with the approval of the Secretary and solely as follows:

(A) Sales and barter that are incidental to the donation of the commodities or products.

(B) Sales and barter to finance the distribution, handling, and processing costs of the donated commodities or products in the importing country or in a country through which such commodities or products must be transshipped, or other activities in the importing country that are consistent with providing food assistance to needy people.

(C) Sales and barter of commodities and products furnished to intergovernmental agencies or organizations, insofar as they are consistent with normal programming procedures in the distribution of commodities by those agencies or organizations.

(D)(i) Sales of commodities and products furnished to nonprofit and voluntary agencies, or cooperatives, for food assistance under agreements that provide for the use, by the agency or cooperative, of foreign currency proceeds generated from such sale of commodities or products for the purposes established in clause (ii) of this subparagraph.

(ii) Foreign currency proceeds generated from the sales of commodities and products under this subparagraph shall be used by nonprofit and voluntary agencies, or cooperatives, for activities carried out by the agency or cooperative that will enhance the effectiveness of transportation, distribution, and use of commodities and products donated under this subsection, including food for work programs and cooperative and agricultural projects.

(iii) Except as otherwise provided in clause (v), such agreements, taken together for each fiscal year, shall provide for sales of commodities and products for foreign currency proceeds in amounts that are, in the aggregate, not less than 5 percent of the aggregate value of all commodities and products furnished for carrying out programs of assistance under this subsection in such fiscal year. The minimum allocation requirements of this clause apply with respect to commodities and products made available under this subsection for carrying out programs of assistance under title II of the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1721 et seq.], and not with respect to commodities and products made available to carry out the Food for Progress Act of 1985 [7 U.S.C. 1736o].

(iv) Foreign currency proceeds generated from the sale of commodities or products under this subparagraph shall be expended within the country of origin within one year of acquisition of such currency, except that the Secretary may permit the use of such proceeds (I) in countries other than the country of origin as necessary to expedite the transportation of commodities and products furnished under this subsection, and (II) after one year of acquisition as appropriate to achieve the purposes of clause (i).

(v) The provisions of clause (iii) of this subparagraph establishing minimum annual allo-

cations for sales and use of proceeds shall not apply to the extent that there have not been sufficient requests for such sales and use of proceeds nor to the extent required under paragraph (3).

(E) Sales and barter to cover expenses incurred under paragraph (5)(a).

No portion of the proceeds or services realized from sales or barter under this paragraph may be used to meet operating and overhead expenses, except as otherwise provided in subparagraph (C) and except for personnel and administrative costs incurred by local cooperatives.

(8)(A) To the maximum extent practicable, expedited procedures shall be used in the implementation of this subsection.

(B) The Secretary shall be responsible for regulations governing sales and barter, and the use of foreign currency proceeds, under paragraph (7) of this subsection that will provide reasonable safeguards to prevent the occurrence of abuses in the conduct of activities provided for in paragraph (7).

(9)(A) Each recipient of commodities and products approved for sale or barter under paragraph (7) shall report to the Secretary information with respect to the items required to be included in the Secretary's report pursuant to clauses (i) through (iv) of subparagraph (B). Reports pursuant to this subparagraph shall be submitted in accordance with regulations of the Secretary. Such regulations shall require at least one report annually, to be submitted not later than December 31 following the end of the fiscal year in which the commodities and products are received; except that a report shall not be required with respect to fiscal year 1985.

(B) Not later than February 15, 1987, and annually thereafter, the Secretary shall report to the Congress on sales and barter, and use of foreign currency proceeds, under paragraph (7) during the preceding fiscal year. Such report shall include information on—

(i) the quantity of commodities furnished for such sale or barter;

(ii) the amount of funds (including dollar equivalents for foreign currencies) and value of services generated from such sales and barter in such fiscal year;

(iii) how such funds and services were used;

(iv) the amount of foreign currency proceeds that were used under agreements under subparagraph (D) of paragraph (7) in such fiscal year, and the percentage of the quantity of all commodities and products furnished under this subsection in such fiscal year such use represented;

(v) the Secretary's best estimate of the amount of foreign currency proceeds that will be used, under agreements under subparagraph (D) of paragraph (7), in the then current fiscal year and the next following fiscal year (if all requests for such use are agreed to), and the percentage that such estimated use represents of the quantity of all commodities and products that the Secretary estimates will be furnished under this subsection in each such fiscal year;

(vi) the effectiveness of such sales, barter, and use during such fiscal year in facilitating the distribution of commodities and products under this subsection;

(vii) the extent to which sales, barter, or uses—

(I) displace or interfere with commercial sales of United States agricultural commodities and products that otherwise would be made,

(II) affect usual marketings of the United States,

(III) disrupt world prices of agricultural commodities or normal patterns of trade with friendly countries, or

(IV) discourage local production and marketing of agricultural commodities in the countries in which commodities and products are distributed under this subsection; and

(viii) the Secretary's recommendations, if any, for changes to improve the conduct of sales, barter, or use activities under paragraph (7).

(10)(A) Subject to the limitations established under paragraph (3), the Secretary shall make available for disposition under this subsection in each of the fiscal years 1986 through 1990 not less than the minimum quantities of eligible commodities specified in subparagraph (B).

(B) The minimum quantity of eligible commodities that shall be made available for disposition under this subsection in each fiscal year shall be—

(i) 500,000 metric tons of grains and oilseeds from the Corporation's uncommitted stocks, or an amount equal to 10 percent of the Corporation's uncommitted stocks of grains and oilseeds as of the end of such fiscal year (as estimated by the Secretary), whichever is less; and

(ii) 10 percent of the Corporation's uncommitted stocks of dairy products, but not less than 150,000 metric tons of such products to the extent that uncommitted stocks are available.

The Secretary shall make such estimation of expected year-end levels of the Corporation's uncommitted stocks prior to the beginning of the fiscal year. The Secretary's determination as to the amount of the Corporation's stocks that shall be made available for disposition under this subsection for such fiscal year shall be published in the Federal Register, along with a breakdown by kind of commodity and the quantity of each kind of commodity that shall be made available, before the beginning of such fiscal year.

(C) Of the aggregate amounts made available each fiscal year pursuant to both clauses (i) and (ii) of subparagraph (B), not less than 75,000 metric tons shall be made available to carry out the Food for Progress Act of 1985 [7 U.S.C. 1736o].

(D)(i) The Secretary—

(I) may waive the minimum quantity requirements of subparagraphs (A) and (B) for a fiscal year to the extent that the Secretary determines and reports to Congress that there are not sufficient requests for eligible commodities under this subsection for such

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fiscal year, except that the waiver authority of this subclause may not be used to waive the minimum quantity requirement of subparagraph (C);

(II) may waive the minimum quantity requirement of subparagraph (C) in accordance with subsection (f)(2) of the Food for Progress Act of 1985 [7 U.S.C. 1736o(f)(2)]; and

(III) may waive the minimum quantity requirements of subparagraphs (A), (B), and (C) for a fiscal year, if the Secretary determines that the restrictions on the furnishing of commodities under paragraph (3) prevent the making available of commodities in such quantities.

(ii) For any fiscal year in which the minimum levels of uncommitted Commodity Credit Corporation stocks specified in subparagraph (B) are not made available and during which any requests for commodities under this subsection are rejected, the Secretary shall provide a detailed, written explanation to Congress, at the end of such fiscal year, of the reasons for the rejections of such requests.

(11)(A) The Secretary may furnish eligible commodities under this subsection in connection with (i) concessional sales agreements entered into under title I of the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1701 et seq.] or other statutes, or (ii) agricultural export bonus or promotion programs carried out under the Commodity Credit Corporation Charter Act [15 U.S.C. 714 et seq.] or other statutes.

(B) Eligible commodities may be furnished by the Secretary under this subsection in connection with agreements by recipient countries to acquire additional agricultural commodities from the United States through commercial arrangements.

(C) The amount of any commodity furnished under subparagraphs (A) and (B) of this paragraph in any fiscal year shall not be considered for the purpose of determining whether the requirements of paragraph (10)(A) of this subsection have been met during such fiscal year.

(c) Ultra-high temperature processed fluid milk; two-year pilot program; report to Congress

To prevent the waste of dairy products acquired by the Commodity Credit Corporation through price support operations, the Corporation, on such terms and under such regulations as the Secretary may prescribe, shall carry out a two-year pilot program under which the Corporation shall barter or exchange such dairy products, to the extent they are available, for forty thousand metric tons (consisting of twenty thousand metric tons in each year of the pilot program) of ultra-high temperature processed fluid milk. Such barter or exchange shall be effected on the basis of competitive bids submitted by domestic processors. The processed milk acquired by the Corporation under this subsection shall be available for donation through foreign governments and public and nonprofit private humanitarian organizations for the assistance of needy persons outside the United States, and the Corporation may pay, with respect to such processed milk donated under this subsection, transporting, handling, and other charges, including the cost of overseas delivery. Any donations under this subsection shall be coordinated through the mechanism designated by the President to coordinate assistance under the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1691 et seq.] and shall be in addition to the level of assistance programmed under that Act. The pilot program shall be implemented by the Corporation as soon as practicable after April 10, 1984, and shall be operated for a period of two years after its implementation. Upon completion of the pilot program, the Secretary shall submit a report to Congress on its operation.

(d) Pilot barter program for exchange of agricultural commodities for strategic materials

(1) The Secretary shall establish and carry out a pilot program under which strategic or other materials that the United States does not produce domestically in amounts sufficient for its requirements and for which national stockpile or reserve goals established by law are unmet shall be acquired in exchange for commodities meeting the criteria specified in subsection (a) of this section.

(2) The program established under paragraph (1) shall be carried out through agreements with at least two countries.

(3) In establishing the pilot program under paragraph (2), the Secretary shall give priority to—

(A) the acquisition of materials that involve less risk of loss through deterioration and have lower storage costs than the agricultural commodities or products for which they are exchanged; and

(B) nations with food and currency reserve shortages.

(4) To the extent practical, the Secretary shall use private channels of commerce to consummate any exchange of commodities for materials under the program.

(5) Any materials acquired under the programs shall be held by the Commodity Credit Corporation and may be transferred, on a reimbursable basis, to any Department or agency of the United States that has responsibility for any reserve or other need for the material. Any material acquired, in excess of any required reserve, may be sold by the Corporation to the extent authorized by the Secretary taking into consideration any effect that such sale may have on the commercial market of such material.

(6) The program established by the Secretary shall be carried out during the fiscal years ending September 30, 1986, and September 30, 1987, and the Secretary shall submit a report to Congress, not later than 60 days after the end of each such fiscal year with respect to the operation of the program.

(As amended Apr. 10, 1984, Pub. L. 98-258, title V, § 502, 98 Stat. 137; Aug. 8, 1985, Pub. L. 99-83, title X, § 1007, 99 Stat. 271; Dec. 23, 1985, Pub. L. 99-198, title XI, §§ 1109, 1129, 99 Stat. 1467, 1486.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (a), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§ 3001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

The Agricultural Trade Development and Assistance Act of 1954, referred to in subsecs. (b)(1), (6), (7)(D)(iii), (11)(A), (c), is act July 10, 1954, ch. 469, 68 Stat. 454, as amended, which is classified generally to chapter 41 (§ 1691 et seq.) of this title. Titles I and II of the Agricultural Trade Development and Assistance Act of 1954 are classified generally to subchapters II (§ 1701 et seq.) and III (§ 1721 et seq.), respectively, of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of this title and Tables.

This Act, referred to in subsec. (b)(3)(A), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, known as the Agricultural Act of 1949, which is classified principally to this chapter (§ 1421 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

The Food for Progress Act of 1985, referred to in subsec. (b)(1), (7)(D)(iii), (10)(C), (D)(i)(II), is Pub. L. 99-198, title XI, § 1110, Dec. 23, 1985, 99 Stat. 1472, which is classified to section 1736o of this title.

The Commodity Credit Corporation Charter Act, referred to in subsec. (b)(11)(A), is act June 29, 1948, ch. 704, 62 Stat. 1070, as amended, which is classified generally to subchapter II (§ 714 et seq.) of chapter 15 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 714 of Title 15 and Tables.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, § 1109(1), struck out provisions that such dairy products could also be donated through foreign governments and public and nonprofit private humanitarian organizations for the assistance of needy persons outside the United States, that the Commodity Credit Corporation could pay, with respect to commodities so donated, reprocessing, packaging, transporting, handling, and other charges, including the cost of overseas delivery, and that in order to assure that any such donations for use outside the United States were coordinated with and would complement other United States foreign assistance, such donations had to be coordinated through the mechanism designated by the President to coordinate assistance under the Agricultural Trade Development and Assistance Act of 1954 and were to be in addition to the level of assistance programmed under that Act.

Subsec. (b). Pub. L. 99-198, § 1109(2), in amending subsec. (b) generally, substituted provisions relating to the furnishing of eligible commodities for the purpose of carrying out programs of assistance in developing and friendly countries under title II of the Agricultural Trade Development and Assistance Act of 1954 and section 1736o of this title for provisions relating to the furnishing of dairy products, rice and wheat (which had been acquired by the Commodity Credit Corporation through price support operations) for the purpose of carrying out title II of that Act.

Pub. L. 99-83 added applicability to rice acquired by the Commodity Credit Corporation through price support operations.

Subsec. (d). Pub. L. 99-198, § 1129, added subsec. (d).

1984—Subsec. (a). Pub. L. 98-258, § 502(1), (2), designated existing provisions as subsec. (a) and in subsec. (a), as so designated, substituted "subsection" for "section" wherever appearing.

Subsecs. (b), (c). Pub. L. 98-258, § 502(3), added subsecs. (b) and (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as a note under section 5151-1 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1428, 1431b, 1431c, 1431d, 1464, 1446a, 1736n, 1736o, 4004 of this title; title 22 section 1922; title 42 sections 1758, 1761, 1762a, 1777, 1783, 3030a, 3045f; title 46 App. section 1241f.

§ 1431e. Distribution of surplus commodities to special nutrition projects: reprocessing agreements with private companies

(1) Notwithstanding any other provision of law, whenever Government stocks of commodities are acquired under the price support programs and are not likely to be sold by the Commodity Credit Corporation or otherwise used in programs of commodity sale or distribution, such commodities shall be made available without charge or credit to nutrition projects under the authority of the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.), to child nutrition programs providing food service, and to food banks participating in the special nutrition projects established under section 4004 of this title. Such distribution may include bulk distribution to congregate nutrition sites and to providers of home delivered meals under the Older Americans Act of 1965. The Commodity Credit Corporation is authorized to use available funds to operate the program under this subsection and to further process products to facilitate bonus commodity use. Commodities made available under this section shall include, but not be limited to, dairy products, wheat or the products thereof, rice, honey, and cornmeal.

(2)(A) Effective through June 30, 1987, whenever a commodity is made available without charge or credit under any nutrition program administered by the Secretary of Agriculture, the Secretary shall encourage consumption of such commodity through agreements with private companies under which the commodity is reprocessed into end-food products for use by eligible recipient agencies. The expense of reprocessing shall be paid by such eligible recipient agencies.

(B) To maintain eligibility to enter into, and to continue, any agreement with the Secretary of Agriculture under subparagraph (A), a private company shall annually settle all accounts with the Secretary and any appropriate State agency regarding commodities processed under such agreements.

(As amended Pub. L. 99-198, title XV, § 1567(a), (b), Dec. 23, 1985, 99 Stat. 1591, 1592.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in par. (1), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§ 3001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

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AMENDMENTS

1985—Pub. L. 99-198 designated existing provisions as par. (1), added provision directing that commodities made available under this section include, but not be limited to, dairy products, wheat or the products thereof, rice, honey, and cornmeal, and added par. (2).

§ 1432. Extension of price support on long staple cotton seeds and products

REFERENCES IN TEXT

Section 1347 of this title, referred to in text, was repealed by Pub. L. 98-88, § 2, Aug. 26, 1983, 97 Stat. 494.

§ 1433b. Processing of surplus agricultural commodities into liquid fuels and agricultural commodity byproducts

(a) Authority of Commodity Credit Corporation; terms and conditions established by Secretary; fuel prices

Notwithstanding any other provision of law, in order to prevent the accumulation of excessive stocks of agricultural commodities through the price support and stabilization operations of the Commodity Credit Corporation [1] the Corporation may, under terms and conditions established by the Secretary, make its accumulated stocks of agricultural commodities available, at no cost or reduced cost, to encourage the purchase of such commodities for the production of liquid fuels and agricultural commodity byproducts. In carrying out the program established by this section, the Secretary shall ensure, insofar as possible, that any use of agricultural commodities made available be made in such manner as to encourage increased use and avoid displacing usual marketings of agricultural commodities.

[*See main edition for text of* (b) *and* (c)]

(As amended Dec. 23, 1985, Pub. L. 99-198, title X, § 1024, 99 Stat. 1460.)

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1985—Subsec. (a). Pub. L. 99-198 substituted provision authorizing the Corporation to make its accumulated agricultural commodities stocks available at no cost or reduced cost to encourage the purchase thereof for the production of liquid fuels and commodity byproducts, with any use of such commodities to be made in such a manner as to encourage increased use and avoid displacing usual marketings of such commodities for provision authorizing the Corporation to provide for processing of its accumulated stock into liquid fuels and commodity byproducts to be either made available to Federal agencies to meet their regular or emergency needs or to be sold commercially by the Corporation, at a price determined by the Secretary notwithstanding any other provisions of law and in a manner so as not to disrupt the prices in commercial markets of agriculturally-derived liquid fuel.

§ 1433c. Advance recourse commodity loans

Notwithstanding any other provision of this Act, the Secretary may make advance recourse loans available to producers of the commodities of the 1986 through 1990 crops for which nonrecourse loans are made available under this Act if the Secretary finds that such action is necessary to ensure that adequate operating credit is available to producers. Such recourse loans may be made available under such reasonable terms and conditions as the Secretary may prescribe, except that the Secretary shall require that a producer obtain crop insurance for the crop as a condition of eligibility for a loan.

(Oct. 31, 1949, ch. 792, title IV, § 424, as added Dec. 23, 1985, Pub. L. 99-198, title X, § 1003, 99 Stat. 1447.)

REFERENCES IN TEXT

This Act, referred to in text, is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, known as the Agricultural Act of 1949, which is classified principally to this chapter (§ 1421 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

EFFECTIVE AND TERMINATION DATES

Section 1003 of Pub. L. 99-198 provided in part that this section is effective for the 1986 through 1990 crops.

SUBCHAPTER II—BASIC AGRICULTURAL COMMODITIES

§ 1441. Price support levels

The Secretary of Agriculture (hereinafter called the "Secretary") is authorized and directed to make available through loans, purchases, or other operations, price support to cooperators for any crop of any basic agricultural commodity, if producers have not disapproved marketing quotas for such crop, at a level not in excess of 90 per centum of the parity price of the commodity nor less than the level provided in subsections (a) to (c) of this section as follows:

[*See main edition for text of* (a) *to* (e)]

(f) Repealed. Pub. L. 98-88, § 2, Aug. 26, 1983, 97 Stat. 494.

(g), (h) Omitted [1]

(i) Notwithstanding any other provision of law—

(1)(A) The Secretary shall make available to producers in the several States of the United States loans and purchases for each of the 1982 through 1985 crops of rice at such level as bears the same ratio to the loan level for the preceding year's crop as the established price for each such crop bears to the established price for the preceding year's crop. If the Secretary determines that loans and purchases at the foregoing level for any of the 1982 through 1985 crops would substantially discourage the exportation of rice and result in excessive stocks of rice in the United States, the Secretary may, notwithstanding the foregoing provisions of this paragraph, establish loans and purchases for any such crop at such level, not less than $8 per hundredweight, as the Secretary determines necessary to avoid such consequences: *Provided*, That the loan and purchase level for the succeeding crop shall be established on the basis of the loan and purchase level established for the preceding crop year before

[1] So in original. Probably should be followed by a comma.

[1] See 1976 and 1977 Amendment notes below.

the application of this sentence. The loan and purchase level and the established price for each of the 1982 through 1985 crops of rice shall be announced not later than March 1 of each calendar year for the crop harvested in that calendar year.

(B)(i) Beginning April 15, 1986, the Secretary shall permit an eligible producer to repay a loan made under subparagraph (A) with respect to the 1985 crop at a level that is the lesser of—

(I) the loan level determined for such crop; or

(II) the prevailing world market price for rice, as determined by the Secretary.

(ii) The Secretary shall prescribe by regulation—

(I) a formula to define the prevailing world market price for rice; and

(II) a mechanism by which the Secretary shall announce periodically the prevailing world market price for rice.

(iii) To be eligible to repay a loan in accordance with clause (i), a producer must have a loan made under subparagraph (A) outstanding on April 15, 1986.

(iv) A loan made under this subsection shall have a term of not more than 9 months beginning after the month in which the application for the loan is made. The Secretary may extend the maturity date of loans made for the 1985 crop of rice as necessary to permit the orderly marketing of such rice.

(v) As a condition to permitting a producer to repay a loan as provided in this subparagraph, the Secretary may require a producer to purchase negotiable marketing certificates equal in value to an amount that does not exceed the difference, as determined by the Secretary, between the amount of the loan obtained by the producer and the amount of the loan repayment. Such certificates shall be negotiable.

(vi) Such certificates shall be redeemable for rice owned by the Commodity Credit Corporation valued at the prevailing market price, as determined by the Secretary. If such rice is not available in the State in which the rice pledged as collateral for the loan was produced or at such other location outside of such State as may be approved by the owner of such certificate, such certificate shall be redeemable in cash.

(vii) The Commodity Credit Corporation, under regulations prescribed by the Secretary, shall assist any person receiving marketing certificates under this subparagraph in the redemption or marketing of such certificates. Insofar as practicable, the Secretary shall permit an owner of a certificate to designate the storage facility at which such owner would prefer to receive rice in exchange for such certificate.

(viii) If any such certificate is not presented for redemption or marketing within a reasonable number of days after issuance, as determined by the Secretary, reasonable costs of storage and other carrying charges, as determined by the Secretary, shall be deducted from the value of the certificate for the period beginning after such reasonable number of days and ending with the date of the presentation of such certificate to the Commodity Credit Corporation.

(C)(i) Beginning April 15, 1986, the Secretary shall, for the 1985 crop of rice, make payments available to—

(I) producers who have produced rice, and although eligible to obtain a loan or purchase agreement under this subsection did not obtain such loan or agreement, and have not sold or delivered such rice under a sales contract; and

(II) producers who have produced rice that is not eligible to be placed under loan and have not sold or delivered such rice under a sales contract.

(ii) A payment under this subparagraph shall be computed by multiplying—

(I) the loan payment rate; by

(II) the quantity of rice the producer has not sold or delivered under a sales contract.

(iii) For purposes of this subparagraph, the loan payment rate shall be the amount by which—

(I) the loan level determined for the 1985 crop; exceeds

(II) the level at which a loan may be repaid under subparagraph (B).

(iv) The Secretary may make all or part of a payment under this subparagraph in the form of negotiable marketing certificates, subject to the terms and conditions provided in subparagraph (B).

(D) The payment limitation provided in section 1101 of the Agriculture and Food Act of 1981 (7 U.S.C. 1308 [2]) shall not apply to—

(i) any gain realized by a producer from repaying a loan for the 1985 crop of rice at the rate permitted under subparagraph (B); or

(ii) any payment received for a crop of rice under subparagraph (C).

(2) [*See main edition for text of* (A) *and* (B)]

(C) The established price for rice shall be not less than $10.85 per hundredweight for the 1982 crop, $11.40 per hundredweight for the 1983 crop, and $11.90 per hundredweight for the 1984 and 1985 crops. Any such established price may be adjusted by the Secretary as the Secretary determines to be appropriate to reflect any change in (i) the average adjusted cost of production per acre for the two crop years immediately preceding the year for which the determination is made from (ii) the average adjusted cost of production per acre for the two crop years immediately preceding the year previous to the one for which the determination is made. The adjusted cost of production for each of such years may be determined by the Secretary on the basis of such information as the Secretary finds necessary and appropriate for the purpose and may include variable costs, machinery ownership costs, and general farm overhead costs,

[2] See References in Text note below.

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allocated to the crops involved on the basis of the proportion of the value of the total production derived from each crop.

[See main edition for text of (D) and (E), (3) and (4)]

(5)(A) Notwithstanding any other provision of law, except as provided in the third, fourth, and fifth sentences of this paragraph, the Secretary may establish a limitation on the acreage planted to rice if the Secretary determines that the total supply of rice, in the absence of such limitation, will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. Any such limitation shall be announced by the Secretary not later than January 31 of the calendar year in which the crop for which the announcement is made is harvested. For the 1983 crop of rice, the Secretary shall provide for a combination of (i) an acreage limitation program as described under this subparagraph and (ii) a diversion program as described under subparagraph (B) under which the acreage planted to rice for harvest on the farm would be limited to the acreage base for the farm reduced by a total of 20 per centum, consisting of a reduction of 15 per centum under the acreage limitation program and a reduction of 5 per centum under the diversion program. For the 1985 crop of rice, if the Secretary estimates that the quantity of rice on hand in the United States on July 31, 1985 (not including any quantity of rice produced in the United States during calendar year 1985), will exceed twenty-five million hundredweight, the Secretary shall provide for a combination of an acreage limitation program as described under this subparagraph and a land diversion program as described under subparagraph (B) under which the acreage planted to rice for harvest on the farm would be limited to the acreage base for the farm reduced by a total of not less than 25 per centum, consisting of a reduction of 20 per centum under the acreage limitation program and a reduction under the land diversion program equal to the difference between the total reduction for the farm and the 20 per centum reduction under the acreage limitation program. As a condition of eligibility for loans, purchases, and payments on the 1983 and 1985 crops of rice, the producers on a farm must comply with the terms and conditions of the combined acreage limitation and diversion program. Such limitation shall be achieved by applying a uniform percentage reduction to the acreage base for each rice-producing farm. Producers who knowingly produce rice in excess of the permitted rice acreage for the farm shall be ineligible for rice loans, purchases, and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as the result of a limitation under this subparagraph shall be the acreage planted on the farm to rice for harvest in the crop year immediately preceding the year for which the determination is made or, at the discretion of the Secretary, the average acreage planted to rice for harvest in the two crop years immediately preceding the year for which the determination is made. For the purpose of the preceding sentence, acreage planted to rice for harvest shall include any acreage which the producers were prevented from planting to rice or other nonconserving crop in lieu of rice because of drought, flood, or other natural disaster, or other condition beyond the control of the producers. The Secretary may make adjustments to reflect established crop rotation practices and to reflect such other factors as the Secretary determines should be considered in determining a fair and equitable base. Notwithstanding any other provision of this subparagraph, the acreage base to be used for the farm under the program for the 1983 crop of rice shall be the same as the acreage base appplicable [2] to the farm under the acreage limitation program for the 1982 crop, adjusted to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines should be considered in determining a fair and equitable base. A number of acres on the farm determined by dividing (i) the product obtained by multiplying the number of acres required to be withdrawn from the production of rice times the number of acres actually planted to rice, by (ii) the number of acres authorized to be planted to rice under the limitation established by the Secretary shall be devoted to conservation uses, in accordance with regulations issued by the Secretary, which will assure protection of such acreage from weeds and wind and water erosion. The number of acres so determined is hereafter in this subsection referred to as "reduced acreage". The Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of the reduced acreage to be devoted to sweet sorghum, hay and grazing or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or other commodity, if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of the price support program, and will not affect farm income adversely. If an acreage limitation program is announced under this paragraph for a crop of rice, paragraph (4) of this subsection shall not be applicable to such crop, including any prior announcement which may have been made under such paragraph with respect to such crop. The individual farm program acreage shall be the acreage planted on the farm to rice for harvest within the permitted rice acreage for the farm as established under this paragraph.

(B) The Secretary may make land diversion payments to producers of rice, whether or not an acreage limitation for rice is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of rice to

[2] So in original.

desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers. The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community. Notwithstanding the foregoing provisions of this subparagraph, the Secretary shall implement a land diversion program for the 1983 crop of rice under which the Secretary shall make crop retirement and conservation payments to any producer of the 1983 crop of rice whose acreage planted to rice for harvest on the farm is reduced so that it does not exceed the rice acreage base for the farm less an amount equivalent to 5 per centum of the rice acreage base in addition to the reduction required under subparagraph (A), and the producer devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the rice acreage base under this subparagraph. Notwithstanding the foregoing provisions of this subparagraph, if the Secretary implements a land diversion program for the 1985 crop of rice under the provisions of subparagraph (A), the Secretary shall make crop retirement and conservation payments to any producer of the 1985 crop of rice whose acreage planted to rice for harvest on the farm is reduced so that it does not exceed the rice acreage base for the farm less an amount equivalent to the percentage of the acreage base specified by the Secretary, but not less than 5 per centum, in addition to the reduction required under the acreage limitation program under subparagraph (A), and who devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the rice acreage base under this subparagraph. Diversion payments made to producers under this subparagraph shall be made in an amount computed by multiplying (i) the diversion payment rate, by (ii) the farm program payment yield for the crop, by (iii) the additional acreage diverted under this subparagraph. The diversion payment rate shall be established by the Secretary at not less than $3.00 per hundredweight for the 1983 crop of rice, except that the rate may be reduced up to 10 per centum if the Secretary determines that the same program objective could be achieved with the lower rate, and at not less than $2.70 per hundredweight for the 1985 crop of rice: *Provided*, That if the Secretary estimates that the quantity of rice on hand in the United States on July 31, 1985 (not including any quantity of rice produced in the United States during calendar year 1985), will exceed (I) thirty-five million hundredweight, such rate shall be established by the Secretary at not less than $3.25 per hundredweight, and (II) forty-two million five hundred thousand hundredweight, such rate shall be established by the Secretary at not less than $3.50 per hundredweight. The Secretary shall make not less than 50 per centum of any payments under this subparagraph to producers of the 1983 and 1985 crops as soon as practicable after a producer enters into a land diversion contract with the Secretary and in advance of any determination of performance, but in no case prior to October 1, 1982. If a producer fails to comply with a land diversion contract after obtaining an advance payment under this subparagraph, the producer shall repay the advance immediately and, in accordance with regulations issued by the Secretary, pay interest on the advance.

[*See main edition for text of (C) and (D), (6) to (12)*]

(As amended Aug. 26, 1983, Pub. L. 98-88, § 2, 97 Stat. 494; Apr. 10, 1984, Pub. L. 98-258, title IV, §§ 401, 402, 98 Stat. 135; Dec. 23, 1985, Pub. L. 99-198, title VI, § 602, 99 Stat. 1427.)

REFERENCES IN TEXT

Section 1101 of the Agriculture and Food Act of 1981, referred to in subsec. (i)(1)(D), was formerly classified to section 1308 of this title. See Prior Provisions note set out under that section.

The Federal Crop Insurance Act, referred to in subsec. (i)(3)(C), is title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, as amended, which is classified generally to chapter 36 (§ 1501 et seq.) of this title. For complete classification of this Act to the Code, see section 1501 of this title and Tables.

AMENDMENTS

1985—Subsec. (i)(1). Pub. L. 99-198 temporarily redesignated existing provisions as subpar. (A) and added subpars. (B) to (D). See Effective and Termination Dates of 1985 Amendment note below.

1984—Subsec. (i)(2)(C). Pub. L. 98-258, § 401, substituted "and $11.90 per hundredweight for the 1984 and 1985 crops" for "$11.90 per hundredweight for the 1984 crop, and $12.40 per hundredweight for the 1985 crop".

Subsec. (i)(5)(A). Pub. L. 98-258, § 402(1), substituted "third, fourth, and fifth" for "third and fourth" after "Notwithstanding any other provision of law, except as provided in the".

Pub. L. 98-258, § 402(2), added sentence providing: "For the 1985 crop of rice, if the Secretary estimates that the quantity of rice on hand in the United States on July 31, 1985 (not including any quantity of rice produced in the United States during calendar year 1985), will exceed twenty-five million hundredweight, the Secretary shall provide for a combination of an acreage limitation program as described under this subparagraph and a land diversion program as described under subparagraph (B) under which the acreage planted to rice for harvest on the farm would be limited to the acreage base for the farm reduced by a total of not less than 25 per centum, consisting of a reduction of 20 per centum under the acreage limitation program and a reduction under the land diversion program equal to the difference between the total reduc-

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tion for the farm and the 20 per centum reduction under the acreage limitation program."

Pub. L. 98-258, § 402(3), substituted "1983 and 1985 crops of rice" for "1983 crop of rice" after "As a condition of eligibility for loans, purchases, and payments on the".

Subsec. (i)(5)(B). Pub. L. 98-258, § 402(4), added sentence providing that if the Secretary implements a land diversion program for the 1985 crop of rice under the provisions of subparagraph (A), the Secretary shall make crop retirement and conservation payments to any producer of the 1985 crop of rice whose acreage planted to rice for harvest on the farm is reduced so that it does not exceed the rice acreage base for the farm less an amount equivalent to the percentage of the acreage base specified by the Secretary, but not less than 5 per centum, in addition to the reduction required under the acreage limitation program under subparagraph (A), and who devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the rice acreage base under this subparagraph.

Pub. L. 98-258, § 402(5), substituted "Diversion payments made to producers under this subparagraph shall be made in an amount computed by multiplying" for "Such payments shall be made in an amount computed by multiplying".

Pub. L. 98-258, § 402(6), substituted "$3.00 per hundredweight for the 1983 crop of rice, except that the rate may be reduced up to 10 per centum if the Secretary determines that the same program objective could be achieved with the lower rate, and at not less than $2.70 per hundredweight for the 1985 crop of rice" for "$3.00 per hundredweight, except that the rate may be reduced up to 10 per centum if the Secretary determines that the same program objective could be achieved with the lower rate" after "The diversion payment rate shall be established by the Secretary at not less than" and added a proviso that if the Secretary estimates that the quantity of rice on hand in the United States on July 31, 1985 (not including any quantity of rice produced in the United States during calendar year 1985), will exceed (I) thirty-five million hundredweight, such rate shall be established by the Secretary at not less than $3.25 per hundredweight, and (II) forty-two million five hundred thousand hundredweight, such rate shall be established by the Secretary at not less than $3.50 per hundredweight.

Pub. L. 98-258, § 402(7), substituted "1983 and 1985 crops" for "1983 crop" after "The Secretary shall make not less than 50 per centum of any payments under this subparagraph to producers of the".

1983—Subsec. (f). Pub. L. 98-88 struck out subsec. (f) which had provided: "The provisions of this Act relating to price support for cotton shall apply severally to (1) Amercian upland cotton and (2) extra long staple cotton described in subsection (a) of this section and ginned as required by subsection (e) of section 1347 of this title, except that, notwithstanding any other provision of this Act, price support shall be made available for the 1982 and each subsequent crop of extra long staple cotton through nonrecourse loans as provided in this subsection. If producers have not disapproved marketing quotas for any crop of extra long staple cotton, price support loans shall be made available to cooperators for such crop at a level which is not less than 75 per centum or more than 125 per centum in excess of the loan level established for Strict Low Middling one and one-sixteenth inch upland cotton (micronaire 3.5 through 4.9) of such crop at average location in the United States. If producers have disapproved marketing quotas for any crop of extra long staple cotton, price support loans shall be made available to cooperators for such crop at a level which shall be 50 per centum in excess of the loan level established for Strict Low Middling one and one-sixteenth inch upland cotton (micronaire 3.5 through 4.9) of such crop at average location in the United States. Nothing contained herein shall affect the authority of the Secretary to make price support available for extra long staple cotton in accordance with section 1422 of this title." See section 1444(h) of this title.

1977—Subsec. (f). Pub. L. 95-113, § 607, substituted "Strict Low Middling one and one-sixteenth inch" for "Middling one-inch".

Subsec. (h). Pub. L. 95-113, § 702, temporarily added subsec. (h). See Effective and Termination Dates of 1977 Amendment note below.

1976—Subsec. (g). Pub. L. 94-214 temporarily added subsec. (g). See Effective and Termination Dates of 1976 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 602 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 is effective for the 1985 crop of rice.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 2 of Pub. L. 98-88 provided in part that the repeal of subsec. (f) of this section by Pub. L. 98-88 is effective beginning with the 1984 crop of extra long staple cotton.

EFFECTIVE AND TERMINATION DATES OF 1977 AMENDMENT

Section 702 of Pub. L. 95-113 provided in part that subsec. (h) is effective only for the 1978 through 1981 crops of rice.

EFFECTIVE AND TERMINATION DATES OF 1976 AMENDMENT

Section 102 of Pub. L. 94-214 provided in part that enactment of subsec. (g) of this section by such section 102 shall be effective for the 1976 and 1977 crops of rice.

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF PEANUTS

Section 707 of Pub. L. 99-198 provided that: "Section 101 of the Agricultural Act of 1949 (7 U.S.C. 1441) shall not be applicable to the 1986 through 1990 crops of peanuts."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1427, 1428, 1442, 1444, 1444a, 1444b, 1445, 1445a of this title.

§ 1441-1. Loan rates, target prices, disaster payments, acreage limitation program, and land diversion for 1986 through 1990 crops of rice

Notwithstanding any other provision of law:

(a) Loans and purchases; computation; levels; term; repayment; regulations; marketing certificates; redemption or marketing

(1) Except as provided in paragraph (2), the Secretary shall make available to producers loans and purchases for each of the 1986 through 1990 crops of rice at a level that is not less than—

(A) in the case of the 1986 crop of rice, $7.20 per hundredweight; and

(B) in the case of each of the 1987 through 1990 crops of rice, the higher of—

(i) 85 percent of the simple average price received by producers, as determined by the Secretary, during the marketing years for the immediately preceding 5 crops of rice, excluding the year in which the average price was the highest and the year in which

the average price was the lowest in such period; or

(ii) $6.50 per hundredweight.

(2) The loan level for a crop of rice determined under paragraph (1)(B) may not be reduced by more than 5 percent from the loan level determined for the preceding crop.

(3) The loan and purchase level and the established price for each of the 1986 through 1990 crops of rice shall be announced not later than January 31 of each calendar year for the crop harvested in such calendar year.

(4) A loan made under this section shall have a term of not more than 9 months beginning after the month in which the application for the loan is made.

(5)(A) The Secretary shall permit a producer to repay a loan made under paragraph (1) for a crop at a level that is the lesser of—

(i) the loan level determined for such crop; or

(ii) the higher of—

(I) the loan level determined for such crop multiplied by 50 percent for each of the 1986 and 1987 crops, 60 percent for the 1988 crop, and 70 percent for each of the 1989 and 1990 crops; or

(II) the prevailing world market price for rice, as determined by the Secretary.

(B) The Secretary shall prescribe by regulation—

(i) a formula to define the prevailing world market price for rice; and

(ii) a mechanism by which the Secretary shall announce periodically the prevailing world market price for rice.

(C)(i) As a condition of permitting a producer to repay a loan as provided in subparagraph (A), the Secretary may require a producer to purchase marketing certificates equal in value to an amount that does not exceed one-half the difference, as determined by the Secretary, between the amount of the loan obtained by the producer and the amount of the loan repayment. Such certificates shall be negotiable.

(ii) Such certificates shall be redeemable for rice owned by the Commodity Credit Corporation valued at the prevailing market price, as determined by the Secretary. If such rice is not available in the State in which the rice pledged as collateral for the loan was produced or at such other location outside of such State as may be approved by the owner of such certificate, such certificate shall be redeemable in cash.

(iii) The Commodity Credit Corporation, under regulations prescribed by the Secretary, shall assist any person receiving marketing certificates under this subparagraph in the redemption or marketing of such certificates. Insofar as practicable, the Secretary shall permit an owner of a certificate to designate the storage facility at which such owner would prefer to receive rice in exchange for such certificate.

(iv) If any such certificate is not presented for redemption or marketing within a reasonable number of days after issuance, as determined by the Secretary, reasonable costs of storage and other carrying charges, as determined by the Secretary, shall be deducted from the value of the certificate for the period beginning after such reasonable number of days and ending with the date of the presentation of such certificate to the Commodity Credit Corporation.

(6) For purposes of this section, the simple average price received by producers for the immediately preceding marketing year shall be based on the latest information available to the Secretary at the time of the determination.

(b) Payments to producers otherwise eligible for loans or purchase agreements; computation; amount of eligible crop; loan payment rate; negotiable marketing certificates

(1) The Secretary may, for each of the 1986 through 1990 crops of rice, make payments available to producers who, although eligible to obtain a loan or purchase agreement under subsection (a) of this section, agree to forgo obtaining such loan or agreement in return for such payments.

(2) A payment under this subsection shall be computed by multiplying—

(A) the loan payment rate; by

(B) the quantity of rice the producer is eligible to place under loan.

(3) For purposes of this subsection, the quantity of rice eligible to be placed under loan may not exceed the product obtained by multiplying—

(A) the individual farm program acreage for the crop; by

(B) the farm program payment yield established for the farm.

(4) For purposes of this subsection, the loan payment rate shall be the amount by which—

(A) the loan level determined for such crop under subsection (a) of this section; exceeds

(B) the level at which a loan may be repaid under subsection (a) of this section.

(5) The Secretary shall make up to one-half the amount of a payment under this subsection available in the form of negotiable marketing certificates, subject to the terms and conditions provided in subsection (a)(5)(C) of this section.

(c) Payments; computation; acreage limitation; conservation uses; nonprogram crops; established price; disaster payments; crop insurance; adjustments

(1)(A) The Secretary shall make available to producers payments for each of the 1986 through 1990 crops of rice in an amount computed by multiplying—

(i) the payment rate; by

(ii) the individual farm program acreage; by

(iii) the farm program payment yield established for the crop for the farm.

(B)(i) If an acreage limitation program under subsection (f)(2) of this section is in effect for a crop of rice and the producers on a farm devote a portion of the permitted rice acreage of the farm (as determined in accordance with subsection (f)(2)(A) of this section) equal to more than 8 percent of the permitted rice acreage of the farm for the crop to conservation uses or nonprogram crops—

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(I) such portion of the permitted rice acreage in excess of 8 percent of such acreage devoted to conservation uses or nonprogram crops shall be considered to be planted to rice for the purpose of determining the individual farm program acreage in accordance with subsection (f)(2)(E) of this section and for the purpose of determining the acreage on the farm required to be devoted to conservation uses in accordance with subsection (f)(2)(D) of this section; and

(II) the producers shall be eligible for payments under this paragraph on such acreage, subject to the compliance of the producers with clause (ii).

(ii) To be eligible for payments under clause (i), except as provided in clause (iii), the producers on the farm must actually plant rice for harvest on at least 50 percent of the permitted rice acreage of the farm.

(iii) If a State or local agency has imposed in an area of a State or county a quarantine on the planting of rice for harvest on farms in such area, the State committee established under section 590h(b) of title 16 may recommend to the Secretary that payments be made under this paragraph, without regard to the requirement imposed under clause (ii), to producers in such area who were required to forgo the planting of rice for harvest on acreage to alleviate or eliminate the condition requiring such quarantine. If the Secretary determines that such condition exists, the Secretary may make payments under this paragraph to such producers. To be eligible for payments under this clause, such producers may not plant wheat, feed grains, cotton, or soybeans on such acreage.

(iv) The rice crop acreage base and rice farm program payment yield of the farm shall not be reduced due to the fact that such portion of the permitted acreage of the farm was devoted to conserving uses or nonprogram crops.

(v) Other than as provided in clauses (i) through (iv), payments may not be made under this subsection for any crop on a greater acreage than the acreage actually planted to rice.

(vi) Any acreage considered to be planted to rice in accordance with clause (i) may not also be designated as conservation use acreage for the purpose of fulfilling any provisions under any acreage limitation or land diversion program requiring that the producers devote a specified acreage to conservation uses.

(C) The payment rate for rice shall be the amount by which the established price for the crop of rice exceeds the higher of—

(i) the national average market price received by producers during the first 5 months of the marketing year for such crop, as determined by the Secretary; or

(ii) the loan level determined for such crop.

(D) The established price for rice shall not be less than $11.90 per hundredweight for the 1986 crop, $11.66 per hundredweight for the 1987 crop, $11.30 per hundredweight for the 1988 crop, $10.95 per hundredweight for the 1989 crop, and $10.71 per hundredweight for the 1990 crop.

(E) The total quantity of rice on which payments would otherwise be payable to a producer on a farm for any crop under this subsection shall be reduced by the quantity on which any disaster payment is made to the producer for the crop under paragraph (2).

(F) The Secretary may pay not more than 5 percent of the total amount of a payment made under this paragraph in the form of rice. The use of rice in making payments to producers shall be subject to a determination by the Secretary of the effect that such in-kind payments will have on market prices for any commodity. The Secretary shall report such determination to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(G) As used in this subsection, the term "nonprogram crop" means any agricultural commodity other than wheat, feed grains, upland cotton, extra long staple cotton, rice, or soybeans.

(2)(A)(i) Except as provided in subparagraph (C), if the Secretary determines that the producers on a farm are prevented from planting any portion of the acreage intended for rice to rice or other nonconserving crops because of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the Secretary shall make a prevented planting disaster payment to the producers in an amount equal to the product obtained by multiplying—

(I) the number of acres so affected but not to exceed the acreage planted to rice for harvest (including any acreage that the producers were prevented from planting to rice or other nonconserving crops in lieu of rice because of drought, flood, or other natural disaster, or other condition beyond the control of the producers) in the immediately preceding year; by

(II) 75 percent of the farm program payment yield established for the farm by the Secretary; by

(III) a payment rate equal to 33⅓ percent of the established price for the crop.

(ii) Payments made by the Secretary under this subparagraph may be made in the form of cash or from stocks of rice held by the Commodity Credit Corporation.

(B) Except as provided in subparagraph (C), if the Secretary determines that because of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the total quantity of rice that the producers are able to harvest on any farm is less than the result of multiplying 75 percent of the farm program payment yield established for the farm for such crop by the acreage planted for harvest for such crop, the Secretary shall make a reduced yield disaster payment to the producers at a rate equal to 33⅓ percent of the established price for the crop for the deficiency in production below 75 percent for the crop.

(C) Producers on a farm shall not be eligible for—

(i) prevented planting disaster payments under subparagraph (A), if prevented planting crop insurance is available to the producers under the Federal Crop Insurance Act (7

U.S.C. 1501 et seq.) with respect to the rice acreage of the producers; or

(ii) reduced yield disaster payments under subparagraph (B), if reduced yield crop insurance is available to the producers under such Act with respect to the rice acreage of the producers.

(D)(i) Notwithstanding subparagraph (C), the Secretary may make a disaster payment to producers on a farm under this subsection if the Secretary determines that—

(I) as the result of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the producers have suffered substantial losses of production either from being prevented from planting rice or other nonconserving crops or from reduced yields;

(II) such losses have created an economic emergency for the producers;

(III) crop insurance indemnity payments under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) and other forms of assistance made available by the Federal Government to such producers for such losses is insufficient to alleviate such economic emergency; and

(IV) additional assistance must be made available to such producers to alleviate such economic emergency.

(ii) The Secretary may make such adjustments in the amount of payments made available under this paragraph with respect to an individual farm so as to assure the equitable allotment of such payments among producers, taking into account other forms of Federal disaster assistance provided to the producers for the crop involved.

(d) Program acreages; proclamation; revision; adjustments; program allocation factor

(1)(A) Except for a crop with respect to which there is an acreage limitation program in effect under subsection (f) of this section, the Secretary shall proclaim a national program acreage for each of the 1986 through 1990 crops of rice. The proclamation shall be made not later than January 31 of each calendar year for the crop harvested in that calendar year.

(B) The Secretary may revise the national program acreage first proclaimed for any crop year for the purpose of determining the allocation factor under paragraph (2) if the Secretary determines it necessary based on the latest information. The Secretary shall proclaim such revised national program acreage as soon as it is made.

(C) The national program acreage for rice shall be the number of harvested acres the Secretary determines (on the basis of the weighted national average of the farm program payment yields for the crop for which the determination is made) will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the marketing year for such crop.

(D) If the Secretary determines that carryover stocks of rice are excessive or an increase in stocks is needed to assure desirable carryover, the Secretary may adjust the national program acreage by the quantity the Secretary determines will accomplish the desired increase or decrease in carryover stocks.

(2) The Secretary shall determine a program allocation factor for each crop of rice. The allocation factor for rice shall be determined by dividing the national program acreage for the crop by the number of acres that the Secretary estimates will be harvested for such crop. In no event may the allocation factor for any crop of rice be more than 100 percent nor less than 80 percent.

(3)(A) The individual farm program acreage for each crop of rice shall be determined by multiplying the allocation factor by the acreage of rice planted for harvest on the farms for which individual farm program acreages are required to be determined.

(B) The individual farm program acreage may not be further reduced by application of the allocation factor if the producers reduce the acreage of rice planted for harvest on the farm from the crop acreage base established for the farm under subchapter IV of this chapter by at least the percentage recommended by the Secretary in the proclamation of the national program acreage.

(C) The Secretary shall provide fair and equitable treatment for producers on farms on which the acreage of rice planted for harvest is less than the crop acreage base established for the farm under subchapter IV of this chapter, but for which the reduction is insufficient to exempt the farm from the application of the allocation factor.

(D) In establishing the allocation factor for rice, the Secretary may make such adjustment as the Secretary deems necessary to take into account the extent of exemption of farms under the foregoing provisions of this subsection.

(e) Payment yields

The farm program payment yields for farms for each crop of rice shall be determined under subchapter IV of this chapter.

(f) Acreage limitation program; determination; announcement; conservation uses; regulations; nonprogram crops; land diversion payments; wildlife food plots or habitats; agreements

(1)(A) Notwithstanding any other provision of this Act, if the Secretary determines that the total supply of rice, in the absence of an acreage limitation program, will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency, the Secretary may provide for any crop of rice an acreage limitation program as described in paragraph (2).

(B) In making a determination under clause (i), the Secretary shall take into consideration the number of acres placed in the conservation acreage reserve established under section 3831 of title 16.

(C) If the Secretary elects to put an acreage limitation program into effect for any crop year, the Secretary shall announce any such program not later than January 31 of the calendar year in which the crop is harvested.

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(D) The Secretary shall, to the maximum extent practicable, carry out an acreage limitation program described in paragraph (2) for a crop of rice in a manner that will result in a carryover of 30 million hundredweight of rice.

(2)(A) If a rice acreage limitation program is announced under paragraph (1), such limitation shall be achieved by applying a uniform percentage reduction (not to exceed 35 percent) to the rice crop acreage base for the crop for each rice-producing farm.

(B) Except as provided in subsection (g) of this section, producers who knowingly produce rice in excess of the permitted rice acreage for the farm, as established in accordance with subparagraph (A), shall be ineligible for rice loans, purchases, and payments with respect to that farm.

(C) Rice crop acreage bases for each crop of rice shall be determined under subchapter IV of this chapter.

(D)(i) A number of acres on the farm shall be devoted to conservation uses, in accordance with regulations issued by the Secretary. Such number shall be determined by dividing—

(I) the product obtained by multiplying the number of acres required to be withdrawn from the production of rice times the number of acres planted to such commodity; by

(II) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary.

(ii) The number of acres determined under clause (i) is hereafter in this subsection referred to as "reduced acreage".

(E) If an acreage limitation program is announced under paragraph (1) for a crop of rice, subsection (d) of this section shall not be applicable to such crop, including any prior announcement that may have been made under such subsection with respect to such crop. Except as provided in subsection (c)(1)(B) of this section, the individual farm program acreage shall be the acreage planted on the farm to rice for harvest within the permitted rice acreage for the farm as established under this paragraph.

(3)(A) The regulations issued by the Secretary under paragraph (2) with respect to acreage required to be devoted to conservation uses shall assure protection of such acreage from weeds and wind and water erosion.

(B) Subject to subparagraph (C), the Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage to be devoted to sweet sorghum, hay and grazing, or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or other commodity, if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of the price support program, and will not affect farm income adversely.

(C)(i) Except as provided in clause (ii), the Secretary shall permit, at the request of the State committee established under section 590h(b) of title 16 for a State and subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage diverted from production by participating producers in such State to be devoted to—

(I) hay and grazing, in the case of the 1986 crop of rice; and

(II) grazing, in the case of each of the 1987 through 1990 crops of rice.

(ii) Haying and grazing shall not be permitted for any crop of rice under clause (i) during any 5-consecutive-month period that is established for such crop for a State by the State committee established under section 590h(b) of title 16.

(4)(A) The Secretary may make land diversion payments to producers of rice, whether or not an acreage limitation program for rice is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of rice to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

(B) The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted.

(C) The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

(5)(A) The reduced acreage and additional diverted acreage may be devoted to wildlife food plots or wildlife habitat in conformity with standards established by the Secretary in consultation with wildlife agencies.

(B) The Secretary may pay an appropriate share of the cost of practices designed to carry out the purposes of subparagraph (A).

(C) The Secretary may provide for an additional payment on such acreage in an amount determined by the Secretary to be appropriate in relation to the benefit to the general public if the producer agrees to permit, without other compensation, access to all or such portion of the farm, as the Secretary may prescribe, by the general public, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations.

(7)(A) [1] An operator of a farm desiring to participate in the program conducted under this subsection shall execute an agreement with the Secretary providing for such participation not later than such date as the Secretary may prescribe.

(B) The Secretary may, by mutual agreement with producers on a farm, terminate or modify any such agreement if the Secretary deter-

[1] So in original. Probably should be "(6)(A)".

mines such action necessary because of an emergency created by drought or other disaster or to prevent or alleviate a shortage in the supply of agricultural commodities.

(g) Payments in kind; eligibility

(1) The Secretary may, for each of the 1986 through 1990 crops of rice, make payments available to producers who meet the requirements of this subsection.

(2) Such payments shall be—

(A) made in the form of rice owned by the Commodity Credit Corporation; and

(B) subject to the availability of such rice.

(3)(A) Payments under this subsection shall be determined in the same manner as provided in subsection (b) of this section.

(B) The quantity of rice to be made available to a producer under this subsection shall be equal in value to the payments so determined under such subsection.

(4) A producer shall be eligible to receive a payment under this subsection for a crop if the producer—

(A) agrees to forgo obtaining a loan or purchase agreement under subsection (a) of this section;

(B) agrees to forgo receiving payments under subsection (c) of this section;

(C) does not plant rice for harvest in excess of the crop acreage base reduced by one-half of any acreage required to be diverted from production under subsection (f) of this section; and

(D) otherwise complies with this section.

(h) Defaults; waiver of deadlines

(1) If the failure of a producer to comply fully with the terms and conditions of the program formulated under this section precludes the making of loans, purchases, and payments, the Secretary may, nevertheless, make such loans, purchases, and payments in such amounts as the Secretary determines are equitable in relation to the seriousness of the failure.

(2) The Secretary may authorize the county and State committees established under section 590h(b) of title 16 to waive or modify deadlines and other program requirements in cases in which lateness or failure to meet such other requirements does not affect adversely the operation of the program.

(i) Regulations

The Secretary may issue such regulations as the Secretary determines necessary to carry out this section.

(j) Commodity Credit Corporation

The Secretary shall carry out the program authorized by this section through the Commodity Credit Corporation.

(k) Assignment of payments

The provisions of section 590h(g) of title 16 (relating to assignment of payments) shall apply to payments under this section.

(l) Sharing of payments

The Secretary shall provide for the sharing of payments made under this section for any farm among the producers on the farm on a fair and equitable basis.

(m) Protection of interests of tenants and sharecroppers

The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers.

(n) Eligibility preconditions; other commodity programs; acreage limitations for other crops; compliance with respect to other farms

(1) Notwithstanding any other provision of law, except as provided in paragraph (2), compliance on a farm with the terms and conditions of any other commodity program may not be required as a condition of eligibility for loans, purchases, or payments under this section.

(2) The Secretary may require that, as a condition of eligibility of producers on a farm for loans, purchases, or payments under this section, the acreage planted for harvest on the farm to any other commodity for which an acreage limitation program is in effect shall not exceed the crop acreage base established for the farm for that commodity.

(3) The Secretary may not require producers on a farm, as a condition of eligibility for loans, purchases, or payments under this section for such farm, to comply with the terms and conditions of the rice program with respect to any other farm operated by such producers.

(Oct. 31, 1949, ch. 792, title I, § 101A, as added Dec. 23, 1985, Pub. L. 99-198, title VI, § 601, 99 Stat. 1419.)

REFERENCES IN TEXT

The Federal Crop Insurance Act, referred to in subsec. (c)(2)(C), (D)(i)(III), is title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, as amended, which is classified generally to chapter 36 (§ 1501 et seq.) of this title. For complete classification of this Act to the Code, see section 1501 of this title and Tables.

This Act, referred to in subsec. (f)(1)(A), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, known as the Agricultural Act of 1949, which is classified principally to this chapter (§ 1421 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

EFFECTIVE AND TERMINATION DATES

Section 601 of Pub. L. 99-198 provided in part that this section is effective only for the 1986 through 1990 crops of rice.

§ 1441-1a. Marketing certificates for rice

(a) Authority of Commodity Credit Corporation to issue negotiable marketing certificates

Notwithstanding any other provision of law, whenever, during the period beginning August 1, 1986, and ending July 31, 1991, the world price for a class of rice (adjusted to United States qualities and location), as determined by the Secretary of Agriculture, is below the current loan repayment rate for that class of rice, to make United States rice competitive in world markets and to maintain and expand exports of rice produced in the United States, the Commodity Credit Corporation, under such regulations as the Secretary may prescribe, shall make payments, through the issuance of negotiable marketing certificates, to persons who

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have entered into an agreement with the Commodity Credit Corporation to participate in the program established under this section. Such payments shall be made in such monetary amounts and subject to such terms and conditions as the Secretary determines will make rice produced in the United States available at competitive prices consistent with the purposes of this section, including such payments as may be necessary to make rice in inventory on August 1, 1986, available on the same basis.

(b) Determination of value of certificates

The value of each certificate issued under subsection (a) of this section shall be based on the difference between—

(1) the loan repayment rate for the class of rice; and

(2) the prevailing world market price for the class of rice, as determined by the Secretary of Agriculture under a published formula submitted for public comment before its adoption.

(c) Commodity Credit Corporation assistance in redemption, marketing, or exchange of certificates

The Commodity Credit Corporation, under regulations prescribed by the Secretary of Agriculture, may assist any person receiving marketing certificates under this section in the redemption of certificates for cash, or marketing or exchange of such certificates for (1) rice owned by the Commodity Credit Corporation or (2) (if the Secretary and the person agree) other agricultural commodities or the products thereof owned by the Commodity Credit Corporation, at such times, in such manner, and at such price levels as the Secretary determines will best effectuate the purposes of the program established under this section. Notwithstanding any other provision of law, any price restrictions that may otherwise apply to the disposition of agricultural commodities by the Commodity Credit Corporation shall not apply to the redemption of certificates under this section.

(d) Exchange of certificates for commodities and products

Insofar as practicable, the Secretary shall permit owners of certificates to designate the commodities and the products thereof, including storage sites thereof, such owners would prefer to receive in exchange for certificates. If any certificate is not presented for redemption, marketing, or exchange within a reasonable number of days after the issuance of such certificate (as determined by the Secretary), reasonable costs of storage and other carrying charges, as determined by the Secretary, shall be deducted from the value of the certificate for the period beginning after such reasonable number of days and ending with the date of the presentation of such certificate to the Commodity Credit Corporation.

(e) Prevention of adverse effects

The Secretary of Agriculture shall take such measures as may be necessary to prevent the marketing or exchange of agricultural commodities and the products thereof for certificates under this section from adversely affecting the income of producers of such commodities or products.

(f) Transfer of certificates

Under regulations prescribed by the Secretary of Agriculture, certificates issued to rice exporters under this section may be transferred to other exporters and persons approved by the Secretary.

(Pub. L. 99-198, title VI, § 603, Dec. 23, 1985, 99 Stat. 1429.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Act of 1949 which is classified principally to this chapter. For complete classification of the 1949 Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

§ 1443. Omitted

CODIFICATION

Section, act Oct. 31, 1949, ch. 792, title I, § 102, as added Aug. 28, 1958, Pub. L. 85-835, title I, § 101, 72 Stat. 988, related to acreage allotment and price support levels for the 1959 and 1960 crops of upland cotton.

§ 1444. Cotton price support levels

[See main edition for text of (a) to (f)]

(g) Loan rates, target prices, disaster payments, acreage reduction program and land diversion for 1982 through 1985 crops

[See main edition for text of (1) and (2)]

(3) *[See main edition for text of (A)]*

(B) The established price for upland cotton shall not be less than the higher of (i) $0.71 per pound for the 1982 crop, $0.76 per pound for the 1983 crop, and $0.81 per pound for the 1984 and 1985 crops, plus any adjustment made for changes in production costs as provided in subparagraph (C) of this paragraph, or (ii) 120 per centum of the loan level determined for such crop under paragraph (1) of this subsection.

[See main edition for text of (C) and (D), (4) to (8)]

(9)(A) Notwithstanding any other provision of this subsection, except as provided in the second and third sentences of this subparagraph, the Secretary may establish a limitation on the acreage planted to upland cotton if the Secretary determines that the total supply of upland cotton, in the absence of such limitation, will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. For the 1985 crop of upland cotton, if the Secretary estimates that the quantity of upland cotton on hand in the United States on July 31, 1985 (not including any quantity of upland cotton produced in the United States during calendar year 1985), will exceed three million seven hundred thousand bales, the Secretary (i) shall provide for a land division [1] program as described under sub-

[1] So in original. Probably should be "diversion".

paragraph (B) under which the acreage planted to upland cotton for harvest on the farm would be limited to the acreage base for the farm reduced by not less than 5 per centum and (ii) may provide for an acreage limitation program as described under this subparagraph under which the acreage planted to upland cotton for harvest on the farm would be limited to the acreage base for the farm reduced by not more than 20 per centum in addition to the reduction required under clause (i). If the Secretary implements a combined acreage limitation program and land division [6] program, any reduction required by the Secretary in excess of 25 per centum of the acreage base for the farm shall be made under the land diversion program. As a condition of eligibility for loans, purchases, and payments on the 1985 crop of upland cotton, if the Secretary implements a land diversion program or a combined acreage limitation and land diversion program, the producers on a farm must comply with the terms and conditions of such program. Such limitation shall be achieved by applying a uniform percentage reduction to the acreage base for each cotton-producing farm. Producers who knowingly produce cotton in excess of the permitted cotton acreage for the farm shall be ineligible for cotton loans and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as a result of a limitation under this subparagraph shall be the acreage planted on the farm to upland cotton for harvest in the crop year immediately preceding the year for which the determination is made or, at the discretion of the Secretary, the average acreage planted to upland cotton for harvest in the two crop years immediately preceding the year for which the determination is made. For the purpose of the preceding sentence, acreage planted to cotton for harvest shall include any acreage which the producers were prevented from planting to cotton or other nonconserving crop in lieu of cotton because of drought, flood, or other natural disaster, or other condition beyond the control of the producers. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines should be considered in determining a fair and equitable base. A number of acres on the farm determined by dividing (i) the product obtained by multiplying the number of acres required to be withdrawn from the production of upland cotton times the number of acres actually planted to such commodity, by (ii) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary shall be devoted to conservation uses, in accordance with regulations issued by the Secretary, which will assure protection of such acreage from weeds and wind and water erosion. The number of acres so determined is hereafter in this subsection referred to as "reduced acreage". The Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of the reduced acreage to be devoted to sweet sorghum, hay and grazing, or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or other commodity, if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of the price support program, and will not affect farm income adversely. If an acreage limitation program is announced under this paragraph for a crop of upland cotton, paragraphs (5), (6), and (7) of this subsection shall not be applicable to such crop, including any prior announcement which may have been made under such paragraphs with respect to such crop. The individual farm program acreage shall be the acreage planted on the farm to upland cotton for harvest within the permitted upland cotton acreage for the farm as established under this paragraph.

(B) The Secretary may make land diversion payments to producers of upland cotton, whether or not an acreage limitation for upland cotton is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of upland cotton to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers. The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community. Notwithstanding the foregoing provisions of this subparagraph, if the Secretary implements a land diversion program for the 1985 crop of upland cotton under the provisions of subparagraph (A), the Secretary shall make crop retirement and conservation payments to any producer of the 1985 crop of upland cotton whose acreage planted to upland cotton for harvest on the farm is reduced so that it does not exceed the upland cotton acreage base for the farm less an amount equivalent to the percentage of the acreage base specified by the Secretary, but not less than 5 per centum, in addition to the reduction required under the acreage limitation program under subparagraph (A), if any, and who devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the upland cotton acreage base under this subparagraph. Such payments shall be made in an amount computed by multiplying (i) the diversion payment rate, by (ii) the farm program payment yield for the crop, by (iii) the acreage diverted under this subparagraph. The diversion payment rate shall be established by the

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Secretary at not less than $0.275 per pound: *Provided,* That if the Secretary estimates that the quantity of upland cotton on hand in the United States on July 31, 1985 (not including any quantity of upland cotton produced in the United States during calendar year 1985), will exceed (I) four million one hundred thousand bales, such rate shall be established by the Secretary at not less than $0.30 per pound, and (II) four million seven hundred thousand bales such rate shall be established by the Secretary at not less than $0.35 per pound. The Secretary shall make not less than 50 per centum of any payments under this subparagraph to producers of the 1985 crop as soon as practicable after a producer enters into a land diversion contract with the Secretary and in advance of any determination of performance. If a producer fails to comply with a land diversion contract after obtaining an advance payment under this subparagraph, the producer shall repay the advance immediately and, in accordance with regulations issued by the Secretary, pay interest on the advance.

[*See main edition for text of (C), (10) to (18)*]

(h) Program for extra long staple cotton beginning with 1984 crop

(1) For purposes of this subsection, extra long staple cotton means cotton which is produced from pure strain varieties of the Barbadense species or any hybrid thereof, or other similar types of extra long staple cotton, designated by the Secretary, having characteristics needed for various end uses for which American upland cotton is not suitable and grown in irrigated cotton-growing regions of the United States designated by the Secretary or other areas designated by the Secretary is suitable for the production of such varieties or types and which is ginned on a roller-type gin or, if authorized by the Secretary, ginned on another type gin for experimental purposes.

(2) The Secretary shall, upon presentation of warehouse receipts reflecting accrued storage charges of not more than sixty days, make available to producers nonrecourse loans for a term of ten months from the first day of the month in which the loan is made at a level which is not less than 85 percent of the simple average price received by producers of extra long staple cotton, as determined by the Secretary, during 3 years of the 5-year period ending July 31 in the year in which the loan level is announced, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period.. [1] If authorized by the Secretary, nonrecourse loans provided for in this subsection may, upon request of the producer during the tenth month of the loan period for the cotton, be made available for an additional term of eight months. The loan level for any crop of extra long staple cotton shall be determined and announced by the Secretary not later than December 1 of the calendar year preceding the marketing year for which such loan is to be effective and such level shall not thereafter be changed.

(3)(A) In addition, payments shall be made for each crop of extra long staple cotton to producers on each farm at a rate equal to the amount by which the higher of—

(i) the average market price received by farmers for extra long staple cotton during the first eight months of the marketing year for such crop, as determined by the Secretary, or

(ii) the loan level determined under paragraph (2) of this subsection for such crop,

is less than the established price per pound times, in each case, the farm program acreage for extra long staple cotton (determined in accordance with paragraph (6) or paragraph (8)(A) of this subsection, but in no event on a greater acreage than the acreage actually planted to extra long staple cotton for harvest), multiplied by the farm program payment yield for extra long staple cotton (determined in accordance with paragraph (7) of this subsection).

(B) The established price for each crop of extra long staple cotton shall be 120 per centum of the loan level determined for such crop under paragraph (2) of this subsection.

(C) If the Secretary establishes an acreage limitation program for a crop of extra long staple cotton in accordance with paragraph (8)(A) of this subsection and determines that deficiency payments will likely be made for such crop of extra long staple cotton under subparagraph (A) of this paragraph, the Secretary may make available advance deficiency payments for such crop to producers who agree to participate in the acreage limitation program. Such advance payments shall be made available to producers as soon as practicable after the producer files a notice of intention to participate in such acreage limitation program and in such amount as the Secretary determines appropriate to encourage adequate participation in such program, except that such amount shall not exceed an amount determined by multiplying (i) the estimated farm program acreage for the crop, by (ii) the farm program payment yield for the crop, by (iii) 50 per centum of the projected payment rate, as determined by the Secretary. In any case in which the deficiency payment payable to a producer for a crop, as finally determined by the Secretary under subparagraph (A) of this paragraph, is less than the amount paid to the producer as an advance deficiency payment under this paragraph, the producer shall refund an amount equal to the difference between the amount advanced and the amount finally determined by the Secretary to be payable to the producer. If the Secretary determines that no deficiency payments are due producers on a crop, the producer who received advanced payments on such crop shall refund such payments. If a producer fails to comply with the requirements under the acreage limitation program after obtaining an advance deficiency payment under this paragraph, the producer shall immediately repay the amount of the advance, plus interest thereon in such amount as the Secretary shall prescribe.

(4) The Secretary shall establish and announce for each crop of extra long staple

[1] So in original.

cotton a national program acreage. The Secretary may revise the national program acreage first announced for any crop year for the purpose of determining the allocation factor under paragraph (5) of this subsection if the Secretary determines it necessary based upon the latest information, and the Secetary shall announce such revised national program acreage as soon as it has been made. The national program acreage shall be the number of harvested acres the Secretary determines (on the basis of the estimated weighted national average of the farm program payment yields for the crop for which the determination is made) will produce the quantity (less imports) of extra long staple cotton that the Secretary estimates will be utilized domestically and for export during the marketing year for such crop. The national program acreage shall be subject to such adjustment as the Secretary determines necessary, taking into consideration the estimated carryover supply and the stocks not accounted for by official domestic consumption and export data, so as to provide for an adequate but not excessive total supply of extra long staple cotton from the marketing year for the crop for which such national program acreage is established. In no event shall the national program acreage be less than sixty thousand acres.

(5) The Secretary shall determine a program allocation factor for each crop of extra long staple cotton. The allocation factor (not to exceed 100 per centum) shall be determined by dividing the national program acreage for the crop by the number of acres that the Secretary estimates will be harvested for such crop.

(6) The individual farm program acreage for each crop of extra long staple cotton shall be determined by multiplying the allocation factor by the acreage of extra long staple cotton planted for harvest on each farm for which individual farm program acreages are required to be determined. The farm program acreage shall not be further reduced by application of the allocation factor if the producers reduce the acreage of extra long staple cotton planted for harvest on the farm from the acreage base established for the farm under paragraph (8)(A) of this subsection by at least the percentage recommended by the Secretary in the announcement of the national program acreage. The Secretary shall provide fair and equitable treatment for producers on farms on which the acreage of extra long staple cotton planted for harvest is less than the acreage base established for the farm under paragraph (8)(A) of this subsection, but for which the reduction is insufficient to exempt the farm from the application of the allocation factor. In establishing the allocation factor for extra long staple cotton, the Secretary may make such adjustment as the Secretary deems necessary to take into account the extent of exemption of farms under the foregoing provisions of this paragraph.

(7) The farm program payment yield for each crop of extra long staple cotton shall be determined on the basis of the actual yields per harvested acre on the farm for the preceding three years, except that the actual yields shall be adjusted by the Secretary for abnormal yields in any year caused by drought, flood, or other natural disaster, or other condition beyond the control of the producers. In case farm yield data for one or more years are unavailable or there was no production, the Secretary shall provide for appraisals to be made on the basis of actual yields and program payment yields for similar farms in the area for which data are available. Notwithstanding the foregoing provisions of this paragraph in the determination of yields, the Secretary shall take into account the actual yields proved by the producer, and neither such yields nor the farm program payment yield established on the basis of such yields shall be reduced under other provisions of this paragraph. If the Secretary determines it necessary, the Secretary may establish national, State, or county program payment yields on the basis of historical yields, as adjusted by the Secretary to correct for abnormal factors affecting such yields in the historical period, or, if such data are not available, on the Secretary's estimate of actual yields for the crop year involved. If national, State, or county program payment yields are established, the farm program payment yields shall balance to the national, State, or county program payment yields.

(8)(A) Notwithstanding any other provision of this subsection, the Secretary may establish a limitation on the acreage planted to extra long staple cotton if the Secretary determines that the total supply of extra long staple cotton, in the absence of such limitation, will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable prices and to meet a national emergency. Such limitation shall be achieved by applying a uniform percentage reduction to the acreage base for each extra long staple cotton-producing farm. Producers who knowingly produce extra long staple cotton in excess of the permitted acreage for the farm shall be ineligible for extra long staple cotton loans and payments with respect to that farm. The acreage base for any farm for the purpose of determining any reduction required to be made for any year as a result of a limitation under this subparagraph shall be the average acreage planted on the farm to extra long staple cotton for harvest in the three crop years immediately preceding the year prior to the year for which the determination is made. For the purpose of the preceding sentence, acreage planted to extra long staple cotton for harvest shall include any acreage which the producers were prevented from planting to extra long staple cotton or other nonconserving crops in lieu of extra long staple cotton because of drought, flood, or other natural disaster or other condition beyond the control of the producers. The Secretary may make adjustments to reflect established crop-rotation practices and to reflect such other factors as the Secretary determines should be considered in determining a fair and equitable base. There is hereby established for the 1984, 1985, and 1986 crops an acreage base reserve equal to 5 per centum of the total of the farm acreage bases established for the crop under the foregoing provisions of this subparagraph. Such reserve shall be in addition to the total of the

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farm acreage bases and shall be used by the county committees, in accordance with regulations of the Secretary, for making adjustments of farm acreage bases to correct inequities and prevent hardship, and for establishing bases for farms on which no extra long staple cotton was planted during the preceding four years. A number of acres on the farm determined by dividing (i) the product obtained by multiplying the number of acres required to be withdrawn from the production of extra long staple cotton times the number of acres actually planted to such commodity, by (ii) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary, shall be devoted to conservation uses, in accordance with regulations issued by the Secretary, which will assure protection of such acreage from weeds and wind and water erosion. The number of acres so determined is hereafter in this subsection referred to as "reduced acreage". The Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of the reduced acreage to be devoted to sweet sorghum, hay and grazing, or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or other commodity, if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of the price support program, and will not affect farm income adversely. If an acreage limitation program is announced under this paragraph for a crop of extra long staple cotton, paragraphs (4), (5), and (6) of this subsection shall not be applicable to such crop, including any prior announcement which may have been made under such paragraphs with respect to such crop. The individual farm program acreage shall be the actual acreage planted on the farm to extra long staple cotton for harvest within the permitted extra long staple cotton acreage for the farm as established under this paragraph.

(B) The Secretary may make land diversion payments to producers of extra long staple cotton, whether or not an acreage limitation program for extra long staple cotton is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of extra long staple cotton to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers. The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

(C) The reduced acreage and the diverted acreage may be devoted to wildlife food plots or wildlife habitat in conformity with standards established by the Secretary in consultation with wildlife agencies. The Secretary may pay an appropriate share of the cost of practices designed to carry out the purpose of the foregoing sentence. The Secretary may provide for an additional payment on such acreage in an amount determined by the Secretary to be appropriate in relation to the benefit to the general public if the producer agrees to permit, without other compensation, access to all or such portion of the farm, as the Secretary may perscribe, by the general public, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations.

(9) An operator of a farm desiring to participate in the program conducted under paragraph (8) of this subsection shall execute an agreement with the Secretary providing for such participation not later than such date as the Secretary may prescribe. The Secretary may, by mutual agreement with the producers on the farm, terminate or modify any sucy agreement if the Secretary determines such action necessary because of an emergency created by drought or other disaster or to prevent or alleviate a shortage in the supply of agricultural commodities.

(10) The Secretary shall provide for the sharing of payments made under this subsection for any farm among the producers on the farm on a fair and equitable basis.

(11) The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers.

(12) If the failure of a producer to comply fully with the terms and conditions of the program formulated under this subsection precludes the making of loans and payments, the Secretary may, nevertheless, make such loans and payments in such amounts as the Secretary determines to be equitable in relation to the seriousness of the failure. The Secretary may authorize the county and State committees established under section 590h(b) of title 16 to waive or modify deadlines and other program requirements in cases in which lateness or failure to meet such other requirements does not affect adversely the operation of the program.

(13) The Secretary may issue such regulations as the Secretary determines necessary to carry out the provisions of this subsection.

(14) The Secretary shall carry out the program authorized by this subsection through the Commodity Credit Corporation.

(15) The provisions of section 590h(g) of title 16 (relating to assignment of payments) shall apply to payments made under this subsection.

(16) Notwithstanding any other provision of law, compliance on a farm with the terms and conditions of any other commodity program may not be required as a condition of eligibility for loans or payments under this subsection.

(17) In order to encourage and assist producers in the orderly ginning and marketing of their extra long staple cotton production, the

Secretary shall make recourse loans available to such producers on seed cotton in accordance with authority vested in the Secretary under the Commodity Credit Corporation Charter Act [15 U.S.C. 714 et seq.].

(18) References made in sections 1422, 1423, 1426, 1427, and 1431 of this title to the terms "support price", "level of support", and "level of price support" shall be considered to apply as well to the level of loans for extra long staple cotton under this subsection; and references to the terms "price support", "price support operations", and "price support program" in such sections and in section 1421(a) of this title shall be considered as applying as well to the loan operations for extra long staple cotton under this subsection.

(19) Notwithstanding any other provision of law, this subsection shall not be applicable to the 1991 and subsequent crops of extra long staple cotton.

(As amended Aug. 26, 1983, Pub. L. 98-88, § 4, 97 Stat. 494; Apr. 10, 1984, Pub. L. 98-258, title III, §§ 301, 302, 98 Stat. 133; Oct. 1, 1985, Pub. L. 99-114, § 3, 99 Stat. 488; Dec. 23, 1985, Pub. L. 99-198, title V, § 507, 99 Stat. 1419.)

REFERENCES IN TEXT

The Commodity Credit Corporation Charter Act, referred to in subsecs. (g)(18) and (h)(17), is act June 29, 1948, ch. 704, 62 Stat. 1070, as amended, which is classified generally to subchapter II (§ 714 et seq.) of chapter 15 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 714 of Title 15 and Tables.

AMENDMENTS

1985—Subsec. (h)(2). Pub. L. 99-198, § 507(1), in first sentence substituted "85 percent or the simple average price received by producers of extra long staple cotton, as determined by the Secretary, during 3 years of the 5-year period ending July 31 in the year in which the loan level is announced, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period." for "50 per centum in excess of the loan level established for each crop of Strict Low Middling one and one-sixteenth inch upland cotton (micronaire 3.5 through 4.9) at average location in the United States", and, in last sentence substituted "December 1" for "November 1" and struck out ", or within 10 days after the loan level for the related crop of upland cotton is announced, whichever is later,".

Pub. L. 99-114, § 3(1), inserted ", or within 10 days after the loan level for the related crop of upland cotton is announced, whichever is later,".

Subsec. (h)(4). Pub. L. 99-114, § 3(2), inserted "and announce" after "The Secretary shall establish" and struck out sentence which had provided that national program acreage for extra long staple cotton had to be announced by the Secretary not later than November 1 of the calendar year preceding the year for which such acreage was established.

Subsec. (h)(19). Pub. L. 99-198, § 507(2), added par. (19).

1984—Subsec. (g)(3)(B). Pub. L. 98-258, § 301, substituted "and $0.81 per pound for the 1984 and 1985 crops" for "$0.81 per pound for the 1984 crop, and $0.86 per pound for the 1985 crop".

Subsec. (g)(9)(A). Pub. L. 98-258, § 302(1), inserted "except as provided in the second and third sentences of this subparagraph," after "Notwithstanding any other provision of this subsection,".

Pub. L. 98-258, § 302(2), added sentences providing that for the 1985 crop of upland cotton, if the Secretary estimates that the quantity of upland cotton on hand in the United States on July 31, 1985 (not including any quantity of upland cotton produced in the United States during calendar year 1985), will exceed three million seven hundred thousand bales, the Secretary (i) shall provide for a land division [diversion] program as described under subparagraph (B) under which the acreage planted to upland cotton for harvest on the farm would be limited to the acreage base for the farm reduced by not less than 5 per centum and (ii) may provide for an acreage limitation program as described under this subparagraph under which the acreage planted to upland cotton for harvest on the farm would be limited to the acreage base for the farm reduced by not more than 20 per centum in addition to the reduction required under clause (i), that if the Secretary implements a combined acreage limitation program and land division [diversion] program, any reduction required by the Secretary in excess of 25 per centum of the acreage base for the farm shall be made under the land diversion program, and that, as a condition of eligibility for loans, purchases, and payments on the 1985 crop of upland cotton, if the Secretary implements a land diversion program or a combined acreage limitation and land diversion program, the producers on a farm must comply with the terms and conditions of such program.

Subsec. (g)(9)(B). Pub. L. 98-258, § 302(3), added sentences providing that if the Secretary implements a land diversion program for the 1985 crop of upland cotton under the provisions of subparagraph (A), the Secretary shall make crop retirement and conservation payments to any producer of the 1985 crop of upland cotton whose acreage planted to upland cotton for harvest on the farm is reduced so that it does not exceed the upland cotton acreage base for the farm less an amount equivalent to the percentage of the acreage base specified by the Secretary, but not less than 5 per centum, in addition to the reduction required under the acreage limitation program under subparagraph (A), if any, and who devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the upland cotton acreage base under this subparagraph, that such payments shall be made in an amount computed by multiplying (i) the diversion payment rate, by (ii) the farm program payment yield for the crop, by (iii) the acreage diverted under this subparagraph, that the diversion payment rate shall be established by the Secretary at not less than $0.275 per pound: *Provided*, That if the Secretary estimates that the quantity of upland cotton on hand in the United States on July 31, 1985 (not including any quantity of upland cotton produced in the United States during calendar year 1985), will exceed (I) four million one hundred thousand bales, such rate shall be established by the Secretary at not less than $0.30 per pound, and (II) four million seven hundred thousand bales such rate shall be established by the Secretary at not less than $0.35 per pound, that the Secretary shall make not less than 50 per centum of any payments under this subparagraph to producers of the 1985 crop as soon as practicable after a producer enters into a land diversion contract with the Secretary and in advance of any determination of performance, and that if a producer fails to comply with a land diversion contract after obtaining an advance payment under this subparagraph, the producer shall repay the advance immediately and, in accordance with regulations issued by the Secretary, pay interest on the advance.

1983—Subsec. (h). Pub. L. 98-88 added subsec. (h).

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENTS

Section 4 of Pub. L. 98-88 provided in part that the enactment of subsec. (h) of this section by Pub. L. 98-88 is effective beginning with the 1984 crop of extra long staple cotton.

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INAPPLICABILITY TO 1986 THROUGH 1990 CROPS

Subsec. (a) of this section inapplicable to 1986 through 1990 crops, see section 504 of Pub. L. 99–198, set out as a note under section 1446d of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1344, 1348, 1349, 1350, 1377, 1427, 1428 of this title.

§ 1444–1. Loan rates, target prices, disaster payments, acreage limitation program, and land diversion for 1986 through 1990 upland cotton crops

Notwithstanding any other provision of law:

(a) Nonrecourse loans; computation; loan levels; increase or decrease; extension of loan periods; repayment when market price less than loan level; negotiable marketing certificates; value; redemption, marketing exchange or other transfer; regulations; prevailing world market price

(1) Except as provided in paragraph (2), the Secretary shall, on presentation of warehouse receipts reflecting accrued storage charges of not more than 60 days, make available for the 1986 through 1990 crops of upland cotton to producers nonrecourse loans for a term of 10 months from the first day of the month in which the loan is made at such level, per pound, as will reflect for Strict Low Middling one and one-sixteenth inch upland cotton (micronaire 3.5 through 4.9) at average location in the United States at a level that is not less than—

(A) in the case of the 1986 crop of upland cotton, 55 cents per pound; and

(B) in the case of each of the 1987 through 1990 crops of upland cotton, the smaller of—

(i) 85 percent of the average price (weighted by market and month) of such quality of cotton as quoted in the designated United States spot markets during 3 years of the 5-year period ending July 31 in the year in which the loan level is announced, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; or

(ii) 90 percent of the average, for the 15-week period beginning July 1 of the year in which the loan level is announced, of the 5 lowest-priced growths of the growths quoted for Middling one and three-thirty-seconds inch cotton C.I.F. northern Europe (adjusted downward by the average difference during the period April 15 through October 15 of the year in which the loan is announced between such average northern European price quotation of such quality of cotton and the market quotations in the designated United States spot markets for Strict Low Middling one and one-sixteenth inch cotton (micronaire 3.5 through 4.9)).

(2)(A) The loan level for any crop determined under paragraph (1)(B) may not be reduced by more than 5 percent from the loan level determined for the preceding crop nor below 50 cents per pound.

(B) If for any crop the average northern European price determined under paragraph (1)(B)(ii) is less than the average United States spot market price determined under paragraph (1)(B)(i), the Secretary may increase the loan level to such level as the Secretary may deem appropriate, not in excess of the average United States spot market price determined under paragraph (1)(B)(i).

(3) The loan level for any crop of upland cotton shall be determined and announced by the Secretary not later than November 1 of the calendar year preceding the marketing year for which such loan is to be effective, except that in the case of the 1986 crop, such determination and announcement shall be made as soon as practicable after December 23, 1985. Such level shall not thereafter be changed.

(4)(A) Except as provided in subparagraph (B), nonrecourse loans provided for in this section shall, on request of the producer during the 10th month of the loan period for the cotton, be made available for an additional term of 8 months.

(B) A request to extend the loan period shall not be approved in any month in which the average price of Strict Low Middling one and one-sixteenth inch cotton (micronaire 3.5 through 4.9) in the designated spot markets for the preceding month exceeded 130 percent of the average price of such quality of cotton in such markets for the preceding 36-month period.

(5)(A) If the Secretary determines that the prevailing world market price for upland cotton (adjusted to United States quality and location) is below the loan level determined under the foregoing provisions of this subsection, in order to make United States upland cotton competitive in world markets, the Secretary shall implement the provisions of Plan A or Plan B in accordance with this paragraph.

(B) If the Secretary elects to implement Plan A, the Secretary shall permit a producer to repay a loan made for any crop at a level determined and announced by the Secretary at the same time the Secretary announces the loan level for such crop as determined under paragraph (3). Such repayment level for loans on such crops shall not be less than 80 percent of the loan level determined for the crop. Such repayment level, once announced for the crop, shall not thereafter be changed.

(C)(i) If the Secretary elects to implement Plan B, except as provided in clause (ii), the Secretary shall permit a producer to repay a loan made for any crop at a level that is the lesser of—

(I) the loan level determined for such crop; or

(II) the prevailing world market price for upland cotton (adjusted to United States quality and location), as determined by the Secretary.

(ii) For each of the 1987 through 1990 crops of cotton, if the world market price for cotton (adjusted to United States quality and location) as determined by the Secretary, is less than 80 percent of the loan level determined for such crop, the Secretary may permit a producer to repay a loan made under this subsection for a crop at such level (not in excess of 80 percent of the loan level determined for such crop) as the Secretary determines will—

(I) minimize potential loan forfeitures;

(II) minimize the accumulation of cotton stocks by the Federal Government;

(III) minimize the cost incurred by the Federal Government in storing cotton; and

(IV) allow cotton produced in the United States to be marketed freely and competitively, both domestically and internationally.

(D)(i) Notwithstanding any other provision of law, during the period beginning August 1, 1986, and ending July 31, 1991, if a program carried out under Plan A or Plan B fails to make United States upland cotton fully competitive in world markets and the prevailing world market price of upland cotton (adjusted to United States quality and location), as determined by the Secretary, is below the current loan repayment rate for upland cotton determined under subparagraph (A), to make United States upland cotton competitive in world markets and to maintain and expand domestic consumption and exports of upland cotton produced in the United States, the Secretary shall provide for the issuance of negotiable marketing certificates in accordance with this subparagraph.

(ii) The Commodity Credit Corporation, under such regulations as the Secretary may prescribe, shall make payments, through the issuance of negotiable marketing certificates, to first handlers of cotton (persons regularly engaged in buying or selling upland cotton) who have entered into an agreement with the Commodity Credit Corporation to participate in the program established under this subparagraph. Such payments shall be made in such monetary amounts and subject to such terms and conditions as the Secretary determines will make upland cotton produced in the United States available at competitive prices, consistent with the purposes of this subparagraph, including such payments as may be necessary to make raw cotton in inventory on August 1, 1986, available on the same basis.

(iii) The value of each certificate issued under clause (ii) shall be based on the difference between—

(I) the loan repayment rate for upland cotton under Plan A or Plan B, as the case may be; and

(II) the prevailing world market price of upland cotton, as determined by the Secretary under a published formula submitted for public comment before its adoption.

(iv) The Commodity Credit Corporation, under regulations prescribed by the Secretary, may assist any person receiving marketing certificates under this subparagraph in the redemption of certificates for cash, or marketing or exchange of such certificates for (I) upland cotton owned by the Commodity Credit Corporation or (II) (if the Secretary and the person agree) other agricultural commodities or the products thereof owned by the Commodity Credit Corporation, at such times, in such manner, and at such price levels as the Secretary determines will best effectuate the purposes of the program established under this subparagraph. Notwithstanding any other provision of law, any price restrictions that may otherwise apply to the disposition of agricultural commodities by the Commodity Credit Corporation shall not apply to the redemption of certificates under this subparagraph.

(v) Insofar as practicable, the Secretary shall permit owners of certificates to designate the commodities and the products thereof, including storage sites thereof, such owners would prefer to receive in exchange for certificates. If any certificate is not presented for redemption, marketing, or exchange within a reasonable number of days after the issuance of such certificate (as determined by the Secretary), reasonable costs of storage and other carrying charges, as determined by the Secretary, shall be deducted from the value of the certificate for the period beginning after such reasonable number of days and ending with the date of the presentation of such certificate to the Commodity Credit Corporation.

(vi) The Secretary shall take such measures as may be necessary to prevent the marketing or exchange of agricultural commodities and products for certificates under this section from adversely affecting the income of producers of such commodities or products.

(vii) Under regulations prescribed by the Secretary, certificates issued to cotton handlers under this subparagraph may be transferred to other handlers and persons approved by the Secretary.

(E)(i) The Secretary shall prescribe by regulation—

(I) a formula to define the prevailing world market price for cotton; and

(II) a mechanism by which the Secretary shall announce periodically the prevailing world market price for cotton.

(ii) Not later than 90 days after December 23, 1985, the Secretary shall—

(I) publish in the Federal Register proposed regulations specifying such formula and mechanism; and

(II) invite public comment on such proposal.

(iii) The prevailing world market price established under this subparagraph shall be used for purposes of both Plan A and Plan B and marketing certificates under subparagraph (D).

(b) Payments to producers otherwise eligible for loans; computation; amount of eligible crop; loan payment rate; negotiable marketing certificates

(1) The Secretary may, for each of the 1986 through 1990 crops of upland cotton, make payments available to producers who, although eligible to obtain a loan under subsection (a) of this section, agree to forgo obtaining such loan in return for such payments.

(2) A payment under this subsection shall be computed by multiplying—

(A) the loan payment rate; by

(B) the quantity of upland cotton the producer is eligible to place under loan.

(3) For purposes of this subsection, the quantity of upland cotton eligible to be placed under loan may not exceed the product obtained by multiplying—

(A) the individual farm program acreage for the crop; by

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(B) the farm program payment yield established for the farm.

(4) For purposes of this subsection, the loan payment rate shall be the amount by which—

(A) the loan level determined for such crop under subsection (a) of this section; exceeds

(B) the level at which a loan may be repaid under subsection (a) of this section.

(5) The Secretary may make up to one-half the amount of a payment under this subsection available in the form of negotiable marketing certificates, subject to the terms and conditions provided in subsection (a)(5)(D) of this section.

(c) Payments; computation; acreage limitation; established prices; disaster payments; crop insurance

(1)(A) The Secretary shall make available to producers payments for each of the 1986 through 1990 crops of upland cotton in an amount computed by multiplying—

(i) the payment rate; by

(ii) the individual farm program acreage; by

(iii) the farm program payment yield established for the crop for the farm.

(B)(i) If an acreage limitation program under subsection (f)(2) of this section is in effect for a crop of upland cotton and the producers on a farm devote a portion of the permitted upland cotton acreage of the farm (as determined in accordance with subsection (f)(2)(A) of this section) equal to more than 8 percent of the permitted upland cotton acreage of the farm for the crop to conservation uses or nonprogram crops—

(I) such portion of the permitted upland cotton acreage in excess of 8 percent of such acreage devoted to conservation uses or nonprogram crops shall be considered to be planted to upland cotton for the purpose of determining the individual farm program acreage in accordance with subsection (f)(2)(E) of this section and for the purpose of determining the acreage on the farm required to be devoted to conservation uses in accordance with subsection (f)(2)(D) of this section; and

(II) the producers shall be eligible for payments under this paragraph on such acreage, subject to the compliance of the producers with clause (ii).

(ii) To be eligible for payments under clause (i), except as provided in clause (iii), the producers on the farm must actually plant upland cotton for harvest on at least 50 percent of the permitted upland cotton acreage of the farm.

(iii) If a State or local agency has imposed in an area of a State or county a quarantine on the planting of upland cotton for harvest on farms in such area, the State committee established under section 590h(b) of title 16 may recommend to the Secretary that payments be made under this paragraph, without regard to the requirement imposed under clause (ii), to producers in such area who were required to forgo the planting of upland cotton for harvest on acreage to alleviate or eliminate the condition requiring such quarantine. If the Secretary determines that such condition exists, the Secretary may make payments under this paragraph to such producers. To be eligible for payments under this clause, such producers may not plant wheat, feed grains, rice, cotton, or soybeans on such acreage.

(iv) The upland cotton crop acreage base and upland cotton farm program payment yield of the farm shall not be reduced due to the fact that such portion of the permitted acreage of the farm was devoted to conserving uses or nonprogram crops.

(v) Other than as provided in clauses (i) through (iv), payments may not be made under this subsection for any crop on a greater acreage than the acreage actually planted to upland cotton.

(vi) Any acreage considered to be planted to upland cotton in accordance with clause (i) may not also be designated as conservation use acreage for the purpose of fulfilling any provisions under any acreage limitation or land diversion program requiring that the producers devote a specified acreage to conservation uses.

(C) The payment rate for upland cotton shall be the amount by which the established price for the crop of upland cotton exceeds the higher of—

(i) the national average market price received by producers during the calendar year that includes the first 5 months of the marketing year for such crop, as determined by the Secretary; or

(ii) the loan level determined for such crop.

(D) The established price for upland cotton shall not be less than $0.81 per pound for the 1986 crop, $0.794 per pound for the 1987 crop, $0.77 per pound for the 1988 crop, $0.745 per pound for the 1989 crop, and $0.729 per pound for the 1990 crop.

(E) The total quantity of upland cotton on which payments would otherwise be payable to a producer on a farm for any crop under this subsection shall be reduced by the quantity on which any disaster payment is made to the producer for the crop under paragraph (2).

(F) The Secretary may pay not more than 5 percent of the total amount of a payment made under this paragraph in the form of upland cotton. The use of upland cotton in making payments to producers shall be subject to a determination by the Secretary of the effect that such in-kind payments will have on market prices for any commodity. The Secretary shall report such determination to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(G) As used in this subsection, the term "nonprogram crop" means any agricultural commodity other than wheat, feed grains, upland cotton, extra long staple cotton, rice, or soybeans.

(2)(A)(i) Except as provided in subparagraph (C), if the Secretary determines that the producers on a farm are prevented from planting any portion of the acreage intended for upland cotton to upland cotton or other nonconserving crops because of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the Secretary shall make a prevented planting disaster payment to the producers in an amount equal to the product obtained by multiplying—

(I) the number of acres so affected but not to exceed the acreage planted to upland cotton for harvest (including any acreage that the producers were prevented from planting to upland cotton or other nonconserving crops in lieu of upland cotton because of drought, flood, or other natural disaster, or other condition beyond the control of the producers) in the immediately preceding year; by

(II) 75 percent of the farm program payment yield established for the farm by the Secretary; by

(III) a payment rate equal to 33⅓ percent of the established price for the crop.

(ii) Payments made by the Secretary under this subparagraph may be made in the form of cash or from stocks of upland cotton held by the Commodity Credit Corporation.

(B) Except as provided in subparagraph (C), if the Secretary determines that because of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the total quantity of upland cotton that the producers are able to harvest on any farm is less than the result of multiplying 75 percent of the farm program payment yield established for the farm for such crop by the acreage planted for harvest for such crop, the Secretary shall make a reduced yield disaster payment to the producers at a rate equal to 33⅓ percent of the established price for the crop for the deficiency in production below 75 percent for the crop.

(C) Producers on a farm shall not be eligible for—

(i) prevented planting disaster payments under subparagraph (A), if prevented planting crop insurance is available to the producers under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) with respect to the upland cotton acreage of the producers; or

(ii) reduced yield disaster payments under subparagraph (B), if reduced yield crop insurance is available to the producers under such Act with respect to the upland cotton acreage of the producers.

(D)(i) Notwithstanding subparagraph (C), the Secretary may make a disaster payment to producers on a farm under this subsection if the Secretary determines that—

(I) as the result of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the producers have suffered substantial losses of production either from being prevented from planting upland cotton or other nonconserving crops or from reduced yields;

(II) such losses have created an economic emergency for the producers;

(III) crop insurance indemnity payments under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) and other forms of assistance made available by the Federal Government to such producers for such losses is insufficient to alleviate such economic emergency; and

(IV) additional assistance must be made available to such producers to alleviate such economic emergency.

(ii) The Secretary may make such adjustments in the amount of payments made available under this paragraph with respect to an individual farm so as to assure the equitable allotment of such payments among producers, taking into account other forms of Federal disaster assistance provided to the producers for the crop involved.

(d) Program acreages; proclamation; revision; adjustments; program allocation factor

(1)(A) Except for a crop with respect to which there is an acreage limitation program in effect under subsection (f) of this section, the Secretary shall proclaim a national program acreage for each of the 1986 through 1990 crops of upland cotton. The proclamation shall be made not later than November 1 of the calendar year preceding the year for which such acreage is established, except that in the case of the 1986 crop, such announcement shall be made as soon as practicable after December 23, 1985.

(B) The Secretary may revise the national program acreage first proclaimed for any crop year for the purpose of determining the allocation factor under paragraph (2) if the Secretary determines it necessary based on the latest information. The Secretary shall proclaim such revised national program acreage as soon as it is made.

(C) The national program acreage for upland cotton shall be the number of harvested acres the Secretary determines (on the basis of the weighted national average of the farm program payment yields for the crop for which the determination is made) will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the marketing year for such crop.

(D) The national program acreage shall be subject to such adjustment as the Secretary determines necessary, taking into consideration the estimated carryover supply, so as to provide for an adequate but not excessive total supply of upland cotton for the marketing year for the crop for which such national program acreage is established. In no event shall the national program acreage be less than 10 million acres.

(2) The Secretary shall determine a program allocation factor for each crop of upland cotton. The allocation factor (not to exceed 100 percent) shall be determined by dividing the national program acreage for the crop by the number of acres that the Secretary estimates will be harvested for such crop.

(3)(A) The individual farm program acreage for each crop of upland cotton shall be determined by multiplying the allocation factor by the acreage of upland cotton planted for harvest on the farms for which individual farm program acreages are required to be determined.

(B) The individual farm program acreage may not be further reduced by application of the allocation factor if the producers reduce the acreage of upland cotton planted for harvest on the farm from the crop acreage base established for the farm under subchapter IV of this chapter by at least the percentage recommended by the

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Secretary in the proclamation of the national program acreage.

(C) The Secretary shall provide fair and equitable treatment for producers on farms on which the acreage of upland cotton planted for harvest is less than the crop acreage base established for the farm under subchapter IV of this chapter, but for which the reduction is insufficient to exempt the farm from the application of the allocation factor.

(D) In establishing the allocation factor for upland cotton, the Secretary may make such adjustment as the Secretary deems necessary to take into account the extent of exemption of farms under the forgoing [8] provisions of this subsection.

(e) Payment yields

The farm program payment yields for farms for each crop of upland cotton shall be determined under subchapter IV of this chapter.

(f) Acreage limitation programs; determination; announcement; conservation uses; regulations; nonprogram crops; land diversion payments; wildlife food plots or habitats; agreements

(1)(A) Notwithstanding any other provision of this Act, if the Secretary determines that the total supply of upland cotton, in the absence of an acreage limitation program, will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency, the Secretary may provide for any crop of upland cotton an acreage limitation program as described in paragraph (2).

(B) In making a determination under clause (i), the Secretary shall take into consideration the number of acres placed in the conservation acreage reserve established under section 3831 of title 16.

(C) If the Secretary elects to put an acreage limitation program into effect for any crop year, the Secretary shall announce any such program not later than November 1 of the calendar year preceding the year in which the crop is harvested, except that in the case of the 1986 crop, such announcement shall be made as soon as practicable after December 23, 1985.

(D) The Secretary shall, to the maximum extent practicable, carry out an acreage limitation program described in paragraph (2) for a crop of upland cotton in a manner that will result in a carryover of 4 million bales of upland cotton.

(2)(A) If a [9] upland cotton acreage limitation program is announced under paragraph (1), such limitation shall be achieved by applying a uniform percentage reduction (not to exceed 25 percent) to the upland cotton crop acreage base for the crop for each upland cotton-producing farm.

(B) Except as provided in subsection (g) of this section, producers who knowingly produce upland cotton in excess of the permitted upland cotton acreage for the farm, as established in accordance with subparagraph (A), shall be ineligible for upland cotton loans and payments with respect to that farm.

(C) Upland cotton crop acreage bases for each crop of upland cotton shall be determined under subchapter IV of this chapter.

(D)(i) A number of acres on the farm shall be devoted to conservation uses, in accordance with regulations issued by the Secretary. Such number shall be determined by dividing—

(I) the product obtained by multiplying the number of acres required to be withdrawn from the production of upland cotton times the number of acres planted to such commodity; by

(II) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary.

(ii) The number of acres determined under clause (i) is hereafter in this subsection referred to as "reduced acreage".

(E) If an acreage limitation program is announced under paragraph (1) for a crop of upland cotton, subsection (d) of this section shall not be applicable to such crop, including any prior announcement that may have been made under such subsection with respect to such crop. Except as provided in subsection (c)(1)(B) of this section, the individual farm program acreage shall be the acreage planted on the farm to upland cotton for harvest within the permitted upland cotton acreage for the farm as established under this paragraph.

(3)(A) The regulations issued by the Secretary under paragraph (2) with respect to acreage required to be devoted to conservation uses shall assure protection of such acreage from weeds and wind and water erosion.

(B) Subject to subparagraph (C), the Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage to be devoted to sweet sorghum, hay and grazing, or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or other commodity, if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of the price support program, and will not affect farm income adversely.

(C)(i) Except as provided in clause (ii), the Secretary shall permit, at the request of the State committee established under section 590h(b) of title 16 for a State and subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage diverted from production by participating producers in such State to be devoted to—

(I) hay and grazing, in the case of the 1986 crop of upland cotton; and

(II) grazing, in the case of each of the 1987 through 1990 crops of upland cotton.

(ii) Haying and grazing shall not be permitted for any crop of upland cotton under clause (i) during any 5-consecutive-month period that is established for such crop for a State by the State committee established under section 590h(b) of title 16.

(4)(A) The Secretary may make land diversion payments to producers of upland cotton, whether or not an acreage limitation program

[8] So in original. Probably should be "foregoing".
[9] So in original. Probably should be "an".

for upland cotton is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of upland cotton to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

(B) The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted.

(C) The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

(5)(A) The reduced acreage and additional diverted acreage may be devoted to wildlife food plots or wildlife habitat in conformity with standards established by the Secretary in consultation with wildlife agencies.

(B) The Secretary may pay an appropriate share of the cost of practices designed to carry out the purposes of subparagraph (A).

(C) The Secretary may provide for an additional payment on such acreage in an amount determined by the Secretary to be appropriate in relation to the benefit to the general public if the producer agrees to permit, without other compensation, access to all or such portion of the farm, as the Secretary may prescribe, by the general public, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations.

(7)(A) [10] An operator of a farm desiring to participate in the program conducted under this subsection shall execute an agreement with the Secretary providing for such participation not later than such date as the Secretary may prescribe.

(B) The Secretary may, by mutual agreement with producers on a farm, terminate or modify any such agreement if the Secretary determines such action necessary because of an emergency created by drought or other disaster or to prevent or alleviate a shortage in the supply of agricultural commodities.

(g) Payments in kind; eligibility

(1) The Secretary may, for each of the 1986 through 1990 crops of upland cotton, make payments available to producers who meet the requirements of this subsection.

(2) Such payments shall be—

(A) made in the form of upland cotton owned by the Commodity Credit Corporation; and

(B) subject to the availability of such upland cotton.

(3)(A) Payments under this subsection shall be determined in the same manner as provided in subsection (b) of this section.

(B) The quantity of upland cotton to be made available to a producer under this subsection shall be equal in value to the payments so determined under such subsection.

(4) A producer shall be eligible to receive a payment under this subsection for a crop if the producer—

(A) agrees to forgo obtaining a loan under subsection (a) of this section;

(B) agrees to forgo receiving payments under subsection (c) of this section;

(C) does not plant upland cotton for harvest in excess of the crop acreage base reduced by one-half of any acreage required to be diverted from production under subsection (f) of this section; and

(D) otherwise complies with this section.

(h) Defaults; waiver of deadlines

(1) If the failure of a producer to comply fully with the terms and conditions of the program formulated under this section precludes the making of loans and payments, the Secretary may, nevertheless, make such loans and payments in such amounts as the Secretary determines are equitable in relation to the seriousness of the failure.

(2) The Secretary may authorize the county and State committees established under section 590h(b) of title 16 to waive or modify deadlines and other program requirements in cases in which lateness or failure to meet such other requirements does not affect adversely the operation of the program.

(i) Regulations

The Secretary may issue such regulations as the Secretary determines necessary to carry out this section.

(j) Commodity Credit Corporation

The Secretary shall carry out the program authorized by this section through the Commodity Credit Corporation.

(k) Assignment of payments

The provisions of section 590h(g) of title 16 (relating to assignment of payments) shall apply to payments under this section.

(l) Sharing of payments

The Secretary shall provide for the sharing of payments made under this section for any farm among the producers on the farm on a fair and equitable basis.

(m) Protection of interests of tenants and sharecroppers

The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers.

(n) Eligibility preconditions; other commodity programs; acreage limitations for other crops; compliance with respect to other farms

(1) Notwithstanding any other provision of law, except as provided in paragraph (2), compliance on a farm with the terms and conditions of any other commodity program may not

[10] So in original. Probably should be "(6)(A)".

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be required as a condition of eligibility for loans or payments under this section.

(2) The Secretary may require that, as a condition of eligibility of producers on a farm for loans or payments under this section, the acreage planted for harvest on the farm to any other commodity for which an acreage limitation program is in effect shall not exceed the crop acreage base for that commodity.

(3) The Secretary may not require producers on a farm, as a condition of eligibility for loans or payments under this section for such farm, to comply with the terms and conditions of the upland cotton program with respect to any other farm operated by such producers.

(o) Special limited global import quotas; conditions

(1) Whenever the Secretary determines that the average price of Strict Low Middling one and one-sixteenth inch cotton (micronaire 3.5 through 4.9) in the designated spot markets for a month exceeded 130 percent of the average price of such quality of cotton in such markets for the preceding 36 months, notwithstanding any other provision of law, the President shall immediately establish and proclaim a special limited global import quota for upland cotton subject to the following conditions:

(A) The quantity of the special quota shall be equal to 21 days of domestic mill consumption of upland cotton at the seasonally adjusted average rate of the most recent 3 months for which data are available.

(B) If a special quota has been established under this subsection during the preceding 12 months, the quantity of the quota next established hereunder shall be the smaller of 21 days of domestic mill consumption calculated as set forth in subparagraph (A) or the quantity required to increase the supply to 130 percent of the demand.

(C) As used in subparagraph (B):

(i) The term "supply" means, using the latest official data of the Bureau of the Census, the Department of Agriculture, and the Department of the Treasury—

(I) the carryover of upland cotton at the beginning of the marketing year (adjusted to 480-pound bales) in which the special quota is established; plus

(II) production of the current crop; plus

(III) imports to the latest date available during the marketing year.

(ii) The term "demand" means—

(I) the average seasonally adjusted annual rate of domestic mill consumption in the most recent 3 months for which data are available; plus

(II) the larger of—

(aa) average exports of upland cotton during the preceding 6 marketing years; or

(bb) cumulative exports of upland cotton plus outstanding export sales for the marketing year in which the special quota is established.

(D) When a special quota is established under this subsection, cotton may be entered under such quota during the 90-day period beginning on the effective date of the proclamation.

(2) Notwithstanding paragraph (1), a special quota period may not be established that overlaps an existing quota period.

(Oct. 31, 1949, ch. 792, title I, § 103A, as added Dec. 23, 1985, Pub. L. 99-198, title V, § 501, 99 Stat. 1407.)

REFERENCES IN TEXT

The Federal Crop Insurance Act, referred to in subsec. (c)(2)(C), (D)(i)(III), is title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, as amended, which is classified generally to chapter 36 (§ 1501 et seq.) of this title. For complete classification of this Act to the Code, see section 1501 of this title and Tables.

This Act, referred to in subsec. (f)(1)(A), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, known as the Agricultural Act of 1949, which is classified principally to this chapter (§ 1421 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

EFFECTIVE AND TERMINATION DATES

Section 501 of Pub. L. 99-198 provided in part that this section is effective only for the 1986 through 1990 crops of upland cotton.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1308 of this title.

§ 1444b. Feed grains; price support program

(a) Notwithstanding the provisions of section 1441 of this title, beginning with the 1964 crop, price support shall be made available to producers for each crop of corn at such level, not less than 50 per centum or more than 90 per centum of the parity price therefor, as the Secretary determines will not result in increasing Commodity Credit Corporation stocks of corn: *Provided*, That in the case of any crop for which an acreage diversion program is in effect for feed grains, the level of price support for corn of such crop shall be at such level not less than 65 per centum or more than 90 per centum of the parity price therefor as the Secretary determines necessary to achieve the acreage reduction goal established by him for the crop.

(b) Beginning with the 1959 crop, price support shall be made available to producers for each crop of oats, rye, barley, and grain sorghums at such level of the parity price therefor as the Secretary of Agriculture determines is fair and reasonable in relation to the level at which price support is made available for corn, taking into consideration the feeding value of such commodity in relation to corn, and the other factors set forth in section 1421(b) of this title.

(Oct. 31, 1949, ch. 792, title I, § 105, as added Oct. 31, 1949, ch. 792, title I, § 104(b)(2), as added Aug. 28, 1958, Pub. L. 85-835, title II, § 201, 72 Stat. 994, and amended Mar. 22, 1961, Pub. L. 87-5, § 1, 75 Stat. 6; Aug. 8, 1961, Pub. L. 87-128, title I, § 131, 75 Stat. 301; Mar. 30, 1962, Pub. L. 87-425, § 1, 76 Stat. 50; Sept. 27, 1962, Pub. L. 87-703, title III, §§ 301, 305, 76 Stat. 612, 614; May 20, 1963, Pub. L. 88-26, § 2, 77 Stat. 44; Aug. 6, 1965, Pub. L. 89-112, § 1, 79 Stat. 446; Nov. 3, 1965, Pub. L. 89-321, title III, § 301, 79 Stat. 1188; June 17, 1966, Pub. L. 89-451, § 2, 80

Stat. 202; Nov. 3, 1965, Pub. L. 89-321, title III, § 301, as amended Oct. 11, 1968, Pub. L. 90-559, § 1(1), 82 Stat. 996; Nov. 30, 1970, Pub. L. 91-524, title V, § 501, 84 Stat. 1368; Nov. 30, 1970, Pub. L. 91-524, title V, § 501, as amended Aug. 10, 1973, Pub. L. 93-86, § 1(18), 87 Stat. 230; Aug. 10, 1973, Pub. L. 93-86, § 1(18), 87 Stat. 230; Aug. 10, 1973, Pub. L. 93-86, § 1(18), as amended Oct. 18, 1973, Pub. L. 93-125, § 1(d), 87 Stat. 450; Dec. 29, 1973, Pub. L. 93-228, § 1(b), 87 Stat. 944.)

CODIFICATION

Pub. L. 91-524, as amended by Pub. L. 93-86, amended section generally by substantially revising subsecs. (a) to (e) and enacting subsecs. (f) to (i), effective only through the 1977 crops of feed grains. See 1970 and 1973 Amendment notes and Effective and Termination Dates of 1970 and 1973 Amendment notes below. Prior to such amendment by Pub. L. 91-524 and Pub. L. 93-86, subsec. (c) was applicable only to the 1961 to 1963 crops of feed grains, subsec. (d) was applicable only to the 1964 and 1965 crops of feed grains, and subsec. (e) was applicable only to the 1966 through 1970 crops of feed grains.

AMENDMENTS

1973—Pub. L. 93-228 amended feed grains program for 1974 through 1977, as described hereunder.

Pub. L. 93-125 amended feed grain loan and purchases price support program for 1974 through 1977, as described hereunder.

Pub. L. 93-86 temporarily enacted feed grain loans and purchases price support program for 1974 through 1977, as described hereunder. See Effective and Termination Dates of 1973 Amendment note below.

Pub. L. 91-524, § 501, as amended Pub. L. 93-86, § 1(18)(A), reenacted introductory text without change.

Subsec. (a)(1). Pub. L. 91-524, § 501, as amended Pub. L. 93-86, § 1(18)(A), increased minimum corn crop support level from $1.00 to $1.10 per bushel.

Subsec. (a)(2). Pub. L. 91-524, § 501, as amended Pub. L. 93-36, § 1(18)(A), reenacted par. (2) provisions without change.

Subsec. (b)(1). Pub. L. 91-524, § 501, as amended Pub. L. 93-86, § 1(18)(B), added par. (1). Former par. (1) related to subject matter as described in 1970 Amendment note for subsec. (b)(1) of this section.

Subsec. (b)(1) last sentence. Pub. L. 93-228 substituted "(or of wheat, or cotton planted in lieu of the allotted crop)" for "(or other nonconserving crop planted instead of feed grains)".

Subsec. (b)(2). Pub. L. 91-524, § 501, as amended Pub. L. 93-86, § 1(18)(B), added par. (2). Former par. (2) made payments with respect to a farm available on 50 per centum of the feed grain base for the farm and for computation of the payments on the basis of the yield established for the farm for the preceding crop with such adjustments as the Secretary determines necessary to provide a fair and equitable yield.

Subsec. (b)(3). Pub. L. 91-524, § 501, as amended Pub. L. 93-86, § 1(18)(B), substituted in: first sentence, "the feed grain allotment for the farm, the feed grain allotment for the farm for the succeeding crops shall be reduced by the percentage by which the planted acreage is less than the feed grain allotment for the farm, but such reduction shall not exceed 20 per centum of the feed grain allotment" for "the portion of the feed grain base for the farm on which payments are available under this subsection, the feed grain base for the farm for the succeeding crops shall be reduced by the percentage by which the planted acreage is less than such portion of the feed grain base for the farm, but such reduction shall not exceed 20 per centum of the feed grain base"; second sentence, including proviso, "feed grain allotment" for "feed grain base"; third sentence, "feed grain allotments" for "feed grain bases"; fourth sentence, "90 per centum of the feed grain allotment" for "90 per centum of the portion of the feed grain base on which payments are made available" and "100 per centum of such allotment" for "100 per centum of such portion"; and sixth sentence "effective operation of the program" for "effective operation of the feed grain or soybean program"; and authorized acreage devoted to guar, castor beans, cotton, triticale, oats, rye, or such other crops as the Secretary may deem appropriate, to be considered as feed grain acreage.

Subsec. (c)(1) second sentence. Pub. L. 93-86, § 1(18)(D), formerly § 1(18)(C [second]), renumbered by Pub. L. 93-125, § 1(d)(ii), substituted in item (i) "feed grain allotment" for "feed grain base", inserted preceding item (ii) ", if required by the Secretary", and substituted in item (ii) "soil conserving uses" for "soil-conserving uses".

Subsec. (c)(1) third sentence. Pub. L. 93-86, § 1(18)(E), formerly § 1(18)(D), renumbered by Pub. L. 93-125, § 1(d)(ii), substituted "The Secretary is authorized for the 1974 through 1977 crops to limit the acreage planted to feed grains on the farm to a percentage of the farm acreage allotment." for "The Secretary is authorized for the 1971, 1972, and 1973 crops to limit the acreage planted to feed grains on the farm to such percentage of the feed grain base as he determines necessary to provide an orderly transition to the program provided for under this section."

Subsec. (c)(1) fifth sentence. Pub. L. 93-86, § 1(18)(D), formerly § 1(18)(C [second]), renumbered by Pub. L. 93-125, § 1(d)(ii), substituted "1971 through 1977" for "1971, 1972, 1973".

Subsec. (c)(1) last sentence. Pub. L. 93-86, § 1(18)(C), as amended Pub. L. 93-125, § 1(d)(i), authorized set-aside acreage to be devoted to hay and production of triticale, oats, and rye, and deleted item (1) and (2) designation of existing provisions, and former introductory text reading "Grazing shall not be permitted during any of the five principal months of the normal growing season as determined by the county committee established pursuant to section 590h(b) of Title 16, and subject to this limitation", and provided for such provisions as run-in rather than new-paragraph text.

Subsec. (c)(3). Pub. L. 93-86, § 1(18)(G), formerly § 1(18)(F), renumbered by Pub. L. 93-125, § 1(d)(ii), inserted after provision for devotion of set-aside acreage and diverted acreage to wildlife food plots or wildlife habitat the sentence "The Secretary may, in the case of programs for the 1974 through 1977 crops, pay an appropriate share of the cost of practices designed to carry out the purposes of the foregoing sentences."

Subsec. (e)(1). Pub. L. 93-86, § 1(18)(F), formerly § 1(18)(E), renumbered by Pub. L. 93-125, § 1(d)(ii), struck out provision reading "For the purpose of this section, the feed grain base shall be the average acreage devoted on the farm to corn, grain sorghums and, if designated by the Secretary, barley in 1959 and 1960."

Subsec. (e)(2). Pub. L. 93-86, § 1(18)(F), formerly § 1(18)(E), renumbered by Pub. L. 93-125, § 1(d)(ii), substituted "farm grain allotments" for "farm grain bases" wherever appearing.

Subsec. (e)(3). Pub. L. 93-86, § 1(18)(F), formerly § 1(18)(E), renumbered by Pub. L. 93-125, § 1(d)(ii), struck out provisions respecting reservation for farms in a State for any year for apportionment to farms without 1959 and 1960 acreage, apportionment factors, prohibition against reflection of new cropland by such reserved allocation, and consideration of farm feed grain base as farm feed grain acreage for 1959 and 1960 crop years.

Subsec. (g). Pub. L. 93-86, § 1(18)(F), formerly § 1(18)(E), renumbered by Pub. L. 93-125, § 1(d)(ii), struck out provisions for preliminary payments, time and rate of payment, and reduction of preliminary payment rate.

1970—Pub. L. 91-524 temporarily enacted feed grains loans and purchases price support program for 1971,

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1972, and 1973, as described hereunder. See Effective and Termination Dates of 1970 Amendment note below.

Pub. L. 91-524 substituted as introductory text "Notwithstanding any other provision of law" for former subsec. (a) introductory text "Notwithstanding the provisions of section 1441 of this title".

Subsec. (a)(1). Pub. L. 91-524 substituted par. (1) provisions making loans and purchases available on corn crop at such level, not less than $1.00 per bushel nor in excess of 90 per centum of the parity price therefor, as the Secretary determines will encourage exportation of feed grains and not result in excessive total stocks of feed grains in the United States for former subsec. (a) provisions for such corn price support level, beginning with 1964 crop, not less than 50 per centum or more than 90 per centum of the parity price therefor, as the Secretary determines will not result in increasing Commodity Credit Corporation stocks of corn, including proviso for such corn price support level, in the case of any crop for which an acreage diversion program is in effect for feed grains, not less than 65 per centum or more than 90 per centum of the parity price therefor as the Secretary determines necessary to achieve the acreage reduction goal established by him for the crop.

Subsec. (a)(2). Pub. L. 91-524 substituted par. (2) provisions making loans and purchases available on each crop of barley, oats, and rye, at such level as the Secretary determines is fair and reasonable in relation to the level that loans and purchases are made available for corn, taking into consideration the feeding value of such commodity in relation to corn and other factors specified in section 1421(b) of this title, and on each crop of grain sorghums at such level as the Secretary determines is fair and reasonable in relation to the level that loans and purchases are made available for corn, taking into consideration the feeding value and average transportation costs to market of grain sorghums in relation to corn for former subsec. (b) provisions for such price support level on each crop of oats, rye, barley, and grain sorghums, beginning with the 1959 crop, at such level of the parity price therefor as the Secretary of Agriculture determines is fair and reasonable in relation to the level at which price support is made available for corn, taking into consideration the feeding value of such commodity in relation to corn, and the other factors set forth in section 1421(b) of this title.

Subsec. (b)(1). Pub. L. 91-524 made payments available for crops of corn, grain sorghums, and barley; prescribed as payment rate for corn such rate as, together with the national average market price received by farmers during first five months of the marketing year for the crop would not be less than (A) $1.35 per bushel, or (B) 70 per centum of the parity price of corn as of the beginning of the marketing year, whichever was the greater; prescribed as payment rate for grain sorghums and barley such rate as was fair and reasonable in relation to the rate at which payments were made available for corn; and prescribed rate of payment for 1973 crop would not be such as would result in a total amount of payments which Secretary estimated would be made pursuant to this subsection with respect to 1973 crop of feed grains above total amount of payments made pursuant to this subsection with respect to 1972 crop of feed grains by reason of level specified in clause (B) being fixed above 68 per centum of the parity price for the corn.

Subsec. (b)(2). Pub. L. 91-524 made payments with respect to a farm available on 50 per centum of the feed grain base for the farm and for computation of the payments on the basis of the yield established for the farm for the preceding crop with such adjustments as the Secretary determines necessary to provide a fair and equitable yield.

Subsec. (b)(3). Pub. L. 91-524 added par. (3).

Former subsec. (b) provided that "Beginning with the 1959 crop, price support shall be made available to producers for each crop of oats, rye, barley, and grain sorghums at such level of the parity price therefor as the Secretary of Agriculture determines is fair and reasonable in relation to the level at which price support is made available for corn, taking into consideration the feeding value of such commodity in relation to corn, and the other factors set forth in section 1421(b) of this title," and is now incorporated in subsec. (a)(2) of this section.

Subsec. (c)(1). Pub. L. 91-524 required cropland set-aside, taking into consideration excessive stocks and adequate carryover, and provided for conservation uses acreage, crop year feed grain acreage limitation, "feed grains" for consideration of wheat as feed grain acreage, consideration of section 1339c feed grains diversion program, grazing restriction, and authorization of set-aside acreage for grazing and production of other commodities.

Subsec. (c)(2). Pub. L. 91-524 provided for land diversion payments for conservation uses acreage and for conservation uses acreage limitation.

Subsec. (c)(3). Pub. L. 91-524 required protective measures and provided for wildlife use standards and additional payments for public use.

Subsec. (c)(4). Pub. L. 91-524 provided for filing of participation agreement of farm operators, soil conserving uses acreage requirement, and mutual termination of agreement because of emergencies or limited supplies.

Subsecs. (c)(5), (6). Pub. L. 91-524 eliminated pars. (5) and (6) which related to price support for the 1963 crop of corn and to eligibility for price support on the 1963 crop of corn, grain sorghums, and barley.

Subsec. (d). Pub. L. 91-524 redesignated ninth sentence of former subsec. (e) as (d) and substituted "sharing of payments under this section among producers on the farm on a fair and equitable basis" for "sharing of such certificates among producers on the farm on the basis of their respective shares in the feed grain crop produced on the farm, or the proceeds therefrom, except that in any case in which the Secretary determines that such basis would not be fair and equitable, the Secretary shall provide for such sharing on such other basis as he may determine to be fair and equitable".

Subsec. (e). Pub. L. 91-524 added subsec. (e).

Subsec. (f). Pub. L. 91-524 redesignated last sentence of former subsec. (e) as (f) and substituted "under this section precludes the making of loans, purchases, and payments" and "make such loans, purchases, and payments" for "under this subsection (e) and subsection (e) of this section preclude the making of payments-in-kind" and "make such payments-in-kind".

Subsecs. (g) to (i). Pub. L. 91-524 added subsecs. (g) to (i).

Effective and Termination Dates of 1973 Amendment

Section 501 of Pub. L. 91-524, as amended by section 1(18) of Pub. L. 93-86, provided for amendment of such section 501, amending this section, effective only with respect to the 1974 through 1977 crops of feed grains.

Section 501(a), formerly 501, of Pub. L. 91-524, renumbered and amended by section 1(18)(A) of Pub. L. 93-86 provided for amendment of subsec. (a) of this section effective only with respect to the 1971 through 1977 crops of feed grains.

Section 501(b) of Pub. L. 91-524, as added by section 1(18)(B) of Pub. L. 93-86 provided for amendment of subsec. (b) of this section effective only with respect to the 1974 through 1977 crops of feed grains.

Effective and Termination Dates of 1970 Amendment

Section 501 of Pub. L. 91-524 provided for amendment of section effective only with respect to the 1971, 1972, and 1973 crops of feed grains.

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF FEED GRAINS

Pub. L. 99-198, title IV, § 402, Dec. 23, 1985, 99 Stat. 1406, provided that: "Section 105 of the Agricultural Act of 1949 (7 U.S.C. 1444b) shall not be applicable to the 1986 through 1990 crops of feed grains."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1444a of this title.

§ 1444c. Omitted

CODIFICATION

Section, acts Oct. 31, 1949, ch. 792, title I, § 105A, as added Sept. 29, 1977, Pub. L. 95-113, title V, §§ 501, 502, 91 Stat. 928, 930, and amended Mar. 18, 1980, Pub. L. 96-213, §§ 2, 4(c), 94 Stat. 119, 120; Sept. 26, 1980, Pub. L. 96-365, title II, § 201(c), 94 Stat. 1320, Dec. 3, 1980, Pub. L. 96-494, title II, § 202(a), 94 Stat. 2570, related to loan rates and target prices for the 1977 through 1981 crops of feed grains. See Effective and Termination Dates note below.

EFFECTIVE AND TERMINATION DATES

Sections 501 and 502 of Pub. L. 95-113 provided in part that subsecs. (a), (b), and (c) of this section are effective only for the 1977 through 1981 crops of feed grains, and that subsecs. (d) through (i) of this section are effective only for the 1978 through 1981 crops of feed grains.

§ 1444d. Loan rates and target prices for 1982 through 1985 feed grain crops

Notwithstanding any other provision of law—

(a) Loans and purchases; reduction

[*See main edition for text of (1) and (2)*]

(3) The Secretary may make available loans and purchases, as provided in this subsection, to producers on a farm who cut for silage corn that they have produced of the 1984 and 1985 crops and who participate in the program provided for by the Secretary under subsection (e) of this section. Such loans and purchases may be made on a quantity of corn of the same crop, other than the corn cut for silage, acquired by the producer equivalent to a quantity determined by multiplying the acreage of corn cut for silage by the lower of the farm program payment yield or the actual yield on a field, as determined by the Secretary, that is similar to the field from which such silage was obtained.

(b) Payments; computation; established prices; adjusted cost of production; emergency compensation; disaster payments

(1) [*See main edition for text of (A) and (B)*]

(C) The established price for corn shall be not less than $2.70 per bushel for the 1982 crop, $2.86 per bushel for the 1983 crop, and $3.03 per bushel for the 1984 and 1985 crops. Any such established price may be adjusted by the Secretary as the Secretary determines to be appropriate to reflect any change in (i) the average adjusted cost of production per acre for the two crop years immediately preceding the year for which the determination is made from (ii) the average adjusted cost of production per acre for the two crop years immediately preceding the year previous to the one for which the determination is made. The adjusted cost of production for each of such years may be determined by the Secretary on the basis of such information as the Secretary finds necessary and appropriate for the purpose and may include variable costs, machinery ownership costs, and general farm overhead costs, allocated to the crops involved on the basis of the proportion of the value of the total production derived from each crop.

(D) Notwithstanding the foregoing provisions of this section, if the Secretary adjusts the level of loans and purchases for corn in accordance with the proviso in subsection (a)(1) of this section, the Secretary shall provide emergency compensation by increasing the established price payments for corn by such amount as the Secretary determines necessary to provide the same total return to producers as if the adjustment in the level of loans and purchases had not been made: *Provided*, That any such payments under this subparagraph shall not be included in the payments subject to limitations under the provisions of section 1101 of the Agriculture and Food Act of 1981.[11]

[*See main edition for text of (E) and (F), (2); (c) and (d)*]

(e) Cropland set-aside; announcement; acreage limitation; conservation uses; land diversion payments; wildlife habitats; agreements

(1) Notwithstanding any other provision of law—

(A) Except as provided in subparagraphs (B) and (C) of this paragraph, the Secretary may provide for any crop either for a program under which the acreage planted to feed grains would be limited as described in paragraph (2) or a set-aside program as described in paragraph (3) of this subsection if the Secretary determines that the total supply of feed grains, in the absence of such a program, will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. The Secretary shall announce any such feed grain acreage limitation program or set-aside program for the 1984 crop not later than September 30, 1983, and for the 1985 crop not later than September 30, 1984: *Provided*, That, notwithstanding any other provision of law, the Secretary shall have the authority to make appropriate adjustments in such announcement for the feed grain acreage limitation program or the set-aside program for the 1984 crop not later than October 30, 1983, and for the 1985 crop not later than October 30, 1984, if the Secretary determines that there has been a significant change in the total supply of feed grains since the earlier announcement.

[*See main edition for text of (B)*]

(C) For the 1985 crop of feed grains, if the Secretary estimates that the quantity of corn on hand in the United States on September 30, 1985 (not including any quantity of corn produced in the United States during calendar year 1985), will exceed one billion one

[11] See References in Text note below.

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hundred million bushels, the Secretary (i) shall provide for a land diversion program as described under paragraph (5) under which the acreage planted to feed grains for harvest on the farm would be limited to the acreage base for the farm reduced by a total of not less than 5 per centum and (ii) may provide for an acreage limitation program as described under paragraph (2). If the Secretary implements a combined acreage limitation program and land diversion program, the total reduction required by the Secretary in the acreage planted to feed grains for harvest on the farm shall not exceed 20 per centum of the acreage base for the farm. Any reduction required by the Secretary in excess of 15 per centum of the acreage base for the farm shall be equally proportioned between an acreage limitation program and a land diversion program. As a condition of eligibility for loans, purchases, and payments on the 1985 crop of feed grains, if the Secretary implements a land diversion program or a combined acreage limitation and land diversion program, the producers on a farm must comply with the terms and conditions of such programs.

[*See main edition for text of (2) to (4)*]

(5) The Secretary may make land diversion payments to producers of feed grains, whether or not an acreage limitation or set-aside program for feed grains is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of feed grains to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers. The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community. Notwithstanding the foregoing provisions of this paragraph, the Secretary shall implement a land diversion program for the 1983 crop of feed grains under which the Secretary shall make crop retirement and conservation payments to any producer of the 1983 crop of feed grains whose acreage planted to feed grains for harvest on the farm is reduced so that it does not exceed the feed grain acreage base for the farm less an amount equivalent to 5 per centum of the feed grain acreage base in addition to the reduction required under paragraph (2) or (3), and the producer devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the feed grain acreage base under this paragraph. Notwithstanding the foregoing provisions of this paragraph, if the Secretary implements a land diversion program for the 1985 crop of feed grains under the provisions of paragraph (1)(C), the Secretary shall make crop retirement and conservation payments to any producer of the 1985 crop of feed grains whose acreage planted to feed grains for harvest on the farm is reduced so that it does not exceed the feed grain acreage base for the farm less an amount equivalent to the percentage of the acreage base specified by the Secretary, but not less than 5 per centum, in addition to the reduction required under paragraph (2), if any, and who devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the feed grain acreage base under this paragraph. Diversion payments made to producers under this paragraph shall be made in an amount computed by multiplying (i) the diversion payment rate, by (ii) the farm program payment yield for the crop, by (iii) the additional acreage diverted under this subsection. The diversion payment rate shall be established by the Secretary at not less than $1.50 per bushel for the 1983 crop of corn, except that the rate may be reduced up to 10 per centum if the Secretary determines that the same program objective could be achieved with the lower rate, and at not less than $1.50 per bushel for the 1985 crop of corn. The payment rate for grain sorghums, oats, and, if designated by the Secretary, barley shall be such rate as the Secretary determines is fair and reasonable in relation to the rate at which payments are made available for corn. The Secretary shall make not less than 50 per centum of any payments under this paragraph to producers of the 1983 and 1985 crops as soon as practicable after a producer enters into a land diversion contract with the Secretary and in advance of any determination of performance, but in no case prior to October 1, 1982. If a producer fails to comply with a land diversion contract after obtaining an advance payment under this paragraph, the producer shall repay the advance immediately and, in accordance with regulations issued by the Secretary, pay interest on the advance.

[*See main edition for text of (6) and (7); (f) to (k)*]

(As amended Sept. 29, 1983, Pub. L. 98-100, § 1(a), 97 Stat. 718; Apr. 10, 1984, Pub. L. 98-258, title II, §§ 201-203, 98 Stat. 132, 133.)

REFERENCES IN TEXT

Section 1101 of the Agriculture and Food Act of 1981, referred to in subsec. (b)(1)(D), was formerly classified to section 1308 of this title. See Prior Provisions note set out under that section.

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98-258, § 203, added par. (3).

Subsec. (b)(1)(C). Pub. L. 98-258, § 201, substituted "and $3.03 per bushel for the 1984 and 1985 crops" for "$3.03 per bushel for the 1984 crop, and $3.18 per bushel for the 1985 crop".

Subsec. (e)(1)(A). Pub. L. 98-258, § 202(1), substituted "Except as provided in subparagraphs (B) and (C)" for "Except as provided in subparagraph (B)".

Subsec. (e)(1)(C). Pub. L. 98-258, § 202(2), added subpar. (C).

Subsec. (e)(5). Pub. L. 98-258, § 202(3)(A), added provision that, notwithstanding the foregoing provisions of this paragraph, if the Secretary implements a land diversion program for the 1985 crop of feed grains under the provisions of paragraph (1)(C), the Secretary shall make crop retirement and conservation payments to any producer of the 1985 crop of feed grains whose acreage planted to feed grains for harvest on the farm is reduced so that it does not exceed the feed grain acreage base for the farm less an amount equivalent to the percentage of the acreage base specified by the Secretary, but not less than 5 per centum, in addition to the reduction required under paragraph (2), if any, and who devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the feed grain acreage base under this paragraph.

Pub. L. 98-258, § 202(3)(B), substituted "Diversion payments made to producers under this paragraph" for "Such payments" before "shall be made in an amount computed by multiplying".

Pub. L. 98-258, § 202(3)(C), substituted "for the 1983 crop of corn" for "for corn" after "The diversion payment rate shall be established by the Secretary at not less than $1.50 per bushel" and, in that same sentence, added ", and at not less than $1.50 per bushel for the 1985 crop of corn" after "the same program objective could be achieved with the lower rate".

Pub. L. 98-258, § 202(3)(D), substituted "1983 and 1985 crops" for "1983 crop" after "The Secretary shall make not less than 50 per centum of any payments under this paragraph to producers of the".

1983—Subsec. (e)(1)(A). Pub. L. 98-100 substituted "The Secretary shall announce any such feed grain acreage limitation program or set-aside program for the 1984 crop not later than September 30, 1983, and for the 1985 crop not later than September 30, 1984: *Provided*, That, notwithstanding any other provision of law, the Secretary shall have the authority to make appropriate adjustments in such announcement for the feed grain acreage limitation program or the set-aside program for the 1984 crop not later than October 30, 1983, and for the 1985 crop not later than October 30, 1984, if the Secretary determines that there has been a significant change in the total supply of feed grains since the earlier announcement" for "The Secretary shall announce any such feed grain acreage limitation program or set-aside program not later than November 15 prior to the calendar year in which the crop is harvested, except that in the case of the 1982 crop, the Secretary shall announce such program as soon as practicable after December 22, 1981".

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Section 1(a) of Pub. L. 98-100, provided in part that the amendment of this section by Pub. L. 98-100 is effective for the 1984 and 1985 crops of feed grains.

§ 1444e. Loan rates, target prices, disaster payments, acreage limitation and set-aside programs, and land diversion for 1986 through 1990 feed grain crops

Notwithstanding any other provision of law:

(a) Loans and purchases; reduction; repayment

(1) Except as provided in paragraphs (2) through (4), the Secretary shall make available to producers loans and purchases for each of the 1986 through 1990 crops of corn at such level as the Secretary determines will encourage the exportation of feed grains and not result in excessive total stocks of feed grains after taking into consideration the cost of producing corn, supply and demand conditions, and world prices for corn.

(2) Except as provided in paragraph (3), the loan and purchase level determined under paragraph (1) shall—

(A) in the case of the 1986 crop of corn, not be less than $2.40 per bushel; and

(B) in the case of each of the 1987 through 1990 crops of corn, not be less than 75 percent, nor more than 85 percent, of the simple average price received by producers of corn, as determined by the Secretary, during the marketing years for the immediately preceding 5 crops of corn, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, except that the loan and purchase level for a crop determined under this clause may not be reduced by more than 5 percent from the level determined for the preceding crop.

(3)(A) Except as provided in subparagraph (B), if the Secretary determines that the average price received by producers for corn in the previous marketing year was not more than 110 percent of the loan and purchase level for corn for such marketing year or determines that such action is necessary to maintain a competitive market position for feed grains, the Secretary—

(i) in the case of the 1986 crop of corn, shall reduce the loan and purchase level for corn for the marketing year by the amount the Secretary determines necessary to maintain domestic and export markets for grain but not less than 10 percent of the loan and purchase level for such crop; and

(ii) in the case of each of the 1987 through 1990 crops of corn, may reduce the loan and purchase level for corn for the marketing year by the amount the Secretary determines necessary to maintain domestic and export markets for grain.

(B) The loan and purchase level may not be reduced under subparagraph (A) by more than 20 percent in any year.

(C) Any reduction in the loan and purchase level for corn under this paragraph shall not be considered in determining the loan and purchase level for corn for subsequent years.

(4)(A) The Secretary may permit a producer to repay a loan made under paragraph (1) or (6) for a crop at a level that is the lesser of—

(i) the loan level determined for such crop; or

(ii) the higher of—

(I) 70 percent of such level;

(II) if the loan level for a crop was reduced under paragraph (3), 70 percent of the loan level that would have been in effect but for the reduction under paragraph (3); or

(III) the prevailing world market price for feed grains, as determined by the Secretary.

(B) If the Secretary permits a producer to repay a loan in accordance with subparagraph (A), the Secretary shall prescribe by regulation—

(i) a formula to define the prevailing world market price for feed grains; and

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(ii) a mechanism by which the Secretary shall announce periodically the prevailing world market price for feed grains.

(5) For purposes of this section, the simple average price received by producers for the immediately preceding marketing year shall be based on the latest information available to the Secretary at the time of the determination.

(6) The Secretary shall make available to producers loans and purchases for each of the 1986 through 1990 crops of grain sorghums, barley, oats, and rye, respectively, at such level as the Secretary determines is fair and reasonable in relation to the level that loans and purchases are made available for corn, taking into consideration the feeding value of such commodity in relation to corn and other factors specified in section 1421(b) of this title.

(b) Payments to producers otherwise eligible for loans; computation; amount of eligible crop; loan payment rate

(1) The Secretary may, for each of the 1986 through 1990 crops of corn, grain sorghums, barley, oats, and rye, make payments available to producers who, although eligible to obtain a loan or purchase agreement under subsection (a) of this section, agree to forego [12] obtaining such loan or agreement in return for such payments.

(2) A payment under this subsection shall be computed by multiplying—

(A) the loan payment rate; by

(B) the quantity of such feed grains the producer is eligible to place under loan.

(3) For purposes of this subsection, the quantity of feed grains eligible to be placed under loan may not exceed the product obtained by multiplying—

(A) the individual farm program acreage for the crop; by

(B) the farm program payment yield established for the farm.

(4) For purposes of this subsection, the loan payment rate shall be the amount by which—

(A) the loan level determined for such crop under subsection (a) of this section; exceeds

(B) the level at which a loan may be repaid under subsection (a) of this section.

(c) Payments; computation; acreage limitation; established prices; adjustments; conservation uses; nonprogram crops; emergency compensation; disaster payments; crop insurance

(1)(A) The Secretary shall make available to producers payments for each of the 1986 through 1990 crops of corn, grain sorghums, oats, and, if designated by the Secretary, barley, in an amount computed by multiplying—

(i) the payment rate; by

(ii) the individual farm program acreage for the crop; by

(iii) the farm program payment yield for the crop for the farm.

(B)(i) If an acreage limitation program under subsection (f)(2) of this section is in effect for a crop of feed grains and the producers on a farm devote a portion of the permitted feed grain acreage of the farm (as determined in accordance with subsection (f)(2)(A) of this section) equal to more than 8 percent of the permitted feed grain acreage of the farm for the crop to conservation uses or nonprogram crops—

(I) such portion of the permitted feed grain acreage of the farm in excess of 8 percent of such acreage devoted to conservation uses or nonprogram crops shall be considered to be planted to feed grains for the purpose of determining the individual farm program acreage in accordance with subsection (f)(2)(E) of this section and for the purpose of determining the acreage on the farm required to be devoted to conservation uses in accordance with subsection (f)(2)(D) of this section; and

(II) the producers shall be eligible for payments under this paragraph on such acreage, subject to the compliance of the producers with clause (ii).

(ii) To be eligible for payments under clause (i), except as provided in clause (iii), the producers on the farm must actually plant feed grains for harvest on at least 50 percent of the permitted feed grain acreage of the farm.

(iii) If a State or local agency has imposed in an area of a State or county a quarantine on the planting of feed grains for harvest on farms in such area, the State committee established under section 590h(b) of title 16 may recommend to the Secretary that payments be made under this paragraph, without regard to the requirement imposed under clause (ii), to producers in such area who were required to forgo the planting of feed grains for harvest on acreage to alleviate or eliminate the condition requiring such quarantine. If the Secretary determines that such condition exists, the Secretary may make payments under this paragraph to such producers. To be eligible for payments under this clause, such producers may not plant wheat, cotton, rice, or soybeans on such acreage.

(iv) The feed grain crop acreage base and feed grain program payment yield of the farm shall not be reduced due to the fact that such portion of the permitted acreage of the farm was devoted to conserving uses or nonprogram crops.

(v) Other than as provided in clauses (i) through (iv), payments may not be made under this paragraph for any crop on a greater acreage than the acreage actually planted to feed grains.

(vi) Any acreage considered to be planted to feed grains in accordance with clause (i) may not also be designated as conservation use acreage for the purpose of fulfilling any provisions under any acreage limitation or land diversion program requiring that the producers devote a specified acreage to conservation uses.

(C)(i) Except as provided in clause (ii), the payment rate for corn shall be the amount by which the established price for the crop of corn exceeds the higher of—

(I) the national weighted average market price received by producers during the first 5

[12] So in original. Probably should be "forgo".

months of the marketing year for such crop, as determined by the Secretary; or

(II) the loan level determined for such crop, prior to any adjustment made under subsection (a)(3) of this section for the marketing year for such crop of corn.

(ii) If the national weighted average market price received by producers during the first 5 months of the marketing year for a crop, as determined by the Secretary, exceeds $2.04 per bushel for the 1986 crop of corn, $2.19 per bushel for the 1987 crop, and $2.24 per bushel for the 1988 crop, at the option of the Secretary, the payment rate for such crop of corn shall be the amount by which the established price for the crop of corn exceeds the higher of—

(I) $2.04 per bushel for the 1986 crop, $2.19 per bushel for the 1987 crop, and $2.24 per bushel for the 1988 crop; or

(II) the loan level determined for such crop, prior to any adjustment made under subsection (a)(3) of this section for the marketing year for such crop of corn.

(D)(i) Notwithstanding the foregoing provisions of this section, if the Secretary adjusts the level of loans and purchases for feed grains under subsection (a)(4) of this section, the Secretary shall provide emergency compensation by increasing the established price payments for feed grains by such amount as the Secretary determines necessary to provide the same total return to producers as if the adjustment in the level of loans and purchases had not been made, taking into consideration any payments made as the result of subparagraph (C)(ii).

(ii) In determining the payment rate, per bushel, for established price payments for a crop of feed grains under this subparagraph, the Secretary shall use the national weighted average market price, per bushel of wheat, received by producers during the marketing year for such crop, as determined by the Secretary.

(E) The established price for corn shall not be less than $3.03 per bushel for each of the 1986 and 1987 crops, $2.97 per bushel for the 1988 crop, $2.88 per bushel for the 1989 crop, and $2.75 per bushel for the 1990 crop.

(F) The payment rate for grain sorghums, oats, and, if designated by the Secretary, barley, shall be such rate as the Secretary determines is fair and reasonable in relation to the rate at which payments are made available for corn.

(G) The total quantity on which payments would otherwise be payable to a producer on a farm for any crop under this paragraph shall be reduced by the quantity on which any disaster payment is made to the producer for the crop under paragraph (2).

(H) The Secretary may pay not more than 5 percent of the total amount of a payment made under this paragraph in the form of feed grains. The use of feed grains in making payments to producers shall be subject to a determination by the Secretary of the effect that such in-kind payments will have on market prices for any commodity. The Secretary shall report such determination to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(I) As used in this paragraph, the term "nonprogram crop" means any agricultural commodity other than wheat, feed grains, upland cotton, extra long staple cotton, rice, or soybeans.

(2)(A)(i) Except as provided in subparagraph (C), if the Secretary determines that the producers on a farm are prevented from planting any portion of the acreage intended for feed grains to feed grains or other nonconserving crops because of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the Secretary shall make a prevented planting disaster payment to the producers in an amount equal to the product obtained by multiplying—

(I) the number of acres so affected but not to exceed the acreage planted to feed grains for harvest (including any acreage that the producers were prevented from planting to feed grains or other nonconserving crops in lieu of feed grains because of drought, flood, or other natural disaster, or other condition beyond the control of the producers) in the immediately preceding year; by

(II) 75 percent of the farm program payment yield established by the Secretary; by

(III) a payment rate equal to 33⅓ percent of the established price for the crop.

(ii) Payments made by the Secretary under this subparagraph may be made in the form of cash or from stocks of feed grains held by the Commodity Credit Corporation.

(B) Except as provided in subparagraph (C), if the Secretary determines that because of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the total quantity of feed grains that the producers are able to harvest on any farm is less than the result of multiplying 60 percent of the farm program payment yield established by the Secretary for such crop by the acreage planted for harvest for such crop, the Secretary shall make a reduced yield disaster payment to the producers at a rate equal to 50 percent of the established price for the crop for the deficiency in production below 60 percent for the crop.

(C) Producers on a farm shall not be eligible for—

(i) prevented planting disaster payments under subparagraph (A), if prevented planting crop insurance is available to the producers under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) with respect to the feed grain acreage of the producers; or

(ii) reduced yield disaster payments under subparagraph (B), if reduced yield crop insurance is available to the producers under such Act with respect to the feed grain acreage of the producers.

(D)(i) Notwithstanding subparagraph (C), the Secretary may make a disaster payment to the producers on a farm under this paragraph if the Secretary determines that—

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(I) as the result of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the producers on a farm have suffered substantial losses of production either from being prevented from planting feed grains or other nonconserving crops or from reduced yields;

(II) such losses have created an economic emergency for the producers;

(III) crop insurance indemnity payments under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) and other forms of assistance made available by the Federal Government to such producers for such losses are insufficient to alleviate such economic emergency; and

(IV) additional assistance must be made available to such producers to alleviate such economic emergency.

(ii) The Secretary may make such adjustments in the amount of payments made available under this subparagraph with respect to an individual farm so as to assure the equitable allotment of such payments among producers, taking into account other forms of Federal disaster assistance provided to the producers for the crop involved.

(d) Program acreages; proclamation; revision; adjustments; program allocation factor

(1)(A) Except for a crop with respect to which there is an acreage limitation program in effect under subsection (f) of this section, the Secretary shall proclaim a national program acreage for each of the 1986 through 1990 crops of feed grains. The proclamation shall be made not later than September 30 of each calendar year for the crop harvested in the next succeeding calendar year, except that in the case of the 1986 crop, the proclamation shall be made as soon as practicable after December 23, 1985.

(B) The Secretary may revise the national program acreage first proclaimed for any crop year for the purpose of determining the allocation factor under paragraph (2) if the Secretary determines it necessary based on the latest information. The Secretary shall proclaim such revised national program acreage as soon as it is made.

(C) The national program acreage for feed grains shall be the number of harvested acres the Secretary determines (on the basis of the weighted national average of the farm program payment yields for the crop for which the determination is made) will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the marketing year for such crop.

(D) If the Secretary determines that carryover stocks of feed grains are excessive or an increase in stocks is needed to assure desirable carryover, the Secretary may adjust the national program acreage by the quantity the Secretary determines will accomplish the desired increase or decrease in carryover stocks.

(2) The Secretary shall determine a program allocation factor for each crop of feed grains. The allocation factor for feed grains shall be determined by dividing the national program acreage for the crop by the number of acres that the Secretary estimates will be harvested for such crop, except that in no event shall the allocation factor for any crop of feed grains be more than 100 percent nor less than 80 percent.

(3)(A) Except as provided in subsection (f)(2) of this section, the individual farm program acreage for each crop of feed grains shall be determined by multiplying the allocation factor by the acreage of feed grains planted for harvest on the farms for which individual farm program acreages are required to be determined.

(B) The individual farm program acreage shall not be further reduced by application of the allocation factor if the producers reduce the acreage of feed grains planted for harvest on the farm from the crop acreage base established for the farm under subchapter IV of this chapter by at least the percentage recommended by the Secretary in the proclamation of the national program acreage.

(C) The Secretary shall provide fair and equitable treatment for producers on farms on which the acreage of feed grains planted for harvest is less than the crop acreage base established for the farm under subchapter IV of this chapter, but for which the reduction is insufficient to exempt the farm from the application of the allocation factor.

(D) In establishing the allocation factor for feed grains, the Secretary may make such adjustment as the Secretary deems necessary to take into account the extent of exemption of farms under the foregoing provisions of this paragraph.

(e) Payment yields

The farm program payment yields for farms for each crop of feed grains shall be determined under subchapter IV of this chapter.

(f) Acreage limitation and set-aside programs; determination; announcement; adjustments; land diversion payments; necessity of compliance; conservation uses; regulations; nonprogram crops; wildlife food plots or habitats; agreements; production targets

(1)(A)(i) Notwithstanding any other provision of this Act, except as provided in subparagraphs (B) through (D), if the Secretary determines that the total supply of feed grains, in the absence of an acreage limitation or set-aside program, will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency, the Secretary may provide for any crop of feed grains either an acreage limitation program as described in paragraph (2) or a set-aside program as described in paragraph (3).

(ii) In making a determination under clause (i), the Secretary shall take into consideration the number of acres placed in the conservation acreage reserve established under section 3831 of title 16.

(iii) If the Secretary elects to put either of such programs into effect for any crop year, the Secretary shall announce any such program not later than September 30 prior to the calendar year in which the crop is harvested, except that in the case of the 1986 crop, the Secretary

shall announce such program as soon as practicable after December 23, 1985.

(iv) Not later than November 15 of the year previous to the year in which the crop is harvested, the Secretary may make adjustments in an announcement made under clause (iii) if the Secretary determines that there has been a significant change in the total supply of feed grains since the program was first announced.

(B) In the case of the 1986 crop of feed grains, if the Secretary estimates, as soon as practicable after December 23, 1985, that the quantity of corn on hand in the United States on the first day of the marketing year for that crop (not including any quantity of corn of that crop) will be—

(i) more than 2,000,000,000 bushels, the Secretary shall provide for—

(I) an acreage limitation program (as described in paragraph (2)) under which the acreage planted to feed grains for harvest on a farm would be limited to the feed grain crop acreage base for the farm for the crop reduced by not less than 12½ percent nor more than 17½ percent; and

(II) a land diversion program (as described in paragraph (5)) with in-kind payments under which the acreage planted to feed grains for harvest on a farm would be limited to the feed grain acreage crop base for the farm for the crop reduced by not less than an amount equivalent to 2½ percent of the feed grain crop acreage base, in addition to any reduction required under subclause (I); or

(ii) 2,000,000,000 bushels or less, the Secretary may provide for—

(I) an acreage limitation program (as described in paragraph (2)) under which the acreage planted to feed grains for harvest on a farm would be limited to the feed grain crop acreage base for the farm for the crop reduced by not more than 12½ percent; and

(II) a land diversion program as described in paragraph (5).

(C) In the case of each of the 1987 through 1990 crops of feed grains, if the Secretary estimates, not later than September 30 of the year previous to the year in which the crop is harvested, that the quantity of corn on hand in the United States on the first day of the marketing year for that crop (not including any quantity of corn of that crop) will be—

(i) more than 2,000,000,000 bushels, the Secretary shall provide for an acreage limitation program (as described in paragraph (2)) under which the acreage planted to feed grains for harvest on a farm would be limited to the feed grain crop acreage base for the farm for the crop reduced by not less than 12½ percent nor more than 20 percent; or

(ii) 2,000,000,000 bushels or less, the Secretary may provide for such an acreage limitation program under which the acreage planted to feed grains for harvest on a farm would be limited to the feed grain crop acreage base for the farm for the crop reduced by not more than 12½ percent.

(D) As a condition of eligibility for loans, purchases, and payments for any such crop of feed grains, except as provided in subsection (g) of this section, the producers on a farm must comply with the terms and conditions of the acreage limitation program and, if applicable, the land diversion program, as provided in paragraph (1)(B)(i)(I).

(2)(A) If a feed grain acreage limitation program is announced under paragraph (1), such limitation shall be achieved by applying a uniform percentage reduction to the feed grain crop acreage base for the crop for each feed grain-producing farm.

(B) Except as provided in subsection (g) of this section, producers who knowingly produce feed grains in excess of the permitted feed grain acreage for the farm shall be ineligible for feed grain loans, purchases, and payments with respect to that farm.

(C) The Secretary may provide that no producer of malting barley shall be required as a condition of eligibility for feed grain loans, purchases, and payments to comply with any acreage limitation under this paragraph if such producer has previously produced a malting variety of barley for harvest, plants barley only of an acceptable malting variety for harvest, and meets such other conditions as the Secretary may prescribe.

(D) Feed grain crop acreage bases for each crop of feed grains shall be determined under subchapter IV of this chapter.

(E)(i) A number of acres on the farm shall be devoted to conservation uses, in accordance with regulations issued by the Secretary. Such number shall be determined by dividing—

(I) the product obtained by multiplying the number of acres required to be withdrawn from the production of feed grains times the number of acres planted to such commodity; by

(II) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary.

(ii) The number of acres so determined is hereafter in this subsection referred to as "reduced acreage".

(F) If an acreage limitation program is announced under paragraph (1) for a crop of feed grains, subsection (d) of this section shall not be applicable to such crop, including any prior announcement that may have been made under such subsection with respect to such crop. Except as otherwise provided in subsection (c)(1)(B) of this section, the individual farm program acreage shall be the acreage planted on the farm to feed grains for harvest within the permitted feed grain acreage for the farm as established under this paragraph.

(3)(A) If a set-aside program is announced under paragraph (1), as a condition of eligibility for loans, purchases, and payments for feed grains authorized by this Act (except as provided in subsection (g) of this section), the producers on a farm must—

(i) set aside and devote to conservation uses an acreage of cropland equal to a specified percentage, as determined by the Secretary, of the acreage of feed grains planted for harvest for the crop for which the set-aside is in effect; and

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(ii) otherwise comply with the terms of such program.

(B) The set-aside acreage shall be devoted to conservation uses, in accordance with regulations issued by the Secretary.

(C) If a set-aside program is established, the Secretary may limit the acreage planted to feed grains. Such limitation shall be applied on a uniform basis to all feed grain-producing farms.

(D) The Secretary may make such adjustments in individual set-aside acreages under this section as the Secretary determines necessary—

(i) to correct for abnormal factors affecting production; and

(ii) to give due consideration to tillable acreage, crop-rotation practices, types of soil, soil and water conservation measures, topography, and such other factors as the Secretary determines necessary.

(4)(A) The regulations issued by the Secretary under paragraphs (2) and (3) with respect to acreage required to be devoted to conservation uses shall assure protection of such acreage from weeds and wind and water erosion.

(B) Subject to subparagraph (C), the Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage to be devoted to sweet sorghum, hay and grazing, or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or other commodity, if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of the price support program, and will not affect farm income adversely.

(C)(i) Except as provided in clause (ii), the Secretary shall permit, at the request of the State committee established under section 590h(b) of title 16 for a State and subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage diverted from production by participating producers in such State to be devoted to—

(I) hay and grazing, in the case of the 1986 crop of feed grains; and

(II) grazing, in the case of each of the 1987 through 1990 crops of feed grains.

(ii) Haying and grazing shall not be permitted for any crop of feed grains under clause (i) during any 5-consecutive-month period that is established for such crop for a State by the State committee established under section 590h(b) of title 16.

(D) In determining the quantity of land to be devoted to conservation uses under an acreage limitation or set-aside program with respect to land that has been farmed under summer fallow practices, as defined by the Secretary, the Secretary shall consider the effects of soil erosion and such other factors as the Secretary considers appropriate.

(5)(A) The Secretary may make land diversion payments to producers of feed grains, whether or not an acreage limitation or set-aside program for feed grains is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of feed grains to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

(B) The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted.

(C) The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

(6)(A) Any reduced acreage, set-aside acreage, and additional diverted acreage may be devoted to wildlife food plots or wildlife habitat in conformity with standards established by the Secretary in consultation with wildlife agencies.

(B) The Secretary may pay an appropriate share of the cost of practices designed to carry out the purposes of subparagraph (A).

(C) The Secretary may also pay an appropriate share of the cost of approved soil and water conservation practices (including practices that may be effective for a number of years) established by the producer on reduced acreage, set-aside acreage, or additional diverted acreage.

(D) The Secretary may provide for an additional payment on such acreage in an amount determined by the Secretary to be appropriate in relation to the benefit to the general public if the producer agrees to permit, without other compensation, access to all or such portion of the farm, as the Secretary may prescribe, by the general public, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations.

(7)(A) An operator of a farm desiring to participate in the program conducted under this subsection shall execute an agreement with the Secretary providing for such participation not later than such date as the Secretary may prescribe.

(B) The Secretary may, by mutual agreement with producers on a farm, terminate or modify any such agreement if the Secretary determines such action necessary because of an emergency created by drought or other disaster or to prevent or alleviate a shortage in the supply of agricultural commodities.

(8) Notwithstanding the foregoing provisions of this subsection, in carrying out the program conducted under this subsection, the Secretary may prescribe production targets for participating farms expressed in bushels of production so that all participating farms achieve the same pro rata reduction in production as prescribed by the national production targets.

(g) Payments in kind; eligibility

(1) The Secretary may, for each of the 1986 through 1990 crops of corn, grain sorghums, oats, and, if designated by the Secretary, barley, make payments available to producers who meet the requirements of this subsection.

(2) Such payments shall be—

(A) made in the form of such feed grains, respectively, owned by the Commodity Credit Corporation; and

(B) subject to the availability of such feed grains.

(3)(A) Payments under this subsection shall be determined in the same manner as provided in subsection (b) of this section.

(B) The quantity of feed grains to be made available to a producer under this subsection shall be equal in value to the payments so determined under such subsection.

(4) A producer shall be eligible to receive a payment under this subsection for a crop if the producer—

(A) agrees to forgo obtaining a loan or purchase agreement under subsection (a) of this section;

(B) agrees to forgo receiving payments under subsection (c) of this section;

(C) does not plant feed grains for harvest in excess of the crop acreage base reduced by one-half of any acreage required to be diverted from production under subsection (f) of this section; and

(D) otherwise complies with this section.

(h) Defaults; waiver of deadlines

(1) If the failure of a producer to comply fully with the terms and conditions of the program conducted under this section precludes the making of loans, purchases, and payments, the Secretary may, nevertheless, make such loans, purchases, and payments in such amounts as the Secretary determines are equitable in relation to the seriousness of the failure.

(2) The Secretary may authorize the county and State committees established under section 590h(b) of title 16 to waive or modify deadlines and other program requirements in cases in which lateness or failure to meet such other requirements does not affect adversely the operation of the program.

(i) Regulations

The Secretary may issue such regulations as the Secretary determines necessary to carry out this section.

(j) Commodity Credit Corporation

The Secretary shall carry out the program authorized by this section through the Commodity Credit Corporation.

(k) Assignment of payments

The provisions of section 590h(g) of title 16 (relating to assignment of payments) shall apply to payments under this section.

(l) Sharing of payments

The Secretary shall provide for the sharing of payments made under this section for any farm among the producers on the farm on a fair and equitable basis.

(m) Protection of interest of tenants and sharecroppers

The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers.

(n) Eligibility preconditions; acreage limitations for other crops; compliance with other commodity programs

(1) Except as provided in paragraphs (2) and (3), compliance on a farm with the terms and conditions of any other commodity program may not be required as a condition of eligibility for loans, purchases, or payments under this section.

(2) If an acreage limitation program is established for a crop of feed grains under subsection (f)(2) of this section, producers who participate in the program may not plant acreage of another commodity for which there is an acreage limitation program in effect in excess of the crop acreage base for the crop for the farm.

(3) If a set-aside program is established for a crop of feed grains under subsection (f)(3) if this section, compliance on a farm with the terms and conditions of any other commodity program may be required as a condition of eligibility for loans, purchases, or payments under this section.

(Oct. 31, 1949, ch. 792, title I, § 105C, as added Dec. 23, 1985, Pub. L. 99-198, title IV, § 401, 99 Stat. 1395.)

REFERENCES IN TEXT

The Federal Crop Insurance Act, referred to in subsec. (c)(2)(C), (D)(i)(III), is title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, as amended, which is classified generally to chapter 36 (§ 1501 et seq.) of this title. For complete classification of this Act to the Code, see section 1501 of this title and Tables.

This Act, referred to in subsec. (f)(1)(A)(i), (3)(A), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, known as the Agricultural Act of 1949, which is classified principally to this chapter (§ 1421 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

EFFECTIVE AND TERMINATION DATES

Section 401 of Pub. L. 99-198 provided in part that this section is effective only for the 1986 through 1990 crops of feed grains.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1308, 1445b-5, 1445h of this title.

§ 1444e-1. Loans and purchases for 1986 through 1990 crops of corn

(a) Notwithstanding any other provision of law, effective only for each of the 1986 through 1990 crops of feed grains, the Secretary of Agriculture may make available loans and purchases, as provided in this section, to producers on a farm who—

(1) for silage—

(A) cut corn (including mutilated corn) that the producers have produced in such crop year; or

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(B) purchase or exchange corn (including mutilated corn) that has been produced in such crop year by another producer (including a producer that is not participating in an acreage limitation or set-aside program for such crop established by the Secretary); and

(2) participate in an acreage limitation or set-aside program for such crop of corn established by the Secretary.

(b) Such loans and purchases may be made on a quantity of corn of the same crop, other than the corn obtained for silage, acquired by the producer equivalent to a quantity determined by multiplying—

(1) the acreage of corn obtained for silage; by

(2) the lower of the farm program payment yield or the actual yield on a field, as determined by the Secretary, that is similar to the field from which such silage was obtained.

(Pub. L. 99-198, title IV, § 403, Dec. 23, 1985, 99 Stat. 1406.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Act of 1949 which is classified principally to this chapter. For complete classification of the 1949 Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

§ 1445. Tobacco price support levels for 1960 and subsequent years

Notwithstanding any of the provisions of section 1441 of this title: (a) For the 1960 crop of any kind of tobacco for which marketing quotas are in effect, or for which marketing quotas are not disapproved by producers, the support level in cents per pound shall be the level at which the 1959 crop of such kind of tobacco was supported, or if marketing quotas were disapproved for the 1959 crop of such kind of tobacco, the level at which the 1959 crop of such kind of tobacco would have been supported if marketing quotas had been in effect. (b) For the 1961 crop and each subsequent crop of any kind of tobacco for which marketing quotas are in effect, or for which marketing quotas are not disapproved by producers, the support level in cents per pound shall be determined by adjusting the support level for the 1959 crop of such kind of tobacco, or if marketing quotas were disapproved for the 1959 crop of such kind of tobacco, the level at which the 1959 crop of such kind of tobacco would have been supported if marketing quotas had been in effect, by multiplying such support level for the 1959 crop by the ratio of (i) the average of the index of prices paid by farmers, including wage rates, interest, and taxes, as defined in section 1301(a)(1)(C) of this title, for the three calendar years immediately preceding the calendar year in which the marketing year begins for the crop for which the support level is being determined to (ii) the average index of such prices paid by farmers, including wage rates, interest, and taxes for the calendar year 1959.

(c) If acreage poundage or poundage farm marketing quotas are in effect under section 1314c or 1314e of this title, (1) price support shall not be made available on tobacco marketed in excess of 110 per centum of the marketing quota (after adjustments) for the farm on which such tobacco was produced, and (2) for the purpose of price-support eligibility, tobacco carried over from one marketing year to another shall, when marketed, be considered tobacco of the then current crop.

(d) Notwithstanding the provisions of section 1423 of this title, if the Secretary determines that the supply of any grade of any kind of tobacco of a crop for which marketing quotas are in effect or are not disapproved by producers will likely be excessive, the Secretary, after prior consultation with the association through which price support for the grade and kind of tobacco is made available to producers, may reduce the support rate which would otherwise be established for such grade of tobacco after taking into consideration the effect such reduction may have on the supply and price of other grades of other kinds of quota tobacco: *Provided,* That the weighted average of the support rates for all eligible grades of such kind of tobacco shall, after such reduction, reflect not less than (1) 65 per centum of the increase in the support level for such kind of tobacco which would otherwise be established under this section, if the support level therefor is higher then the support level for the preceding crop, or (2) the support level for such kind of tobacco established under this section, if the support level therefor is not higher than the support level for the preceding crop. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary shall take into consideration the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, and anticipated domestic and export demand, based on the maturity, uniformity and stalk position of such tobacco.

(e) Notwithstanding the foregoing provisions of this section, for the 1983 crop of any kind of tobacco for which marketing quotas are in effect or for which marketing quotas are not disapproved by producers, the support level in cents per pound shall be the support level in cents per pound at which the respective 1982 crop was supported.

(f) Notwithstanding the foregoing provisions of this section—

(1) For the 1984 crop of Flue-cured tobacco, the support level shall be the level in cents per pound at which the 1982 crop was supported.

(2) For the 1985 crop of Flue-cured tobacco, the support level shall be the level in cents per pound at which the 1982 crop was supported, plus or minus, respectively, the amount by which (A) the support level for the 1985 crop, as determined under subsection (b) of this section, is greater or less than (B) the support level for the 1984 crop, as determined under subsection (b) of this section, as that difference may be adjusted by the Secretary under subsection (d) of this section if the support level under clause (A) is greater than the support level under clause (B), except

that the support level for the 1985 crop shall be the level in cents per pound at which the 1982 crop was supported if the support level as determined under subsection (b) of this section for the 1985 crop would not be more than 5 per centum greater than the support level as determined under subsection (b) of this section for the 1984 crop.

(3) For the 1984 crop of any kind of tobacco (other than Flue-cured tobacco) for which marketing quotas are in effect or are not disapproved by producers and for the 1985 crop of any kind of tobacco (other than Flue-cured and Burley tobacco) for which marketing quotas are in effect or are not disapproved by producers, the Secretary shall establish the support level at such level as will not narrow the normal price support differential between Flue-cured tobacco and such other kind of tobacco. Before establishing the support level under this paragraph for any such kind of tobacco the Secretary shall publish in the Federal Register a notice of the level the Secretary proposes to establish and give an opportunity for the public to comment on the proposal. In determining the level to be established under this paragraph for a particular kind of tobacco, the Secretary shall take into consideration the cost of producing such kind of tobacco, the supply and demand conditions for such kind of tobacco, the comments received in response to the public notice of the proposal, and such other relevant factors as the Secretary determines appropriate.

(4) For the 1985 crop of Burley tobacco and for the 1986 and each subsequent crop of any kind of tobacco for which marketing quotas are in effect or are not disapproved by producers, the support level shall be the level in cents per pound at which the immediately preceding crop was supported (or if the level for that crop was adjusted under subsection (g) of this section the level at which such crop would have been supported without regard to any adjustment under subsection (g) of this section), plus or minus, respectively, the amount by which (A) the support level for the crop for which the determination is being made, as determined under subsection (b) of this section, is greater or less than (B) the support level for the immediately preceding crop, as determined under subsection (b) of this section, as that difference may be adjusted by the Secretary under subsection (d) of this section if the support level under clause (A) is greater than the support level under clause (B).

(5) For the 1985 crop of Burley tobacco, notwithstanding paragraph (4) of this section, the support level shall be $1.488 per pound.

(g)(1) Except as provided in paragraph (2), notwithstanding the provisions of subsections (d) and (f) of this section and section 1423 of this title, the Secretary, if requested by the board of directors of the association through which price support for Flue-cured tobacco is made available to producers, may (1) designate for any crop certain grades of Flue-cured tobacco that are eligible for price support (but representing in the aggregate not more than 25 per centum of the total quantity of the Flue-cured tobacco crop that the Secretary estimates will be produced) that the Secretary determines are of such quantity or quality as to impair their marketability, and (2) without regard to the weighted average of the support rates for eligible grades of Flue-cured tobacco determined under the proviso to the first sentence of subsection (d) of this section, further reduce the support rates for such grades to the extent the Secretary deems necessary to reflect their market value, but in no event by more than 12 per centum of the respective support rates that would otherwise be established under this section.

(2) Any reduction in the support rates for grades of Flue-cured tobacco under this subsection shall not be considered in determining the support levels for subsequent years.

(As amended July 25, 1983, Pub. L. 98–59, § 1, 97 Stat. 296; Nov. 29, 1983, Pub. L. 98–180, title II, § 202, 97 Stat. 1144; Nov. 15, 1985, Pub. L. 99–157, § 6(a), 99 Stat. 818.)

AMENDMENTS

1985—Subsec. (f)(5). Pub. L. 99–157 added par. (5).

1983—Subsec. (e). Pub. L. 98–59 added subsec. (e).

Subsecs. (f), (g). Pub. L. 98–180 added subsecs. (f) and (g).

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 202 of Pub. L. 98–180 provided in part that the amendment of this section by Pub. L. 98–180 is effective for the 1984 and subsequent crops of tobacco.

Section 1 of Pub. L. 98–59 provided in part that the amendment of this section by Pub. L. 98–59 is effective for the 1983 crop of tobacco.

BURLEY TOBACCO IMPORTS; EFFECT ON PRICE-SUPPORT PROGRAM; REVIEW BY SECRETARY OF AGRICULTURE

Secretary of Agriculture to review the effects of imports of Burley tobacco on the Department's Burley-tobacco price-support program whenever the level of price support for any crop of Burley tobacco is increased by less than 65 per centum of the amount that it would have otherwise been increased if the level of price support would have been determined in accordance with subsec. (b) of this section, see section 625 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 625 of this title.

§ 1445–1. Producer contributions to No Net Cost Tobacco Fund

[See main edition for text of (a) to (c)]

(d) Requirements

The Secretary shall—

[See main edition for text of (1)]

(2) effective for the 1983 crop only, require that each owner and operator of any farm who, in conformity with the provisions of subtitle B, part I,[13] of the Agricultural Adjust-

[13] So in original. Probably intended to refer to subtitle B, part I, of title III.

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ment Act of 1938 [7 U.S.C. 1311 et seq.], leases all or any part of an acreage allotment or marketing quota for Flue-cured tobacco to make contributions, for deposit into the Fund established by the association which, under a loan agreement with the Corporation, makes price support available to producers of Flue-cured tobacco. The amount of such contribution for the quantity of tobacco of each crop represented by such lease shall be the same amount as the contribution for producers of Flue-cured tobacco of such crop determined and approved under paragraph (1). The Secretary shall require that such association, upon receiving such contribution, issue to such owner and operator capital stock or, if the association does not issue such stock, a capital certificate having a par value or face amount, respectively, equal to the contribution;

(3) require that the Fund established by each association shall be kept and maintained separate from all other accounts of the association and shall be used exclusively, as prescribed by the Secretary, for the purpose of ensuring, insofar as practicable, that the Corporation, under its loan agreements with the association with respect to 1982 and subsequent crops of quota tobacco, will suffer no net losses (including, but not limited to, recovery of the amount of loans extended to cover the overhead costs of the association), after any net gains are applied to net losses of the corporation [14] under paragraph (5): *Provided*, That, notwithstanding any other provision of law, use by the association of moneys in the Fund, including interest and other earnings, for the purposes of reducing the association's outstanding indebtedness to the Corporation associated with 1982 and subsequent crops of quota tobacco and making loan advances to producers is authorized, and use of such moneys for any other purposes that will be mutually beneficial to producers who contribute to the Fund and to the Corporation, shall, if approved by the Secretary, be considered an appropriate use of the Fund;

[*See main edition for text of (4) to (6); (e) to (g)*]

(As amended Nov. 29, 1983, Pub. L. 98–180, title II, § 203, 97 Stat. 1145.)

AMENDMENTS

1983—Subsec. (d)(2). Pub. L. 98–180, § 203(1), substituted "1983 crop only" for "1983 and subsequent crops".

Subsec. (d)(3). Pub. L. 98–180, § 203(2), inserted proviso authorizing use by the association of moneys in the Fund for the purposes of reducing the association's outstanding indebtedness to the Corporation associated with 1982 and subsequent crops of quota tobacco and making loan advances to producers.

§ 1445–2. Marketing assessments to No Net Cost Tobacco Account

(a) Definitions

As used in this section—

(1) the term "association" means a producer-owned cooperative marketing association which has entered into a loan agreement with the Corporation to make price support available to producers of a kind of tobacco;

[*See main edition for text of (2) to (4)*]

(5) the term "tobacco" means any kind of tobacco, as defined in section 1301(b)(15) of this title, for which marketing quotas are in effect or for which marketing quotas are not disapproved by producers;

[*See main edition for text of (6) and (7); (b) and (c)*]

(d) Payment of marketing assessments to Corporation for deposit into Account; determination and adjustment of amounts; collection

[*See main edition for text of (1)*]

(2)(A) For purposes of paragraph (1), the Secretary shall determine and adjust from time to time, in consultation with such association, the amount of the marketing assessment which shall be imposed, as a condition of eligibility for price support, on each pound of the kind of tobacco involved marketed by a producer from a farm within such association's area. Such amount shall be equal to an amount which, when collected, will result in an accumulation of an Account for such association adequate to reimburse the Corporation for any net losses which the Corporation may sustain under its loan agreements with such association, based on reasonable estimates of the amounts which the Corporation will lend to such association under such agreements and the proceeds which will be realized from the sales of the kind of tobacco involved which are pledged to the Corporation by such association as security for loans.

(B) With respect to the 1985 crop of Burley tobacco, for the purposes of paragraph (1), the marketing assessment shall not be more than 4 cents per pound.

[*See main edition for text of (3), (e) to (i)*]

(As amended Nov. 29, 1983, Pub. L. 98–180, title II, § 204, 97 Stat. 1145; Nov. 15, 1985, Pub. L. 99–157, § 6(b), 99 Stat. 818.)

AMENDMENTS

1985—Subsec. (d)(2). Pub. L. 99–157 designated existing provisions as subpar. (A) and added subpar. (B).

1983—Subsec. (a)(1). Pub. L. 98–180, § 204(1), struck out ", except that the term does not include such an association that has entered into such an agreement to make price support available to producers of Flue-cured tobacco" after "kind of tobacco".

Subsec. (a)(5). Pub. L. 98–180, § 204(2), struck out "except Flue-cured tobacco" after "kind of tobacco".

§ 1445a. Wheat price support levels; "cooperator" defined

Notwithstanding the provisions of section 1441 of this title, beginning with the 1964 crop—

(1) Price support for wheat accompanied by domestic certificates shall be at such level not less than 65 per centum or more than 90 per

[14] So in original. Probably should be "Corporation".

centum of the parity price therefor as the Secretary determines appropriate, taking into consideration the factors specified in section 1421(b) of this title.

(2) Price support for wheat accompanied by export certificates shall be at such level not more than 90 per centum of the parity price therefor as the Secretary determines appropriate, taking into consideration the factors specified in section 1421(b) of this title.

(3) Price support for wheat not accompanied by marketing certificates shall be at such level, not in excess of 90 per centum of the parity price therefor, as the Secretary determines appropriate, taking into consideration competitive world prices of wheat, the feeding value of wheat in relation to feed grains, and the level at which price support is made available for feed grains.

(4) Price support shall be made available only to cooperators: and, if a commercial wheat-producing area is established for such crop, price support shall be made available only in the commercial wheat-producing area.

(5) Effective with respect to crops planted for harvest in the calendar year 1966 and any subsequent year, the level of price support for any crop of wheat for which a national marketing quota is not proclaimed or for which marketing quotas have been disapproved by producers shall be as provided in section 1441 of this title.

(6) A "cooperator" with respect to any crop of wheat produced on a farm shall be a producer who (i) does not knowingly exceed (A) the farm acreage allotment for wheat on the farm or (B) except as the Secretary may by regulation prescribe, the farm acreage allotment for wheat on any other farm on which the producer shares in the production of wheat, and (ii) complies with the land-use requirements of section 1339 of this title, to the extent prescribed by the Secretary. Effective with respect to crops planted for harvest in the calendar year 1966 and any subsequent year, if marketing quotas are not in effect for the crop of wheat, a "cooperator" with respect to any crop of wheat produced on a farm shall be a producer who does not knowingly exceed the farm acreage allotment for wheat. No producer shall be deemed to have exceeded a farm acreage allotment for wheat if the entire amount of the farm marketing excess is delivered to the Secretary or stored in accordance with applicable regulations to avoid or postpone payment of the penalty, but the producer shall not be eligible to receive price support on such marketing excess. No producer shall be deemed to have exceeded the farm acreage allotment for wheat on any other farm, if such farm is exempt from the farm marketing quota for such crop under section 1335 of this title. No producer shall be deemed to have exceeded a farm acreage allotment for wheat if the production on the acreage in excess of the farm acreage allotment is stored pursuant to the provisions of section 1379c(b) of this title, but the producer shall not be eligible to receive price support on the wheat so stored.

(Oct. 31, 1949, ch. 792, title I, § 107, as added Sept. 27, 1962, Pub. L. 87-703, title III, § 325(1), 76 Stat. 630, and amended Apr. 11, 1964, Pub. L. 88-297, title II, § 203, 78 Stat. 182; Nov. 3, 1965, Pub. L. 89-321, title V, § 506, 79 Stat. 1203; Oct. 11, 1968, Pub. L. 90-559, § 1(1), 82 Stat. 996; Nov. 30, 1970, Pub. L. 91-524, title IV, § 401, 84 Stat. 1362; Aug. 10, 1973, Pub. L. 93-86, § 1(8), 87 Stat. 224; Oct. 18, 1973, Pub. L. 93-125, § 1(b), 87 Stat. 450; Dec. 29, 1973, Pub. L. 93-228, § 1(a), 87 Stat. 944.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93-86, § 1(8)(A), temporarily substituted "$1.37 per bushel" for "$1.25 per bushel". See Effective and Termination Dates of 1970 and 1973 Amendment notes below.

Subsec. (b). Pub. L. 93-86, § 1(8)(B), temporarily substituted "payments" for "certificates". See Effective and Termination Dates of 1970 and 1973 Amendment notes below.

Subsec. (c). Pub. L. 93-228 substituted "(or of cotton, corn, grain sorghums, or barley planted in lieu of wheat)" for "(or other nonconserving crop planted instead of wheat)", in two places.

Pub. L. 93-125 substituted "prevented from planting any portion" for "prevented from planting, any portion".

Pub. L. 93-86, § 1(8)(C), (D), temporarily added subsec. (c). See Effective and Termination Dates of 1970 and 1973 Amendment notes below.

1970—Pub. L. 91-524 temporarily revised section into subsecs. (a) and (b) which provided for loans on wheat at such levels not in excess of the parity price as the Secretary determines appropriate, taking into consideration competitive world prices of wheat, the feeding value of wheat in relation to feed grains, and the level at which price support is made available for feed grains, provided that, if a set-aside program is in effect, program benefits would be made available only to producers who comply with such set-aside program, and placed a floor on the loan of $1.25 per bushel. See Effective and Termination Dates of 1970 Amendment note below.

1968—Subsec. (2). Pub. L. 90-559 provided for a one year extension through 1970.

1965—Pub. L. 89-321 temporarily raised the wheat support level to 100 per centum of parity or as near to 100 per centum as the Secretary determines to be practicable, placed a floor of 100 per centum of parity for wheat accompanied by marketing certificates and $1.25 for wheat not so accompanied under the 1966 crop, guaranteed to cooperators for 1967 through 1969 crops a total average rate of return per bushel of not less than the total average rate of return per bushel made available to cooperators through loans and domestic marketing certificates for the 1966 crop where the diversion factor is not less than 10 per centum, and eliminated reference to classification as cooperators of producers who do not knowingly exceed the farm acreage allotment for wheat in cases where marketing quotas are not in effect. See Effective and Termination Dates of 1965 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1973 AMENDMENT

Section 1(8) of Pub. L. 93-86 provided in part that the amendment by section 1(8) of Pub. L. 93-86 is effective beginning with the 1974 crop.

EFFECTIVE AND TERMINATION DATES OF 1970 AMENDMENT

Section 401 of Pub. L. 91-524, as amended by section 1(8) of Pub. L. 93-86, provided in part that the amendment by Pub. L. 91-524 is effective only with respect to the 1971 through 1977 crops of wheat.

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EFFECTIVE AND TERMINATION DATES OF 1965 AMENDMENT

Section 506 of Pub. L. 89-321, as amended by Pub. L. 90-559, § 1(1), Oct. 11, 1968, 82 Stat. 996, provided in part that the amendment of this section by Pub. L. 89-321 shall be effective only with respect to the 1966 through 1970 crops.

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS OF WHEAT

Pub. L. 99-198, title III, § 312, Dec. 23, 1985, 99 Stat. 1395, provided that: "Section 107 of the Agricultural Act of 1949 (7 U.S.C. 1445a) shall not be applicable to the 1986 through 1990 crops of wheat."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1379c of this title.

§ 1445b. Omitted

CODIFICATION

Section, acts Oct. 31, 1949, ch. 792, title I, § 107A, as added Sept. 29, 1977, Pub. L. 95-113, title IV, §§ 401, 402, 91 Stat. 921, 924, and amended Mar. 18, 1980, Pub. L. 96-213, §§ 3, 4(d), 94 Stat. 119, 120; Sept. 26, 1980, Pub. L. 96-365, title II, § 201(d), 94 Stat. 1320; Dec. 3, 1980, Pub. L. 96-494, title II, § 202(b), 94 Stat. 2570, related to loan rates and target prices for the 1977 through 1981 crops of wheat. See Effective Date; Termination note below.

EFFECTIVE AND TERMINATION DATES

Sections 401 and 402 of Pub. L. 95-113 provided in part that subsecs. (a), (b), and (c) of this section are effective only for the 1977 through 1981 crops of wheat, and that subsecs. (d) through (i) of this section are effective only for the 1978 through 1981 crops of wheat.

§ 1445b-1. Loan rates and target prices for 1982 through 1985 wheat crops

Notwithstanding any other provision of law—

[*See main edition for text of* (a)]

(b) Payments; computation; established prices; adjusted cost of production; emergency compensation; disaster payments

(1) [*See main edition for text of* (A) *and* (B)]

(C) The established price for wheat shall be not less than $4.05 per bushel for the 1982 crop, $4.30 per bushel for the 1983 crop, and $4.38 per bushel for the 1984 and 1985 crops. Any such established price may be adjusted by the Secretary as the Secretary determines to be appropriate to reflect any change in (i) the average adjusted cost of production per acre for the two crop years immediately preceding the year for which the determination is made from (ii) the average adjusted cost of production per acre for the two crop years immediately preceding the year previous to the one for which the determination is made. The adjusted cost of production for each of such years may be determined by the Secretary on the basis of such information as the Secretary finds necessary and appropriate for the purpose and may include variable costs, machinery ownership costs, and general farm overhead costs, allocated to the crops involved on the basis of the proportion of the value of the total production derived from each crop.

(D) Notwithstanding the foregoing provisions of this section, if the Secretary adjusts the level of loans and purchases for wheat in accordance with the proviso in subsection (a) of this section, the Secretary shall provide emergency compensation by increasing the established price payments for wheat by such amount as the Secretary determines necessary to provide the same total return to producers as if the adjustment in the level of loans and purchases had not been made: *Provided,* That any payments under this subparagraph shall not be included in the payments subject to limitations under the provisions of section 1101 of the Agriculture and Food Act of 1981.[15]

[*See main edition for text of* (E), (2); (c) *and* (d)]

(e) Cropland set-aside; announcement; acreage limitation; conservation uses; land diversion payments; wildlife habitats; agreements

(1) Notwithstanding any other provision of law—

(A) Except as provided in subparagraphs (B), (C), and (D) of this paragraph, the Secretary may provide for any crop either for a program under which the acreage planted to wheat would be limited as described in paragraph (2) or a set-aside program as described in paragraph (3) of this subsection if the Secretary determines that the total supply of wheat, in the absence of such a program, will be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. The Secretary shall announce any such wheat acreage limitation program or set-aside program for the 1985 crop not later than July 1, 1984: *Provided,* That, notwithstanding any other provision of law, the Secretary shall have the authority to make appropriate adjustments in such announcement for the wheat acreage limitation program or the set-aside program for the 1985 crop not later than July 31, 1984, if the Secretary determines that there has been a significant change in the total supply of wheat since the earlier announcement.

[*See main edition for text of* (B)]

(C) Notwithstanding any previous announcement to the contrary, for the 1984 crop of wheat the Secretary shall provide for a combination of (i) an acreage limitation program as described under paragraph (2) and (ii) a land diversion program as described under paragraph (5) under which the acreage planted to wheat for harvest on the farm would be limited to the acreage base for the farm reduced by not more than 30 per centum, consisting of a reduction of not more than 20 per centum under the acreage limitation program and a reduction of 10 per centum under the land diversion program, and (iii) a voluntary payment-in-kind land diversion program under which the acreage planted to wheat for harvest on the farm would be reduced by not less than 10 per centum nor more than 20 per centum of the

[15] See References in Text note below.

acreage base for the farm, in addition to any reduction under the acreage limitation and land diversion programs provided for under clauses (i) and (ii), as determined by the Secretary. Under the payment-in-kind land diversion program, compensation in kind for diverted acres shall be made available to producers by the Secretary under such terms and conditions as the Secretary shall prescribe and in such amounts as the Secretary determines appropriate to encourage adequate participation in such program, except that the rate of such compensation shall not be less than 85 per centum of the farm program payment yield. As a condition of eligibility for loans, purchases, and payments on the 1984 crop of wheat, the producers on a farm must comply with the terms and conditions of the combined acreage limitation program and land diversion program.

(D) For the 1985 crop of wheat the Secretary shall provide for a combination of (i) an acreage limitation program as described under paragraph (2) and (ii) a land diversion program as described under paragraph (5) under which the acreage planted to wheat for harvest on the farm would be limited to the acreage base for the farm reduced by not more than 30 per centum, consisting of a reduction of not more than 20 per centum under the acreage limitation program and a reduction of 10 per centum under the land diversion program. As a condition of eligibility for loans, purchases, and payments on the 1985 crop of wheat, the producers on a farm must comply with the terms and conditions of the combined acreage limitation program and land diversion program.

[*See main edition for text of (2) to (4)*]

(5) The Secretary may make land diversion payments to producers of wheat, whether or not an acreage limitation or set-aside program for wheat is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of wheat to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers. The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community. Notwithstanding the foregoing provisions of this paragraph, the Secretary shall implement a land diversion program for the 1983 crop of wheat under which the Secretary shall make crop retirement and conservation payments to any producer of the 1983 crop of wheat whose acreage planted to wheat for harvest on the farm is reduced so that it does not exceed the wheat acreage base for the farm less an amount equivalent to 5 per centum of the wheat acreage base in addition to the reduction required under paragraph (2), and the producer devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the wheat acreage base under this paragraph. Such payments shall be made in an amount computed by multiplying (i) the diversion payment rate, by (ii) the farm program payment yield for the crop, by (iii) the additional acreage diverted under this paragraph. The diversion payment rate shall be established by the Secretary at not less than $3.00 per bushel for the 1983 crop, except that the rate may be reduced up to 10 per centum if the Secretary determines that the same program objective could be achieved with the lower rate. The Secretary shall make not less than 50 per centum of any payments under this paragraph to producers of the 1983 crop as soon as practicable after a producer enters into a land diversion contract with the Secretary and in advance of any determination of performance, but in no case prior to October 1, 1982. Notwithstanding the foregoing provisions of this paragraph, the Secretary shall implement a land diversion program for the 1984 and 1985 crops of wheat under which the Secretary shall make crop retirement and conservation payments to any producer of the 1984 and 1985 crops of wheat whose acreage planted to wheat for harvest on the farm for each such crop is reduced so that it does not exceed the wheat acreage base for the farm less an amount equivalent to 10 per centum of the wheat acreage base in addition to the reduction required under paragraph (2), and who devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the wheat acreage base under this paragraph. Such payments shall be made in an amount computed by multiplying (i) the diversion payment rate, by (ii) the farm program payment yield for the crop, by (iii) the additional acreage diverted under this paragraph. The diversion payment rate for the 1984 and 1985 crops of wheat shall be established by the Secretary at not less than $2.70 per bushel. The Secretary shall make not less than 50 per centum of any payments under this paragraph to producers of the 1984 and 1985 crops of wheat as soon as practicable after a producer enters into a land diversion contract with the Secretary for each such crop and in advance of any determination of performance. If a producer fails to comply with a land diversion contract after obtaining an advance payment under this paragraph, the producer shall repay the advance immediately and, in accordance with regulations issued by the Secretary, pay interest on the advance.

[*See main edition for text of (6) and (7)*]

(8) Notwithstanding any other provision of this subsection, in carrying out acreage limitation, cash land diversion, and payment-in-kind

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land diversion programs for the 1984 crop of wheat, the Secretary shall permit, at the request of the State committee established under section 590h(b) of title 16 for a State and subject to such terms and conditions as the Secretary may prescribe that are in no event more restrictive than those in effect for producers who participated in the payment-in-kind land diversion program for that part of the 1983 crop of wheat planted before January 11, 1983, all or any part of the acreage diverted from production under such programs by participating producers in such State to be devoted to hay and grazing.

[*See main edition for text of (f) to (k)*]

(As amended Sept. 29, 1983, Pub. L. 98–100, § 1(b), 97 Stat. 718; Apr. 10, 1984, Pub. L. 98–258, title I, §§ 101–103, 98 Stat. 130, 131.)

REFERENCES IN TEXT

Section 1101 of the Agriculture and Food Act of 1981, referred to in subsec. (b)(1)(D), was formerly classified to section 1308 of this title. See Prior Provisions note set out under that section.

AMENDMENTS

1984—Subsec. (b)(1)(C). Pub. L. 98–258, § 101, substituted "and $4.38 per bushel for the 1984 and 1985 crops" for "$4.45 per bushel for the 1984 crop, and $4.65 per bushel for the 1985 crop".

Subsec. (e)(1)(A). Pub. L. 98–258, § 102(1), substituted "Except as provided in subparagraphs (B), (C), and (D)" for "Except as provided in subparagraph (B)".

Subsec. (e)(1)(C), (D). Pub. L. 98–258, § 102(2), added subpars. (C) and (D).

Subsec. (e)(5). Pub. L. 98–258, § 102(3), inserted "for the 1983 crop" after "The diversion payment rate shall be established by the Secretary at not less than $3.00 per bushel".

Pub. L. 98–258, § 102(4), added provisions requiring that the Secretary implement a land diversion program for the 1984 and 1985 crops of wheat under which the Secretary shall make crop retirement and conservation payments to any producer of the 1984 and 1985 crops of wheat whose acreage planted to wheat for harvest on the farm for each such crop is reduced so that it does not exceed the wheat acreage base for the farm less an amount equivalent to 10 per centum of the wheat acreage base in addition to the reduction required under paragraph (2), and who devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the wheat acreage base under this paragraph, that such payments be made in an amount computed by multiplying (i) the diversion payment rate, by (ii) the farm program payment yield for the crop, by (iii) the additional acreage diverted under this paragraph, that the diversion payment rate for the 1984 and 1985 crops of wheat be established by the Secretary at not less than $2.70 per bushel, and that the Secretary make not less than 50 per centum of any payments under this paragraph to producers of the 1984 and 1985 crops of wheat as soon as practicable after a producer enters into a land diversion contract with the Secretary for each such crop and in advance of any determination of performance.

Subsec. (e)(8). Pub. L. 98–258, § 103, added par. (8).

1983—Subsec. (e)(1)(A). Pub. L. 98–100 substituted "The Secretary shall announce any such wheat acreage limitation program or set-aside program for the 1985 crop not later than July 1, 1984: *Provided*, That, notwithstanding any other provision of law, the Secretary shall have the authority to make appropriate adjustments in such announcement for the wheat acreage limitation program or the set-aside program for the 1985 crop not later than July 31, 1984, if the Secretary determines that there has been a significant change in the total supply of wheat since the earlier announcement" for "The Secretary shall announce any such wheat acreage limitation program or set-aside program not later than August 15 prior to the calendar year in which the crop is harvested, except that in the case of the 1982 crop, the Secretary shall announce such program as soon as practicable after December 22, 1981".

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1(b) of Pub. L. 98–100 provided in part that the amendment of this section by Pub. L. 98–100 is effective for the 1985 crop of wheat.

§ 1445b–2. Advance deficiency and diversion payments

(a) Advance deficiency payments; 1986 through 1990 crops

(1) If the Secretary establishes an acreage limitation or set-aside program for any of the 1986 through 1990 crops of wheat, feed grains, upland cotton, or rice under this Act and determines that deficiency payments will likely be made for such commodity for such crop, the Secretary—

(A) shall make advance deficiency payments available to producres [18] who agree to participate in such program for the 1986 crop; and

(B) may make such payments available to such producers for each of the 1987 through 1990 crops.

(2) Advance deficiency payments under paragraph (1) shall be made to the producer under the following terms and conditions:

(A) Such payments may be made available in the form of—

(i) cash;

(ii) commodities owned by the Commodity Credit Corporation and negotiable certificates redeemable in a commodity owned by the Commodity Credit Corporation, except that not more than 50 percent of such payments may be made in commodities or such certificates in the case of any producer; or

(iii) any combination of clauses (i) and (ii).

(B) If payments are made available to producers as provided for under subparagraph (A)(ii), such producers may elect to receive such payments either in the form of—

(i) such commodities; or

(ii) such certificates.

(C) Such a certificate shall be redeemable for a period not to exceed 3 years from the date such certificate is issued.

(D) The Commodity Credit Corporation shall pay the cost of storing a commodity that may be received under such a certificate until such time as the certificate is redeemed.

(E) Such payments shall be made available as soon as practicable after the producer enters into a contract with the Secretary to participate in such program.

(F) Such payments shall be made available in such amounts as the Secretary determines appropriate to encourage adequate participa-

[18] So in original. Probably should be "producers".

tion in such program, except that such amount may not exceed an amount determined by multiplying—

(i) the estimated farm program acreage for the crop, by

(ii) the farm program payment yield for the crop, by

(iii) 50 percent of the projected payment rate,

as determined by the Secretary.

(G) If the deficiency payment payable to a producer for a crop, as finally determined by the Secretary under this Act, is less than the amount paid to the producer as an advance deficiency payment for the crop under this subsection, the producer shall refund an amount equal to the difference between the amount advanced and the amount finallly [17] determined by the Secretary to be payable to the producer as a deficiency payment for the crop concerned.

(H) If the Secretary determines under this Act that deficiency payments will not be made available to producers on a crop with respect to which advance deficiency payments already have been made under this subsection, the producers who received such advance payments shall refund such payments.

(I) Any refund required under subparagraph (G) or (H) shall be due at the end of the marketing year for the crop with respect to which such payments were made.

(J) If a producer fails to comply with requirements established under the acreage limitations or set-aside program involved after obtaining an advance deficiency payment under this subsection, the producer shall repay immediately the amount of the advance, plus interest thereon in such amount as the Secretary shall prescribe by regulation.

(3) The Secretary may issue such regulations as the Secretary determines necessary to carry out this section.

(4) The Secretary shall carry out the program authorized by this section through the Commodity Credit Corporation.

(5) The authority provided in this section shall be in addition to, and not in place of, any authority granted to the Secretary or the Commodity Credit Corporation under any other provisions of law.

(b) Advance land diversion payments; 1986 through 1990 crops

If the Secretary makes land diversion payments under this Act to assist in adjusting the total national acreage of any of the 1986 through 1990 crops of wheat, feed grains, upland cotton, or rice to desirable levels, the Secretary may make at least 50 percent of such payments available to a producer as soon as possible after the producer agrees to undertake the diversion of land in return for such payments.

(As amended Dec. 23, 1985, Pub. L. 99-198, title X, § 1002, 99 Stat. 1446.)

[17] So in original. Probably should be "finally".

REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(1), (2)(G), (H), (b), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, known as the Agricultural Act of 1949, which is classified principally to this chapter (§ 1421 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

AMENDMENTS

1985—Pub. L. 99-198 temporarily amended section generally, substituting provisions relating to advance deficiency and diversion payments for the 1986 through 1990 crops of wheat, feed grains, upland cotton and rice for provisions relating to advance deficiency payments for the 1982 through 1985 crops of wheat, feed grains, upland cotton and rice. See Effective and Termination Dates of 1985 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 1002 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 is effective only for the 1986 through 1990 crops of wheat, feed grains, upland cotton, and rice.

§ 1445b-3. Loan rates and target prices for 1986 through 1990 wheat crops

Notwithstanding any other provision of law:

(a) Loans and purchases; reduction; repayment; simple average price

(1) Except as provided in paragraphs (2) through (4), the Secretary shall make available to producers loans and purchases for each of the 1986 through 1990 crops of wheat at such level as the Secretary determines will maintain the competitive relationship of wheat to other grains in domestic and export markets after taking into consideration the cost of producing wheat, supply and demand conditions, and world prices for wheat.

(2) For any crop of wheat for which marketing quotas are in effect, the loan and purchase level determined under paragraph (1) shall not be less than the higher of—

(A) 75 percent of the national average cost of production per bushel of wheat, as determined by the Secretary, taking into consideration variable expenses, general farm overhead, taxes, insurance, interest, and capital replacement costs (but excluding residual returns for management and risk); or

(B) $3.55 per bushel.

(3) Except as provided in paragraph (4), for any crop of wheat for which marketing quotas are not in effect, the loan and purchase level determined under paragraph (1) shall—

(A) in the case of the 1986 crop of wheat, not be less than $3.00 per bushel; and

(B) in the case of each of the 1987 through 1990 crops of wheat, not be less than 75 percent, nor more than 85 percent, of the simple average price received by producers of wheat, as determined by the Secretary, during the marketing years for the immediately preceding 5 crops of wheat, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, except that the loan and purchase level for a crop determined

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under this clause may not be reduced by more than 5 percent from the level determined for the preceding crop.

(4)(A) Except as provided in subparagraph (B), for any crop of wheat for which marketing quotas are not in effect, if the Secretary determines that the average price received by producers for wheat in the previous marketing year was not more than 110 percent of the loan and purchase level for wheat for such marketing year or determines that such action is necessary to maintain a competitive market position for wheat, the Secretary—

(i) in the case of the 1986 crop of wheat, shall reduce the loan and purchase level for wheat for the marketing year by the amount the Secretary determines necessary to maintain domestic and export markets for grain but not less than 10 percent of the loan and purchase level for such crop; and

(ii) in the case of each of the 1987 through 1990 crops of wheat, may reduce the loan and purchase level for wheat for the marketing year by the amount the Secretary determines necessary to maintain domestic and export markets for grain.

(B) The loan and purchase level may not be reduced under subparagraph (A) by more than 20 percent in any year.

(C) Any reduction in the loan and purchase level for wheat under this paragraph shall not be considered in determining the loan and purchase level for wheat for subsequent years.

(5)(A) The Secretary may permit a producer to repay a loan made under paragraph (1) for a crop at a level that is the lesser of—

(i) the loan level determined for such crop; or

(ii) the higher of—

(I) 70 percent of such level;

(II) if the loan level for a crop was reduced under paragraph (4), 70 percent of the loan level that would have been in effect but for the reduction under paragraph (4); or

(III) the prevailing world market price for wheat, as determined by the Secretary.

(B) If the Secretary permits a producer to repay a loan in accordance with subparagraph (A), the Secretary shall prescribe by regulation—

(i) a formula to define the prevailing world market price for wheat; and

(ii) a mechanism by which the Secretary shall announce periodically the prevailing world market price for wheat.

(6) For purposes of this section, the simple average price received by producers for the immediately preceding marketing year shall be based on the latest information available to the Secretary at the time of the determination.

(b) Payments in lieu of loan or purchase agreements; computation

(1) The Secretary may, for each of the 1986 through 1990 crops of wheat, make payments available to producers who, although eligible to obtain a loan or purchase agreement under subsection (a) of this section, agree to forgo obtaining such loan or agreement in return for such payments.

(2) A payment under this subsection shall be computed by multiplying—

(A) the loan payment rate; by

(B) the quantity of wheat the producer is eligible to place under loan.

(3) For purposes of this subsection, the quantity of wheat eligible to be placed under loan may not exceed the product obtained by multiplying—

(A) the individual farm program acreage for the crop; by

(B) the farm program payment yield established for the farm.

(4) For purposes of this subsection, the loan payment rate shall be the amount by which—

(A) the loan level determined for such crop under subsection (a) of this section; exceeds

(B) the level at which a loan may be repaid under subsection (a) of this section.

(c) Payments; computation; amount; conservation use or nonprogram crop acreage; quarantine; emergency compensation; disaster payments; "nonprogram crop" defined; prevented planting or reduced yield disaster or crop insurance payments; economic emergency payments

(1)(A) The Secretary shall make available to producers payments for each of the 1986 through 1990 crops of wheat in an amount computed by multiplying—

(i) the payment rate; by

(ii) the individual farm program acreage for the crop; by

(iii) the farm program payment yield for the crop for the farm.

(B) Payments for any such crop for which marketing quotas are in effect shall not exceed an amount equal to the payment rate multiplied by the farm marketing quota.

(C)(i) If an acreage limitation program under subsection (f)(2) of this section is in effect for a crop of wheat and the producers on a farm devote a portion of the permitted wheat acreage of the farm (as determined in accordance with subsection (f)(2)(A) of this section) equal to more than 8 percent of the permitted wheat acreage of the farm for the crop to conservation uses or nonprogram crops—

(I) such portion of the permitted wheat acreage of the farm in excess of 8 percent of such acreage devoted to conservation uses or nonprogram crops shall be considered to be planted to wheat for the purpose of determining the individual farm program acreage in accordance with subsection (f)(2)(E) of this section and for the purpose of determining the acreage on the farm required to be devoted to conservation uses in accordance with subsection (f)(2)(D) of this section; and

(II) the producers shall be eligible for payments under this paragraph on such acreage, subject to the compliance of the producers with clause (ii).

(ii) To be eligible for payments under clause (i), except as provided in clauses (iii) and (vii), the producers on the farm must actually plant wheat for harvest on at least 50 percent of the permitted wheat acreage of the farm.

(iii) If a State or local agency has imposed in an area of a State or county a quarantine on the planting of wheat for harvest on farms in such area, the State committee established under section 590h(b) of title 16 may recommend to the Secretary that payments be made under this paragraph, without regard to the requirement imposed under clause (ii), to producers in such area who were required to forgo the planting of wheat for harvest on acreage to alleviate or eliminate the condition requiring such quarantine. If the Secretary determines that such condition exists, the Secretary may make payments under this paragraph to such producers. To be eligible for payments under this clause, such producers may not plant feed grains, cotton, rice, or soybeans on such acreage.

(iv) The wheat crop acreage base and wheat farm program payment yield of the farm shall not be reduced due to the fact that such portion of the permitted acreage of the farm was devoted to conserving uses or nonprogram crops.

(v) Other than as provided in clauses (i) through (iv), payments may not be made under this paragraph for any crop on a greater acreage than the acreage actually planted to wheat.

(vi) Any acreage considered to be planted to wheat in accordance with clause (i) may not also be designated as conservation use acreage for the purpose of fulfilling any provisions under any acreage limitation, set-aside program, or land diversion program requiring that the producers devote a specified acreage to conservation uses.

(vii) This subparagraph shall not apply if the established price for wheat is determined pursuant to subparagraph (H)(i).

(D)(i) Except as provided in clause (ii), the payment rate for wheat shall be the amount by which the established price for the crop of wheat exceeds the higher of—

(I) the national weighted average market price received by producers during the first 5 months of the marketing year for such crop, as determined by the Secretary; or

(II) the loan level determined for such crop, prior to any adjustment made under subsection (a)(4) of this section for the marketing year for such crop of wheat.

(ii) If the national weighted average market price received by producers during the first 5 months of the marketing year for a crop, as determined by the Secretary, exceeds $2.55 per bushel for the 1986 crop, $2.65 per bushel for the 1987 crop, or $2.82 per bushel for the 1988 crop, at the option of the Secretary, the payment rate for such crop of wheat shall be the amount by which the established price for the crop of wheat exceeds the higher of—

(I) $2.55 per bushel for the 1986 crop, $2.65 per bushel for the 1987 crop, and $2.82 per bushel for the 1988 crop; or

(II) the loan level determined for such crop, prior to any adjustment made under subsection (a)(4) of this section for the marketing year for such crop of wheat.

(E)(i) Notwithstanding the foregoing provisions of this section, if the Secretary adjusts the level of loans and purchases for wheat under subsection (a)(4) of this section, the Secretary shall provide emergency compensation by increasing the established price payments for wheat by such amount as the Secretary determines necessary to provide the same total return to producers as if the adjustment in the level of loans and purchases had not been made, taking into consideration any payments made as the result of subparagraph (D)(ii).

(ii) In determining the payment rate, per bushel, for established price payments for a crop of wheat under this subparagraph, the Secretary shall use the national weighted average market price, per bushel of wheat, received by producers during the marketing year for such crop, as determined by the Secretary.

(F) For any crop of wheat for which marketing quotas are in effect, the established price shall not be less than the higher of—

(i) the national average cost of production per bushel of wheat, as determined by the Secretary under subsection (a)(2) of this section; or

(ii) $4.65 per bushel.

(G) For any crop of wheat for which marketing quotas are not in effect, the established price for wheat shall not be less than $4.38 per bushel for each of the 1986 and 1987 crops, $4.29 per bushel for the 1988 crop, $4.16 per bushel for the 1989 crop, and $4.00 per bushel for the 1990 crop.

(H) For any crop of wheat for which marketing quotas are not in effect, at the option of the Secretary and subject to subparagraph (G), the established price for wheat applicable to producers may be determined on the basis of—

(i) the percentage by which the producers reduce the acreage planted to wheat on the farm for harvest from the crop acreage base for the farm in accordance with an acreage limitation program described in subsection (f)(2) of this section; or

(ii) a graduated scale of production under which the amount of the payments made to the producers would vary for specified quantities of wheat produced by the producers and such payments would be targeted to commercial family farmers who have annual gross sales in excess of $20,000.

(I) The total quantity on which payments would otherwise be payable to a producer on a farm for any crop under this paragraph shall be reduced by the quantity on which any disaster payment is made to the producer for the crop under paragraph (2).

(J) The Secretary may pay not more than 5 percent of the total amount of a payment made under this paragraph in the form of wheat. The use of wheat in making payments to producers shall be subject to a determination by the Secretary of the effect that such in-kind payments will have on market prices for any commodity. The Secretary shall report such determination to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(K) As used in this paragraph, the term "nonprogram crop" means any agricultural commod-

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ity other than wheat, feed grains, upland cotton, extra long staple cotton, rice, or soybeans.

(2)(A)(i) Except as provided in subparagraph (C), if the Secretary determines that the producers on a farm are prevented from planting any portion of the acreage intended for wheat to wheat or other nonconserving crops because of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the Secretary shall make a prevented planting disaster payment to the producers in an amount equal to the product obtained by multiplying—

(I) the number of acres so affected but not to exceed the acreage planted to wheat for harvest (including any acreage that the producers were prevented from planting to wheat or other nonconserving crops in lieu of wheat because of drought, flood, or other natural disaster, or other condition beyond the control of the producers) in the immediately preceding year; by

(II) 75 percent of the farm program payment yield established by the Secretary; by

(III) a payment rate equal to 33⅓ percent of the average of the established prices for the crop.

(ii) Payments made by the Secretary under this subparagraph may be made in the form of cash or from stocks of wheat held by the Commodity Credit Corporation.

(B) Except as provided in subparagraph (C), if the Secretary determines that because of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the total quantity of wheat that the producers are able to harvest on any farm is less than the result of multiplying 60 percent of the farm program payment yield established by the Secretary for such crop by the acreage planted for harvest for such crop, the Secretary shall make a reduced yield disaster payment to the producers at a rate equal to 50 percent of the established price for the crop for the deficiency in production below 60 percent for the crop.

(C) Producers on a farm shall not be eligible for—

(i) prevented planting disaster payments under subparagraph (A), if prevented planting crop insurance is available to the producers under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) with respect to the wheat acreage of the producers; or

(ii) reduced yield disaster payments under subparagraph (B), if reduced yield crop insurance is available to the producers under such Act with respect to the wheat acreage of the producers.

(D)(i) Notwithstanding subparagraph (C), the Secretary may make a disaster payment to producers on a farm under this paragraph if the Secretary determines that—

(I) as the result of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the producers on a farm have suffered substantial losses of production either from being prevented from planting wheat or other nonconserving crops or from reduced yields;

(II) such losses have created an economic emergency for the producers;

(III) crop insurance indemnity payments under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) and other forms of assistance made available by the Federal Government to such producers for such losses are insufficient to alleviate such economic emergency; and

(IV) additional assistance must be made available to such producers to alleviate such economic emergency.

(ii) The Secretary may make such adjustments in the amount of payments made available under this subparagraph with respect to an individual farm so as to assure the equitable allotment of such payments among producers, taking into account other forms of Federal disaster assistance provided to the producers for the crop involved.

(d) National program acreage; proclamation; revision; adjustments; program allocation factor; individual program acreage

(1)(A) For any crop of wheat for which marketing quotas are not in effect and an acreage limitation program under subsection (f) of this section is not in effect, the Secretary shall proclaim a national program acreage. The proclamation shall be made not later than June 1 of each calendar year for the crop harvested in the next succeeding calendar year, except that in the case of the 1986 crop, the proclamation shall be made as soon as practicable after December 23, 1985.

(B) The Secretary may revise the national program acreage first proclaimed for any crop year for the purpose of determining the allocation factor under paragraph (2) if the Secretary determines it necessary based on the latest information. The Secretary shall proclaim such revised national program acreage as soon as it is made.

(C) The national program acreage for wheat shall be the number of harvested acres the Secretary determines (on the basis of the weighted national average of the farm program payment yields for the crop for which the determination is made) will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the marketing year for such crop.

(D) If the Secretary determines that carryover stocks of wheat are excessive or an increase in stocks is needed to assure desirable carryover, the Secretary may adjust the national program acreage by the quantity the Secretary determines will accomplish the desired increase or decrease in carryover stocks.

(2) The Secretary shall determine a program allocation factor for each crop of wheat for which marketing quotas are not in effect. The allocation factor for wheat shall be determined by dividing the national program acreage for the crop by the number of acres that the Secretary estimates will be harvested for such crop, except that in no event shall the allocation factor for any crop of wheat be more than 100 percent nor less than 80 percent.

(3)(A)(i) Except as provided in subsection (f)(2) of this section, the individual farm program acreage for each crop of wheat for which marketing quotas are not in effect shall be determined by multiplying the allocation factor by the acreage of wheat planted for harvest on the farms for which individual farm program acreages are required to be determined.

(ii) The individual farm program acreage shall not be further reduced by application of the allocation factor if the producers reduce the acreage of wheat planted for harvest on the farm from the crop acreage base established for the farm under subchapter IV of this chapter by at least the percentage recommended by the Secretary in the proclamation of the national program acreage.

(iii) The Secretary shall provide fair and equitable treatment for producers on farms on which the acreage of wheat planted for harvest is less than the crop acreage base established for the farm under subchapter IV of this chapter, but for which the reduction is insufficient to exempt the farm from the application of the allocation factor.

(iv) In establishing the allocation factor for wheat, the Secretary may make such adjustment as the Secretary deems necessary to take into account the extent of exemption of farms under the foregoing provisions of this paragraph.

(B) For any crop of wheat for which marketing quotas are in effect, the individual farm program acreage shall be the acreage on the farm that the Secretary determines is sufficient to produce the quantity of wheat equal to the farm marketing quota established for the farm under section 1334 of this title.

(e) Payment yields

The farm program payment yields for farms for each crop of wheat shall be determined under subchapter IV of this chapter.

(f) Acreage limitation or set-aside programs; conservation acreage reserve factor; announcements; adjustments; loss of eligibility for loans, purchases, and payments; acreage bases determinations; reduced acreage for conservation uses; individual program, other commodity, and land diversion acreage; wildlife food plots or habitat; costs of soil and water conservation practices; general public accessibility payments; participation agreements; execution; modification, or termination; production targets

(1)(A)(i) Notwithstanding any other provision of this Act, except as provided in subparagraphs (B) through (E), if the Secretary determines that the total supply of wheat, in the absence of an acreage limitation or set-aside program, will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency, the Secretary may provide for any crop of wheat for which marketing quotas are not in effect either an acreage limitation program as described in paragraph (2) or a set-aside program as described in paragraph (3).

(ii) In making a determination under clause (i), the Secretary shall take into consideration the number of acres placed in the conservation acreage reserve established under section 3831 of title 16.

(iii) If the Secretary elects to put either of such programs into effect for any crop year, the Secretary shall announce such program not later than June 1 prior to the calendar year in which the crop is harvested, except that in the case of the 1986 crop, the Secretary shall announce such program as soon as practicable after December 23, 1985.

(iv) Not later than July 31 of the year previous to the year in which the crop is harvested, the Secretary may make adjustments in the program announced under clause (iii) if the Secretary determines that there has been a significant change in the total supply of wheat since the program was first announced.

(B) In the case of the 1986 crop of wheat, if the Secretary estimates, as soon as practicable after December 23, 1985, that the quantity of wheat on hand in the United States on the first day of the marketing year for that crop (not including any quantity of wheat of that crop) will be—

(i) more than 1,000,000,000 bushels, the Secretary shall provide for—

(I) an acreage limitation program (as described in paragraph (2)) under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by not less than 15 percent nor more than 22½ percent; and

(II) a land diversion program (as described in paragraph (5)(A)) with in-kind payments under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by 2½ percent of the wheat crop acreage base, in addition to any reduction required under subclause (I); or

(ii) 1,000,000,000 bushels or less, the Secretary may provide for—

(I) an acreage limitation program (as described in paragraph (2)) under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by not more than 15 percent; and

(II) a land diversion program as described in paragraph (5)(A).

(C) In the case of the 1987 crop of wheat, if the Secretary estimates, not later than June 1 of the year previous to the year in which the crop is harvested, that the quantity of wheat on hand in the United States on the first day of the marketing year for that crop (not including any quantity of wheat of that crop) will be—

(i) more than 1,000,000,000 bushels, the Secretary shall provide for an acreage limitation program (as described in paragraph (2)) under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by not less than 20 percent but not more than 27½ percent; or

(ii) 1,000,000,000 bushels or less, the Secretary may provide for such an acreage limita-

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tion program under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by not more than 20 percent.

(D) In the case of each of the 1988 through 1990 crops of wheat, if the Secretary estimates, not later than June 1 of the year previous to the year in which the crop is harvested, that the quantity of wheat on hand in the United States on the first day of the marketing year for that crop (not including any quantity of wheat of that crop) will be—

(i) more than 1,000,000,000 bushels, the Secretary shall provide for an acreage limitation program (as described in paragraph (2)) under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by not less than 20 percent nor more than 30 percent; or

(ii) 1,000,000,000 bushels or less, the Secretary may provide for such an acreage limitation program under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by not more than 20 percent.

(E) As a condition of eligibility for loans, purchases, and payments for any such crop of wheat, except as provided in subsection (g) of this section, the producers on a farm must comply with the terms and conditions of the acreage limitation program and, if applicable, the land diversion program as provided in paragraph (1)(B)(i)(II).

(2)(A)(i) If a wheat acreage limitation program is announced under paragraph (1), such limitation shall be achieved by applying a uniform percentage reduction to the wheat crop acreage base for the crop for each wheat-producing farm.

(ii) If the Secretary elects to determine the established price for wheat applicable to producers as provided in subsection (c)(1)(H)(i) of this section, the limitation on the acreage planted to wheat shall be achieved by applying the percentage reductions selected by producers under subsection (c)(1)(H)(i) of this section to the crop acreage base for each wheat-producing farm.

(B) Except as provided in subsection (g) of this section, producers who knowingly produce wheat in excess of the permitted wheat acreage for the farm shall be ineligible for wheat loans, purchases, and payments with respect to that farm.

(C) Wheat crop acreage bases for each crop of wheat shall be determined under subchapter IV of this chapter.

(D)(i) A number of acres on the farm shall be devoted to conservation uses, in accordance with regulations issued by the Secretary. Such number shall be determined by dividing—

(I) the product obtained by multiplying the number of acres required to be withdrawn from the production of wheat times the number of acres planted to such commodity; by

(II) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary.

(ii) The number of acres so determined is hereafter in this subsection referred to as "reduced acreage".

(E) If an acreage limitation program is announced under paragraph (1) for a crop of wheat, subsection (d) of this section shall not be applicable to such crop, including any prior announcement that may have been made under such subsection with respect to such crop. Except as otherwise provided in subsection (c)(1)(C) of this section, the individual farm program acreage shall be the acreage planted on the farm to wheat for harvest within the permitted wheat acreage for the farm as established under this paragraph.

(3)(A) If a set-aside program is announced under paragraph (1), as a condition of eligibility for loans, purchases, and payments for wheat authorized by this Act (except as provided in subsection (g) of this section), the producers on a farm must—

(i) set aside and devote to conservation uses an acreage of cropland equal to a specified percentage, as determined by the Secretary, of the acreage of wheat planted for harvest for the crop for which the set-aside is in effect; and

(ii) otherwise comply with the terms of such program.

(B) The set-aside acreage shall be devoted to conservation uses, in accordance with regulations issued by the Secretary.

(C) If a set-aside program is established, the Secretary may limit the acreage planted to wheat. Such limitation shall be applied on a uniform basis to all wheat-producing farms.

(D) The Secretary may make such adjustments in individual set-aside acreages under this paragraph as the Secretary determines necessary—

(i) to correct for abnormal factors affecting production; and

(ii) to give due consideration to tillable acreage, crop-rotation practices, types of soil, soil and water conservation measures, topography, and such other factors as the Secretary determines necessary.

(4)(A) The regulations issued by the Secretary under paragraphs (2) and (3) with respect to acreage required to be devoted to conservation uses shall assure protection of such acreage from weeds and wind and water erosion.

(B) Subject to subparagraph (C), the Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage to be devoted to sweet sorghum, hay and grazing, or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, or other commodity, if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of the price support program, and will not affect farm income adversely.

(C)(i) Except as provided in clause (ii), the Secretary shall permit, at the request of the State committee established under section 590h(b) of title 16 for a State and subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage diverted from production by participating producers in such State to be devoted to—

(I) hay and grazing, in the case of the 1986 crop of wheat; and

(II) grazing, in the case of each of the 1987 through 1990 crops of wheat.

(ii) Haying and grazing shall not be permitted for any crop of wheat under clause (i) during any 5-consecutive-month period that is established for such crop for a State by the State committee established under section 590h(b) of title 16.

(D) In determining the quantity of land to be devoted to conservation uses under an acreage limitation or set-aside program with respect to land that has been farmed under summer fallow practices, as defined by the Secretary, the Secretary shall consider the effects of soil erosion and such other factors as the Secretary considers appropriate.

(5)(A)(i) The Secretary may make land diversion payments to producers of wheat, whether or not an acreage limitation program, set-aside program, or marketing quotas for wheat are in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of wheat to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

(ii) The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted.

(iii) The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

(B)(i) Notwithstanding the foregoing provisions of this paragraph, the Secretary shall implement a land diversion program for the 1986 crop of wheat for producers who plant the 1986 crop of wheat before the announcement by the Secretary of the wheat acreage limitation program for that crop under which the Secretary shall make crop retirement and conservation payments to any such producer of the 1986 crop of wheat who—

(I) reduces the acreage on the farm planted to wheat for harvest so that it does not exceed the wheat crop acreage base for the farm less an amount equivalent to 10 percent of the wheat crop acreage base (in addition to any reduction required under paragraph (2)); and

(II) devotes to approved conservation uses an acreage of cropland equivalent to the reduction required from the wheat crop acreage base under this paragraph.

(ii) Payments under clause (i) shall be made in an amount computed by multiplying—

(I) the diversion payment rate; by

(II) the acreage diverted under this paragraph; by

(III) the farm program payment yield for the crop.

(iii) The diversion payment rate shall be $2.00 per bushel.

(6)(A) Any reduced acreage, set-aside acreage, and additional diverted acreage may be devoted to wildlife food plots or wildlife habitat in conformity with standards established by the Secretary in consultation with wildlife agencies.

(B) The Secretary may pay an appropriate share of the cost of practices designed to carry out the purposes of subparagraph (A).

(C) The Secretary may also pay an appropriate share of the cost of approved soil and water conservation practices (including practices that may be effective for a number of years) established by the producer on reduced acreage, set-aside acreage, or additional diverted acreage.

(D) The Secretary may provide for an additional payment on such acreage in an amount determined by the Secretary to be appropriate in relation to the benefit to the general public if the producer agrees to permit, without other compensation, access to all or such portion of the farm, as the Secretary may prescribe, by the general public, for hunting, trapping, fishing, and hiking, subject to applicable State and Federal regulations.

(7)(A) An operator of a farm desiring to participate in the program conducted under this subsection shall execute an agreement with the Secretary providing for such participation not later than such date as the Secretary may prescribe.

(B) The Secretary may, by mutual agreement with producers on a farm, terminate or modify any such agreement if the Secretary determines such action necessary because of an emergency created by drought or other disaster or to prevent or alleviate a shortage in the supply of agricultural commodities.

(8) Notwithstanding the foregoing provisions of this subsection, in carrying out the program conducted under this subsection, the Secretary may prescribe production targets for participating farms expressed in bushels of production so that all participating farms achieve the same pro rata reduction in production as prescribed by the national production targets.

(g) Payments in form of wheat; terms and conditions

(1) The Secretary may, for each of the 1986 through 1990 crops of wheat, make payments available to producers who meet the requirements of this subsection.

(2) Such payments shall be—

(A) made in the form of wheat owned by the Commodity Credit Corporation; and

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(B) subject to the availability of such wheat.

(3)(A) Payments under this subsection shall be determined in the same manner as provided in subsection (b) of this section.

(B) The quantity of wheat to be made available to a producer under this subsection shall be equal in value to the payments so determined under such subsection.

(4) A producer shall be eligible to receive a payment under this subsection for a crop if the producer—

(A) agrees to forgo obtaining a loan or purchase agreement under subsection (a) of this section;

(B) agrees to forgo receiving payments under subsection (c) of this section;

(C) does not plant wheat for harvest in excess of the crop acreage base reduced by one-half of any acreage required to be diverted from production under subsection (f) of this section; and

(D) otherwise complies with this section.

(h) Defaults; waiver of deadlines

(1) If the failure of a producer to comply fully with the terms and conditions of the program conducted under this section precludes the making of loans, purchases, and payments, the Secretary may, nevertheless, make such loans, purchases, and payments in such amounts as the Secretary determines are equitable in relation to the seriousness of the failure.

(2) The Secretary may authorize the county and State committees established under section 590h(b) of title 16 to waive or modify deadlines and other program requirements in cases in which lateness or failure to meet such other requirements does not affect adversely the operation of the program.

(i) Regulations

The Secretary may issue such regulations as the Secretary determines necessary to carry out this section.

(j) Commodity Credit Corporation

The Secretary shall carry out the program authorized by this section through the Commodity Credit Corporation.

(k) Assignment of payments

The provisions of section 590h(g) of title 16 (relating to assignment of payments) shall apply to payments under this section.

***(l)* Fair and equitable sharing of payments**

The Secretary shall provide for the sharing of payments made under this section for any farm among the producers on the farm on a fair and equitable basis.

(m) Tenant and sharecropper safeguards

The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers.

(n) Eligibility preconditions

(1) Except as provided in paragraphs (2) and (3), compliance on a farm with the terms and conditions of any other commodity program may not be required as a condition of eligibility for loans, purchases, or payments under this section.

(2) If an acreage limitation program is established for a crop of wheat under subsection (f)(2) of this section, producers who participate in the program may not plant acreage of another commodity for which there is an acreage limitation program in effect in excess of the crop acreage base for the crop for the farm.

(3) If a set-aside program is established for a crop of wheat under subsection (f)(3) of this section, compliance on a farm with the terms and conditions of any other commodity program may be required as a condition of eligibility for loans, purchases, or payments under this section.

(Oct. 31, 1949, ch. 792, title I, § 107D, as added Dec. 23, 1985, Pub. L. 99–198, title III, § 308, 99 Stat. 1383.)

REFERENCES IN TEXT

The Federal Crop Insurance Act, referred to in subsec. (c)(2)(C), (D)(i)(III), is title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, as amended, which is classified generally to chapter 36 (§ 1501 et seq.) of this title. For complete classification of this Act to the Code, see section 1501 of this title and Tables.

This Act, referred to in subsec. (f)(1)(A)(i), (3)(A), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, known as the Agricultural Act of 1949, which is classified principally to this chapter (§ 1421 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

EFFECTIVE AND TERMINATION DATES

Section 308 of Pub. L. 99–198 provided in part that this section is effective only for the 1986 through 1990 crops of wheat.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1308, 1309, 1445b–5, 1445h of this title.

§ 1445b–4. Payments in commodities

(a) In-kind payments by Secretary

In making in-kind payments under any of the annual programs for wheat, feed grains, upland cotton, or rice (other than negotiable marketing certificates for upland cotton or rice), the Secretary may—

(1) acquire and use like commodities that have been pledged to the Commodity Credit Corporation as security for price support loans, including loans made to producers under section 1445e of this title; and

(2) use other like commodities owned by the Commodity Credit Corporation.

(b) Methods of payment

The Secretary may make in-kind payments—

(1) by delivery of the commodity to the producer at a warehouse or other similar facility, as determined by the Secretary;

(2) by the transfer of negotiable warehouse receipts;

(3) by the issuance of negotiable certificates which the Commodity Credit Corporation shall redeem for a commodity in accordance with regulations prescribed by the Secretary; or

(4) by such other methods as the Secretary determines appropriate to enable the producer to receive payments in an efficient, equitable, and expeditious manner so as to ensure that the producer receives the same total return as if the payments had been made in cash.

(Oct. 31, 1949, ch. 792, title I, § 107E, as added Dec. 23, 1985, Pub. L. 99–198, title X, § 1005, 99 Stat. 1448.)

§ 1445b–5. Export certificate programs for 1986 through 1990 crops of wheat and feed grain

(a) Establishment of program by Secretary

(1) The Secretary may establish a program, applicable to any of the 1986 through 1990 crops of wheat or feed grains, to provide incentives for the export of any of such crops of wheat and feed grains from private stocks. The program for any such crop established under this subsection by the Secretary shall include the following terms:

(A) The Secretary shall issue wheat or feed grain export certificates to producers to whom the Secretary makes loans and payments under section 1445b–3 or 1444e of this title, respectively, for a crop if such producers comply with the terms and conditions of the program for such crop.

(B) Each such certificate shall bear a monetary denomination and a designation specifying a quantity of the crop of the commodity involved, selected by the Secretary.

(C) The aggregate quantity of wheat or feed grains specified in all export certificates distributable to eligible producers of the crop involved shall be equal to—

(i) the aggregate amount of wheat or feed grains produced by producers participating in the program for the crop under section 1445b–3 or 1444e of this title, as determined by multiplying the acreage planted by each such producer for harvest times the farm program payment yield for the commodity, times

(ii) an export production factor.

For purposes of this subparagraph, the export production factor for a crop shall be determined by the Secretary by dividing the quantity of such crop harvested domestically that the Secretary estimates will not be used domestically and will be available for export (excluding the portion of the crop expected to be added to carryover stocks) during the marketing year for such crop by the quantity of such crop that the Secretary estimates will be harvested domestically.

(D) Wheat or feed grain export certificates shall be distributed among eligible producers in a manner that will ensure that each eligible producer receives certificates having an aggregate face value that represents an equal rate of return per unit of wheat or feed grains produced by such producer for such crop. For purposes of determining such rate of return, the Secretary shall take into consideration regional variations in the costs incurred by producers to market the commodity (including transportation costs).

(E) An export certificate issued under this subsection shall be redeemed by the Secretary for a cash amount equal to the monetary denomination on such certificate (or, at the option of the Secretary, a quantity of the commodity involved having a current fair market value equal to such amount) only on presentation by a holder who exports a quantity of the crop involved (including processed wheat or feed grains) equal to the quantity designated in the certificate and only if the Secretary has not redeemed previously an export certificate issued under this subsection presented in connection with the particular wheat or feed grains so exported.

(2) The Secretary shall carry out this subsection through the Commodity Credit Corporation. If sufficient funds are available to the Corporation, there shall be expended to carry out this subsection with respect to the export of the crop of wheat or feed grains involved an amount not less than the product of multiplying—

(A) 21 cents for wheat, 11 cents for corn, and such amounts for grain sorghums, oats, and, if designated by the Secretary, barley as the Secretary determines fair and reasonable in relation to the amount specified for corn, times

(B) the aggregate of the wheat or feed grain acreage planted to the commodity for harvest by producers participating in the program for the crop with respect to which deficiency payments are available under section 1445b–3 or 1444e of this title, times

(C) the average of the program yields for the crop.

(3) Funds expended to carry out export certificate programs established under this subsection shall be in addition to, and not in place of, funds authorized by any other law to be expended to finance or encourage the export of wheat or feed grains.

(4) For purposes of facilitating the transfer of export certificates under this subsection, the Commodity Credit Corporation may buy and sell certificates in accordance with regulations prescribed by the Secretary.

(b) Issuance of certificates to eligible producers

(1) Effective for each of the 1986 through 1990 crops of wheat or feed grains, the Secretary may issue to eligible producers (who, for purposes of this subsection, are producers of wheat or feed grains participating in the program under this Act for such crop who meet the requirements of paragraph (2)) export marketing certificates, denominated in bushels of wheat or feed grains, as applicable, for the crop, which shall be used, under such terms and conditions as the Secretary may prescribe consistent with the provisions of this subsection, as follows:

(A) Not later than 3 months before the beginning of the marketing year for a crop of wheat or feed grains, the Secretary may issue to eligible producers that plant at least 50 percent of the farm's wheat or feed grain crop acreage base for such crop, export marketing certificates to be applicable to such

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marketing year that, in the aggregate, shall equal the quantity of the commodity the Secretary estimates will be exported during the marketing year. Each such eligible producer shall receive certificates for a quantity of the commodity that bears the same ratio to the quantity of estimated exports as the producer's crop acreage base for that crop of the commodity bears to the aggregate total of all such eligible producers' crop acreage bases for that crop, rounded upward to the nearest full bushel.

(B) The denomination of export marketing certificates shall be 1 bushel (with no accompanying cash face value), except that the Secretary may issue certificates in multiples of such denomination, and any certificate in the multiple of such denomination, may be exchanged by the producer, at the county Agricultural Stabilization and Conservation Service office, for certificates representing an equivalent quantity of the commodity in different multiples, to facilitate the operation of the program under this subsection. Each export marketing certificate shall designate the producer by name and the crop involved.

(C) If 7 months after the beginning of the marketing year for the crop, the Secretary determines that the amount of the commodity that will be exported during the marketing year for that crop will exceed the aggregate quantity of the commodity represented by all the export marketing certificates so issued, the Secretary may issue additional export marketing certificates to producers that initially received certificates for the crop sufficient to cover the additional exports, such certificates to be apportioned among such producers so that [19] producer receives the same portion of the additional certificates issued that the producer received of the export certificates initially issued for the crop, as provided in subparagraph (A), rounded upward to the nearest full bushel.

(D) Producers may convey export marketing certificates issued under this subsection to purchasers of the commodity involved sold by the producers at any time prior to the end of the marketing year for the crop described in the certificate. If a producer has less wheat or feed grains to sell than the quantity represented by the export marketing certificates issued to the producer, because of reduced production or other reason or because, in the case of additional certificates issued under subparagraph (C), the producer had disposed of the producer's wheat or feed grains prior to the issuance of such additional certificates, the producer, at any time prior to the end of the marketing year for the crop involved, may sell the extra export marketing certificates to any person for such price as agreed on by the producer and purchaser. Any certificate may be reconveyed without restriction.

(2) To be eligible to receive export certificates under this subsection for a crop of wheat or feed grains, a producer of such commodity must participate in the program under this subchapter for such crop, and—

(A) if there is no acreage limitation or set-aside in effect for the crop, limit the acreage on the farm planted to the crop for harvest to the farm's wheat or feed grain crop acreage base, as applicable;

(B) if an acreage limitation is in effect for the crop, limit the acreage on the farm planted to the crop for harvest to the farm's wheat or feed grain crop acreage base, as applicable, reduced to the extent required under the acreage limitation program, and comply with any other terms of the acreage limitation program established by the Secretary; or

(C) if a set-aside program is in effect for the crop, comply with the set-aside and other terms of the set-aside program established by the Secretary.

(3) Whenever the Secretary issues certificates under this subsection for a crop of wheat or feed grains, no person may export wheat or feed grains or products thereof, from the United States during the marketing year for the crop without surrendering to the Secretary, at the time of export, export marketing certificates for such crop representing the quantity of the commodity being exported or, in the case of wheat or feed grain products, the equivalent quantity of the commodity contained in the products being exported. Persons that fail to comply with the requirements of the preceding sentence shall be subject, for each violation thereof, to a fine of not more than $25,000 or imprisonment for not to exceed 1 year, or both such fine and imprisonment. This paragraph shall not apply to exports of commodities or products owned by the Federal Government or any agency or instrumentality thereof, nor to commodities or products provided to the exporter by the Commodity Credit Corporation under an export development program.

(4) Any person who falsely makes, issues, alters, forges, or counterfeits any export marketing certificate, or with fraudulent intent possesses, transfers, or uses any such falsely made, issued, altered, forged, or counterfeited export marketing certificate, shall be subject to a fine of not more than $10,000 or imprisonment of not more than 10 years, or both such fine and imprisonment.

(5) For purposes of facilitating the transfer of export certificates under this subsection, the Commodity Credit Corportation [19] may buy and sell certificates in accordance with regulations prescribed by the Secretary.

(Oct. 31, 1949, ch. 792, title I, § 107F, as added Dec. 23, 1985, Pub. L. 99-198, title X, § 1006, 99 Stat. 1448.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, known as the Agricultural Act of 1949, which is classified principally to this chapter (§ 1421 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

[19] So in original. Probably should be followed by "a".

[19] So in original. Probably should be "Corporation".

EFFECTIVE AND TERMINATION DATES

Section 1006 of Pub. L. 99-198 provided in part that this section is effective for the 1986 through 1990 crops of wheat and feed grains.

§ 1445c. Omitted

CODIFICATION

Section, act Oct. 31, 1949, ch. 792, title I, § 108, as added Sept. 29, 1977, Pub. L. 95-113, title VIII, § 807, 91 Stat. 947, related to the price support program for the 1978 through 1981 crops of peanuts. See Effective and Termination Dates note below.

EFFECTIVE AND TERMINATION DATES

Section 807 of Pub. L. 95-113 provided in part that this section is effective for the 1978 through 1981 crops of peanuts.

§ 1445c-2. Price support for 1986 through 1990 crops of peanuts; loans, purchases, and other operations; national average quota support rate

Notwithstanding any other provision of law:

(1)(A) The Secretary shall make price support available to producers through loans, purchases, and other operations on quota peanuts for each of the 1986 through 1990 crops.

(B)(i) The national average quota support rate for the 1986 crop of quota peanuts shall be equal to the national average support rate established for the 1985 crop of quota peanuts, adjusted by the Secretary by a percentage equal to the percentage of any increase in the prices paid by producers for commodities and services, interest, taxes, and wage rates during the period beginning with calendar year 1981 and ending with calendar year 1985, as determined by the Secretary.

(ii) The national average quota support rate for each of the 1987 through 1990 crops of quota peanuts shall be the national average quota support rate for the immediately preceding crop, adjusted to reflect any increase, during the calendar year immediately preceding the marketing year for the crop for which a level of support is being determined, in the national average cost of peanut production, excluding any change in the cost of land, except that in no event shall the national average quota support rate for any such crop exceed by more than 6 percent the national average quota support rate for the preceding crop.

(C) The levels of support so announced shall not be reduced by any deductions for inspection, handling, or storage.

(D) The Secretary may make adjustments for location of peanuts and such other factors as are authorized by section 1423 of this title.

(E) The Secretary shall announce the level of support for quota peanuts of each crop not later than February 15 preceding the marketing year for the crop for which the level of support is being determined.

(2)(A) The Secretary shall make price support available to producers through loans, purchases, or other operations on additional peanuts for each of the 1986 through 1990 crops at such levels as the Secretary finds appropriate, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets, except that the Secretary shall set the support rate on additional peanuts at a level estimated by the Secretary to ensure that there are no losses to the Commodity Credit Corporation on the sale or disposal of such peanuts.

(B) The Secretary shall announce the level of support for additional peanuts of each crop not later than February 15 preceding the marketing year for the crop for which the level of support is being determined.

(3)(A)(i) In carrying out paragraphs (1) and (2), the Secretary shall make warehouse storage loans available in each of the three producing areas (described in section 1446.60 of title 7 of the Code of Federal Regulations (January 1, 1985)) to a designated area marketing association of peanut producers that is selected and approved by the Secretary and that is operated primarily for the purpose of conducting such loan activities. The Secretary may not make warehouse storage loans available to any cooperative that is engaged in operations or activities concerning peanuts other than those operations and activities specified in this section and section 1359 of this title.

(ii) Such area marketing associations shall be used in administrative and supervisory activities relating to price support and marketing activities under this section and section 1359 of this title.

(iii) Loans made under this subparagraph shall include, in addition to the price support value of the peanuts, such costs as the area marketing association reasonably may incur in carrying out its responsibilities, operations, and activities under this section and section 1359 of this title.

(B)(i) The Secretary shall require that each area marketing association establish pools and maintain complete and accurate records by area and segregation for quota peanuts handled under loan and for additional peanuts placed under loan, except that separate pools shall be established for Valencia peanuts produced in New Mexico. Bright hull and dark hull Valencia peanuts shall be considered as separate types for the purpose of establishing such pools.

(ii) Net gains on peanuts in each pool, unless otherwise approved by the Secretary, shall be distributed only to producers who placed peanuts in the pool and shall be distributed in proportion to the value of the peanuts placed in the pool by each producer. Net gains for peanuts in each pool shall consist of the following:

(I) For quota peanuts, the net gains over and above the loan indebtedness and other costs or losses incurred on peanuts placed in such pool plus an amount from the pool for additional peanuts, to the extent of the net gains from the sale for domestic food and related uses of additional peanuts in the pool for additional peanuts equal to any loss on disposition of all peanuts in the pool for quota peanuts.

(II) For additional peanuts, the net gains over and above the loan indebtedness and

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other costs or losses incurred on peanuts placed in the pool for additional peanuts less any amount allocated to offset any loss on the pool for quota peanuts as provided in subclause (I).

(4) Notwithstanding any other provision of this section:

(A) Any distribution of net gains on additional peanuts shall be first reduced to the extent of any loss by the Commodity Credit Corporation on quota peanuts placed under loan.

(B)(i) The proceeds due any producer from any pool shall be reduced by the amount of any loss that is incurred with respect to peanuts transferred from an additional loan pool to a quota loan pool under section 1358(s)(8) of this title.

(ii) Losses in area quota pools, other than losses incurred as a result of transfers from additional loan pools to quota loan pools under section 1358(s)(8) of this title, shall be offset by any gains or profits from pools in other production areas (other than separate type pools established under paragraph (3)(B)(i) for Valencia peanuts produced in New Mexico) in such manner as the Secretary shall by regulation prescribe.

(5) Notwithstanding any other provision of law, no price support may be made available by the Secretary for any crop of peanuts with respect to which poundage quotas have been disapproved by producers, as provided for in section 1358(u) of this title.

(Oct. 31, 1949, ch. 792, title I, § 108B, as added Dec. 23, 1985, Pub. L. 99-198, title VII, § 705, 99 Stat. 1439.)

EFFECTIVE AND TERMINATION DATES

Section 705 of Pub. L. 99-198 provided in part that this section is effective only for the 1986 through 1990 crops of peanuts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1359 of this title.

§ 1445d. Special wheat acreage grazing and hay program for 1978 through 1990 crop years

Notwithstanding any other provision of law—

(a) Authorization for program; acreage designation; payment

The Secretary is authorized to administer a special wheat acreage grazing and hay program (hereinafter in this section referred to as the "special program") in each of the crop years 1978 through 1990. If a special program is implemented, a producer shall be permitted to designate, under such regulations as established by the Secretary, a portion of the acreage on the farm intended to be planted to wheat, feed grains, or upland cotton for harvest, not in excess of 40 per centum thereof, or 50 acres, whichever is greater, which shall be planted to wheat (or some other commodity other than corn or grain sorghum) and used by the producer for grazing purposes or hay rather than for commercial grain production. A producer who elects to participate in the special program shall receive a payment as provided in subsection (c) of this section.

[See main edition for text of (b) to (f)]

(As amended Dec. 23, 1985, Pub. L. 99-198, title X, § 1015, 99 Stat. 1457.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198 substituted "1990" for "1985".

§ 1445e. Producer reserve program for wheat and feed grains

(a) Formulation and administration; safeguards

The Secretary shall formulate and administer a program under which producers of wheat and feed grains will be able to store wheat and feed grains when such commodities are in abundant supply, extend the time period for their orderly marketing, and provide for adequate, but not excessive, carryover stocks to ensure a reliable supply of the commodities. The Secretary shall establish safeguards to assure that wheat and feed grains held under the program shall not be utilized in any manner to unduly depress, manipulate, or curtail the free market. The authority provided by this section shall be in addition to other authorities available to the Secretary for carrying out producer loan and storage operations.

(b) Terms and conditions for loans

In carrying out the producer storage program, the Secretary shall provide original or extended price support loans for wheat and feed grains under terms and conditions designed to encourage producers to store wheat and feed grains for extended periods of time in order to promote orderly marketing when wheat or feed grains are in abundant supply. Loans made under this section shall be made at such level of support as the Secretary determines appropriate, except that the loan rate shall not be less than the then current level of support under the wheat and feed grain programs established under this subchapter. Among such other terms and conditions as the Secretary may prescribe by regulation, the program may provide for (1) repayment of such loans in not less than three years, with extensions as warranted by market conditions; (2) payments to producers for storage in such amounts and under such conditions as the Secretary determines appropriate to encourage producers to participate in the program; (3) a rate of interest as determined under subsection (c) of this section; (4) recovery of amounts paid for storage, and for the payment of additional interest or other charges if such loans are repaid by producers when the total amount of wheat or feed grains in storage under programs under this section is below the upper limits for such storage as set forth in clauses (A) and (B) of subsection (e)(2) of this section and the market price for wheat or feed grains is below the price levels determined under clause (5) of this sentence; and (5) conditions designed to induce producers to redeem and market the wheat or feed grains securing such loans without regard to the maturity dates thereof when-

ever the Secretary determines that the market price for the commodity has attained the higher of 140 percent of the nonrecourse loan rate for the commodity or the established price for such commodity, as determined under this subchapter. Whenever—

(A)(i) the total quantity of wheat stored under storage programs established under this section is less than 17 percent of the estimated total domestic and export usage of wheat during the then current marketing year for wheat, as determined by the Secretary; or

(ii) the total quantity of feed grains stored under storage programs established under this section is less than 7 percent of the estimated total domestic and export usage of feed grains during the then current marketing year for feed grains, as determined by the Secretary; and

(B) the market price of the commodity, as determined by the Secretary, does not exceed 140 percent of the nonrecourse loan rate for the commodity;

the Secretary shall encourage participation in the programs authorized under this section by offering producers increased storage payments and loan levels, interest waivers, or such other incentives as the Secretary determines necessary to maintain the total amount of storage under the programs at the levels specified in clauses (A) and (B). The Secretary shall ensure that producers are afforded a fair and equitable opportunity to participate in each producer storage program, taking into account regional differences in the time of harvest.

[*See main edition for text of* (c) *and* (d)]

(e) Announcement

(1) The Secretary shall announce the terms and conditions of the producer storage program as far in advance of making loans as practicable. In such announcement, the Secretary shall specify the quantity of wheat or feed grains to be stored under the program which the Secretary determines appropriate to promote the orderly marketing of such commodities, subject to the upper limits on the total quantity of wheat and feed grains that may be stored under storage programs established under this section set out in paragraph (2).

(2) Prior to the harvest of each crop of wheat and feed grains, the Secretary shall determine and establish upper limits on the total quantity of wheat and feed grains that may be stored under storage programs established under this section to be effective during the marketing year for such crop, as follows:

(A) The upper limit on the total quantity of wheat that may be stored under such programs shall not exceed 30 percent of the estimated total domestic and export usage of wheat during the marketing year for the crop of wheat, as determined by the Secretary.

(B) The upper limit on the total quantity of feed grains that may be stored under such programs shall not exceed 15 percent of the estimated total domestic and export usage of feed grains during the marketing year for the crop, as determined by the Secretary.

(C) Notwithstanding clauses (A) and (B), the Secretary may establish the upper limits at higher levels—not in excess of 110 percent of the levels determined under clauses (A) and (B)—if the Secretary determines that the higher limits are necessary to achieve the purposes of this section.

[*See main edition for text of* (f) *to* (i)]

(As amended Dec. 23, 1985, Pub. L. 99-198, title X, § 1012(a), 99 Stat. 1455.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198 in first sentence substituted "abudnant supply, extend" for "abundant supply and extend" and inserted ", and provide for adequate, but not excessive, carryover stocks to ensure a reliable supply of the commodities" after "for their orderly marketing".

Subsec. (b). Pub. L. 99-198 in third sentence substituted ", with extensions as warranted by market conditions" for "nor more than five years" in cl. (1), substituted "when the total amount of wheat or feed grains in storage under programs under this section is below the upper limits for such storage as set forth in clauses (A) and (B) of subsection (e)(2) of this section and the market price for wheat or feed grains is below" for "before the market price for wheat or feed grains has reached" in cl. (4), substituted "the higher of 140 percent of the nonrecourse loan rate for the commodity or the established price for such commodity, as determined under this subchapter" for "a specified level, as determined by the Secretary" in cl. (5), and at end added provisions requiring the Secretary to encourage participation in the programs authorized under this section by offering producers increased storage payments and loan levels, interest waivers, or such other incentives as the Secretary determines necessary to maintain total amount of storage at specified levels, whenever the total quantity of wheat and feed grains stored under this section is less than 17 and 7 percent, respectively, of the estimated total usage thereof during the then current marketing year, and the marketing price does not exceed 140 percent of the nonrecourse loan rate for the commodity, and added provision requiring the Secretary to ensure than producers are afforded a fair and equitable opportunity to participate in each producer storage program.

Subsec. (e). Pub. L. 99-198 designated existing provisions as par. (1), in par. (1), as so designated, inserted ", subject to the upper limits on the total quantity of wheat and feed grains that may be stored under storage programs established under this section set out in paragraph (2)" in second sentence, struck out third sentence which authorized the Secretary to place an upper limit of not less than seven hundred million bushels for wheat and one billion bushels for feed grains placed in the reserve, and added par. (2).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1012(a) of Pub. L. 99-198 provided in part that, except as provided in section 1012(b) of Pub. L. 99-198, [set out below], the amendments by section 1012(a) of Pub. L. 99-198 are effective beginning with the 1986 crops.

Section 1012(b) of Pub. L. 99-198 provided that: "The amendment made by subsection (a)(2)(B) of this section [amending cl. (4) of the third sentence of subsec. (b) of this section] shall take effect with respect to any loan made under section 110 of the Agricultural Act of 1949 (7 U.S.C. 1445e) the date for repayment of which occurs after the date of enactment of this Act [Dec. 23, 1985]."

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SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1445b–4, 4001, 4002 of this title.

§ 1445h. Supplemental set-aside and acreage limitation authority

Notwithstanding any other provision of law or prior announcement made by the Secretary to the contrary, the Secretary may announce and provide for a set-aside or acreage limitation program under section 1444e or 1445b–3 of this title for one or more of the 1986 through 1990 crops of wheat and feed grains if the Secretary determines that such action is in the public interest as a result of the imposition of restrictions on the export of any such commodity by the President or other member of the executive branch of the Federal Government. To carry out effectively a set-aside or acreage limitation program authorized under this section, the Secretary may make such modifications and adjustments in such program as the Secretary determines necessary because of any delay in instituting such program.

(As amended Dec. 23, 1985, Pub. L. 99–198, title X, § 1011, 99 Stat. 1454.)

AMENDMENTS

1985—Pub. L. 99–198 temporarily amended section generally, substituting provisions authorizing the Secretary to announce and provide for a set-aside or acreage limitation program under section 1444e or 1445b–3 of this title for one or more of the 1986 through 1990 crops of wheat and feed grains for provisions which authorized the Secretary to announce and provide for such a program under section 1444d(e) or 1445b–1(e) of this title for one or more of the crops of wheat and feed grains. See Effective and Termination Dates of 1985 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 1011 of Pub. L. 99–198 provided in part that the amendment by section 1011 of Pub. L. 99–198 is effective for the 1986 through 1990 crops of wheat and feed grains.

§ 1445i. Multiyear set-aside contracts for 1986 through 1990 crops of wheat, feed grains, upland cotton, and rice

Notwithstanding any other provision of law:

(1) The Secretary of Agriculture may enter into multiyear set-aside contracts for a period not to extend beyond the 1990 crops. Such contracts may be entered into only as a part of the programs in effect for the 1986 through 1990 crops of wheat, feed grains, upland cotton, and rice, and only producers participating in one or more of such programs shall be eligible to contract with the Secretary under this section. Producers agreeing to a multiyear set-aside agreement shall be required to devote the set-aside acreage to vegetative cover capable of maintaining itself through such period to provide soil protection, water quality enhancement, wildlife production, and natural beauty. Grazing of livestock under this section shall be prohibited, except in areas of a major disaster, as determined by the President, if the Secretary finds there is a need for such grazing as a result of such disaster. Producers entering into agreements under this section shall also agree to comply with all applicable State and local laws and regulations governing noxious weed control.

(2) The Secretary shall provide cost-sharing incentives to farm operators for the establishment of vegetative cover, whenever a multiyear set-aside contract is entered into under this section.

(3) The Secretary may issue such regulations as the Secretary determines necessary to carry out this section.

(4) The Secretary shall carry out the program authorized by this section through the Commodity Credit Corporation.

(Pub. L. 99–198, title X, § 1010, Dec. 23, 1985, 99 Stat. 1454.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Act of 1949 which is classified principally to this chapter. For complete classification of the 1949 Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

SUBCHAPTER III—NONBASIC AGRICULTURAL COMMODITIES

§ 1446. Price support levels for designated nonbasic agricultural commodities

The Secretary is authorized and directed to make available (without regard to the provisions of sections 1447 to 1449 of this title) price support to producers for tung nuts, soybeans, honey, milk, sugar beets, and sugar cane as follows:

(a) Repealed. Aug. 28, 1954, ch. 1041, title VII, § 709, 68 Stat. 912.

(b)(1) For each of the 1986 through 1990 crops of honey, the price of honey shall be supported through loans, purchases, or other operations as follows:

(A) For the 1986 crop, the loan and purchase level for honey shall be 64 cents per pound.

(B) For the 1987 crop, the loan and purchase level for honey shall be 63 cents per pound.

(C) For each of the 1988, 1989, and 1990 crops, the loan and purchase level for honey shall be the same as the level established for the preceding crop year reduced by 5 percent, except that such level may not be less than an amount equal to 75 percent of the simple average price received by producers of honey in the 5 preceding crop years, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period.

(2) The Secretary may permit a producer to repay a loan made to the producer under this subsection for a crop at a level that is the lesser of—

(A) the loan level determined for such crop; or

(B) such level as the Secretary determines will—

(i) minimize the number of loan forfeitures;

(ii) not result in excessive total stocks of honey;

(iii) reduce the costs incurred by the Federal Government in storing honey; and

(iv) maintain the competitiveness of honey in domestic and export markets.

(3)(A) If the Secretary determines that a person has knowingly pledged adulterated or imported honey as collateral to secure a loan made under this subsection, such person shall, in addition to any other penalties or sanctions prescribed by law, be ineligible for a loan, purchase, or payment under this subsection for the 3 crop years succeeding such determination.

(B) For purposes of subparagraph (A), honey shall be considered adulterated if—

(i) any substance has been substituted wholly or in part for such honey;

(ii) such honey contains a poisonous or deleterious substance that may render such honey injurious to health, except that in any case in which such substance is not added to such honey, such honey shall not be considered adulterated if the quantity of such substance in or on such honey does not ordinarily render it injurious to health; or

(iii) such honey is for any other reason unsound, unhealthy, unwholesome, or otherwise unfit for human consumption.

(c) Except as provided in subsection (d) of this section, the price of milk shall be supported at such level not in excess of 90 per centum nor less than 75 per centum of the parity price therefor as the Secretary determines necessary in order to assure an adequate supply of pure and wholesome milk to meet current needs, reflect changes in the cost of production, and assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs. Such price support shall be provided through the purchase of milk and the products of milk.

(d) Notwithstanding any other provision of law—

(1)(A) During the period beginning on January 1, 1986, and ending on December 31, 1990, the price of milk shall be supported as provided in this subsection.

(B) During the period beginning on January 1, 1986, and ending on December 31, 1986, the price of milk shall be supported at a rate equal to $11.60 per hundredweight for milk containing 3.67 percent milkfat.

(C)(i) During the period beginning on January 1, 1987, and ending on September 30, 1987, the price of milk shall be supported at a rate equal to $11.35 per hundredweight for milk containing 3.67 percent milkfat.

(ii) Except as provided in subparagraph (D), during the period beginning on October 1, 1987, and ending on December 31, 1990, the price of milk shall be supported at a rate equal to $11.10 per hundredweight for milk containing 3.67 percent milkfat.

(D)(i) Subject to clause (ii), if for any of the calendar years 1988, 1989, and 1990, the level of purchases of milk and the products of milk under this subsection (less sales under section 1427 of this title for unrestricted use), as estimated by the Secretary on January 1 of such calendar year, will exceed 5,000,000,000 pounds (milk equivalent), on January 1 of such calendar year, the Secretary shall reduce by 50 cents the rate of price support for milk as in effect on such date.

(ii) The rate of price support for milk may not be reduced under clause (i) unless—

(I) the milk production termination program under paragraph (3) achieved a reduction in the production of milk by participants in the program of at least 12,000,000,000 pounds during the 18 months of the program; or

(II) the Secretary submits to Congress a certification, including a statement of facts in support of the certification of the Secretary, that reasonable contract offers were extended by the Secretary under such program but such offers were not accepted by a sufficient number of producers making reasonable bids for contracts to achieve such a reduction in production.

(E) If for any of the calendar years 1988, 1989, and 1990, the level of purchases of milk and the products of milk under this subsection (less sales under section 1427 of this title for unrestricted use), as estimated by the Secretary on January 1 of such calendar year, will not exceed 2,500,000,000 pounds (milk equivalent), the Secretary shall increase by 50 cents the rate of price support for milk in effect on such date.

(F) The price of milk shall be supported through the purchase of milk and the products of milk.

(2)(A) During the period beginning on April 1, 1986, and ending on September 30, 1987, the Secretary shall provide for a reduction to be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use.

(B) The amount of the reduction under subparagraph (A) in the price received by producers shall be—

(i) the period beginning on April 1, 1986, and ending on December 31, 1986, 40 cents per hundredweight of milk marketed; and

(ii) during the first 9 months of 1987, 25 cents per hundredweight of milk marketed.

(C) The funds represented by the reduction in price, required under subparagraph (A) to be applied to the marketings of milk by a producer, shall be collected and remitted to the Commodity Credit Corporation, at such time and in such manner as prescribed by the Secretary, by each person making payment to a producer for milk purchased from such producer, except that in the case of a producer who markets milk of the producer's own production directly to consumers, such funds shall be remitted directly to the Corporation by such producer.

(D) The funds remitted to the Corporation under this paragraph shall be considered as included in the payments to a producer of milk for purposes of the minimum price provisions of the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amend-

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ments by the Agricultural Marketing Agreement Act of 1937.

(3)(A)(i) The Secretary shall establish and carry out under this paragraph a milk production termination program for the 18-month period beginning April 1, 1986.

(ii) Under the milk production termination program required under this subparagraph, the Secretary, at the request of any producer of milk in the United States who submits to the Secretary a bid, may offer to enter into a contract with the producer for the purpose of terminating the production of milk by the producer in return for a payment to be made by the Secretary.

(iii) For the 18-month period for which the milk production termination program under this subparagraph is in effect, the Secretary shall—

(I) as soon as practicable, determine the total number of dairy cattle the Secretary estimates will be marketed for slaughter as a result of such program; and

(II) by regulation specify marketing procedures to ensure that greater numbers of dairy cattle slaughtered as a result of the production termination program provided for in this section shall be slaughtered in each of the periods of April through August 1986, and March through August 1987 than for the other months of the program. Such procedures also shall ensure that such sales of dairy cattle for slaughter shall occur on a basis estimated by the Secretary that maintains historical seasonal marketing patterns. During such 18-month period, the Secretary shall limit the total number of dairy cattle marketed for slaughter under the program in excess of the historical dairy herd culling rate to no more than 7 percent of the national dairy herd per calendar year.

(iv) Each contract made under this subparagraph shall provide that—

(I) the producer shall sell for slaughter or for export all the dairy cattle in which such producer owns an interest;

(II) during a period of 3, 4, or 5 years, as specified by the Secretary in each producer contract and beginning on the day the producer completes compliance with subclause (I), the producer neither shall acquire any interest in dairy cattle or in the production of milk nor acquire, or make available to any person, any milk production capacity of a facility that becomes available because of compliance by a producer with such subclause unless the Secretary shall by regulation otherwise permit; and

(III) if the producer fails to comply with such contract, the producer shall repay to the Secretary the entire payment received under the contract, including simple interest payable at a rate prescribed by the Secretary, which shall, to the extent practicable, reflect the cost to the Corporation of its borrowings from the Treasury of the United States, commencing on the date payment is first received under such contract.

(v) Any producer of milk who seeks to enter into a contract for payments under this paragraph shall provide the Secretary with (I) evidence of such producer's marketing history; (II) the size and composition of the producer's dairy herd during the period the marketing history is determined; and (III) the size and composition of the producer's dairy herd at the time the bid is submitted, as the Secretary deems necessary and appropriate.

(vi) Except as provided in subparagraph (D), no producer who commenced marketing of milk in the 15-month period ending March 31, 1986, shall be eligible to enter into a contract for payments under this subparagraph.

(vii) A contract entered into under this paragraph by a producer who by reason of death cannot perform or assign such contract may be performed or assigned by the estate of such producer.

(B) The Secretary may establish and carry out a milk diversion or milk production termination program for any of the calendar years 1988, 1989, and 1990 as necessary to avoid the creation of burdensome excess supplies of milk or milk products.

(C) In setting the terms and conditions of any milk diversion or milk production termination under this paragraph and of each contract made under this subparagraph, the Secretary shall take into account any adverse effect of such program or contracts on beef, pork, and poultry producers in the United States and shall take all feasible steps to minimize such effect.

(D) A producer who commenced marketing milk after December 31, 1984, shall be eligible to enter into a contract for payments under this subparagraph if such producer's entire milk production facility and entire dairy herd were transferred to the producer by reason of a gift from, or the death of, a member or members of the family of the producer. The term "member of the family of the producer" means (i) an ancestor of the producer, (ii) the spouse of the producer, (iii) a lineal descendant of the producer, or the producer's spouse, or a parent of the producer, or (iv) the spouse of any such lineal descendant.

(E) Application for payment shall be made by producers through the county committees established under section 590h(b) of title 16.

(F) to (J) Repealed. Pub. L. 99-198, title I, § 101(b)(1), (2), Dec. 23, 1985, 99 Stat. 1363, 1365.

(K) Redesignated (E).

(L) Repealed. Pub. L. 99-198, title I, § 101(b)(2), Dec. 23, 1985, 99 Stat. 1365.

(M) A contract entered into under this paragraph by a producer who by reason of death cannot perform or assign such contract may be performed or assigned, in accordance with subparagraph (L), by the estate of such producer.

(N) If the provisions for reductions in the price received for milk marketed for commercial use as provided for in paragraph (2) are held to be invalid by any court, or the Secretary is restrained or enjoined by any court from implementing such provisions, the Secretary shall immediately suspend making any diversion payments under this paragraph for

the period beginning with the date of such court action and shall resume making such payments only if such court action is overruled, stayed, or terminated.

(4) Each producer who markets milk and each person required to make payment to the Corporation under this subsection shall keep such records and make such reports, in such manner, as the Secretary determines necessary to carry out this subsection. The Secretary may make such investigations as the Secretary deems necessary for the effective administration of this subsection or to determine whether any person subject to the provisions of this subsection has engaged or is engaged or is about to engage in any act or practice that constitutes or will constitute a violation of any provision of this subsection or regulation issued under this subsection. For the purpose of such investigation, the Secretary may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of cuntumacy by, or refusal to obey a subpena to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of records. Such court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony on the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district of which such person is an inhabitant or wherever such person may be found.

(5)(A) The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any provision of this subsection or any regulation issued under this subsection. Any such civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action. The Secretary is not required, however, to refer to the Attorney General minor violations of this subsection whenever the Secretary believes that the administration and enforcement of this subsection would be adequately served by suitable written notice or warning to any person committing such violation.

(B)(i) Each person as to whom there is a failure to make a reduction in the price of milk received by such person as required by paragraph (2) or who fails to remit to the Corporation the funds required to be collected and remitted by paragraph (2)(B) shall be liable, in addition to any amount due, to a marketing penalty at a rate equal to the support price for milk in effect at the time the failure occurs on the quantity of milk as to which the failure applies. The Secretary may reduce any such marketing penalty in such amount as the Secretary determines equitable in any case in which the Secretary determines that the failure was unintentional or without knowledge on the part of the person concerned. Each person who knowingly violates any other provision of this subsection, or any regulation issued under this subsection, shall be liable for a civil penalty of not more than $1,000 for each such violation. Any penalty provided for under this subparagraph shall be assessed by the Secretary after notice and opportunity for a hearing.

(ii) Each person who buys, from a producer with respect to whom there is in effect at the time of such sale a contract entered into under paragraph (3), one or more dairy cattle sold for slaughter or export, who knows that such cattle are sold for slaughter or export, and who fails to cause the slaughter or export of such cattle within a reasonable time after receiving such cattle shall be liable for a civil penalty of not more than $5,000 with respect to each of such cattle.

(iii) Each person who retains or acquires an interest in dairy cattle or the production of milk in violation of a contract entered into under this paragraph shall be liable, in addition to any amount due under paragraph (3)(A)(iv), to a marketing penalty on the quantity of milk produced during the period in which such ownership is prohibited under the contract. Such penalty shall be computed at the rate or rates of the support price for milk in effect during the period in which the milk production occurred.

(iv) Each person who makes a false statement in a bid submitted under paragraph (3) as to (I) the marketings of milk for commercial use by the producer, or (II) the size or composition of the dairy herd that produced such marketings, or (III) the size or composition of the dairy herd at the time the bid is submitted shall be subject, in addition to any amount due under paragraph (3)(A)(iv) or clause (iii) of this subparagraph, to a civil penalty of $5,000 for each head of cattle to which such statement applied.

(v) Each person who makes a false statement as to the number of dairy cattle that was sold for slaughter or export under a contract under paragraph (3)(A) shall be subject, in addition to any amount due under paragraph (3)(A)(iv) or clause (iii) of this subparagraph, to a civil penalty of not more than $5,000 for each head of cattle to which such statement applied.

(C) Any person against whom a penalty is assessed under subparagraph (B) may obtain review of such penalty in an appropriate district court of the United States by filing a civil action in such court not later than thirty days after such penalty is imposed. The Secretary shall promptly file in such court a certified copy of the record upon which the penalty is based. The findings of the Secretary may be set aside only if found to be unsupported by substantial evidence.

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(D) The district courts of the United States shall have jurisdiction to review and enforce any penalty imposed under subparagraph (B).

(E) The remedies provided in this paragraph shall be in addition to, and not exclusive of, other remedies that may be available.

(F) In carrying out this subsection, the Secretary may, as the Secretary deems appropriate—

(i) use the services of State and county committees established under section 590h(b) of title 16; and

(ii) enter into agreements to use, on a reimbursable or nonreimbursable basis, the services of administrators of Federal milk marketing orders and State milk marketing programs.

(6) The term "United States" as used in paragraphs (2) and (3) of this subsection means the forty-eight contiguous States in the continental United States.

(7) The Secretary shall carry out this subsection through the Commodity Credit Corporation.

(e), (f) Omitted [1]

[*See main edition for text of (g) and (h)*]

(i)(1)(A) The Secretary shall support the price of soybeans through loans and purchases in each of the 1986 through 1990 marketing years as provided in this subsection.

(B) The support price for the 1986 and 1987 crops of soybeans shall be $5.02 per bushel.

(C) The support price for each of the 1988 through 1990 crops of soybeans shall be established at a level equal to 75 percent of the simple average price received by producers for soybeans in the preceding 5 marketing years, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, except that the level of price support may not be reduced by more than 5 percent in any year and in no event below $4.50 per bushel.

(2) If the Secretary determines that the level of loans or purchases computed for a marketing year under paragraph (1) would discourage the exportation of soybeans and cause excessive stocks of soybeans in the United States, the Secretary may reduce the level of loans and purchases for soybeans for the marketing year by the amount the Secretary determines necessary to maintain domestic and export markets for soybeans, except that the level of loans and purchases may not be reduced by more than 5 percent in any year and in no event below $4.50 per bushel. Any reduction in the loan and purchase level for soybeans under this paragraph shall not be considered in determining the loan and purchase level for soybeans for subsequent years.

(3)(A) If the Secretary determines that such action will assist in maintaining the competitive relationship of soybeans in domestic and export markets after taking into consideration the cost of producing soybeans, supply and demand conditions, and world prices for soybeans, the Secretary may permit a producer to repay a loan made under this subsection for a crop at a level that is the lesser of—

(i) the loan level determined for such crop; or

(ii) the prevailing world market price for soybeans, as determined by the Secretary.

(B) If the Secretary makes the determination described in subparagraph (A), the Secretary shall prescribe by regulation—

(i) a formula to define the prevailing world market price for soybeans; and

(ii) a mechanism by which the Secretary shall periodically announce the prevailing world market price for soybeans.

(4) For purposes of this subsection, the soybean marketing year is the 12-month period beginning on September 1 and ending on August 31.

(5)(A) The Secretary shall make a preliminary announcement of the level of price support for soybeans for a marketing year not earlier than 30 days before the beginning of the marketing year. The announced level shall be based on the latest information and statistics available at the time of the announcement.

(B) The Secretary shall make a final announcement of such level as soon as complete information and statistics are available on prices for the 5 years preceding the beginning of the marketing year. Such final level of support may not be announced later than October 1 of the marketing year with respect to which the announcement is made. The final level of support may not be less than the level of support provided for in the preliminary announcement.

(6) Notwithstanding any other provision of law—

(A) the Secretary shall not require participation in any production adjustment program for soybeans or any other commodity as a condition of eligibility for price support for soybeans;

(B) the Secretary shall not permit the planting of soybeans for harvest on reduced acreage or acreage set aside or diverted from production under any other Federal Government program;

(C) the Secretary may not authorize payments to producers to cover the cost of storing soybeans; and

(D) soybeans may not be considered an eligible commodity for any reserve program.

(j)(1) The price of each of the 1986 through 1990 crops of sugar beets and sugarcane, respectively, shall be supported in accordance with this subsection.

(2) The Secretary shall support the price of domestically grown sugarcane through nonrecourse loans at such level as the Secretary determines appropriate but not less than 18 cents per pound for raw cane sugar, except that such level may be increased under paragraph (4).

(3) The Secretary shall support the price of domestically grown sugar beets through nonrecourse loans at such level as the Secretary determines is fair and reasonable in relation to the loan level for sugarcane.

[1] See 1977 Amendment notes below.

(4)(A) The Secretary may increase the support price for each of the 1986 through 1990 crops of domestically grown sugarcane and sugar beets from the price determined for the preceding crop based on such factors as the Secretary determines appropriate, including changes (during the 2 crop years immediately preceding the crop year for which the determination is made) in the cost of sugar products, the cost of domestic sugar production, and other circumstances that may adversely affect domestic sugar production.

(B) If the Secretary makes a determination not to increase the support price under subparagraph (A), the Secretary shall submit a report containing the findings, decision, and supporting data for such determination to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(5) The Secretary shall announce the loan rate to be applicable during any fiscal year under this subsection as far in advance of the beginning of that fiscal year as is practicable consistent with the purposes of this subsection.

(6) Loans under this subsection during any fiscal year shall be made available not earlier than the beginning of such fiscal year and shall mature before the end of such fiscal year.

(k)(1) If the Secetary [2] determines that the producers on a farm are prevented from planting any portion of the acreage on the farm intended for peanuts, soybeans, sugar beets, or sugarcane to peanuts, soybeans, sugar beets, sugarcane, or other nonconserving crops because of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the Secretary may make a prevented planting disaster payment to the producers in an amount equal to the product obtained by multiplying—

(A) the number of acres so affected but not to exceed the acreage planted to peanuts, soybeans, sugar beets, or sugarcane for harvest (including any acreage that the producers were prevented from planting to such commodity or to other nonconserving crops in lieu of peanuts, soybeans, sugar beets, or sugarcane because of drought, flood or other natural disaster, or other condition beyond the control of the producers) in the immediately preceding year, by

(B) 75 percent of the farm program payment yield established by the Secretary, by

(C) a payment rate equal to 50 percent of the loan and purchase level for the crop.

(2) If the Secretary determines that because of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the total quantity of peanuts, soybeans, sugar beets, or sugarcane that the producers are able to harvest on any farm is less than the result of multiplying 60 percent of the farm program payment yield established by the Secretary for such crop by the acreage planted for harvest for such crop, the Secretary may make a reduced yield disaster payment to the producers at a rate equal to 50 percent of the loan and purchase level for the crop for the deficiency in production below 60 percent for the crop.

(3) The Secretary may make such adjustments in the amount of payments made available under this paragraph with respect to an individual farm so as to assure the equitable allotment of such payments among producers, taking into account other forms of Federal disaster assistance provided to the producers for the crop involved.

(As amended Nov. 29, 1983, Pub. L. 98-180, title I, § 102(a), 97 Stat. 1128; Oct. 1, 1985, Pub. L. 99-114, § 1, 99 Stat. 488; Nov. 15, 1985, Pub. L. 99-157, § 1, 99 Stat. 818; Dec. 13, 1985, Pub. L. 99-182, § 1, 99 Stat. 1173; Dec. 23, 1985, Pub. L. 99-198, title I, § 101(a)-(e), title VIII, § 801, title IX, § 901, title X, §§ 1008, 1041, 99 Stat. 1362, 1363, 1365, 1441, 1443, 1452, 1464.)

REFERENCES IN TEXT

The Agricultural Adjustment Act, as reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, referred to in subsec. (d)(2)(D), is title I of act May 12, 1933, ch. 25, 48 Stat. 31, as amended, which is classified generally to chapter 26 (§ 601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 601 of this title and Tables.

AMENDMENTS

1985—Pub. L. 99-198, §§ 801(1), 901(1), in provisions preceding subsec. (a), temporarily reenacted without change the amendments made in 1977 by sections 901(1) and 902(1) of Pub. L. 95-113 and in 1981 by sections 801(1) and 901(1) of Pub. L. 97-98, which inserted references to soybeans, sugar beets, and sugar cane. See Effective and Termination Dates of Amendments notes for 1985, 1981, and 1977, respectively, set out below.

Subsec. (b). Pub. L. 99-198, § 1041, amended subsec. (b) generally, temporarily substituting provisions for loans, purchases and other price supports for the 1986 through 1990 crops of honey, and repayment of loans under this subsection, as well as penalties for pledging adulterated or imported honey as collateral to secure such loans, for provisions for support of the price of honey through loans, purchases or other operations, without any crop year restrictions, at a level not in excess of 90 per centum nor less than 60 per centum of the parity price thereof, and struck out provisions for price support for tung nuts through the 1976 crop year. See Effective and Termination Dates of 1985 Amendments note below.

Subsec. (c). Pub. L. 99-198, § 101(d), substituted "Except as provided in subsection (d) of this section, the price" for "The price".

Subsec. (d)(1). Pub. L. 99-198, § 101(a), in amending par. (1) generally, substituted provisions adjusting milk price support levels for calendar years 1986 through 1990 by gradually reducing the price support from $11.60 per hundredweight to $11.10 per hundredweight, providing for adjustments of 50 cents per hundredweight in the support level for calendar years 1988 through 1990 depending on projected sales levels for provisions setting price support levels for calendar years 1983 through 1985 by gradually reducing the price support from $13.10 per hundredweight to $12.60 per hundredweight, and providing for adjustments of 50 cents per hundredweight in the support level for twelve month periods beginning on April 1, 1985 and/or July 1, 1985, depending on projected sales levels.

Subsec. (d)(1)(B). Pub. L. 99-182 substituted "December 31, 1985" for "December 13, 1985".

Pub. L. 99-157 substituted "December 13, 1985" for "November 15, 1985".

[2] So in original. Probably should be "Secretary".

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Pub. L. 99-114 substituted "November 15, 1985" for "September 30, 1985".

Subsec. (d)(2). Pub. L. 99-198, § 101(a), in amending par. (2) generally, substituted provisions for a reduction in the price received by producers for all milk produced in the United States and marketed for commercial use in an amount of 40 cents per hundredweight for the period between Apr. 1, 1986, and Dec. 31, 1986, and 25 cents per hundredweight during the first 9 months of 1987 for provisions for a reduction of 50 cents per hundredweight in such price effective for the period beginning with the first day of the first calendar month following Nov. 29, 1983, and ending on Mar. 31, 1985, and struck out provisions relating to the continued applicability of pars. (2) to (7) of this subsection between Nov. 29, 1983, and the last day of November, 1983, and the inapplicability of sections 4501 to 4513 of this title to prior deductions or collections under this subsection, and provisions that to the extent that funds collected under this paragraph were inadequate to make payments to producers under par. (3), such payments had to be made using otherwise available funds.

Subsec. (d)(3)(A). Pub. L. 99-198, § 101(b)(1), in amending subpar. (A) generally, substituted provisions for a milk production termination program for the 18-month period beginning Apr. 1, 1986, for provisions for a milk diversion program under which the Secretary had to offer to enter into a contract, at any time up to Feb. 1, 1984, with any producer of milk in the United States to reduce the quantity of commercially marketed milk during the 15-month period beginning Jan. 1, 1984.

Subsec. (d)(3)(B). Pub. L. 99-198, § 101(b)(1), in amending subpar. (B) generally, substituted provisions authorizing the Secretary to establish and carry out a milk diversion or milk production termination program for any of the calendar years 1988, 1989 and 1990 for provisions which had enumerated the requirements for contracts between the Secretary and any domestic producer of milk to reduce the quantity of commercially marketed milk during the 15-month period beginning Jan. 1, 1984.

Subsec. (d)(3)(C). Pub. L. 99-198, § 101(b)(1), in amending subsec. (C) generally, substituted provisions requiring the Secretary to take into account any adverse effect of any milk diversion or milk production program or contracts on beef, pork and poultry producers in the United States and to take all feasible steps to minimize such effect for provisions requiring the Secretary to pay to producers complying with such contracts an amount equal to the product of $10 per hundredweight and the amount, measured in hundredweights, by which the quantity of milk marketed by such producer for commercial use during the period specified in such contract was less than the quantity of milk marketed by such producer for commercial use during the marketing history period.

Subsec. (d)(3)(D). Pub. L. 99-198, § 101(b)(1), in amending subpar. (D) generally, substituted provisions establishing eligibility of producers who have acquired their entire milk production facility and dairy herd by gift or inheritance from family member or members for provisions prohibiting payments to producers with respect to whom any reduction in the quantity of milk did not meet specified percentage guidelines.

Subsec. (d)(3)(E). Pub. L. 99-198, § 101(b)(1), (3), struck out subpar. (E) which specified conditions under which the Secretary could modify contracts entered into under this paragraph, and redesignated subpar. (K) as (E).

Subsec. (d)(3)(F). Pub. L. 99-198, § 101(b)(1), struck out subpar. (F) which required domestic producers of milk seeking to enter into contracts for diversion payments to provide the Secretary with evidence of such producer's marketing history, as defined by this subparagraph, which the Secretary could adjust to take into account natural disasters or other conditions and factors where necessary.

Subsec. (d)(3)(G). Pub. L. 99-198, § 101(b)(1), struck out subpar. (G) which provided that no marketing history could be assigned to any producer who commenced marketing milk after Dec. 31, 1982, except as provided in subpar. (H).

Subsec. (d)(3)(H). Pub. L. 99-198, § 101(b)(2), struck out subpar. (H) which provided that a producer's marketing history could not be transferred to another person unless the producer's entire milk production facility and dairy herd were transferred by reason of the death of the producer, a gift by the producer, or to a member or members of the family of the producer.

Subsec. (d)(3)(I). Pub. L. 99-198, § 101(b)(2), struck out subpar. (I) which provided that eligibility for diversion payments would be determined on the basis of the marketing history provided for under subpar. (F).

Subsec. (d)(3)(J). Pub. L. 99-198, § 101(b)(2), struck out subpar. (J) which provided for quarterly diversion payments to eligible producers who were able to demonstrate compliance with the terms of the contract with the Secretary for reduction in commercial marketing of milk.

Subsec. (d)(3)(K). Pub. L. 99-198, § 101(b)(3), redesignated subpar. (K) as (E).

Subsec. (d)(3)(L). Pub. L. 99-198, § 101(b)(2), struck out subpar. (L) which provided conditions under which a producer could assign a contract entered into under this paragraph.

Subsec. (d)(3)(O). Pub. L. 99-198, § 101(b)(2), struck out subpar. (O) which authorized the Secretary to adjust the producer's diversion payments to reflect the composition of milk marketed during the marketing history period, in the event of substantial deviation in the composition of milk marketed after that period.

Subsec. (d)(5)(B)(i). Pub. L. 99-198, § 101(c), designated existing provisions as cl. (I), struck out "(i)" after "Each person", substituted "or who fails to remit" for ", (ii) who fails to remit", struck out ", or (iii) who fails to make the reduction in marketings required by a contract under paragraph (3)" before "shall be liable", and added cls. (ii) to (v).

Subsec. (d)(7). Pub. L. 99-198, § 101(e), added par. (7).

Subsec. (i). Pub. L. 99-198, § 801(2), added subsec. (i).

Subsec. (j). Pub. L. 99-198, § 901(2), added subsec. (j).

Subsec. (k). Pub. L. 99-198, § 1008, temporarily added subsec. (k). See Effective and Termination Dates of 1985 Amendment note below.

1983—Subsec. (d). Pub. L. 98-180 amended subsec. (d) generally, substituting provision designed to adjust milk production to levels consistent with the national demand for milk and milk products by reducing the price support to $12.60 per hundredweight, with provision for further increase or decrease depending on volume, providing a 50 cents reduction per hundredweight in the price on all milk produced in the United States and marketed by producers for commercial use, and establishing a milk diversion program to reduce milk production for provision which kept the price support at $13.10 per hundredweight and authorized the Secretary to collect $1.00 from farmers for every hundredweight of production sold, with the first 50 cents, payable beginning Oct. 1, 1982, to be nonrefundable, and the second 50 cents, payable beginning Apr. 1, 1983, refundable if the farmer could demonstrate reduced commercial marketings from such marketings during a defined base period.

1977—Pub. L. 95-113, §§ 901(1), 902(1), inserted references to soybeans, sugar beets, and sugar cane in the provisions preceding subsec. (a).

Subsec. (c). Pub. L. 95-113, § 203(1), substituted the period Oct. 1, 1977, through Mar. 31, 1979, for the period Aug. 10, 1973, through Mar. 31, 1975, as the period during which the price of milk shall be supported at not less than 80 per centum of parity.

Subsec. (d). Pub. L. 95-113, § 203(2), added subsec. (d).

Subsecs. (e), (f). Pub. L. 95-113, §§ 901(2), 902(2), temporarily added subsecs. (e) and (f), respectively.

See Effective and Termination Dates of 1977 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 101(f) of Pub. L. 99-198 provided that: "The provisions of this section [amending subsecs. (c) and (d) of this section] shall become effective January 1, 1986."

Section 801 of Pub. L. 99-198 provided in part that the amendment by section 801 of Pub. L. 99-198 is effective only for the 1986 through 1990 crops of soybeans.

Section 901 of Pub. L. 99-198 provided in part that the amendment by section 901 of Pub. L. 99-198 is effective only for the 1986 through 1990 crops of sugar beets and sugarcane.

Section 1008 of Pub. L. 99-198 provided in part that the amendment by section 1008 of Pub. L. 99-198 if effective only for the 1985 through 1990 crops of peanuts, soybeans, sugar beets, and sugarcane.

Section 1041 of Pub. L. 99-198 provided in part that the amendment of subsec. (b) of this section by section 1041 of Pub. L. 99-198 is effective only for the 1986 through 1990 crops of honey.

EFFECTIVE AND TERMINATION DATES OF 1977 AMENDMENT

Section 901 of Pub. L. 95-113 provided in part that the amendment by section 901 of Pub. L. 95-113 is effective only with respect to the 1978 through 1981 crops of soybeans.

Section 902 of Pub. L. 95-113 provided in part that the amendment by section 902 of Pub. L. 95-113 is effective only with respect to the 1977 and 1978 crops of sugar beets and sugar cane.

Amendment by Pub. L. 95-113 effective Oct. 1, 1977, except as otherwise specifically provided, see section 1901 of Pub. L. 95-113, set out as a note under section 1307 of this title.

APPLICATION OF SUPPORT PRICE FOR MILK

Section 103 of Pub. L. 99-198 provided that: "For purposes of supporting the price of milk under section 201(d) of the Agricultural Act of 1949 [7 U.S.C. 1446(d)], the Secretary of Agriculture may not take into consideration any market value of whey."

AVOIDANCE OF ADVERSE EFFECT OF MILK PRODUCTION TERMINATION PROGRAM ON BEEF, PORK, AND LAMB PRODUCERS

Section 104 of Pub. L. 99-198 provided that: "To minimize the adverse effect of the milk production termination program on beef, pork, and lamb producers in the United States during the 18-month period for which such program is in effect under section 201(d) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)), in such period—

"(1) the Secretary of Agriculture shall use funds available for the purposes of clause (2) of section 32 of the Act entitled 'An Act to amend the Agricultural Adjustment Act, and for other purposes' (7 U.S.C. 612c), approved August 14, 1935, including the contingency funds appropriated under such section 32, and other funds available to the Secretary under the commodity distribution and other nutrition programs of the Department of Agriculture, and including funds available through the Commodity Credit Corporation, to purchase and distribute 200,000,000 pounds of red meat in addition to those quantities normally purchased and distributed by the Secretary. Such purchases by the Secretary shall not reduce purchases of any other agricultural commodities under section 32;

"(2) the Secretary of Agriculture shall use funds available through the Commodity Credit Corporation to purchase 200,000,000 pounds of red meat, in addition to those quantities normally purchased and distributed by the Secretary, and to make such meat available—

"(A) to the Secretary of Defense, on a nonreimbursable basis, for use in commissaries on military installations located outside of the United States; or

"(B) for export under the authority of any law in effect on or after the date of the enactment of this Act [Dec. 23, 1985];

"(3) the Secretary of Defense and other Federal agencies, to the maximum extent practicable, shall use increased quantities of red meat to meet the food needs of the programs that they administer, and State agencies are encouraged to cooperate in such effort; and

"(4) the Secretary of Agriculture shall encourage the consumption of red meat by the public."

CIRCUMVENTION OF HISTORICAL DISTRIBUTION OF MILK

Section 107 of Pub. L. 99-198 provided that: "The Secretary of Agriculture shall—

"(1) monitor the Commodity Credit Corporation purchases of the products of milk during 1986 and 1987; and

"(2) report to Congress, on a quarterly basis, on disruptions of, or attempts by handlers or cooperative marketing associations to circumvent, the historical distribution of milk among processors during the milk production termination program."

APPLICATION OF 1985 AMENDMENTS

Section 108 of subtitle A (§§ 101-108) of title I of Pub. L. 99-198 provided that: "The amendments made by this subtitle [enacting section 1446c-2 of this title, amending subsecs. (c) and (d) of this section, and enacting provisions set out as notes above] shall not affect any liability of any person under section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446) as in effect before the date of the enactment of this Act [Dec. 23, 1985]."

NATIONAL COMMISSION ON DAIRY POLICY

Subtitle D, (§§ 141-146) of title I of Pub. L. 99-198, provided that:

"FINDINGS AND DECLARATION OF POLICY

"SEC. 141. (a) Congress finds that—

"(1) the Federal program established to support the price of milk marketed by producers in the United States was created to provide price and income protection for milk producers as well as to assure consumers of an adequate supply of milk and dairy products at reasonable prices;

"(2) the milk production industry in the United States is composed primarily of small- and medium-sized family farm operations;

"(3) consumers in the United States benefit financially from a milk price support program that prohibits large fluctuations in the price and supply of milk and dairy products;

"(4) consumers in the United States also benefit financially from the current structure of the domestic milk production industry; and

"(5) the Office of Technology Assessment, in its report entitled 'Technology, Public Policy, and the Changing Structure of American Agriculture', found that larger milk production operations already enjoy a major advantage in the production of milk and that, under current Federal policy, the development and use of new technologies will permit a continued trend toward fewer and larger milk production operations throughout the country.

"(b) It is hereby declared to be the policy of Congress to respond to the development of new technologies in the domestic milk production industry by reviewing the present milk price support program and its alternatives, and by adopting such policies as are needed to prevent significant surplus production in the future while ensuring that the current small- and

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medium-sized family farm structure of such industry will be preserved for new generations of producers and consumers alike.

"ESTABLISHMENT OF COMMISSION

"SEC. 142. (a) There is hereby established a National Commission on Dairy Policy, which shall study and make recommendations concerning the future operation of the Federal program established to support the price of milk marketed by producers in the United States.

"(b) The Commission shall be composed of eighteen members who are engaged in the commercial production of milk in the United States, to be appointed by the Secretary of Agriculture. Not fewer than twelve members shall be appointed from nominations submitted to the Secretary by the following Members of Congress, after consultation with the other Members of Congress who sit on the specified committee of the respective House of Congress:

"(1) The Chairman of the Committee on Agriculture of the House of Representatives.

"(2) The ranking minority member of the Committee on Agriculture of the House of Representatives.

"(3) The Chairman of the Committee on Agriculture, Nutrition, and Forestry of the Senate.

"(4) The ranking minority member of the Committee on Agriculture, Nutrition, and Forestry of the Senate.

Each such Member of Congress shall make not fewer than eighteen such nominations for appointment to the Commission, but not more than two such nominations for any particular vacancy on the Commission. The Secretary shall appoint not fewer than three individuals from among the nominations submitted by each such Member of Congress. Each member of the Commission shall represent a milk-producing region of the United States. A region may be made up of more than one State and may be represented by more than one member of the Commission. In making such appointments, the Secretary shall take into account, to the extent practicable, the geographical distribution of milk production volume throughout the United States. In determining geographical representation, whole States shall be considered as a unit.

"(c) A vacancy on the Commission shall be filled in the manner in which the original appointment was made.

"(d) The Commission shall elect a chairman from among the members of the Commission.

"(e) The Commission shall meet at the call of the chairman or a majority of the members of the Commission.

"STUDY AND RECOMMENDATIONS

"Sec. 143. (a) The National Commission on Dairy Policy shall study—

"(1) the current Federal price support program for milk;

"(2) alternatives to such program;

"(3) the future functioning of such program;

"(4) new technologies that will become a part of the milk production industry before the end of this century;

"(5) the effect that developing technologies will have on surplus milk production; and

"(6) the future structure of the milk production industry.

In conducting such study, the Commission shall consider, among other things, how effective the current Federal price support program for milk will be in preventing significant surpluses of dairy products in the future, how well such program will respond to the challenges to the family farm structure of the milk production industry created by developing technologies, and whether or not a better response to those challenges could be achieved through modifications or revisions of current Federal policy.

"(b) On the basis of its study, the Commission shall make findings and develop recommendations for consideration by the Secretary of Agriculture and Congress with respect to the future operation of the Federal price support program for milk.

"(c) The Commission shall submit to the Secretary of Agriculture and Congress, not later than March 31, 1987, a report containing the results of its study and recommendations based on such results.

"ADMINISTRATION

"SEC. 144. (a) The heads of executive agencies, the General Accounting Office, the Office of Technology Assessment, and the Congressional Budget Office, to the extent permitted by law, shall provide to the National Commission on Dairy Policy such information as the Commission may require to carry out its duties and functions.

"(b) Members of the Commission shall serve without compensation for work on the Commission. While away from their homes or regular places of business in the performance of duties of the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service under section 5703 of title 5 of the United States Code.

"(c) To the extent there are sufficient funds available to the Commission in advance under section [139][sic, probably should be '145'], and subject to such rules as may be adopted by the Commission, the Commission, without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to the classification and General Schedule pay rates, may—

"(1) appoint and fix the compensation of a director; and

"(2) appoint and fix the compensation of such additional personnel as the Commission determines necessary to assist it to carry out its duties and functions.

"(d) On the request of the Commission, the heads of executive agencies, the General Accounting Office, and the Office of Technology Assessment may furnish the Commission with such personnel and support services as the head of the agency, or office, and the chairman of the Commission agree are necessary to assist the Commission to carry out its duties and functions. The Commission shall not be required to pay or reimburse any agency or office for personnel and support services provided under this subsection.

"(e) The Commission shall be exempt from sections 7(d), 10(e), 10(f), and 14 of the Federal Advisory Committee Act (5 U.S.C. App.).

"(f) The Commission shall be exempt from the requirements of sections 4301 through 4305 of title 5 of the United States Code.

"FINANCIAL SUPPORT

"SEC. 145. (a) Following the appointment or designation of the members of the National Commission on Dairy Policy, notwithstanding the provisions of section 1342 of title 31 of the United States Code, the Secretary of Agriculture may receive on behalf of the Commission, from persons, groups, and entities within the United States, contributions of money and services to assist the Commission to carry out its duties and functions. Any money contributed under this section shall be made available to the Commission to carry out this subtitle. In no event may the Secretary accept an aggregate amount of contributions from any one person, group, or entity exceeding 10 percent of the budget of the Commission.

"(b) If the contributions under subsection (a) are insufficient to carry out this subtitle, the Secretary of Agriculture may transfer to the Commission, from funds available to the Commodity Credit Corporation,

an amount not to exceed $1,000,000 to carry out this subtitle.

"TERMINATION OF COMMISSION

"SEC. 146. The National Commission on Dairy Policy shall cease to exist thirty days following the submission of its report to the Secretary of Agriculture and Congress."

PREVENTION OF SUGAR LOAN FORFEITURES

Section 902 of Pub. L. 99-198 provided that:

"(a) Beginning with the quota year for sugar imports which begins after the 1985/1986 quota year, the President shall use all authorities available to the President as is necessary to enable the Secretary of Agriculture to operate the sugar program established under section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446) at no cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation.

"(b) Effective only for the 1985/1986 quota year for sugar imports, the President shall—

"(1) modify the 1985/1986 quota year for imports for sugar so that such quota year will end no earlier than December 31, 1986, and rearrange the shipping schedules so that shipments are divided equally throughout the quota year, as extended; or

"(2) require that the sugar program be administered in such a manner as will result in the forfeiture of sugar held by the Commodity Credit Corporation as collateral for price support loans in a quantity no greater than the total quantity (determined by the Secretary of Agriculture) that would have been forfeited to the Commodity Credit Corporation had the 1985/1986 quota year been modified as prescribed in clause (1).

"(c) Beginning with the quota year for sugar imports which begins after the 1985/1986 quota year, the President shall not allocate any of the sugar import quota under such provisions to any country that is a net importer of sugar derived from sugarcane or sugar beets unless the appropriate officials of that country verify to the President that that country does not import for reexport to the United States any sugar produced in Cuba."

APPLICABILITY OF SUBSECTION (d)(2), (3) TO 48 CONTIGUOUS STATES, DECEMBER 1983, THROUGH MAY 1984

Pub. L. 98-213, § 14, Dec. 8, 1983, 97 Stat. 1462, provided that: "Effective with respect to milk marketed for commercial use during the period beginning on December 1, 1983 and ending on May 31, 1984, paragraphs (2) and (3) of section 201(d) of the Agricultural Act of 1949 [subsection (d)(2) and (3) of this section] shall apply only to milk produced in the forty-eight contiguous States."

IMPLEMENTATION OF SUBSECTION (d) WITHOUT REGARD TO PUBLIC PARTICIPATION IN RULEMAKING

Section 102 of Pub. L. 99-198 provided that: "Section 553 of title 5, United States Code, shall not apply with respect to the implementation of section 201(d) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)) by the Secretary of Agriculture, as amended by section 101, including determinations made regarding—

"(1) the level of price support for milk;

"(2) any reduction in the prices paid to producers of milk; and

"(3) the milk production termination program."

Section 102(b) of Pub. L. 98-180 provided that: "The Secretary of Agriculture shall implement the provisions of section 201(d) of the Agricultural Act of 1949, as amended by subsection (a) of this section [subsec. (d) of this section], without regard to the provisions requiring notice and other procedures for public participation in rulemaking contained in section 553 of title 5, United States Code, or in any directive of the Secretary."

AVOIDANCE OF ADVERSE IMPACT OF DAIRY DIVERSION PROGRAM ON BEEF AND PORK PRODUCERS

Section 103 of Pub. L. 98-180 provided that: "In order to minimize the adverse impact of the dairy diversion program on beef and pork producers in the United States during the period the diversion program is in effect—

"(1) the Secretary of Agriculture shall, to the maximum extent practicable, use funds available for the purposes of clause (2) of section 32 of Public Law No. 320, 74th Congress (7 U.S.C. 612c) and other funds available to the Secretary under the commodity distribution and other nutrition programs of the Department of Agriculture to increase the use of beef and pork for such purposes;

"(2) the Secretary of Defense and other Federal and State agencies are encouraged to use increased quantities of beef and pork to meet the food needs of the programs which they administer; and

"(3) the Secretary of Agriculture shall take appropriate action to encourage the consumption of beef and pork by members of the public."

§ 1446a. Dairy products; availability through Commodity Credit Corporation

As a means of increasing the utilization of dairy products (including for purposes of this section, milk) upon the certification by the Administrator of Veterans' Affairs or by the Secretary of the Army, acting for the military departments under the Department of Defense's Single Service Purchase Assignment for Subsistence, or their duly authorized representatives that the usual quantities of dairy products have been purchased in the normal channels of trade—

(a) Administrator of Veterans' Affairs; needs; report to Congress

The Commodity Credit Corporation until December 31, 1990, shall make available to the Administrator of Veterans' Affairs at warehouses where dairy products are stored, such dairy products acquired under price-support programs as the Administrator certifies that he requires in order to provide butter and cheese and other dairy products as a part of the ration in hospitals under his jurisdiction. The Administrator shall report every six months to the Committees on Agriculture of the Senate and House of Representatives and the Secretary of Agriculture the amount of dairy products used under this subsection.

(b) Secretary of the Army; needs; report to Congress

The Commodity Credit Corporation until December 31, 1990, shall make available to the Secretary of the Army, at warehouses where dairy products are stored, such dairy products acquired under price-support programs as the Secretary of the Army or his duly authorized representative certifies can be utilized in order to provide additional butter and cheese and other dairy products as a part of the ration (1) of the Army, Navy, Air Force, or Coast Guard, (2) in hospitals under the jurisdiction of the Department of Defense, and (3) of cadets and midshipmen at, and other personnel assigned to, the United States Merchant Marine Academy. The Secretary of the Army shall report every six months to the Committees on Agriculture of the Senate and the House of Represent-

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atives and the Secretary of Agriculture the amount of dairy products used under this subsection.

[*See main edition for text of* (c) *and* (d)]

(As amended Dec. 23, 1985, Pub. L. 99-198, title I, § 151, 99 Stat. 1377.)

AMENDMENTS

1985—Subsecs. (a), (b). Pub. L. 99-198 substituted "1990" for "1985".

§ 1446c-2. Domestic casein industry

(a) Annual availability of surplus stocks of nonfat dry milk; bid basis

The Commodity Credit Corporation shall provide surplus stocks of nonfat dry milk of not less than 1,000,000 pounds annually to individuals or entities on a bid basis.

(b) Acceptance of bids at lower than resale price

The Commodity Credit Corporation may accept bids at lower than the resale price otherwise required by law, in order to promote the strengthening of the domestic casein industry.

(c) Nonfat dry milk sold to be used only for manufacture of casein

The Commodity Credit Corporation shall take appropriate action to ensure that the nonfat dry milk sold by the Corporation under this section is used only for the manufacture of casein.

(Pub. L. 99-198, title I, § 105, Dec. 23, 1985, 99 Stat. 1367.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Act of 1949 which is classified principally to this chapter. For complete classification of the 1949 Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

APPLICATION OF SECTION

This section not to affect any liability of any person under section 1446 of this title as in effect before Dec. 23, 1985, see section 108 of Pub. L. 99-198, set out as an Application of 1985 Amendments note under section 1446 of this title.

§ 1446d. Price support levels for cottonseed and soybeans

INAPPLICABILITY TO 1986 THROUGH 1990 CROPS

Pub. L. 99-198, title V, § 504, Dec. 23, 1985, 99 Stat. 1418, provided that: "Sections 103(a) and 203 of the Agricultural Act of 1949 (7 U.S.C. 1444(a) and 1446d) shall not be applicable to the 1986 through 1990 crops."

§ 1447. Price support levels for other nonbasic agricultural commodities

The Secretary is authorized to make available through loans, purchases, or other operations price support to producers for any nonbasic agricultural commodity not designated in sections 1446, 1446a, and 1446d of this title at a level not in excess of 90 per centum of the parity price for the commodity.

(Oct. 31, 1949, ch. 792, title III, § 301, 63 Stat. 1053; Sept. 29, 1977, Pub. L. 95-113, title X, § 1003(a), 91 Stat. 950.)

AMENDMENTS

1977—Pub. L. 95-113 temporarily added provisions authorizing the Secretary to make price support available for the 1978 through 1981 crops of flaxseed, dry edible beans, gum naval stores, and, in the case of the 1979 through 1981 crops, sugar beets and sugar cane, and for other nonbasic undesignated commodities. See Effective and Termination Dates of 1977 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1977 AMENDMENT

Section 1003(a) of Pub. L. 95-113 provided in part that the amendment of this section by Pub. L. 95-113 is effective only with respect to the 1978 through 1981 crops.

§ 1448. Price support levels for storable nonbasic agricultural commodities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1446, 1449 of this title.

§ 1449. Determination of price support level

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1446 of this title.

SUBCHAPTER IV—ACREAGE BASE AND PROGRAM YIELD SYSTEM FOR WHEAT, FEED GRAIN, UPLAND COTTON, AND RICE PROGRAMS

PRIOR PROVISIONS

A prior subchapter IV of the Agricultural Act of 1949, Act Oct. 31, 1949, ch. 792, title V, as added July 12, 1951, ch. 223, 65 Stat. 119, relating to the recruiting of agricultural workers from Mexico, was omitted pursuant to the provisions of section 510 thereof which provided that no workers would be available under such provisions after Dec. 31, 1964.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1335, 1441-1, 1444-1, 1444e, 1445b-3 of this title.

§ 1461. Congressional declaration of purpose

The purpose of this subchapter is to prescribe a system for establishing farm and crop acreage bases and program yields for the wheat, feed grain, upland cotton, and rice programs under this Act that is efficient, equitable, flexible, and predictable.

(Oct. 31, 1949, ch. 792, title V, § 501, as added Dec. 23, 1985, Pub. L. 99-198, title X, § 1031, 99 Stat. 1460.)

REFERENCES IN TEXT

This Act, referred to in text, is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, known as the Agricultural Act of 1949, which is classified principally to this chapter (§ 1421 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

PRIOR PROVISIONS

A prior section 1461, act Oct. 31, 1949, ch. 792, title V, § 501, as added July 12, 1951, ch. 223, 65 Stat. 119, and amended Mar. 16, 1954, ch. 98, 68 Stat. 28, provided for powers, duties, and guaranties of Secretary of Labor as part of a program for recruiting agricultural

workers from Mexico for employment up to December 31, 1964.

EFFECTIVE AND TERMINATION DATES

Section 1031 of Pub. L. 99-198 provided in part that this subchapter is effective for the 1986 through 1990 crops of wheat, feed grains, upland cotton, and rice.

§ 1462. Definitions

For purposes of this subchapter—

(1) the term "program crop" means any crop of wheat, feed grains, upland cotton, or rice; and

(2) the term "county committee" means the county committee established under section 590h(b) of title 16 for the county in which the farm is administratively located.

(Oct. 31, 1949, ch. 792, title V, § 502, as added Dec. 23, 1985, Pub. L. 99-198, title X, § 1031, 99 Stat. 1461.)

PRIOR PROVISIONS

A prior section 1462, act Oct. 31, 1949, ch. 792, title V, § 502, as added July 12, 1951, ch. 223, 65 Stat. 119, and amended Aug. 9, 1955, ch. 679, § 2, 69 Stat. 615; Oct. 3, 1961, Pub. L. 87-345, § 1, 75 Stat. 761, related to liabilities and guaranties of employers as part of a program for recruiting agricultural workers from Mexico for employment up to December 31, 1964.

§ 1463. Establishment and maintenance of farm acreage bases

(a) Bases for 1986 and subsequent crop years

(1) Except as provided in paragraph (2), the Secretary shall provide for the establishment and maintenance of farm acreage bases for the 1986 and subsequent crop years.

(2) With respect to the 1986 crop year, the Secretary may forgo the establishment of farm acreage bases under this subchapter.

(b) Determination of farm acreage base by county committee; inclusions

(1) The county committee, in accordance with regulations prescribed by the Secretary, shall determine the farm acreage base for a farm for a crop year. Such farm acreage base shall include the number of acres equal to the sum of the crop acreage bases for the farm.

(2) In the case of farm acreage bases established for the 1987 and subsequent crop years, the determination of the farm acreage base shall also include (in addition to the crop acreage bases for the farm) the sum of (A) the average of the acreage on the farm planted to soybeans in the 1986 and subsequent crop years, and (B) the average of the acreage on the farm devoted by the producer to a conserving use in the normal course of farming operations in the 1986 and subsequent crop years.

(Oct. 31, 1949, ch. 792, title V, § 503, as added Dec. 23, 1985, Pub. L. 99-198, title X, § 1031, 99 Stat. 1461.)

PRIOR PROVISIONS

A prior section 1463, act Oct. 31, 1949, ch. 792, title V, § 503, as added July 12, 1951, ch. 223, 65 Stat. 120, and amended Aug. 9, 1955, ch. 679, § 3, 69 Stat. 615; Oct. 3, 1961, Pub. L. 87-345, § 2, 75 Stat. 761, related to certification of need for workers, consultation with employers and workers, and posting of information as part of a program for recruiting agricultural workers from Mexico for employment up to December 31, 1964.

A prior section 1463a, act Oct. 31, 1949, ch. 792, title V, § 504, as added Oct. 3, 1961, Pub. L. 87-345, § 3, 75 Stat. 761, restricted duration and nature of employment as part of a program for recruiting agricultural workers from Mexico for employment up to December 31, 1964.

§ 1464. Establishment and maintenance of crop acreage bases for each program crop

(a) Maximum base on any one farm; double cropping

(1) The Secretary shall provide for the establishment and maintenance of crop acreage bases for each program crop, including any program crop produced under an established practice of double cropping. The sum of the crop acreage bases for all program crops produced on any farm for any crop year shall not exceed the farm acreage base for such farm for such crop year, except to the extent that the excess is due to an established practice of double cropping.

(2) The term "double cropping" means a farming practice, as defined by the Secretary, which has been carried out on a farm in at least 3 of the 5 crop years immediately preceding the crop year for which the crop acreage base for the farm is established.

(b) Determination of crop acreage base

(1)(A) Except as provided in subparagraph (B), the crop acreage base for a program crop for any farm for the 1986 and subsequent crop years shall be the number of acres that is equal to the average of the acreage planted and considered planted to such program crop for harvest on the farm in each of the five crop years preceding such crop year.

(B)(i) In the case of upland cotton and rice, except as provided in clause (ii), if no planted and considered planted acreage has been established for a farm for each of the five crop years preceding such crop year, the crop acreage base for such crop shall be equal to the average of the acreage planted and considered planted to such crop for harvest on the farm in each of the five crop years preceding such crop year, excluding all crop years in which planted and considered planted acreage was not established for the farm.

(ii) Any crop acreage base established in accordance with paragraph (1)(A) and paragraph (1)(B)(i) shall not exceed a number of acres equal to the average of the acreage planted and considered planted to such crop for harvest on the farm in each of the two crop years preceding such crop year.

(2) The acreage considered planted to a program crop shall include—

(A) any reduced acreage, set-aside acreage, and diverted acreage on the farm;

(B) any acreage on the farm that producers were prevented from planting to such crop because of drought, flood, or other natural disaster, or other condition beyond the control of the producers;

(C) acreage in an amount equal to the difference between the permitted acreage for a program crop and the acreage planted to the crop, if the acreage considered to be planted

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is planted to a nonprogram crop, other than soybeans and extra long staple cotton; and

(D) any acreage on the farm which the Secretary determines is necessary to be included in establishing a fair and equitable crop acreage base.

(3) For the purpose of determining the crop acreage base for the 1986 and subsequent crop years for any farm, the county committee, in accordance with regulations prescribed by the Secretary, may construct a planting history for such crop if—

(A) planting records for such crop for any of the five crop years preceding such crop year are incomplete or unavailable; or

(B) during at least one but not more than four of the five crop years preceding such crop year, the program crop was not produced on the farm.

(c) Adjustments

The Secretary may make adjustments to reflect crop rotation practices and to reflect such other factors as the Secretary determines should be considered in determining a fair and equitable crop acreage base.

(d) Natural disasters or other similar condition beyond producer's control

If a county committee determines, in accordance with regulations prescribed by the Secretary, that the occurrence of a natural disaster or other similar condition beyond the control of the producer prevented the planting of a program crop on any farm within the county (or substantially destroyed any such program crop after it had been planted but before it had been harvested), the producer may plant any other crop, including any other program crop, on the acreage of such farm that, but for the occurrence of such disaster or other condition, would have been devoted to the production of a progam crop. For purposes of determining the farm acreage base or the crop acreage base, any acreage on the farm on which a substitute crop, including any program crop, is planted under this subsection shall be taken into account as if such acreage had been planted to the program crop for which the other crop was substituted.

(Oct. 31, 1949, ch. 792, title V, § 504, as added Dec. 23, 1985, Pub. L. 99-198, title X, § 1031, 99 Stat. 1461.)

PRIOR PROVISIONS

A prior section 1464, act Oct. 31, 1949, ch. 792, title V, § 505, formerly § 504, as added July 12, 1951, ch. 223, 65 Stat. 120, and renumbered Oct. 3, 1961, Pub. L. 87-345, § 3, 75 Stat. 761, related to workers subject to immigration laws, dispensed with need of penalty bond, and provided for effect of use of "wetback" labor as part of a program for recruiting agricultural workers from Mexico for employment up to December 31, 1964.

§ 1465. Upward adjustment of crop acreage base

(a) Maximum adjustment; offsetting equivalent downward adjustment of other bases

The Secretary may provide for an upward adjustment of any crop acreage base for any farm for any crop year. Except as provided in subsection (b) of this section, such adjustment may not exceed the number of acres that is equal to 10 percent of the farm acreage base for such farm for such crop year. Any upward adjustment in a crop acreage base must be offset by an equivalent downward adjustment in one or more other crop acreage bases established for the farm for such crop year.

(b) Suspension of limitations

The Secretary may suspend, on a nationwide basis, any limitation contained in subsection (a) of this section with respect to the crop acreage base for any program crop if the Secretary determines that—

(1) a short supply or other similar emergency situation exists with respect to the program crop; or

(2) market factors exist that require the suspension of the limitation to achieve the purposes of the program.

(Oct. 31, 1949, ch. 792, title V, § 505, as added Dec. 23, 1985, Pub. L. 99-198, title X, § 1031, 99 Stat. 1462.)

PRIOR PROVISIONS

A prior section 1465, act Oct. 31, 1949, ch. 792, title V, § 506(c), formerly § 505(c), as added July 12, 1951, ch. 223, 65 Stat. 121, and renumbered Oct. 3, 1961, Pub. L. 87-345, § 3, 75 Stat. 761, provided for an exemption from a head tax as part of a program for recruiting agricultural workers from Mexico for employment up to December 31, 1964.

A prior section 1465a, act Oct. 31, 1949, ch. 792, title V, § 506(d), as added Oct. 3, 1961, Pub. L. 87-345, § 4, 75 Stat. 761, provided for illness or disability tax as part of a program for recruiting agricultural workers from Mexico for employment up to December 31, 1964.

§ 1466. Program payment yields

(a) Establishment of yields for each farm

The Secretary shall provide for the establishment of a farm program payment yield for each farm for each program crop for each crop year.

(b) 1986 and 1987 crop years; national, State, or county program payment yields

(1) Except as provided in paragraph (2), the farm program payment yield for each of the 1986 and 1987 crop years shall be the average of the farm program payment yields for the farm for the 1981 through 1985 crop years, excluding the year in which such yield was the highest and the year in which such yield was the lowest.

(2) If no crop of the commodity was produced on the farm or no farm program payment yield was established for the farm for any of the 1981 through 1985 crop years, the farm program payment yield shall be established on the basis of the average farm program payment yield for such crop years for similar farms in the area.

(3) If the Secretary determines such action is necessary, the Secretary may establish national, State, or county program payment yields on the basis of—

(A) historical yields, as adjusted by the Secretary to correct for abnormal factors affecting such yields in the historical period; or

(B) the Secretary's estimate of actual yields for the crop year involved if historical yield data is not available.

(4) If national, State, or county program payment yields are established, the farm program payment yields shall balance to the national, State, or county program payment yields.

(c) 1988 and subsequent crop years

(1) With respect to the 1988 and subsequent crop years, the Secretary may (A) establish the farm program payment yield as provided in subsection (b) of this section, or (B) establish a farm program payment yield for any program crop for any farm on the basis of the average of the yield per harvested acre for the crop for such farm for each of the five crop years immediately preceding such crop year, excluding the crop year with the highest yield per harvested acre, the crop year with the lowest yield per harvested acre, and any crop year in which such crop was not planted on the farm. For purposes of the preceding sentence, the farm program payment yield for the 1983 through 1986 crop years and the actual yield per harvested acre with respect to the 1987 and subsequent crop years shall be used in determining farm program payment yields.

(2) The county committee, in accordance with regulations prescribed by the Secretary, may adjust any program yield for any program crop for any farm if the program yield for the crop on the farm does not accurately reflect the productive potential of the farm because of the occurrence of a natural disaster or other similar condition beyond the control of the producer.

(d) Unavailability of actual yield per harvested acre

In the case of any farm for which the actual yield per harvested acre for any program crop referred to in subsection (c)(1) of this section for any crop year is not available, the county committee may assign the farm a yield for the crop for such crop year on the basis of actual yields for the crop for such crop year on similar farms in the area.

(Oct. 31, 1949, ch. 792, title V, § 506, as added Dec. 23, 1985, Pub. L. 99-198, title X, § 1031, 99 Stat. 1463.)

PRIOR PROVISIONS

A prior section 1466, act Oct. 31, 1949, ch. 792, title V, § 507, formerly § 506, as added July 12, 1951, ch. 223, 65 Stat. 121, and renumbered Oct. 3, 1961, Pub. L. 87-345, § 3, 75 Stat. 761, related to utilization of Federal and State agencies by Secretary of Labor as part of a program for recruiting agricultural workers from Mexico for employment up to December 31, 1964.

A prior section 506(a), formerly 505(a), of act Oct. 31, 1949, ch. 792, title V, as added July 12, 1951, ch. 223, 65 Stat. 120, and renumbered Oct. 3, 1961, Pub. L. 87-345, § 3, 75 Stat. 761, amended section 410(a)(1) of Title 42, The Public Health and Welfare.

§ 1467. Five-year planting and production history of farms

Effective for each of the 1986 and subsequent crop years, each county committee, in accordance with regulations prescribed by the Secretary, may require any producer who seeks to establish a farm acreage base, crop acreage base, or farm program payment yield for a farm for a crop year to provide planting and production history of such farm for each of the five crop years immediately preceding such crop year.

(Oct. 31, 1949, ch. 792, title V, § 507, as added Dec. 23, 1985, Pub. L. 99-198, title X, § 1031, 99 Stat. 1463.)

PRIOR PROVISIONS

A prior section 1467, act Oct. 31, 1949, ch. 792, title V, § 508, formerly § 507, as added July 12, 1951, ch. 223, 65 Stat. 121, renumbered and amended Oct. 3, 1961, Pub. L. 87-345, §§ 3, 5, 75 Stat. 761, defined "agricultural employment" and "employer" for purposes of the program for recruiting agricultural workers from Mexico for employment up to December 31, 1964.

§ 1468. Establishment of bases and yields not otherwise capable of establishment by county committee for farms administratively located within county

Each county committees [1] may, in accordance with regulations prescribed by the Secretary, provide for the establishment of a farm acreage base, crop acreage base, and farm program payment yield with respect to any farm administratively located within the county if such farm acreage base, crop acreage base, or farm program payment yield cannot otherwise be established under this subchapter. Such bases and farm program payment yields shall be established in a fair and equitable manner, but no such bases or farm program payment yields shall be established for a farm if the producer on such farm is subject to sanctions under any provision of Federal law for cultivating highly erodible land or converted wetland.

(Oct. 31, 1949, ch. 792, title V, § 508, as added Dec. 23, 1985, Pub. L. 99-198, title X, § 1031, 99 Stat. 1464.)

PRIOR PROVISIONS

A prior section 1468, act Oct. 31, 1949, ch. 792, title V, § 509, formerly § 508, as added July 12, 1951, ch. 223, 65 Stat. 121, and renumbered Oct. 3, 1961, Pub. L. 87-345, § 3, 75 Stat. 761, related to importation of workers from other foreign countries with regard to a program of recruiting agricultural workers from Mexico for employment up to December 31, 1964.

§ 1469. Administrative appeal procedures

The Secretary shall establish an administrative appeal procedure which provides for an administrative review of determinations made with respect to farm acreage bases, crop acreage bases, and farm program payment yields.

(Oct. 31, 1949, ch. 792, title V, § 509, as added Dec. 23, 1985, Pub. L. 99-198, title X, § 1031, 99 Stat. 1464.)

PRIOR PROVISIONS

A prior section 509, formerly 508, of act Oct. 31, 1949, was formerly classified to section 1468 of this title. See Prior Provisions note set out under section 1468 of this title.

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[1] So in original. Probably should be "committee".

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CHAPTER 36—CROP INSURANCE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1301, 1391, 1441, 1441-1, 1444, 1444-1, 1444d, 1444e, 1445b-1, 1445b-3, 1961 of this title; title 12 section 1150a; title 16 sections 3811, 3821; title 21 section 881a.

§ 1508. Agricultural commodity crop insurance

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1444, 1506, 1518 of this title.

§ 1516. Authorization of appropriations

[*See main edition for text of* (a) *and* (b)]

(c) Emergency funding in case of insufficient moneys

(1) If at any time the moneys available to the Federal Crop Insurance Corporation are insufficient to enable the Corporation to discharge its responsibility of indemnifying producers for losses under this chapter, the Corporation may, upon majority vote of its Board of Directors, request the Secretary of Agriculture to use the funds of the Commodity Credit Corporation to make timely payment of indemnities to producers. Upon receiving such a request, the Secretary of Agriculture may use the funds of the Commodity Credit Corporation to meet obligations to indemnify producers for losses under this chapter.

[*See main edition for text of* (2); (d)]

(As amended Dec. 23, 1985, Pub. L. 99-198, title X, § 1021, 99 Stat. 1459.)

AMENDMENTS

1985—Subsec. (c)(1). Pub. L. 99-198 struck out provision that the Secretary's authority to use the funds of the Commodity Credit Corporation for the purposes of this subsection would expire one year after the date on which that authority was first used.

CHAPTER 37—SEEDS

SUBCHAPTER IV—GENERAL PROVISIONS

§ 1600. Appeal to court of appeals

[*See main edition for text of first to third pars.*]

The evidence so taken or admitted and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case.

[*See main edition for text of fifth to seventh pars.*]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(7)(A), 98 Stat. 3357.)

AMENDMENTS

1984—Pub. L. 98-620 in fourth par., struck out provisions requiring proceedings in such cases in the court of appeals to be made a preferred cause and expedited in every way.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 1601. Enforcement of order

If any person against whom an order is issued under section 1599 of this title fails to obey the order, the Secretary of Agriculture, or the United States, by its Attorney General, may apply to the court of appeals of the United States, within the circuit where the person against whom the order was issued resides or has his principal place of business, for the enforcement of the order, and shall file the record in such proceedings, as provided in section 2112 of title 28. Upon such filing of the application the court shall cause notice thereof to be served upon the person against whom the order was issued. The evidence to be considered, the procedure to be followed, and the jurisdiction of the court shall be the same as provided in section 1600 of this title for applications to set aside or modify orders.

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(7)(B), 98 Stat. 3357.)

AMENDMENTS

1984—Pub. L. 98-620 struck out the second par. which required proceedings in such cases to be made a preferred cause and expedited in every way.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 38—DISTRIBUTION AND MARKETING OF AGRICULTURAL PRODUCTS

Sec.
1631. Protection for purchasers of farm products.
(a) Congressional findings.
(b) Declaration of purpose.
(c) Definitions.
(d) Purchases free of security interest.
(e) Purchases subject to security interest.
(f) Law governing "receipt".
(g) Commission merchants or selling agents: sales free of or subject to security interest; law governing "receipt".
(h) Security agreements; identity lists; notice of identity or accounting for proceeds; violations.
(i) Regulations.
(j) Effective date.
1632. Market expansion research.

§ 1622. Duties of Secretary relating to agricultural products

The Secretary of Agriculture is directed and authorized:

[*See main edition for text of* (a) *to* (g)]

(h) Inspection and certification of products in interstate commerce; credit and future availability of funds; investment; certificates as evidence; penalties

To inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe, including assessment and collection of such fees

as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire, except that no person shall be required to use the service authorized by this subsection. Any fees collected under this subsection, late payment penalties, the proceeds from the sales of samples, and interest earned from the investment of such funds shall be credited to the trust fund account that incurs the cost of the services provided under this subsection and shall remain available without fiscal year limitation to pay the expenses of the Secretary incident to providing such services. Such funds may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. Any official certificate issued under the authority of this subsection shall be received by all officers and all courts of the United States as prima facie evidence of the truth of the statements therein contained. Whoever knowingly shall falsely make, issue, alter, forge, or counterfeit any official certificate, memorandum, mark, or other identification, or device for making such mark or identification, with respect to inspection, class, grade, quality, size, quantity, or condition, issued or authorized under this section or knowingly cause or procure, or aid, assist in, or be a party to, such false making, issuing, altering, forging, or counterfeiting, or whoever knowingly shall possess, without promptly notifying the Secretary of Agriculture or his representative, utter, publish, or use as true, or cause to be uttered, published, or used as true, any such falsely made, altered, forged, or counterfeited official certificate, memorandum, mark, identification, or device, or whoever knowingly represents that an agricultural product has been officially inspected or graded (by an authorized inspector or grader) under the authority of this section when such commodity has in fact not been so graded or inspected shall be fined not more than $1,000 or imprisoned not more than one year, or both.

[See main edition for text of (i)]

(j) Improvement of transportation facilities and rates

To assist in improving transportation services and facilities and in obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for agricultural products and farm supplies by making complaint or petition to the Interstate Commerce Commission, the Maritime Commission,,[1] or other Federal or State transportation regulatory body, or the Secretary of Transportation, with respect to rates, charges, tariffs, practices, and services, or by working directly with individual carriers or groups of carriers.

[See main edition for text of (k) to (n)]

[1] So in original.

(As amended Aug. 28, 1984, Pub. L. 98-403, § 2, 98 Stat. 1480; Oct. 4, 1984, Pub. L. 98-443, § 9(j), 98 Stat. 1708.)

AMENDMENTS

1984—Subsec. (h). Pub. L. 98-403 added provisions relating to the credit of certain funds to the trust fund account which incurs the cost of services provided under this subsection, the future availability of those funds, and investment thereof by the Secretary of Agriculture or the Secretary of the Treasury.

Subsec. (j). Pub. L. 98-443 struck out "the Civil Aeronautics Board" after "the Maritime Commission,".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2276 of this title; title 40 section 474.

§ 1631. Protection for purchasers of farm products

(a) Congressional findings

Congress finds that—

(1) certain State laws permit a secured lender to enforce liens against a purchaser of farm products even if the purchaser does not know that the sale of the products violates the lender's security interest in the products, lacks any practical method for discovering the existence of the security interest, and has no reasonable means to ensure that the seller uses the sales proceeds to repay the lender;

(2) these laws subject the purchaser of farm products to double payment for the products, once at the time of purchase, and again when the seller fails to repay the lender;

(3) the exposure of purchasers of farm products to double payment inhibits free competition in the market for farm products; and

(4) this exposure constitutes a burden on and an obstruction to interstate commerce in farm products.

(b) Declaration of purpose

The purpose of this section is to remove such burden on and obstruction to interstate commerce in farm products.

(c) Definitions

For the purposes of this section—

(1) The term "buyer in the ordinary course of business" means a person who, in the ordinary course of business, buys farm products from a person engaged in farming operations who is in the business of selling farm products.

(2) The term "central filing system" means a system for filing effective financing statements or notice of such financing statements on a statewide basis and which has been certified by the Secretary of the United States Department of Agriculture; the Secretary shall certify such system if the system complies with the requirements of this section; specifically under such system—

(A) effective financing statements or notice of such financing statements are

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filed with the office of the Secretary of State of a State;

(B) the Secretary of State records the date and hour of the filing of such statements;

(C) the Secretary of State compiles all such statements into a master list—

(i) organized according to farm products;

(ii) arranged within each such product—

(I) in alphabetical order according to the last name of the individual debtors, or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors; and

(II) in numerical order according to the social security number of the individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number of such debtors; and

(III) geographically by county or parish; and

(IV) by crop year;

(iii) containing the information referred to in paragraph (4)(D);

(D) the Secretary of State maintains a list of all buyers of farm products, commission merchants, and selling agents who register with the Secretary of State, on a form indicating—

(i) the name and address of each buyer, commission merchant and selling agent;

(ii) the interest of each buyer, commission merchant, and selling agent in receiving the lists described in subparagraph (E); and

(iii) the farm products in which each buyer, commission merchant, and selling agent has an interest;

(E) the Secretary of State distributes regularly as prescribed by the State to each buyer, commission merchant, and selling agent on the list described in subparagraph (D) a copy in written or printed form of those portions of the master list described in paragraph [2] (C) that cover the farm products in which such buyer, commission merchant, or selling agent has registered an interest;

(F) the Secretary of State furnishes to those who are not registered pursuant to (2)(D) of this section [3] oral confirmation within 24 hours of any effective financing statement on request followed by written confirmation to any buyer of farm products buying from a debtor, or commission merchant or selling agent selling for a seller covered by such statement.

(3) The term "commission merchant" means any person engaged in the business of receiving any farm product for sale, on commission, or for or on behalf of another person.

(4) The term "effective financing statement" means a statement that—

(A) is an original or reproduced copy thereof;

(B) is signed and filed with the Secretary of State of a State by the secured party;

(C) is signed by the debtor;

(D) contains,

(i) the name and address of the secured party;

(ii) the name and address of the person indebted to the secured party;

(iii) the social security number of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number of such debtor;

(iv) a description of the farm products subject to the security interest created by the debtor, including the amount of such products where applicable; and a reasonable description of the property, including [4] county or parish in which the property is located;

(E) must be amended in writing, within 3 months, similarly signed and filed, to reflect material changes;

(F) remains effective for a period of 5 years from the date of filing, subject to extensions for additional periods of 5 years each by refiling or filing a continuation statement within 6 months before the expiration of the initial 5 year period;

(G) lapses on either the expiration of the effective period of the statement or the filing of a notice signed by the secured party that the statement has lapsed, whichever occurs first;

(H) is accompanied by the requisite filing fee set by the Secretary of State; and

(I) substantially complies with the requirements of this subparagraph even though it contains minor errors that are not seriously misleading.

(5) The term "farm product" means an agricultural commodity such as wheat, corn, soybeans, or a species of livestock such as cattle, hogs, sheep, horses, or poultry used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state (such as ginned cotton, wool-clip, maple syrup, milk, and eggs), that is in the possession of a person engaged in farming operations.

(6) The term "knows" or "knowledge" means actual knowledge.

(7) The term "security interest" means an interest in farm products that secures payment or performance of an obligation.

(8) The term "selling agent" means any person, other than a commission merchant, who is engaged in the business of negotiating the sale and purchase of any farm product on behalf of a person engaged in farming operations.

(9) The term "State" means each of the 50 States, the District of Columbia, the Com-

[2] So in original. Probably should be "subparagraph".

[3] So in original. Probably should be "pursuant to subparagraph (D)".

[4] So in original. Probably should be followed by "the".

monwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(10) The term "person" means any individual, partnership, corporation, trust, or any other business entity.

(11) The term "Secretary of State" means the Secretary of State or the designee of the State.

(d) Purchases free of security interest

Except as provided in subsection (e) of this section and notwithstanding any other provision of Federal, State, or local law, a buyer who in the ordinary course of business buys a farm product from a seller engaged in farming operations shall take free of a security interest created by the seller, even though the security interest is perfected; and the buyer knows of the existence of such interest.

(e) Purchases subject to security interest

A buyer of farm products takes subject to a security interest created by the seller if—

(1)(A) within 1 year before the sale of the farm products, the buyer has received from the secured party or the seller written notice of the security interest organized according to farm products that—

(i) is an original or reproduced copy thereof;

(ii) contains,

(I) the name and address of the secured party;

(II) the name and address of the person indebted to the secured party;

(III) the social security number of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number of such debtor;

(IV) a description of the farm products subject to the security interest created by the debtor, including the amount of such products where applicable, crop year, county or parish, and a reasonable description of the property; and

(iii) must be amended in writing, within 3 months, similarly signed and transmitted, to reflect material changes;

(iv) will lapse on either the expiration period of the statement or the transmission of a notice signed by the secured party that the statement has lapsed, whichever occurs first; and

(v) any [5] payment obligations imposed on the buyer by the secured party as conditions for waiver or release of the security interest; and

(B) the buyer has failed to perform the payment obligations, or

(2) in the case of a farm product produced in a State that has established a central filing system—

(A) the buyer has failed to register with the Secretary of State of such State prior to the purchase of farm products; and

(B) the secured party has filed an effective financing statement or notice that covers the farm products being sold; or

(3) in the case of a farm product produced in a State that has established a central filing system, the buyer—

(A) receives from the Secretary of State of such State written notice as provided in subparagraph [6] (c)(2)(E) or (c)(2)(F) that specifies both the seller and the farm product being sold by such seller as being subject to an effective financing statement or notice; and

(B) does not secure a waiver or release of the security interest specified in such effective financing statement or notice from the secured party by performing any payment obligation or otherwise; and [7]

(f) Law governing "receipt"

What constitutes receipt, as used in this section, shall be determined by the law of the State in which the buyer resides.

(g) Commission merchants or selling agents: sales free of or subject to security interest; law governing "receipt"

(1) Except as provided in paragraph (2) and notwithstanding any other provision of Federal, State, or local law, a commission merchant or selling agent who sells, in the ordinary course of business, a farm product for others, shall not be subject to a security interest created by the seller in such farm product even though the security interest is perfected and even though the commission merchant or selling agent knows of the existence of such interest.

(2) A commission merchant or selling agent who sells a farm product for others shall be subject to a security interest created by the seller in such farm product if—

(A) within 1 year before the sale of such farm product the commission merchant or selling agent has received from the secured party or the seller written notice of the security interest; organized according to farm products, that—

(i) is an original or reproduced copy thereof;

(ii) contains,

(I) the name and address of the secured party;

(II) the name and address of the person indebted to the secured party;

(III) the social security number of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number of such debtor;

(IV) a description of the farm products subject to the security interest created by the debtor, including the amount of such products, where applicable, crop year, county or parish, and a reasonable description of the property, etc.; and

[5] So in original. Probably should be preceded by "contains".

[6] So in original. Probably should be "subsection".

[7] So in original. A period probably should appear instead of "; and".

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(iii) must be amended in writing, within 3 months, similarly signed and transmitted, to reflect material changes;

(iv) will lapse on either the expiration period of the statement or the transmission of a notice signed by the secured party that the statement has lapsed, whichever occurs first; and

(v) any [8] payment obligations imposed on the commission merchant or selling agent by the secured party as conditions for waiver or release of the security interest; and

(B) the commission merchant or selling agent has failed to perform the payment obligations;

(C) in the case of a farm product produced in a State that has established a central filing system—

(i) the commission merchant or selling agent has failed to register with the Secretary of State of such State prior to the purchase of farm products; and

(ii) the secured party has filed an effective financing statement or notice that covers the farm products being sold; or

(D) in the case of a farm product produced in a State that has established a central filing system, the commission merchant or selling agent—

(i) receives from the Secretary of State of such State written notice as provided in subsection (c)(2)(E) or (c)(2)(F) of this section that specifies both the seller and the farm products being sold by such seller as being subject to an effective financing statement or notice; and

(ii) does not secure a waiver or release of the security interest specified in such effective financing statement or notice from the secured party by performing any payment obligation or otherwise.

(3) What constitutes receipt, as used in this section, shall be determined by the law of the State in which the buyer resides.

(h) Security agreements; identity lists; notice of identity or accounting for proceeds; violations

(1) A security agreement in which a person engaged in farming operations creates a security interest in a farm product may require the person to furnish to the secured party a list of the buyers, commission merchants, and selling agents to or through whom the person engaged in farming operations may sell such farm product.

(2) If a security agreement contains a provision described in paragraph (1) and such person engaged in farming operations sells the farm product collateral to a buyer or through a commission merchant or selling agent not included on such list, the person engaged in farming operations shall be subject to paragraph (3) unless the person—

(A) has notified the secured party in writing of the identity of the buyer, commission merchant, or selling agent at least 7 days prior to such sale; or

(B) has accounted to the secured party for the proceeds of such sale not later than 10 days after such sale.

(3) A person violating paragraph (2) shall be fined $5,000 or 15 per centum of the value or benefit received for such farm product described in the security agreement, whichever is greater.

(i) Regulations

The Secretary of Agriculture shall prescribe regulations not later than 90 days after December 23, 1985, to aid States in the implementation and management of a central filing system.

(j) Effective date

This section shall become effective 12 months after December 23, 1985.

(Pub. L. 99-198, title XIII, § 1324, Dec. 23, 1985, 99 Stat. 1535.)

CODIFICATION

Section was not enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Marketing Act of 1946 which comprises this chapter.

§ 1632. Market expansion research

(a) The Secretary of Agriculture, using available funds, shall increase and intensify research programs conducted by or for the Department of Agriculture that are directed at developing technology to overcome barriers to expanded sales of United States agricultural commodities and the products thereof in domestic and foreign markets, including research programs for the development of procedures to meet plant quarantine requirements and improvement in the transportation and handling of perishable agricultural commodities.

(b)(1) The Secretary of Agriculture shall conduct a research and development program to formulate new uses for farm and forest products. Such program shall include, but not be limited to, research and development of industrial, new, and value-added products.

(2) To the extent practicable, the Secretary of Agriculture shall carry out the program authorized in this subsection with colleges and universities, private industry, and Federal and State entities through a combination of grants, cooperative agreements, contracts, and interagency agreements.

(3)(A) There are authorized to be appropriated such sums as are necessary to carry out the program authorized under this subsection.

(B) In addition, the Secretary may use funds appropriated or made available to the Secretary under provisions of law other than subparagraph (A) to carry out such program.

(C) To the extent requests are made for matching funds under such program, the total amount of funds used by the Secretary to carry out the program under this subsection may not be less than $10,000,000 for each of the fiscal years ending September 30, 1986, through September 30, 1990.

(4) Funds appropriated under subparagraph (A) or made available under subparagraph (B) may be transferred among appropriation ac-

[8] So in original. Probably should be preceded by "contains".

counts to carry out the purposes of the program authorized under this subsection.

(5) Notwithstanding any other provision of law, the Federal share of the cost of each research or development project funded under this subsection may not exceed 50 percent of the cost of such project.

(Pub. L. 99-198, title XIV, § 1436, Dec. 23, 1985, 99 Stat. 1558.)

CODIFICATION

Section was not enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Marketing Act of 1946 which comprises this chapter.

CHAPTER 41—AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE

SUBCHAPTER II—SALE OF AGRICULTURAL COMMODITIES FOR FOREIGN CURRENCIES AND LONG-TERM-DOLLAR-CREDIT

Sec.

1708. Agreement with financial intermediary located or operating in developing country purchasing agricultural commodities.
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(c) Terms and conditions of agreement.
(d) Currency repayed by financial intermediary.
(e) Periodic audit; reporting requirement.
(f) Agricultural technical assistance.
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(h) Applicability of provisions.
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(b) Conditions for use of funds or commodities made available; definition.
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(a) Annual reporting requirements; contents.
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(c) Functions, etc., of United States Trade Representative.
(d) Annual meeting of advisory committees.
1736y. Contract sanctity and producer embargo protection.
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CROSS REFERENCES

Dairy products and wheat from Commodity Credit Corporation stocks, costs of distribution to be in addition to levels of assistance programmed under this chapter, see section 1431(b) of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1431, 1446c-1, 1736f-1, 1736n, 1736o, 1765b of this title; title 13 section 301; title 16 section 1537; title 22 sections 1922, 2151a, 2167, 2292n, 2353, 2354, 2362, 2370, 2371, 2394, 2455, 2775; title 46 App. section 1241f.

§ 1691. Declaration of policy

The Congress hereby declares it to be the policy of the United States to expand international trade; to develop and expand export markets for United States agricultural commodities; to use the abundant agricultural productivity of the United States to combat hunger and malnutrition and to encourage economic development in the developing countries, with particular emphasis on assistance to those countries that are determined to improve their own agricultural production; to use foreign currencies accruing under this chapter to foster and encourage the development of private enterprise in developing countries; to enhance food security in developing countries through local food production; and to promote in other ways the foreign policy of the United States. In furnishing food aid under this chapter, the President shall—

[*See main edition for text of (1) to (5)*]

(As amended Dec. 23, 1985, Pub. L. 99-198, title XI, § 1111(a), 99 Stat. 1474.)

AMENDMENTS

1985—Pub. L. 99-198 included Congressional declaration of policy to use accrued foreign currencies to foster and encourage the development of private enterprise in developing countries and to enhance food security in developing countries through local food production in first sentence.

AGRICULTURAL TRADE AND EXPORT POLICY COMMISSION ACT

Subtitle C (§§ 1217-1224) of title XII of Pub. L. 97-98, as added Pub. L. 98-412, Aug. 30, 1984, 98 Stat. 1576, provided that:

"SHORT TITLE

"SEC. 1217. This subtitle may be cited as the 'Agricultural Trade and Export Policy Commission Act'.

"FINDINGS AND DECLARATION OF POLICY

"SEC. 1218. (a) Congress finds that—

"(1) the economic well-being of the Nation's agricultural industry is directly related to its ability to compete in international markets; and

"(2) a thorough examination of agriculture-related trade and export policies, programs, and practices of the United States is needed to ensure that such policies, programs, and practices increase the competitiveness of United States agricultural commodities and products in international markets.

"(b) It is hereby declared to be the policy of Congress to expand international trade in United States agricultural commodities and products and to develop, maintain, and expand markets for United States agricultural exports.

"ESTABLISHMENT

"SEC. 1219. (a) There is established a National Commission on Agricultural Trade and Export Policy to conduct a study of the agriculture-related trade and export policies, programs, and practices of the United States.

"(b) In addition to the ex officio congressional members specified in subsection (c) of this section, the Commission shall be composed of twenty-three members appointed or designated by the President and selected as follows:

"(1) The President shall select three members from among officers or employees of the Executive branch who shall serve in an ex officio capacity without voting rights; and

"(2) The President pro tempore of the Senate and the Speaker of the House of Representatives shall each select ten members from among private citizens of the United States to represent industries that are directly affected by agriculture-related trade and export policies, programs, and practices of the United States, including, but not limited to, the following:

"(A) producers of major agricultural commodities in the United States;

"(B) processors or refiners of United States agricultural commodities;

"(C) exporters, transporters, or shippers of United States agricultural commodities and products to foreign countries;

"(D) suppliers of production equipment or materials to United States farmers;

"(E) providers of financing or credit for domestic and export agricultural purposes; and

"(F) organizations representing general farm and rural interests in the United States.

"(c) The chairmen and ranking minority members of the House Committee on Agriculture, the Senate Committee on Agriculture, Nutrition, and Forestry, the House Committee on Foreign Affairs, the Senate Committee on Foreign Relations, the House Committee on Ways and Means, and the Senate Committee on Finance shall serve as ex officio members of the Commission and shall have the same voting rights as the members of the Commission selected and appointed under the provisions of subsection (b)(2) of this section. The chairmen and ranking minority members may designate other members of their respective committees to serve in their stead as members of the Commission.

"(d) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

"(e) The Commission shall elect a chairman from among the members of the Commission who are selected and appointed under the provisions of subsection (b)(2) of this section.

"(f) The Commission shall meet at the call of the chairman or a majority of the Commission.

"CONDUCT OF STUDY

"SEC. 1220. The Commission shall study the agriculture-related trade and export policies, programs, and practices of the United States and the international and domestic factors affecting such policies, programs, and practices, including the intergovernmental activities of the United States that affect the formulation of policies. In conducting the study, the Commission shall consider, among other things, the following:

"(1) the effectiveness of existing agricultural export assistance programs, and the manner in which they can be improved;

"(2) new export assistance programs that should be considered, and the conditions under which they can be implemented;

"(3) practices of foreign countries that impede the export of United States agricultural commodities and products, and appropriate responses for the United States;

"(4) the effectiveness of the trade agreements program of the United States with respect to agriculture-related trade and exports, and the manner in which it can be improved;

"(5) international economic trends that affect agricultural exports, and the manner in which the United States can best adjust its policies, programs, and practices to meet changing economic conditions;

"(6) potential areas of conflict and compatibility between international agricultural trade and foreign food assistance programs, and the manner in which any conflict can be resolved; and

"(7) the relationship between international agricultural trade and foreign economic development and food programs, and the manner in which they can be made more compatible.

"RECOMMENDATIONS AND REPORTS

"SEC. 1221. (a) On the basis of its study, the Commission shall make findings and develop recommendations for consideration by the President and Congress with respect to the agriculture-related trade and export policies, programs, and practices of the United States, and the manner in which such policies, programs, and practices can be improved to better develop, maintain, and expand markets for United States agricultural exports.

"(b) The Commission shall submit to the President and Congress—

"(1) a report containing its initial findings and recommendations by March 31, 1985,

"(2) such additional interim reports on its work as may be requested by the chairman of any of the Committees set forth in section 1219(c) of this subtitle, and

"(3) a report containing the final results of its study and its recommendations therefrom by July 1, 1986.

"ADMINISTRATION

"SEC. 1222. (a) The heads of Executive agencies, the General Accounting Office, the International Trade Commission, and the Congressional Budget Office shall, to the extent permitted by law, provide the Commission such information as it may require in carrying out its duties and functions.

"(b) Members of the Commission shall serve without any additional compensation for work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service under sections 5701 through 5707 of title 5, United States Code.

"(c) To the extent there are sufficient funds available to the Commission in advance under section 1223 of this subtitle, and subject to such rules as may be adopted by the Commission, the chairman, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, shall have the power to—

"(1) appoint and fix the compensation of a director; and

"(2) appoint and fix the compensation of such additional staff personnel as the Commission determines necessary to carry out its duties and functions.

"(d) Upon request of the Commission, the Secretary of Agriculture shall furnish the Commission with such personnel and support services as are necessary to assist the Commission in carrying out its duties and functions.

"(e) Upon request of the Commission, the heads of other Executive agencies and the General Accounting Office are each authorized to furnish the Commission with such personnel and support services as the head of the agency or office and the chairman of the Commission agree are necessary to assist the Commission in carrying out its duties and functions.

"(f) The Commission shall not be required to pay or reimburse any agency or office for personnel and support services provided under this section.

"(g) In accordance with section 12 of the Federal Advisory Committee Act [5 App. U.S.C.], the Secretary of Agriculture shall maintain such financial records as will fully disclose the disposition of any funds that may be at the disposal of the Commission and the nature and extent of its activities, and the Comptroller General of the United States, or any of the Comptroller General's authorized representatives, shall have access to such records for the purpose of audit and examination.

"(h) The Commission shall be exempt from section 7(d), section 10(e), section 10(f), and section 14 of the Federal Advisory Committee Act [5 App. U.S.C.].

"(i) The Commission shall be exempt from the requirements of sections 4301 through 4305 of title 5, United States Code.

"PUBLIC SUPPORT

"SEC. 1223. (a) Following the appointment or designation of the members of the Commission, notwithstanding the provisions of section 1342 of title 31, United States Code, the Secretary of Agriculture may receive, from persons, corporations, foundations, and all other groups and entities within the United States, contributions of money and services to assist the Commission in carrying out its duties and functions. Any money contributed under this section shall be available to the Commission for the payment of salaries, travel expenses, per diem, and other expenses incurred by the Commission under this subtitle. In no event may the contributions from any one person, corporation, foundation, or other group or entity exceed 5 per centum of the Commission's total budget.

"(b) If the contributions provided under subsection (a) are insufficient for payment of Commission salaries, travel expenses, per diem, and other expenses incurred by the Commission under this subtitle, the Secretary of Agriculture is authorized to use the funds of the Commodity Credit Corporation for such purposes in an amount not to exceed a total of $1,000,000.

"(c) The Secretary of Agriculture shall keep, and shall make available for public inspection during normal business hours, records that fully disclose a complete list of every person, group, and entity making a contribution under this section, the address of the contributor, the amount and type of each such contribution, and the date the contribution was made.

"(d) Any amount of money available to the Commission under this section that remains unobligated upon termination of the Commission shall be deposited in the Treasury as miscellaneous receipts.

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"TERMINATION

"SEC. 1224. The Commission shall terminate sixty days after the transmission of its final report to the President and Congress.".

EX. ORD. NO. 11252. FOOD-FOR-PEACE PROGRAM

Ex. Ord. No. 11252, Oct. 20, 1965, 30 F.R. 13507, as amended by Ex. Ord. No. 12527, Aug. 7, 1985, 50 F.R. 32157, provided:

[*See main edition for text of first four pars.; Sec. 1*]

SEC. 2. This order shall take effect on November 1, 1965.

SUBCHAPTER II—SALE OF AGRICULTURAL COMMODITIES FOR FOREIGN CURRENCIES AND LONG-TERM-DOLLAR-CREDIT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1431, 1707a, 1724, 1727a, 1727b, 1727c, 1732, 1736a, 1736b, 1736c, 1736e, 1736o, 1743, 1766b of this title; title 22 sections 2103, 2291; title 46 App. section 1241f.

§ 1701. Agreements with friendly countries

(a) Negotiation and implementation of agreements for sales; monetary considerations

In order to carry out the policies and accomplish the objectives set forth in section 1691 of this title, the President is authorized to negotiate and carry out agreements with friendly countries to provide for the sale of agricultural commodities—

(1) for dollars on credit terms;

(2) to the extent that sales for dollars under the terms applicable to such sales are not possible, for foreign currencies on credit terms and on terms that permit conversion to dollars at the exchange rate applicable to the sales agreement; or

(3) for foreign currencies for use under section 1708 of this title on terms that permit conversion to dollars.

(b) Level of sales for foreign currencies

(1) Except as provided in paragraph (2), for each of the fiscal years 1986 through 1990 sales for foreign currencies for use under section 1708 of this title under agreements entered into under this subchapter shall be made at an annual level of not less than 10 percent of the aggregate value of all sales of agricultural commodities under this subchapter.

(2) The President may reduce the minimum level of sales for foreign currencies required under paragraph (1) during any fiscal year in which the President determines that the level of agricultural commodities furnished under this title will be significantly reduced as a result of compliance with the requirement under paragraph (1).

(c) Amount of foreign currency generated in sales

Agreements for sales for foreign currency in a developing country for use under section 1708 of this title may not be entered into to the extent that such agreements would generate currency in amounts that cannot be productively used and absorbed in the private sector of such country.

(d) Terms and conditions of sales for foreign currencies

Sales for foreign currencies for use under section 1708 of this title under agreements entered into under this subchapter shall be made on such terms and conditions as are specified in such agreements.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XI, § 1111(c), 99 Stat. 1474.)

AMENDMENTS

1985—Pub. L. 99-198 in amending section generally, incorporated existing text in provisions designated subsec. (a) and added subsecs. (b) to (d).

CARGO PREFERENCE LAW EXEMPTION

Section 3 of act Aug. 3, 1956, ch. 933, 70 Stat. 988, provided that: "Sales of fresh fruit and the products thereof under title I of the Act [sections 1701 to 1704, 1705 to 1707, 1708 to 1711 of this title] shall be exempt from the requirements of the cargo preference laws (Public Resolution 17, Seventy-third Congress [46 App. U.S.C. 1241-1] and section 901(b) of the Merchant Marine Act, 1936 [46 App. U.S.C. 1241(b)]).".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1708 of this title; title 22 section 1922.

§ 1703. Agreements with friendly countries and organizations; terms and conditions

In exercising the authorities conferred upon him by this subchapter, the President shall—

[*See main edition for text of* (a)]

(b) Provision for payment in foreign currencies

except where the President determines that it would be inconsistent with the objectives of this chapter, determine the amount of foreign currencies needed for the uses specified in subsections (a), (b), (e), and (h) of section 1704 of this title, in section 1708 of this title, and in subchapter III-A of this chapter, and the agreements for credit sales shall provide for payment of such amounts in dollars or in foreign currencies upon delivery of the agricultural commodities; and such payment may be considered as an advance payment of the earliest installments;

[*See main edition for text of* (c)]

(d) Sales agreements with countries friendly to United States; reports to Congress; aggressor countries

make sales agreements only with those countries which he determines to be friendly to the United States: *Provided*, That the President shall periodically review the status of those countries which are eligible under this subsection and report the results of such review to the Congress. As used in this chapter, "friendly country" shall not include any country or area dominated or controlled by a foreign government or organization controlling a world Communist movement. Notwithstanding any other act, the President may enter into agreements for the sale of agricultural commodities under this subchapter with countries which fall within the definition of "friendly country" for

the purpose of such sales and no sales under this chapter shall be made with any country if the President finds such country is (a) an aggressor, in a military sense, against any country having diplomatic relations with the United States, or (b) using funds, of any sort, from the United States for purposes inimical to the foreign policies of the United States;

[*See main edition for text of (e) to (l)*]

(m) Currency conversion

except as provided in section 1708 of this title, require foreign currencies to be convertible to dollars to the extent consistent with the effectuation of the purposes of this chapter, but in any event to the extent necessary to (1) permit that portion of such currencies made available for payment of United States obligations to be used to meet obligations or charges payable by the United States or any of its agencies to the government of the importing country or any of its agencies, and (2) in the case of excess currency countries, assure convertibility by sale to American tourists, or otherwise, of such additional amount (up to twenty-five centum of the foreign currencies received pursuant to each agreement entered into after January 1, 1967) as may be necessary to cover all normal expenditures of American tourists in the importing country. In carrying out this subsection, the President shall require that foreign currencies to be used under section 1708 of this title that are acquired under an agreement for the sale of commodities be convertible to dollars during the period beginning 10 years after the date of the last delivery of such commodities and ending 30 years after the date of such delivery. Such agreement for sale shall establish a schedule for such conversion but need not specify the exchange rate for such conversion;

(n) Displacement of sales

take maximum precautions to assure that sales under this chapter shall not displace any sales of United States agricultural commodities which would otherwise be made;

(o) Commercial purchases of agricultural commodities; availability of commercial supplies for programs

take steps to assure that the United States obtains a fair share of any increase in commercial purchases of agricultural commodities by the purchasing country and that commercial supplies are available to meet demands developed through programs carried out under this chapter.; [1]

(p) Convertibility of foreign currencies received pursuant to sales to United States or purchasing country contractors for payment of wages

except as provided in section 1708 of this title, assure convertibility at such uniformly applied exchange rates as shall be agreed upon of up to 50 per centum of the foreign currencies received pursuant to each agreement by sale to United States or purchasing country contractors for payment of wages earned in the development and consummation of works of public improvement in the purchasing country; and

(q) Convertibility of foreign currencies received pursuant to sales to United States importers

except as provided in section 1708 of this title, assure convertibility of up to 50 per centum of the foreign currencies received pursuant to each agreement by sale to United States importers for the procurement of materials or commodities in the purchasing country.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XI, § 1111(d), 99 Stat. 1475.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-198, § 1111(d)(1), inserted ", in section 1708 of this title," after "section 1704 of this title".

Subsec. (d). Pub. L. 99-198, § 1111(d)(2), struck out "for dollars on credit terms" after "agricultural commodities".

Subsec. (m). Pub. L. 99-198, § 1111(d)(3), inserted introductory text "except as provided in section 1708 of this title," substituted a period for the semicolon at end of cl. (2), and added provisions respecting period for convertibility of foreign currencies into dollars and establishment in the agreement for sale of a schedule for conversion without specifying the exchange rate.

Subsec. (n). Pub. L. 99-198, § 1111(d)(4), struck out "for dollars on credit terms" after "sales" and "for cash dollars" after "made".

Subsec. (o). Pub. L. 99-198, § 1111(d)(5), substituted "take" for "Take".

Subsecs. (p), (q). Pub. L. 99-198, § 1111(d)(6), (7), substituted "except as provided in section 1708 of this title, assure convertibility" for "Assure convertibility".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1707, 1707a, 1727d of this title.

§ 1705. Deposit of foreign currencies in special account; reimbursements to Commodity Credit Corporation of sums used by other agencies; reduction of deficits in balance of payments

Foreign currencies received pursuant to this chapter shall be deposited in a special account to the credit of the United States and shall be used only pursuant to sections 1704 and 1708 of this title, and any department or agency of the Government using any of such currencies for a purpose for which funds have been appropriated shall reimburse the Commodity Credit Corporation in an amount equivalent to the dollar value of the currencies used. The President shall utilize foreign currencies received pursuant to this chapter in such manner as will, to the maximum extent possible, reduce any deficit in the balance of payments of the United States.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XI, § 1111(e), 99 Stat. 1475.)

AMENDMENTS

1985—Pub. L. 99-198 inserted reference to section 1708 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1703, 1708, 1709, 1733, 1736a of this title; title 22 section 2291a.

[1] So in original.

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§ 1706. Payment for commodities

(a) Dollar credit sales; period; development loan terms applicable; terms of payment

[*See main edition for text of (1) and (2)*]

(3) Payment for sales made for foreign currencies that are to be used under section 1708 of this title under an agreement entered into under this subchapter shall be made on such terms as are specified in such agreement.

(b) Sales agreement provisions for use of proceeds for prescribed purposes and programs; payments; priority to sales agreements with countries conforming to certain requirements in their agricultural development plans; private sector development activities; deposit of proceeds

[*See main edition for text of (1) to (3)*]

(4)(A) Notwithstanding any other provision of this subsection, agreements under this subchapter for the sale of agricultural commodities for dollars on credit terms may provide that proceeds from the sale of the commodities in the recipient country shall be used for such private sector development activities as are mutually agreed upon by the United States and the recipient government.

(B) Proceeds used for private sector development activities pursuant to this paragraph shall be deposited in jointly programmed accounts to be loaned by the recipient government to one or more financial intermediaries operating within the country for use by those financial intermediaries for loans to private individuals, private and voluntary organizations, corporations, cooperatives, and other entities within such country. In the case of a cooperative or private and voluntary organizations, proceeds may be granted to defray the startup costs of becoming a financial intermediary. Such proceeds shall not be used to promote the production of commodities or the products thereof that will compete, as determined by the President, in world markets with similar commodities or the products thereof produced in the United States.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XI, § 1111(f), (g), 99 Stat. 1475.)

AMENDMENTS

1985—Subsec. (a)(3). Pub. L. 99-198, § 1111(f), added par. (3).

Subsec. (b)(4). Pub. L. 99-198, § 1111(g), added par. (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1707, 1708, 1736o of this title.

§ 1707a. Export Credit Sales Program; financing of commercial sales of private stocks; authorization of appropriations for reimbursement of costs to Commodity Credit Corporation

[*See main edition for text of (a)*]

(b) Financing of commercial export sales for more than three years and less than ten years and guarantees of repayment; determination by Secretary; preferences; authorized uses; terms; resale; review; transmission to Congress; cargo preference laws; authority of Secretary or Commodity Credit Corporation

(1) Export sales of agricultural commodities out of Commodity Credit Corporation and private stocks on credit terms in excess of three years, but not more than ten years, may be financed by the Commodity Credit Corporation. In addition, the Corporation may guarantee the repayment of loans made to finance such sales.

(2) No export sale may be financed, and no loan may be guaranteed, under this subsection unless the Secretary of Agriculture determines that the sale will—

(A) develop, expand, or maintain the importing nation as a foreign market, on a long-term basis, for the commercial sale and export of United States agricultural commodities without displacing normal commercial sales;

(B) otherwise improve the capability of the importing nation to purchase and use, on a long-term basis, United States agricultural commodities; or

(C) otherwise promote the export of United States agricultural commodities.

(3) The Secretary is encouraged, to the maximum extent practicable, to finance or guarantee the export sales of agricultural commodities under this subsection to purchasers from—

(A) countries that are previous recipients of credit extended under title I of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1701 et seq.);

(B) countries unable, as determined by the Secretary, to utilize other short-term export credit programs offered by the Secretary or the Commodity Credit Corporation; and

(C) countries that are friendly countries, as defined in section 103(d) of such Act (7 U.S.C. 1703(d)).

(4) Consistent with the provisions of paragraph (2) of this subsection, intermediate credit financing or guarantees under this subsection may be made available for the following uses:

(A) to establish reserve stocks consistent with international commodity agreements or other stock building plans acceptable to the United States;

(B) the export sale of breeding animals (including, but not limited to, cattle, swine, sheep, and poultry), including the cost of freight from the United States to designated points of entry in other nations;

(C) where determined feasible, for the establishment of facilities in the importing nation to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities (through the use of local currency generated from the import and sale of United States agricultural commodities to finance all or part of such facilities);

(D) to meet competition for agricultural export sales;

(E) to finance the importation of agricultural commodities by developing nations for use in meeting their food and fiber needs; and

(F) otherwise to promote the export sales of agricultural commodities.

(5) Intermediate credit financing or guarantees under this subsection may not be used for the purpose of foreign aid or debt rescheduling.

(6)(A) The terms of credit for export sales financed under this subsection shall include the following terms:

(i) Repayment shall be in dollars with interest at a rate determined by the Secretary.

(ii) The Secretary may, if the Secretary deems such action appropriate to protect the interests of the United States, require an initial payment from the purchaser at the time of sale or shipment of the agricultural commodity.

(B) Contracts of guarantee under this subsection shall contain such terms and conditions as the Commodity Credit Corporation shall determine.

(7) The Secretary shall, wherever feasible, obtain commitments from purchasers that will prevent resale or transshipment to other nations of agricultural commodities purchased with financing or guarantees provided under this subsection.

(8) The provisions of the cargo preference laws shall not apply to export sales financed or guaranteed under this subsection.

[*See main edition for text of* (9)]

(10) For purposes of guaranteeing export sales under this subsection, the Commodity Credit Corporation shall make available—

(A) for each of the fiscal years ending September 30, 1986, through September 30, 1988, not less than $500,000,000; and

(B) for each of the fiscal years ending September 30, 1989 and September 30, 1990, not more than $1,000,000,000.

(c) "Agricultural commodity" defined

The term "agricultural commodity" as used in this section includes any agricultural commodity (including fish, without regard to whether such fish are harvested in aquacultural operations) or product thereof.

(d) Agricultural Export Credit Revolving Fund; establishment, purposes, etc.

[*See main edition for text of* (1) *to* (5)]

(6) The revolving fund created by this subsection is abolished effective October 1, 1990, and all unobligated money in such fund on September 30, 1990, shall be transferred to and become part of the miscellaneous receipts account of the Treasury.

[*See main edition for text of* (7) *and* (8)]

(As amended Pub. L. 98-623, title IV, § 405(c), Nov. 8, 1984, 98 Stat. 3409; Pub. L. 99-198, title XI, §§ 1130, 1131, Dec. 23, 1985, 99 Stat. 1486.)

REFERENCES IN TEXT

The Agricultural Trade Development and Assistance Act of 1954, as amended, referred to in subsec. (b)(3)(A), is act July 10, 1954, ch. 469, 68 Stat. 454, as amended. Title I of the Act is classified to this subchapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1691 of this title and Tables.

The cargo preference laws, referred to in subsec. (b)(8), include act Mar. 26, 1934, ch. 90, 48 Stat. 500, and act Aug. 26, 1954, ch. 936, 68 Stat. 832, which are classified to sections 1241-1 and 1241, respectively, of Title 46, Appendix, Shipping.

AMENDMENTS

1985—Subsec. (b)(1). Pub. L. 99-198, § 1131(1), authorized the Corporation to guarantee the repayment of loans made to finance the export sales of agricultural commodities.

Subsec. (b)(2). Pub. L. 99-198, § 1131(2), inserted ", and no loan may be guaranteed," after "financed" and added subpar. (C).

Subsec. (b)(3). Pub. L. 99-198, § 1131(4), (5), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(4). Pub. L. 99-198, § 1131(4), (6), redesignated former par. (3) as (4), inserted in introductory text "or guarantees" after "financing", struck out "credit" before "competition" in subpar. (D), and added subpars. (E) and (F). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 99-198, § 1131(4), (7), redesignated former par. (4) as (5), inserted "or guarantees" after "financing", and struck out "to encourage credit competition, or" before "for the purpose". Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 99-198, § 1131(4), (8), redesignated former par. (5) as (6), designated introductory text as subpar. (A), redesignated former subpar. (A) as cl. (i), substituting therein "rate determined by the Secretary" for "rate, equal, as nearly as practicable, to the rate charged by the Commodity Credit Corporation for financing under the Corporation's short-term export credit sales program", redesignated former subpar. (B) as cl. (ii), and added subpar. (B). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 99-198, § 1131(3), (4), (9), struck out par. (7) relating to agreements to finance export sales of agricultural commodities and such agreements for establishment of reserve stocks, redesignated former par. (6) as (7), and inserted "or guarantees" after "financing".

Subsec. (b)(8). Pub. L. 99-198, § 1131(10), inserted "or guaranteed" after "financed".

Subsec. (b)(10). Pub. L. 99-198, § 1131(11), added par. (10).

Subsec. (d)(6). Pub. L. 99-198, § 1130, substituted "1990" for "1985" in two places.

1984—Subsec. (c). Pub. L. 98-623 added provision including fish, without regard to whether such fish are harvested in aquacultural operations, in the definition of "agricultural commodity".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 405(d) of Pub. L. 98-624 provided that: "For purposes of section 135 of the Omnibus Budget Reconciliation Act of 1982 (7 U.S.C. 612c note) [Pub. L. 97-253], the amendments made by this section [amending sections 1707a and 1732 of this title and section 714c of Title 15, Commerce and Trade] shall be considered to have taken effect before the date of the enactment of that Act [Sept. 8, 1982]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1736m, 1736n of this title; title 46 App. sections 1241j, 1241p.

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§ 1708. Agreement with financial intermediary located or operating in developing country purchasing agricultural commodities

(a) Loan to financial intermediary of foreign currency accruing from commodity sales to the developing country under sales agreement; publicity of availability of foreign currency to financial intermediary

(1) In order to foster and encourage the development of private enterprise institutions and infrastructure as the base for the expansion, promotion, and improvement of the production of food and other related goods and services within a developing country and pursuant to an agreement for the sale of agricultural commodities entered into under this subchapter, the President may enter into an agreement with a financial intermediary located or operating in such country under which the President shall lend to such financial intermediary foreign currency that accrues as a result of commodity sales to such country under a sales agreement entered into under this subchapter after December 23, 1985. Procurement and other contracting requirements, normally applicable to appropriated funds, shall not apply to such foreign currency.

(2) Prior to loaning the foreign currencies as provided in this section, the President shall take such steps as may be necessary to assure that the availability of such foreign currencies to financial intermediaries is adequately publicized within the purchasing country.

(b) Eligibility of financial intermediary to obtain foreign currency

To be eligible to obtain foreign currency under this section, a financial intermediary must enter into an agreement with the President under which the intermediary agrees to use such currency to make loans to private individuals, cooperatives, corporations, or other entities within a developing country, at reasonable rates of interest, for the purpose of financing—

(1) productive, private enterprise investment within such country, including such investment in projects carried out by cooperatives, nonprofit voluntary organizations, and other entities found to be qualified by the President;

(2) private enterprise facilities for aiding the utilization and distribution, and increasing the consumption of and markets for, United States agricultural commodities and the products thereof; or

(3) private enterprise support of self-help measures and projects.

(c) Terms and conditions of agreement

An agreement entered into under this section shall specify the terms and conditions under which the foreign currency shall be used and subsequently repaid, including the following terms and conditions:

(1) A financial intermediary shall, to the maximum extent feasible, give preference to the financing of agricultural related private enterprise with the funds provided under this section.

(2)(A) A financial intermediary shall repay a loan made under this section, plus accrued interest, at such times and in such manner as will permit conversion of such foreign currency to dollars in accordance with the schedule for such conversion.

(B) A financial intermediary may repay a loan made under this section prior to the repayment date specified in such agreement.

(3) To be eligible to receive financing from a financial intermediary under this section, an entity or venture must—

(A) be owned, directly or indirectly, by citizens of the developing country or any other country eligible to participate in a sales agreement entered into under this subchapter, except that up to 49 percent of such ownership interest may be held by citizens of the United States; and

(B) not be owned or controlled, in whole or in part, by the government or any governmental subdivision of the developing country.

(4)(A) The rate of interest charged on funds loaned to a financial intermediary under this section shall be such rate as is determined by the President and the intermediary.

(B) In the case of a cooperative or nonprofit voluntary agency that is acting as a financial intermediary, the President may charge a lower rate of interest on funds loaned to such intermediary under this section than is charged to other types of intermediaries or make a grant from currencies received from sales made under section 1701(a)(3) of this title to defray the startup costs of becoming a financial intermediary.

(5) No currency made available under this section may be used to promote the production of agricultural commodities or the products thereof that will compete, as determined by the President, in world markets with similar agricultural commodities or the products thereof produced in the United States.

(6) The President may not require a developing country to guarantee the repayment of a loan made to a financial intermediary under this section as a condition of receipt of such loan.

(7) A financial intermediary shall take such steps as may be necessary to publicize in the developing country the availability of loan funds under this section.

(d) Currency repayed by financial intermediary

(1) All currencies repaid by financial intermediaries under agreements entered into under this section shall be deposited and accounted for in accordance with section 1705 of this title.

(2) Currencies repaid by financial intermediaries shall, as determined by the President—

(A) be used to finance additional productive, private enterprise investment under agreements with financial intermediaries entered into under this section;

(B) be used for the development of new markets for United States agricultural commodities;

(C) be used for the payment of United States obligations (including obligations entered into pursuant to other laws of the United States); or

(D) be converted to dollars.

(3) Section 1306 of title 31 shall apply to currencies used for the purpose specified in paragraph (2)(C).

(e) Periodic audit; reporting requirement

(1) Any agreement entered into under this section and section 1706(b)(4) of this title shall be subject to periodic audit to determine whether the terms and conditions of the agreement are being fulfilled.

(2) Not later than 180 days after the end of each fiscal year, the President shall report to the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry and the Committee on Foreign Relations of the Senate on the activities carried out under this section and section 1706(b)(4) of this title during the preceding fiscal year, including an evaluation of the impact of investment under this section and section 1706(b)(4) of this title on the development of agricultural-related private enterprise in each participating country.

(f) Agricultural technical assistance

The President may provide agricultural technical assistance to further the purposes of this section, including the funding of market development activities. To the maximum extent practicable, the President shall use at least 5 percent of the foreign currencies obtained for use under this section from sales of agricultural commodities made under agreements entered into under this subchapter after December 23, 1985, to carry out such assistance.

(g) Channel of foreign currencies for loans for private enterprise investment

For each of the fiscal years 1986 through 1990, and in accordance with the provisions of section 1706(b)(4) of this title and this section, the President is encouraged to channel foreign currencies, in an amount equivalent to 25 percent of the value of sales agreements under this subchapter, for loans for private enterprise investment provided there are appropriate proposals for such an amount of foreign currencies.

(h) Applicability of provisions

The provisions of this section apply notwithstanding any other provision of law.

(i) Definitions

As used in this section and in section 1706(b)(4) of this title—

(1) the term "developing country" means a country that is eligible to participate in a sales agreement entered into under this subchapter; and

(2) the term "financial intermediary" means a bank, financial institution, cooperative, nonprofit voluntary agency, or other organization or entity, as determined by the President, that has the capability of making and servicing a loan in accordance with this section.

(July 10, 1954, ch. 469, title I, § 108, as added Dec. 23, 1985, Pub. L. 99-198, title XI, § 1111(h), 99 Stat. 1476.)

PRIOR PROVISIONS

A prior section 1708, acts July 10, 1954, ch. 469, title I, § 108, 68 Stat. 457; Oct. 8, 1964, Pub. L. 88-638, § 1(12), 78 Stat. 1037; Nov. 11, 1966, Pub. L. 89-808, § 2(B), 80 Stat. 1533, which authorized the Commodity Credit Corporation to finance ocean freight charges pursuant to agreements for sales of agricultural commodities for foreign currencies, was repealed by Pub. L. 97-113, title IV, § 401(7), Dec. 29, 1981, 95 Stat. 1537.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701, 1703, 1705, 1706 of this title.

§ 1709. Self-help measures

(a) Criteria of self-help

Before entering into agreements with developing countries for the sale of United States agricultural commodities on whatever terms, the President shall consider the extent to which the recipient country is undertaking wherever practicable self-help measures to increase per capita production and improve the means for storage and distribution of agricultural commodities, including:

[*See main edition for text of (1) to (10)*]

(11) carrying out programs to improve the health of the rural poor, including the immunization of children.

[*See main edition for text of concluding provision; (b) to (d)*]

(As amended Dec. 23, 1985, Pub. L. 99-198, title XI, § 1112(a)(1), 99 Stat. 1478.)

AMENDMENTS

1985—Subsec. (a)(11). Pub. L. 99-198 included immunization of children.

INCREASED IMMUNIZATIONS OF CHILDREN; REPORTING REQUIREMENT

Section 1112(b) of Pub. L. 99-198 provided that: "In the implementation of health programs undertaken in relation to assistance provided under the Agricultural Trade Development and Assistance Act of 1954 [this chapter], it shall be the goal of the organizations and agencies involved to provide as many additional immunizations of children as possible. Such increased immunization activities should be taken in coordination with similar efforts of other organizations and in keeping with any national plans for expanded programs of immunization. The President shall include information concerning such immunization activities in the annual reports required by section 634 of the Foreign Assistance Act of 1961 [22 U.S.C. 2394], including a report on the estimated number of immunizations provided each year pursuant to this subsection."

SUBCHAPTER III—FAMINE RELIEF AND OTHER ASSISTANCE AND DONATIONS OF FOOD BOTH ON A GOVERNMENT-TO-GOVERNMENT BASIS AND THROUGH VOLUNTARY ORGANIZATIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1431, 1704c, 1714, 1732, 1736b, 1736c, 1736e, 1736f-1, 1743 of this title; title 10 section 2681; title 22 section 2291; title 46 App. section 1241f.

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§ 1721. Distribution of agricultural commodities

[See main edition for text of (a)]

(b) Minimum quantity for distribution

The minimum quantity of agricultural commodities distributed under this subchapter for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, shall be 1,900,000 metric tons, of which not less than 1,425,000 metric tons for nonemergency programs shall be distributed through nonprofit voluntary agencies, cooperatives, and the World Food Program; unless the President determines and reports to the Congress, together with his reasons, that such quantity cannot be used effectively to carry out the purposes of this subchapter.

(c) Nutritional, etc., criteria for distribution

(1) Except as provided in paragraph (2), in distributing agricultural commodities under this subchapter, the President shall—

(A) consider—

(i) the nutritional assistance to recipients and benefits to the United States that would result from distributing such commodities in the form of processed and protein-fortified products, including processed milk, plant protein products, and fruit, nut, and vegetable products;

(ii) the nutritional needs of the proposed recipients of the commodities;

(iii) the cost effectiveness of providing such commodities, for purposes of selecting commodities for distribution under nonemergency programs; and

(iv) the purposes of this subchapter; and

(B) ensure that at least 75 percent of the quantity of agricultural commodities required to be distributed each fiscal year under subsection (b) of this section for nonemergency programs be in the form of processed or fortified products or bagged commodities.

(2) The President may waive the requirement under paragraph (1)(B) or make available a smaller percentage of fortified or processed food than required under paragraph (1)(B) during any fiscal year in which the President determines that the requirements of the programs established under this subchapter will not be best served by the distribution of fortified or processed food in the amounts required under paragraph (1)(B).

(As amended Aug. 8, 1985, Pub. L. 99-83, title X, § 1002, 99 Stat. 270; Dec. 23, 1985, Pub. L. 99-198, title XI, §§ 1102, 1103, 99 Stat. 1465.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-198, § 1102, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The minimum quantity of agricultural commodities distributed under this subchapter—

"(1) for fiscal years 1978 through 1980 shall be 1,600,000 metric tons, of which not less than 1,300,000 metric tons shall be distributed through nonprofit voluntary agencies and the World Food Program;

"(2) for fiscal year 1981 shall be 1,650,000 metric tons, of which not less than 1,350,000 metric tons shall be distributed through nonprofit voluntary agencies and the World Food Program; and

"(3) for fiscal year 1982 and each fiscal year thereafter shall be 1,700,000 metric tons, of which not less than 1,200,000 metric tons for nonemergency programs shall be distributed through nonprofit voluntary agencies and the World Food Program, except that for fiscal year 1986 the minimum quantity distributed shall be 1,800,000 metric tons, of which not less than 1,300,000 metric tons for nonemergency programs shall be distributed through nonprofit voluntary agencies and the World Food Program, and for fiscal year 1987 the minimum quantity distributed shall be 1,900,000 metric tons, of which not less than 1,425,000 metric tons for nonemergency programs shall be distributed through nonprofit voluntary agencies and the World Food Program;

unless the President determines and reports to the Congress, together with his reasons, that such quantity cannot be used effectively to carry out the purposes of this subchapter: *Provided*, That such minimum quantity shall not exceed the total quantity of commodities determined to be available for disposition under this chapter pursuant to section 1731 of this title, less the quantity of commodities required to meet famine or other urgent or extraordinary relief requirements."

Pub. L. 99-83 added provisions relating to minimum quantities for fiscal years 1986 and 1987.

Subsec. (c). Pub. L. 99-198, § 1103, added subsec. (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as a note under section 2151-1 of Title 22, Foreign Relations and Intercourse.

CROSS REFERENCES

Dairy products and wheat, Commodity Credit Corporation stocks available for carrying out this subchapter, see section 1431(b) of this title.

§ 1722. Furnishing commodities through friendly governments, agencies, and organizations

(a) Use of nonprofit voluntary agencies; appropriate disposition; identification of origin of commodities

The President may furnish commodities for the purposes set forth in section 1721 of this title through such friendly governments and such agencies, private or public, including intergovernmental organizations such as the world food program and other multilateral organizations in such manner and upon such terms and conditions as he deems appropriate. Such commodities may be furnished for direct distribution, sale, barter, or other appropriate disposition in carrying out the purposes set forth in section 1721 of this title. The President shall, to the extent practicable, utilize nonprofit voluntary agencies registered with, and approved by, the Agency for International Development. If no United States nonprofit voluntary agency registered with and approved by the Agency for International Development is available, the President may utilize a foreign nonprofit voluntary agency which is registered with and approved by the Agency for International Development. Insofar as practicable, all commodities furnished hereunder shall be clearly identified by appropriate marking on each package or container in the language of the locality where they are distributed as being furnished by the people of the United States of America. Except in the case of emergency, the President shall

take reasonable precaution to assure that commodities furnished hereunder will not displace or interfere with sales which might otherwise be made.

(b) Assistance for community and other self-help activities; displacement of dollar sales; consideration of objectives

[See main edition for text of (1) to (3)]

(4) In the case of commodities distributed under this subchapter by nonprofit voluntary agencies, consideration shall be given to nutritional and development objectives as established by those agencies in light of their assessment of the needs of the people assisted.

(c) Multiyear agreements

(1) In agreements with nonprofit voluntary agencies and cooperatives for nonemergency assistance under this subchapter, the President is encouraged, if requested by the nonprofit voluntary agency or cooperative, to approve multiyear agreements to make agricultural commodities available for distribution by that agency or cooperative. Such agreement shall be subject to the availability each fiscal year of the necessary appropriations and agricultural commodities.

(2) Paragraph (1) does not apply to an agreement which the President determines should be limited to a single year because of the past performance of the nonprofit voluntary agency or cooperative or because the agreement involves a new program of assistance.

(3) In carrying out a multiyear agreement pursuant to this subsection, a nonprofit voluntary agency or cooperative shall not be required to obtain annual approval from the United States Government in order to continue its assistance program pursuant to the agreement, unless exceptional and unforeseen circumstances have occurred which the President determines require such approval.

(As amended Aug. 8, 1985, Pub. L. 99-83, title X, §§ 1003, 1004(a), 1005, 99 Stat. 270, 271.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-83, § 1003, added provisions relating to appropriate disposition under section 1721 of this title.

Subsec. (b)(4). Pub. L. 99-83, § 1004(a), added par. (4).

Subsec. (c). Pub. L. 99-83, § 1005, added subsec. (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83 set out as a note under section 2151-1 of Title 22, Foreign Relations and Intercourse.

§ 1723. Payment of costs and charges

The Commodity Credit Corporation may, in addition to the cost of acquisition, pay with respect to commodities made available under this subchapter costs for packaging, enrichment, preservation, and fortification; processing transportation, handling, and other incidental costs up to the time of their delivery free on board vessels in United States ports; ocean freight charges from United States ports to designated ports of entry abroad; transportation from United States ports to designated points of entry abroad in the case (1) of landlocked countries, (2) where ports cannot be used effectively because of natural or other disturbances, (3) where carriers to a specific country are unavailable, or (4) where a substantial savings in costs or time can be effected by the utilization of points of entry other than ports; in the case of commodities for urgent and extraordinary relief requirements, including pre-positioned commodities, transportation costs from designated points of entry or ports of entry abroad to storage and distribution sites and associated storage and distribution costs; and charges for general average contributions arising out of the ocean transport of commodities transferred pursuant thereto.

(As amended Oct. 12, 1984, Pub. L. 98-473, title III, § 305, 98 Stat. 2195.)

AMENDMENTS

1984—Pub. L. 98-473 inserted following cl. (4): "in the case of commodities for urgent and extraordinary relief requirements, including pre-positioned commodities, transportation costs from designated points of entry or ports of entry abroad to storage and distribution sites and associated storage and distribution costs;".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1431, 1736o of this title.

§ 1724. Authorization of appropriations for reimbursement of Commodity Credit Corporation; limitation; funds for purchase of foreign currencies

Programs of assistance shall not be undertaken under this subchapter during any fiscal year which call for an appropriation of more than $1,000,000,000 to reimburse the Commodity Credit Corporation for all costs incurred in connection with such programs (including the Corporation's investment in commodities made available) plus any amount by which programs of assistance undertaken under this subchapter in the preceding fiscal year have called or will call for appropriations to reimburse the Commodity Credit Corporation in amounts less than were authorized for such purpose during such preceding year. The President may waive the limitation in the preceding sentence if the President determines that such waiver is necessary to undertake programs of assistance to meet urgent humanitarian needs. In addition to other funds available for such purposes under any other Act, funds made available under this subchapter may be used in an amount not exceeding $7,500,000 annually to purchase foreign currencies accruing under subchapter II of this chapter in order to meet costs (except the personnel and administrative costs of cooperating sponsors, distributing agencies, and recipient agencies, and the costs of construction or maintenance or any church owned or operated edifice or any other edifices to be used for sectarian purposes) designed to assure that commodities made available under this subchapter are used to carry out effectively the purposes for which such commodities are made available or

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to promote community and other self-help activities designed to alleviate the causes of the need for such assistance: *Provided, however,* That such funds shall be used only to supplement and not substitute for funds normally available for such purposes from other non-United States Government sources.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XI, § 1101, 99 Stat. 1465.)

AMENDMENTS

1985—Pub. L. 99-198 substituted in first sentence "fiscal" for "calendar" year in two places and authorized a waiver of limitation on assistance when the President determines waiver is necessary to undertake programs of assistance to meet humanitarian needs.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1101 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 is effective Oct. 1, 1985.

§ 1726. Limitation on use of foreign currencies; reports to Congress

Except to meet famine or other urgent or extraordinary relief requirements, no assistance under this subchapter shall be provided under an agreement permitting generation of foreign currency proceeds unless (1) the country receiving the assistance is undertaking self-help measures in accordance with section 1709 of this title, (2) the specific uses to which the foreign currencies are to be put are set forth in a written agreement between the United States and the recipient country, and (3) such agreement provides that the currencies will be used for (A) alleviating the causes of the need for the assistance in accordance with the purposes and policies specified in section 2151a of title 22, (B) programs and projects to increase the effectiveness of food distribution and increase the availability of food commodities provided under this subchapter to the neediest individuals in recipient countries. The President shall include information on currencies used in accordance with this section in the reports required under section 1736b of this title and section 2417 of title 22, or (C) health programs and projects, including immunization of children.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XI, § 1112(a)(2), 99 Stat. 1478.)

AMENDMENTS

1985—Pub. L. 99-198 in cl. (3) added subcl. (C).

§ 1726a. Nonprofit voluntary agency request for nonemergency food assistance agreement; use of foreign currency proceeds

(a) A nonprofit voluntary agency requesting a nonemergency food assistance agreement under this subchapter shall include in such request a description of the intended uses of any foreign currency proceeds that would be generated with the commodities provided under the agreement.

(b) Such agreements shall provide, in the aggregate for each fiscal year, for the use of foreign currency proceeds under this subsection in an amount that is not less than 5 percent of the aggregate value of the commodities distributed under nonemergency programs under this subchapter for such fiscal year.

(July 10, 1954, ch. 469, title II, § 207, as added Dec. 23, 1985, Pub. L. 99-198, title XI, § 1104(a), 99 Stat. 1466.)

EFFECTIVE DATE

Section 1104(b) of Pub. L. 99-198 provided that: "Section 207 of the Agricultural Trade Development and Assistance Act of 1954 (as added by subsection (a)) [this section] shall apply with respect to agreements entered into after December 31, 1985."

SUBCHAPTER III-A—FOOD FOR DEVELOPMENT PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1703, 1736b of this title; title 22 section 2291.

§ 1727. Congressional declaration of purpose

[*See main edition for text of* (a)]

(b) The overall goal of assistance under this subchapter shall be to increase the access of the poor in the recipient country to a growing and improving food supply through activities designed to improve the production, protection, and utilization of food, and to increase the well-being of the poor in the rural sector of the recipient country. Assistance under this subchapter shall be used for programs of agricultural development, rural development, nutrition, health services (including immunization of children), and population planning, and the program described in section 1736(a)(1) of this title, in those countries which are undertaking (or are seriously prepared to undertake in connection with the provision of agricultural commodities under this chapter) self-help measures to increase agricultural production, improve storage, transportation, and distribution of commodities, and reduce population growth in accordance with section 1709 of this title, when such programs are directed at and likely to achieve the policy objectives of sections 2151a and 2151b of title 22 and are consistent with the policy objectives of this chapter. Particular emphasis should be placed on activities which effectively assist small farmers, tenants, sharecroppers, and landless agricultural laborers, by expanding their access to the rural economy through services and institutions at the local level, and otherwise providing opportunities for the poor who are dependent upon agriculture and agriculturally related activities to better their lives through their own efforts.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XI, § 1112(a)(3), 99 Stat. 1478.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-198 inserted "(including immunization of children)" after "health services".

§ 1727a. Participation of developing countries

[*See main edition for text of* (a) *and* (b)]

(c) Minimum aggregate value of projects; waiver of minimum; participatory requirements

(1) Except as provided in paragraph (2) of this subsection, the aggregate value of all agreements entered into under this subchapter—

(A) for fiscal year 1978, shall be not less than 5 percent,

(B) for fiscal year 1979, shall be not less than 10 percent, and

(C) for fiscal year 1980 and each fiscal year thereafter, shall be not less than 10 percent,

of the aggregate value of all agreements entered into under subchapter II of this chapter for such fiscal year.

[See main edition for text of (2) and (3)]

(4) In developing and carrying out Food for Development Programs under this subchapter, consideration shall be given to using the capability and expertise of American agriculture and of United States nonprofit voluntary agencies and cooperatives, in partnership with indigenous individuals and organizations, in furthering economic development and increased food production.

(As amended Aug. 8, 1985, Pub. L. 99-83, title X, § 1004(b), 99 Stat. 271; Dec. 23, 1985, Pub. L. 99-198, title XI, § 1108, 99 Stat. 1467.)

AMENDMENTS

1985—Subsec. (c)(1)(C). Pub. L. 99-198 substituted "10" for "15" percent.

Subsec. (c)(4). Pub. L. 99-83 added "and of United States nonprofit voluntary agencies and cooperatives".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as a note under section 2151-1 of Title 22, Foreign Relations and Intercourse.

§ 1727g. Bartering authority of Secretary; exchange for strategic materials and materials for other purposes; cooperation of agencies; assistance to cooperatives; limitations

The Secretary shall, whenever he determines that such action is in the best interest of the United States, and to the maximum extent practicable, barter or exchange agricultural commodities owned by the Commodity Credit Corporation for (a) such strategic or other materials of which the United States does not domestically produce its requirements and which entail less risk of loss through deterioration or substantially less storage charges as the President may designate, or (b) materials, goods, or equipment required in connection with foreign economic and military aid and assistance programs, or (c) materials or equipment required in substantial quantities for offshore construction programs. He is hereby directed to use every practicable means, in cooperation with other Government agencies, to arrange and make, through private channels, such barters or exchanges or to utilize the authority conferred on him by section 714b(h) of title 15 to make such barters or exchanges. To the maximum extent practicable, the Secretary shall solicit bids from, and utilize, private trading firms to arrange or make barters or exchanges for strategic or other materials under clause (a). In carrying out barters or exchanges authorized by this section, no restrictions shall be placed on the countries of the free world into which surplus agricultural commodities may be sold, except to the extent that the Secretary shall find necessary in order to take reasonable precautions to safeguard usual marketings of the United States and to assure that barters or exchanges under this chapter will not unduly disrupt world prices of agricultural commodities or replace cash sales for dollars. The Secretary may permit the domestic processing of raw materials of foreign origin. The Secretary shall endeavor to cooperate with other exporting countries in preserving normal patterns of commercial trade with respect to commodities covered by formal multilateral international marketing agreements to which the United States is a party. Agencies of the United States Government procuring such materials, goods, or equipment are directed to cooperate with the Secretary in the disposal of surplus agricultural commodities by means of barter or exchange. The Secretary is also directed to assist, through such means as are available to him, farmers' cooperatives in effecting exchange of agricultural commodities in their possession for strategic materials. Barter or exchange of agricultural commodities under clause (a) of this section shall be limited to exchange for materials which originate in the country to which the surplus agricultural commodities are exported and to arrangements which will prevent resale or transshipment of the agricultural commodities to other countries.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XI, § 1167(c), 99 Stat. 1503.)

AMENDMENTS

1985—Pub. L. 99-198 inserted provision that to the maximum extent practicable, the Secretary shall solicit bids from, and utilize, private trading firms to arrange or make barters or exchanges for strategic or other materials under clause (a).

BARTER OF AGRICULTURAL COMMODITIES FOR STRATEGIC AND CRITICAL MATERIALS

Section 1167(a) of Pub. L. 99-198 provided that: "Congress finds that—

"(1) the Commodity Credit Corporation, the General Services Administration, and the Department of Agriculture have authority to barter or exchange agricultural commodities for strategic and critical materials for the national defense stockpile;

"(2) from 1950 to 1973, the Department of Agriculture conducted a highly successful barter program using agricultural commodities to acquire strategic and critical materials;

"(3) private commercial firms in the United States have entered into effective barter agreements with foreign governments or private parties in foreign countries to barter or exchange commodities and services to supplement customary commercial transactions in international markets;

"(4) barter can be an effective secondary method of reducing excess supplies of agricultural commodities and adding needed strategic and critical materials to the national defense stockpile;

"(5) barter can be used to help overcome certain currency exchange and balance-of-trade problems

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and to develop new markets for United States agricultural products;

"(6) barter can be used to promote United States foreign policy interests; and

"(7) several nations are potential partners in a revival of a coherent and well-managed government barter program."

BARTER OF DAIRY AND OTHER COMMODITIES

Pub. L. 98-180, title III, § 302, Nov. 29, 1983, 97 Stat. 1151, provided that:

"(a) It is the sense of Congress that the Secretary of Agriculture should exchange or barter, to the maximum extent practicable under the provisions of law specified in subsection (b), commodities (especially dairy products) owned by the Commodity Credit Corporation for materials, goods, and equipment produced in foreign countries.

"(b) The provisions of law referred to in subsection (a) are—

"(1) section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h)),

"(2) section 310 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1692) [7 U.S.C. 1727g], and

"(3) section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431)."

SUBCHAPTER III-B—EMERGENCY FOOD ASSISTANCE

§ 1728. Findings regarding emergency food assistance

The Congress finds that—

(1) acute food crises continue to cause loss of life, severe malnutrition, and general human suffering in many areas of the Third World, especially in sub-Saharan Africa;

(2) the United States continues to respond to these needs, as a reflection of its humanitarian concern for the people of the Third World, with emergency food and other necessary assistance to alleviate the suffering of those affected by severe food shortages;

(3) the timely provision of food and other necessary assistance to those in need is of paramount importance if the worst effects of such food crises are to be mitigated; and

(4) the ability of the United States to provide food and other necessary assistance on a timely basis, and to ensure that such assistance is distributed to those in need, should be enhanced in order to better enable the United States to help those affected by severe food shortages.

(Pub. L. 98-473, title III, § 302, Oct. 12, 1984, 98 Stat. 2194.)

CODIFICATION

Section was not enacted as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

SHORT TITLE

Section 301 of title III of Pub. L. 98-473 provided that: "This title [enacting this subchapter and amending section 1723 of this title] may be cited as the 'President's Emergency Food Assistance Act of 1984'."

§ 1728a. President's Emergency Food Assistance Fund

(a) Establishment; authority of President to furnish assistance from Fund

There is hereby established the President's Emergency Food Assistance Fund (hereafter in this subchapter referred to as the "Fund"). Whenever the President determines it to be in the national interest of the United States, he is authorized to furnish, in accordance with the provisions of this subchapter, and on such terms and conditions as he may determine, assistance from the Fund for the purpose of alleviating the human suffering of peoples outside the United States caused by acute food shortages. Such assistance may be provided through such governments or other entities, private or public, including intergovernmental and multilateral organizations, as the President deems appropriate.

(b) Types of assistance authorized

Because the effects of severe food shortages will vary with the country or region, assistance to alleviate human suffering may include the provision of food assistance or such activities as the provision of seed, animal fodder, animal vaccines, and transportation (including inland transportation) and distribution services.

(c) Authorization of appropriations

There are authorized to be appropriated to the President $50,000,000 each for fiscal year 1985 and fiscal year 1986 to carry out the purposes of this subchapter, to remain available until expanded.[1]

(d) Authority of President

The President may make loans, advances, and grants to, make and perform agreements and contracts with, or enter into transactions with, any individual, corporation, or other body of persons, government or government agency, whether within or without the United States, and international and intergovernmental organizations in furtherance of the purposes and within the limitations of this subchapter.

(Pub. L. 98-473, title III, § 303, Oct. 12, 1984, 98 Stat. 2194.)

REFERENCES IN TEXT

This subchapter, referred to in the first sentence of subsec. (a) and in subsecs. (c) and (d), was in the original "this title", meaning title III of Pub. L. 98-473 which enacted this subchapter and amended section 1723 of this title.

CODIFICATION

Section was not enacted as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

§ 1728b. Reports on emergency food assistance

Not later than December 31 of each year, the President shall submit a comprehensive report to the appropriate committees of Congress detailing all activities carried out under the authority of this subchapter during the previous fiscal year.

(Pub. L. 98-473, title III, § 304, Oct. 12, 1984, 98 Stat. 2195.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title III of Pub. L. 98-473

[1] So in original. Probably should be "expended".

which enacted this subchapter and amended section 1723 of this title.

CODIFICATION

Section was not enacted as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

SUBCHAPTER IV—GENERAL PROVISIONS

§ 1731. Agricultural commodities available for disposition; determination by Secretary of Agriculture; criteria; storage facilities; domestic production or marketing in recipient countries

EXPORT SALES OF DAIRY PRODUCTS

Pub. L. 99-198, title XI, § 1163, Dec. 23, 1985, 99 Stat. 1499, provided that:

"(a) In each of the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, the Secretary of Agriculture shall sell for export, at such prices as the Secretary determines appropriate, not less than 150,000 metric tons of dairy products owned by the Commodity Credit Corporation, of which not less than 100,000 metric tons shall be butter and not less than 20,000 metric tons shall be cheese, if that disposition of such commodities will not interfere with the usual marketings of the United States nor disrupt world prices of agricultural commodities and normal patterns of commercial trade.

"(b) Such sales shall be made through the Commodity Credit Corporation under existing authority available to the Secretary or the Commodity Credit Corporation.

"(c) Through September 30, 1988, the Secretary shall report semiannually to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the volume of sales made under this section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1431, 1707, 1721, 1727c, 1736f-1, 1736o of this title.

§ 1732. Agricultural commodity defined; fishery products available

The term "agricultural commodity" as used in this chapter shall include any agricultural commodity produced in the United States (including fish, without regard to whether such fish are harvested in aquacultural operations) or product thereof produced in the United States: *Provided, however,* That the term "agricultural commodity" shall not include alcoholic beverages, and for the purposes of subchapter III of this chapter, tobacco or products thereof. The foregoing proviso shall not be construed as prohibiting representatives of the domestic wine, beer, distilled spirits, or other alcoholic beverage industry from participating in market development activities carried out with foreign currencies made available under subchapter II of this chapter which have as their purpose the expansion of export sales of United States agricultural commodities. In the allocation of funds made available under subchapter II of this chapter, priority shall be given to financing the sale of food and fiber commodities.

(As amended Nov. 8, 1984, Pub. L. 98-623, title IV, § 405(b), 98 Stat. 3409.)

AMENDMENTS

1984—Pub. L. 98-623 inserted "(including fish, without regard to whether such fish are harvested in aquacultural operations)" and struck out provision that subject to the availability of appropriations therefor, any domestically produced fishery product could be made available under this chapter.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-623 to be considered as having taken effect before Sept. 8, 1982, for purposes of section 135 of Pub. L. 97-253 (set out as a note under section 612c of this title), see section 405(d) of Pub. L. 98-623, set out as a note under section 1707a of this title.

§ 1733. Authorization of appropriations; reimbursement of Commodity Credit Corporation; classification of expenditures

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1707 of this title; title 46 App. section 1241h.

§ 1736. Food production assistance

FARMER-TO-FARMER PROGRAMS FOR FISCAL YEARS 1986 AND 1987

Pub. L. 99-198, title XI, § 1107, Dec. 23, 1985, 99 Stat. 1467, provided that:

"(a) Notwithstanding any other provision of law, not less than one-tenth of 1 percent of the funds available for each of the fiscal years ending September 30, 1986, and September 30, 1987, to carry out the Agricultural Trade Development and Assistance Act of 1954 [this chapter] shall be used to carry out paragraphs (1) and (2) of section 406(a) of that Act [7 U.S.C. 1736(a)(1), (2)]. Any such funds used to carry out paragraph (2) of section 406(a) shall not constitute more than one-fourth of the funds used as provided by the first sentence of this subsection, shall be used for activities in direct support of the farmer-to-farmer program under paragraph (1) of section 406(a), and shall be administered whenever possible in conjunction with programs under sections 296 through 300 of the Foreign Assistance Act of 1961 [22 U.S.C. 2220a–2220e].

"(b) Not later than 120 days after the date of enactment of this Act [Dec. 23, 1985], the Administrator of the Agency for International Development, in conjunction with the Secretary of Agriculture, shall submit to Congress a report indicating the manner in which the Agency intends to implement the provisions of paragraphs (1) and (2) of section 406(a) of the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1736(a)(1), (2)] with the funds made available under subsection (a)."

§ 1736–1. Special Assistant for Agricultural Trade and Food Aid

(a) Appointment by President

The President shall appoint a Special Assistant to the President for Agricultural Trade and Food Aid (hereinafter in this section referred to as the "Special Assistant").

(b) Service in Executive Office of President

The Special Assistant shall serve in the Executive Office of the President.

(c) Required functions

The Special Assistant shall—

(1) assist and advise the President in order to improve and enhance food assistance programs carried out in the United States and foreign countries;

(2) be available to receive suggestions and complaints concerning the implementation of United States food aid and agricultural

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export programs anywhere in the United States Government and provide prompt responses thereto, including expediting the program implementation in any instances in which there is unreasonable delay;

(3) make recommendations to the President on means to coordinate and streamline the manner in which food assistance programs are carried out by the Department of Agriculture and the Agency for International Development, in order to improve their overall effectiveness;

(4) make recommendations to the President on measures to be taken to increase use of United States agricultural commodities and the products thereof through food assistance programs;

(5) advise the President on agricultural trade;

(6) advise the President on the Food for Progress Program and expedite its implementation;

(7) serve as a member of the Development Coordination Committee and the Food Aid Subcommittee of such Committee;

(8) advise departments and agencies of the Federal Government on their policy guidelines on basic issues of food assistance policy to the extent necessary to assure the coordination of food assistance programs, consistent with law, and with the advice of such Subcommittee; and

(9) submit a report to the President and Congress each year through 1990 containing—

(A) a global analysis of world food needs and production;

(B) an identification of at least 15 target countries which are most likely to emerge as growth markets for agricultural commodities in the next 5 to 10 years; and

(C) a detailed plan for using available export and food aid authorities to increase United States agricultural exports to those targeted countries.

(d) Discretionary functions

The Special Assistant shall also—

(1) solicit information and advice from private and governmental sources and recommend a plan to the President and Congress on measures that should be taken—

(A) to promote the export of United States agricultural commodities and the products thereof; and

(B) to expand export markets for United States agricultural commodities and the products thereof;

(2) develop and recommend to the President national agricultural policies to foster and promote the United States agricultural industry and to maintain and increase the strength of this vitally important sector of the United States economy; and

(3)(A) appraise the various programs and activities of the Federal Government, as they affect the United States agricultural industry, for the purpose of determining the extent to *which such programs and activities are con*tributing or not contributing to such industry; and

(B) make recommendations to the President and Congress with respect to the effectiveness of such programs and activities in contributing to such industry.

(Pub. L. 99-198, title XI, § 1113(a)-(d), Dec. 23, 1985, 99 Stat. 1479.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

Another section 1113(d) of Pub. L. 99-198 amended section 5312 of Title 5, Government Organization and Employees.

§ 1736b. Reports to Congress; revised regulations governing operations; bagged commodities

[*See main edition for text of* (a)]

(b) Not later than September 30 of each year, the President shall submit to the Congress a report containing a global assessment of food production and needs and setting forth planned programing of food assistance under subchapters II and III of this chapter for the coming fiscal year. Not later than December 31, and June 30 of each year, the President shall submit a report to the Congress showing the current status of planned programing of food assistance under subchapters II and III of this chapter for the current fiscal year.

[*See main edition for text of* (c) *to* (e)]

(As amended Aug. 8, 1985, Pub. L. 99-83, title X, § 1006, 99 Stat. 271.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-83 added references to subchapter III in two places.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as a note under section 2151-1 of Title 22, Foreign Relations and Intercourse.

§ 1736c. Termination date for agreements to finance sales under subchapter II and programs of assistance under subchapter III

No agreements to finance sales under subchapter II of this chapter and no programs of assistance under subchapter III of this chapter shall be entered into after December 31, 1990. New spending authority provided for subchapter II of this chapter by the amendments to this section made by the Agriculture and Food Act of 1981 and the Food Security Act of 1985 shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(As amended Dec. 23, 1985, Pub. L. 99-198, title XI, § 1105, 99 Stat. 1466.)

REFERENCES IN TEXT

The new spending authority provided for subchapter II of this chapter by the amendments to this section made by the Agriculture and Food Act of 1981 and the *Food Security Act of 1985, referred to in text,* means the new spending authority provided for subchapter II of this chapter resulting from the extension, by Pub.

L. 97-98 and Pub. L. 99-198, of the termination date for agreements from Dec. 31, 1981, to Dec. 31, 1990.

AMENDMENTS

1985—Pub. L. 99-198 substituted in first sentence "1990" for "1985", and in second sentence substituted "amendments" for "amendment" and inserted reference to the Food Security Act of 1985.

§ 1736f-1. Food security wheat reserve

[See main edition for text of (a) to (h)]

(i) Expiration of authority to replenish stocks of wheat; disposal of remaining stocks

The authority to replace stocks of wheat to maintain the reserve under this section shall expire September 30, 1990, after which stocks released from the reserve may not be replenished. Stocks of wheat remaining in the reserve after September 30, 1990, shall be disposed of by release for use in providing for emergency food needs in developing countries as provided in this section.

(As amended Pub. L. 99-198, title X, § 1013, Dec. 23, 1985, 99 Stat. 1456.)

AMENDMENTS

1985—Subsec. (i). Pub. L. 99-198 substituted "1990" for "1985" wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1445e, 4001 of this title; title 46 App. section 1241f.

§ 1736j. Agricultural embargo protection

Notwithstanding any other provision of law—

(a) Prerequisites; scope of compensation

If the President or other member of the executive branch of the Federal Government causes the export of any agricultural commodity to any country or area of the world to be suspended or restricted for reasons of national security or foreign policy under the Export Administration Act of 1979 [50 App. U.S.C. 2401 et seq.] or any other provision of law, and if such suspension or restriction of the export of such agricultural commodity is imposed other than in connection with a suspension or restriction of all exports from the United States to such country or area of the world, and if sales of such agricultural commodity for export from the United States to such country or area of the world during the year preceding the year in which the suspension or restriction is imposed exceed 3 per centum of the total sales of such commodity for export from the United States to all foreign countries during the year preceding the year in which the suspension or restriction is in effect, the Secretary of Agriculture shall compensate producers of the commodity involved by making payments available to such producers, as provided in subsection (b) of this section.

(b) Amount of payments

If the Secretary makes payments available to producers pursuant to subsection (a) of this section, the amount of such payment shall be determined by—

[See main edition for text of (1) and (2); (c)]

(d) Rules and regulations

The Secretary may issue such regulations as are deemed necessary to carry out the provisions of this section.

(e) Commodity Credit Corporation

The Secretary shall use the Commodity Credit Corporation in carrying out the provisions of this section.

(f) Effective date

The provisions of this section shall become effective with respect to any suspension or restriction of the export of any agricultural commodity, as described in subsection (a) of this section, implemented after December 22, 1981.

(g) Redesignated (f)

(As amended Pub. L. 99-198, title XI, § 1133(b), Dec. 23, 1985, 99 Stat. 1489.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198 struck out cl. (1) designation preceding "making payments available to such producers, as provided in subsection (b) of this section." and cls. (2) and (3), which read:

"(2) on the date on which the suspension or restriction is imposed, establishing the loan level for such commodity under the Agricultural Act of 1949, if a loan program is in effect for the commodity, at 100 per centum of the parity price for the commodity, as determined by the Secretary on the date of the imposition of the suspension or restriction; or

"(3) undertaking any combination of the measures described in clauses (1) and (2) of this subsection."

Subsec. (b). Pub. L. 99-198 struck out "clause (1) of" before "subsection (a)".

Subsecs. (d) to (g). Pub. L. 99-198 struck out subsec. (d) relating to loan levels, and redesignated former subsecs. (e) to (g) as (d) to (f), respectively.

§ 1736m. Expansion of international markets for United States agricultural commodities and products; purposes; implementation authorities

(a) It is the sense of Congress that, in order to further assist in the development, maintenance, and expansion of international markets for United States agricultural commodities and the products thereof, the Secretary of Agriculture should and is requested to—

[See main edition for text of (1) to (4)]

(5) expand, to the fullest extent possible, the market development activities of the Foreign Agricultural Service of the Department of Agriculture in developed, developing, market, and nonmarket foreign countries with particular emphasis on (A) continuation of the cooperator programs at the same funding level (adjusted for inflation) as provided during fiscal year 1970; (B) funding an export market development program for value-added farm products and processed foods at a higher funding level than that provided during the fiscal year ending September 30, 1985; and (C) the implementation of a full-scale program for forestry products, including commodity information, trade policy, and market development for such products;

[See main edition for text of (6) to (8); (b)]

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(As amended Pub. L. 99-198, title XI, § 1126(c), Dec. 23, 1985, 99 Stat. 1482.)

AMENDMENTS

1985—Subsec. (a)(5)(B). Pub. L. 99-198 substituted "funding an export market development program for value-added farm products and processed foods at a higher funding level than that provided during the fiscal year ending September 30, 1985" for "a more active export market development program for value added farm products and processed foods".

§ 1736o. Food for progress

(a) Short title

This section may be cited as the "Food for Progress Act of 1985".

(b) Agreements with developing countries to furnish commodities

In order to use the food resources of the United States more effectively in support of countries that have made commitments to introduce or expand free enterprise elements in their agricultural economies through changes in commodity pricing, marketing, input availability, distribution, and private sector involvement, the President is authorized to enter into agreements with developing countries to furnish commodities made available pursuant to subsections (e) and (f) of this section. Such agreements may provide for commodities to be furnished on a multiyear basis.

(c) "Commodities" defined

As used in this section, the term "commodities" means agricultural commodities and the products thereof.

(d) Considerations for agreements

In determining whether to enter into an agreement with countries under this section, the President shall consider whether a potential recipient country is committed to carry out, or is carrying out, policies that promote economic freedom, private, domestic production of food commodities for domestic consumption, and the creation and expansion of efficient domestic markets for the purchase and sale of such commodities. Such policies may provide for, among other things—

(1) access, on the part of farmers in the country, to private, competitive markets for their product;

(2) market pricing of commodities to foster adequate private sector incentives to individual farmers to produce food on a regular basis for the country's domestic needs;

(3) establishment of market-determined foreign exchange rates;

(4) timely availability of production inputs (such as seed, fertilizer, or pesticides) to farmers;

(5) access to technologies appropriate to the level of agricultural development in the country; and

(6) construction of facilities and distribution systems necessary to handle perishable products.

(e) Availability of commodities; financing sale and exportation of commodities; payment of costs and charges

(1) The Commodity Credit Corporation shall make available to the President such commodities determined to be available under section 401 of the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1731] as the President may request for purposes of furnishing commodities under this section.

(2) Notwithstanding any other provision of law, the Commodity Credit Corporation may use funds appropriated to carry out title I of the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1701 et seq.] in carrying out this section with respect to commodities made available under that Act [7 U.S.C. 1691].

(3) The Commodity Credit Corporation may finance the sale and exportation of commodities, made available under the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1691 et seq.], which are furnished to a developing country under this section. Payment by a developing country for commodities made available under that Act which are purchased on credit terms under this section shall be on the same basis as the terms provided in section 106 of that Act [7 U.S.C. 1706].

(4) In the case of commodities made available under the Agricultural Trade Development and Assistance Act of 1954 for purposes of this section, section 203 of that Act [7 U.S.C. 1723] shall apply to commodities furnished on a grant basis to a developing country under this section and section 401(b) of that Act [7 U.S.C. 1731(b)] shall apply to all commodities furnished to a developing country under this section.

(f) Provision to developing countries on grant basis; minimum metric ton amount available; purchase of commodities by Commodity Credit Corporation; funds for implementation; cost of commodities and expenses

(1) Commodities made available under section 1431(b) of this title for use in carrying out this section shall be provided to developing countries on a grant basis.

(2) Not less than 75,000 metric tons shall be made available pursuant to section 1431(b)(10)(C) of this title to carry out this section unless the President determines there are an insufficient number of eligible recipients.

(3) In carrying out section 1431(b) of this title, the Commodity Credit Corporation may purchase commodities for use under this section if—

(A) the Commodity Credit Corporation does not hold stocks of such commodities; or

(B) Commodity Credit Corporation stocks are insufficient to satisfy commitments made in agreements entered into under this section and such commodities are needed to fulfill such commitments.

(4) No funds of the Commodity Credit Corporation in excess of $30,000,000 (exclusive of the cost of commodities) may be used to carry out this section with respect to commodities made available under section 1431(b) of this title unless authorized in advance in appropriation Acts.

(5) The cost of commodities made available under section 1431(b) of this title which are furnished under this section, and the expenses

incurred in connection with furnishing such commodities, shall be in addition to the level of assistance programmed under the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1691 et seq.] and may not be considered expenditures for international affairs and finance.

(g) Maximum amount of metric tons of commodities to be furnished

Not more than 500,000 metric tons of commodities may be furnished under this section in each of the fiscal years 1986 through 1990.

(h) Prohibition on resale of transshipment of commodities

An agreement entered into under this section shall prohibit the resale or transshipment of the commodities provided under the agreement to other countries.

(i) Agreements not to displace other sales of United States commodities

In entering into agreements under this section, the President shall take reasonable steps to avoid displacement of any sales of United States commodities that would otherwise be made to such countries.

(j) Reporting requirements

Within 90 days after the end of each fiscal year in which an agreement entered into with a country under this section is in effect, the President shall report to the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the status of such agreement and the progress being made to implement private, free enterprise agricultural policies for long-term agricultural development in such country.

(k) Effective and termination dates

This section shall be effective during the period beginning October 1, 1985, and ending September 30, 1990.

(Pub. L. 99-198, title XI, § 1110, Dec. 23, 1985, 99 Stat. 1472.)

REFERENCES IN TEXT

The Agricultural Trade Development and Assistance Act of 1954, referred to in subsecs. (e), (f)(5), is act July 10, 1954, ch. 469, 68 Stat. 454, as amended, which is classified generally to this chapter (§ 1691 et seq.). Title I of the Act is classified to subchapter II (§ 1701 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of this title and Tables.

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1431 of this title.

§ 1736p. Trade policy declaration

(a) Congressional findings

Congress finds that—

(1) the volume and value of United States agricultural exports have significantly declined in recent years as a result of unfair foreign competition and the high value of the dollar;

(2) this decline has been exacerbated by the lack of uniform and coherent objectives in United States agricultural trade policy and the absence of direction and coordination in trade policy formulation;

(3) agricultural interests have been underrepresented in councils of government responsible for determining economic policy that has contributed to a strengthening of the United States dollar;

(4) foreign policy objectives of the United States have been introduced into the trade policy process in a manner injurious to the goal of maximizing United States economic interests through trade; and

(5) the achievement of that goal is in the best interests of the United States.

(b) Congressional declaration of policy

It is hereby declared to be the agricultural trade policy of the United States to—

(1) provide through all means possible agricultural commodities and their products for export at competitive prices, with full assurance of quality and reliability of supply;

(2) support the principle of free trade and the promotion of fairer trade in agricultural commodities and their products;

(3) cooperate fully in all efforts to negotiate with foreign countries reductions in current barriers to fair trade;

(4) counter aggressively unfair foreign trade practices using all available means, including export restitution, export bonus programs, and, if necessary, restrictions on United States imports of foreign agricultural commodities and their products, as a means to encourage fairer trade;

(5) remove foreign policy constraints to maximize United States economic interests through agricultural trade; and

(6) provide for consideration of United States agricultural trade interests in the design of national fiscal and monetary policy that may foster continued strength in the value of the dollar.

(Pub. L. 99-198, title XI, § 1121, Dec. 23, 1985, 99 Stat. 1480.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

§ 1736q. Trade liberalization

(a) Congressional findings

Congress finds that—

(1) the present high level of agricultural protectionism contrasts sharply with the general trade liberalization that has been achieved since the inception of the General Agreement on Tariffs and Trade (hereinafter referred to as "GATT"); and

(2) GATT procedures should explicitly recognize the protective effect of domestic subsidies that alter trade indirectly by reducing

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the demand for imports and increasing the supply of exports.

(b) Sense of Congress

It is the sense of Congress that the President should negotiate with other parties to GATT to revise GATT rules and codes with the goal of reducing agricultural export subsidies, tariffs, and nontariff barriers to trade.

(Pub. L. 99-198, title XI, § 1122, Dec. 23, 1985, 99 Stat. 1480.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

§ 1736r. Agricultural trade consultations

(a) Effectuation of purposes by Secretary of Agriculture in coordination with United States Trade Representative

To improve the orderly marketing of United States agricultural commodities, to achieve higher income for United States producers of agricultural commodities, and to reduce the likelihood of an agricultural commodity price war and the need for export subsidy programs, the Secretary of Agriculture shall, in coordination with the United States Trade Representative, confer with representatives of other major agricultural producing countries and, at the earliest possible date, initiate and pursue agricultural trade consultations among major agricultural producing countries.

(b) Sense of Congress for objectives of consultations

It is the sense of Congress that the objectives of the consultations called for in subsection (a) of this section should be to—

(1) increase the exchange of information on worldwide agricultural production, demand, and commodity supply levels;

(2) determine a more equitable sharing of responsibility for maintaining agricultural commodity reserves and managing supplies of agricultural commodities; and

(3) attain increased cooperation in restraining export subsidy programs.

(c) Reporting requirements

The Secretary of Agriculture shall report to Congress by July 1, 1986, and annually thereafter through fiscal year 1990, on the progress of efforts to initiate and pursue the consultations called for in subsection (a) of this section, including any agreements reached with respect to the objectives set forth in subsection (b) of this section.

(Pub. L. 99-198, title XI, § 1123, Dec. 23, 1985, 99 Stat. 1481.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

§ 1736s. Targeted export assistance

(a) Use by Secretary of Agriculture of funds of, or equal value of commodities owned by, Commodity Credit Corporation

For export activities authorized to be carried out by the Secretary of Agriculture or the Commodity Credit Corporation, the Secretary of Agriculture shall use under this section, in addition to any funds or commodities otherwise required under this Act to be used for such activities, for the fiscal year ending September 30, 1986, and each of the fiscal years thereafter through September 30, 1990, not less than $325,000,000 of funds of, or an equal value of commodities owned by, the Corporation.

(b) Conditions for use of funds or commodities made available; definition

(1) Funds or commodities made available for use under this section shall be used by the Secretary only to counter or offset the adverse effect on the export of a United States agricultural commodity or the product thereof of a subsidy (as defined in paragraph (2)), import quotas, or other unfair trade practices of a foreign country.[1]

(2) As used in paragraph (1), the term subsidy includes an export subsidy, tax rebate on exports, financial assistance on preferential terms, financial assistance for operating losses, assumption of costs or expenses of production, processing, or distribution, a differential export tax or duty exemption, a domestic consumption quota, or other method of furnishing or ensuring the availability of raw materials at artificially low prices.

(c) Priority basis of export assistance

The Secretary shall provide export assistance under this section on a priority basis in the case of—

(1) agricultural commodities and the products thereof with respect to which there has been a favorable decision under section 2411 of title 19; or

(2) agricultural commodities and the products thereof for which exports have been adversely affected, as defined by the Secretary, by retaliatory actions related to a favorable decision under section 2411 of title 19.

(Pub. L. 99-198, title XI, § 1124, Dec. 23, 1985, 99 Stat. 1481.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354, known as the Food Security Act of 1985. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1421 of this title and Tables.

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

[1] Period supplied editorially.

§ 1736t. Short-term export credit

(a) Considerations governing guarantees of repayment of credit extended in connection with export sale

In making available any guarantees of the repayment of credit extended on terms of up to 3 years in connection with the export sale of United States agricultural commodities or the products thereof, the Commodity Credit Corporation shall take into account—

(1) the credit needs of countries that are potential purchasers of United States agricultural exports;

(2) the creditworthiness of such countries; and

(3) whether the availability of Commodity Credit Corporation guarantees will improve the competitive position of United States agricultural exports in world markets.

(b) Minimum amount available in credit guarantees under export credit guarantee program

Effective for the fiscal year ending September 30, 1986 and each fiscal year thereafter through the fiscal year ending September 30, 1990, the Commodity Credit Corporation shall make available not less than $5,000,000,000 in credit guarantees under its export credit guarantee program for short-term credit extended to finance the export sales of United States agricultural commodities and the products thereof.

(c) Origination fees for credit guarantee transaction under Export Credit Guarantee Program (GSM-102)

Notwithstanding any other provision of law, the Secretary of Agriculture may not charge an origination fee with respect to any credit guarantee transaction under the Export Credit Guarantee Program (GSM-102) in excess of an amount equal to one percent of the credit extended under the transaction.

(Pub. L. 99-198, title XI, § 1125, Dec. 23, 1985, 99 Stat. 1482.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

§ 1736u. Cooperator market development program

(a) Sense of Congress

It is the sense of Congress that the cooperator market development program of the Foreign Agricultural Service should be continued to help develop new markets and expand and maintain existing markets for United States agricultural commodities, using nonprofit agricultural trade organizations to the maximum extent practicable.

(b) Exemption from requirements of OMB circular

The cooperator market development program shall be exempt from the requirements of Circular A 110 issued by the Office of Management and Budget.

(Pub. L. 99-198, title XI, § 1126(a), (b), Dec. 23, 1985, 99 Stat. 1482.)

CODIFICATION

Section consists of subsecs. (a) and (b) of section 1126 of Pub. L. 99-198. Subsec. (c) of section 1126 amended section 1736m(a)(5)(B) of this title.

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

§ 1736v. Development and expansion of markets for United States agricultural commodities

(a) Formulation and implementation of program; definitions

(1) Notwithstanding any other provision of law, the Secretary of Agriculture (hereafter [2] in this section referred to as the "Secretary") shall formulate and carry out a program under which agricultural commodities and the products thereof acquired by the Commodity Credit Corporation are provided to United States exporters, users, and processors and foreign purchasers at no cost to encourage the development, maintenance, and expansion of export markets for United States agricultural commodities and the products thereof, including value-added or high-value agricultural products produced in the United States.

(2)(A) The term "agricultural commodities", as used in this section in referring to United States agricultural commodities, includes, but is not limited to—

(i) wheat, feed grains, upland cotton, rice, soybeans, and dairy products produced in the United States;

(ii) any other agricultural commodity produced in the United States that is determined by the Secretary of Agriculture to be in surplus supply and that can be purchased with funds available under section 612c of this title; and

(iii) products of the commodities and products described in clauses (i) and (ii) that are processed in the United States.

(B) United States agricultural commodities, as described in clause (ii) of subparagraph (A), may not be purchased with funds available under section 612c of this title for the sole purpose of use under the program under this section; and such commodities, or products thereof, may not be furnished to a United States user, exporter, processor, or foreign purchaser under the program under this section except by mutual agreement of such user, exporter, processor, or purchaser and the Secretary.

(3) In carrying out paragraph (1), the Secretary may provide such commodities in order to make United States commodities more competitive and shall, to the extent necessary, provide such commodities and products—

(A) to counter or offset—

(i) the adverse effect on the export of a United States agricultural commodity or the product thereof of a subsidy (as defined in paragraph (4)) or other unfair trade practice of a foreign country that directly or indirectly benefits producers, processors,

[2] So in original. Probably should be "hereinafter".

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or exporters of agricultural commodities in such foreign country;

(ii) the adverse effects of United States agricultural price support levels that are temporarily above the export prices offered by overseas competitors in export markets; or

(iii) fluctuations in the exchange rate of the United States dollar against other major currencies; and

(B) in conjunction with an intermediate export credit program conducted by the Commodity Credit Corporation—

(i) for the export sale of breeding animals (including, but not limited to, cattle, swine, sheep, and poultry), including the cost of freight from the United States to designated points of entry in other nations; and

(ii) for the establishment of facilities in the importing nation to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities (through the use of local currency generated from the import and sale of United States agricultural commodities or the products thereof to finance all or part of such facilities).

(4) As used in paragraph (3)(A)(i), the term "subsidy" includes an export subsidy, tax rebate on exports, financial assistance on preferential terms, financial assistance for operating losses, assumption of costs or expenses of production, processing, or distribution, a differential export tax or duty exemption, a domestic consumption quota, or other method of furnishing or ensuring the availability of raw materials at artificially low prices.

(b) Additional authorities for implementation of program

In carrying out the program established by this section, the Secretary of Agriculture—

(1) shall take such action as may be necessary to ensure that the program provides equal treatment to domestic and foreign purchasers and users of United States agricultural commodities and the products thereof in any case in which the importation of a manufactured product made, in whole or in part, from a commodity or the product thereof made available for export under this section would place domestic users of the commodity or the product thereof at a competitive disadvantage;

(2) shall, to the extent that agricultural commodities and the products thereof are to be provided to foreign purchasers during any fiscal year, consider for participation all interested foreign purchasers, giving priority to those who have traditionally purchased United States agricultural commodities and the products thereof and who continue to purchase such commodities and the products thereof on an annual basis in quantities greater than the level of purchases in a previous representative period;

(3) shall encourage increased use and avoid displacing usual marketings of United States agricultural commodities and the products thereof;

(4) shall take reasonable precautions to prevent the resale or transshipment to other countries, or use for other than domestic use in the importing country, of agricultural commodities or the products thereof the export of which is assisted under this section; and

(5) may provide to a United States exporter, user, processor, or foreign purchaser, under the program, agricultural commodities of a kind different than the agricultural commodity involved in the transaction for which assistance under this section is being provided.

(c) Country not meeting financial qualifications for export credit or credit guarantees

(1) If a country does not meet the financial qualifications for export credit or credit guarantees provided by the Commodity Credit Corporation, the Secretary may provide to such country agricultural commodities and the products thereof acquired by the Corporation to the extent necessary to reduce the cost to such country of purchasing United States agricultural commodities and to allow such country to meet such qualifications.

(2) The Secretary shall review and adjust annually the quantity of commodities provided to a country under paragraph (1) in order to encourage such country to place greater reliance on increased use of commercial trade to meet the qualifications referred to in paragraph (1).

(d) Green dollar export certificates; availability, terms and conditions, etc.

(1) In carrying out this section, the Secretary may make green dollar export certificates available to commercial exporters of United States agricultural commodities and the products thereof.

(2) The Secretary shall make such certificates available under such terms and conditions as the Secretary determines appropriate.

(3) The amount of such certificates to be made available to an exporter may be determined—

(A) on the basis of competitive bids submitted by exporters; or

(B) by announcement of the Secretary.

(4)(A) An exporter may redeem a green dollar export certificate for commodities owned by the Commodity Credit Corporation.

(B) For purposes of redeeming such certificates, the Secretary may establish values for such commodities that are different than the acquisition prices of such commodities.

(5) Such certificates—

(A) may be transferred among commercial exporters of United States agricultural commodities; and

(B) shall be redeemed within 6 months after the date of issuance.

(e) Implementation of program through Commodity Credit Corporation

The Secretary of Agriculture shall carry out the program established by this section through the Commodity Credit Corporation.

(f) Price restrictions applicable to dispositions of agricultural commodities owned by Commodity Credit Corporation

Any price restrictions that otherwise may be applicable to dispositions of agricultural commodities owned by the Commodity Credit Corporation shall not apply to agricultural commodities provided under this section.

(g) Nature of program authority

The program established under this section shall be in addition to, and not in place of, any authority granted to the Secretary of Agriculture or the Commodity Credit Corporation under any other provision of law.

(h) Termination of authority

The authority provided under this section shall terminate on September 30, 1990.

(i) Amount of agricultural commodities and products available for use

During the period beginning October 1, 1985, and ending September 30, 1988, the Secretary shall use agricultural commodities and the products thereof referred to in subsection (a) of this section that are equal in value to not less than $2,000,000,000 to carry out this section. To the maximum extent practicable, such commodities shall be used in equal amounts during each of the years in such period.

(Pub. L. 99-198, title XI, § 1127, Dec. 23, 1985, 99 Stat. 1483.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

§ 1736w. Poultry, beef and pork meats and meat-food products; equitable treatment

In the case of any program operated by the Secretary of Agriculture during the years 1986 through 1989, for the purpose of encouraging or enhancing commercial sales in foreign export markets of agricultural products or commodities produced in the United States, which program includes the payment of a bonus or incentive (in cash, commodities, or other benefits) provided to the purchaser, the Secretary shall seek to expend annually at least 15 per centum of the total funds available (or 15 per centum of the value of any commodities employed to encourage such sales) for program activities to likewise encourage and enhance the export sales of poultry, beef or pork meat and meat products.

(Pub. L. 99-198, title XI, § 1128, Dec. 23, 1985, 99 Stat. 1485.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

§ 1736x. Agricultural attaché reports

(a) Annual reporting requirements; contents

The Secretary of Agriculture shall require appropriate officers and employees of the Department of Agriculture, including those stationed in foreign countries, to prepare and submit annually to the Secretary detailed reports that—

(1) document the nature and extent of—

(A) programs in such countries that provide direct or indirect government support for the export of agricultural commodities and the products thereof; and

(B) other trade practices that may impede the entry of United States agricultural commodities and the products thereof into such countries; and

(2) identify opportunities for the export of United States agricultural commodities and the products thereof to such countries.

(b) Annual compilation of information and availability

The Secretary shall annually compile the information contained in such reports and make such information available to Congress, the Agricultural Policy Advisory Committee and the agricultural technical advisory committees established under section 2155 of title 19, and other interested parties.

(c) Functions, etc., of United States Trade Representative

The United States Trade Representative shall—

(1) review the reports prepared under subsection (a) of this section and any other information available to identify export subsidies or other export enhancing techniques (within the meaning of the agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade);

(2) identify markets (in order of priority) in which United States export subsidies can be used most efficiently and will have the greatest impact in offsetting the benefits of foreign export subsidies that—

(A) harm United States exports,

(B) are inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade,

(C) nullify or impair benefits accruing to the United States under international agreements, or

(D) cause serious prejudice to the interests of the United States [1] and

(3) submit to the Congress and to the Secretary of Agriculture an annual report on—

(A) the existence and status of export subsidies and other export enhancing techniques that are the subject of the investigation conducted under paragraph (1), and

(B) the identification and assignment of priority to markets under paragraph (2).

(d) Annual meeting of advisory committees

The Secretary and the United States Trade Representative shall convene a meeting, at least once a year, of the Agricultural Policy Advisory Committee and the agricultural technical advisory committees to develop specific rec-

[1] So in original. Probably should be followed by a comma.

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ommendations for actions to be taken by the Federal Government and private industry to—

(1) reduce or eliminate trade barriers or distortions identified in the annual reports required to be submitted under subsections (a) and (c) of this section; and

(2) expand United States agricultural export opportunities identified in such annual reports.

(Pub. L. 99-198, title XI, § 1132, Dec. 23, 1985, 99 Stat. 1488.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

§ 1736y. Contract sanctity and producer embargo protection

It is hereby declared to be the policy of the United States—

(1) to foster and encourage the export of agricultural commodities and the products of such commodities;

(2) not to restrict or limit the export of such commodities and products except under the most compelling circumstances;

(3) that any prohibition or limitation on the export of such commodities or products should be imposed only in time of a national emergency declared by the President under the Export Administration Act [50 App. U.S.C. 2401 et seq.]; and

(4) that contracts for the export of such commodities or products entered into before the imposition of any prohibition or limitation on the export of such commodities or products should not be abrogated.

(Pub. L. 99-198, title XI, § 1133(a), Dec. 23, 1985, 99 Stat. 1489.)

REFERENCES IN TEXT

The Export Administration Act, referred to in par. (3), probably means the Export Administration Act of 1979, Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables.

CODIFICATION

Section is comprised of section 1133(a) of Pub. L. 99-198. Section 1133(b) of Pub. L. 99-198 amended section 1736j of this title.

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

§ 1736z. Assessment of export displacement

(a) The Secretary of Agriculture shall assess each program, project, or activity administered by the Secretary or the Department of Agriculture that—

(1) provides assistance for establishing, expanding, or facilitating the production, marketing, or use of any agricultural commodity in a foreign country; and

(2) the Secretary determines is likely to have a detrimental impact on efforts to promote the export of United States agricultural commodities;

in order to determine if such program, project, or activity is likely to have such a detrimental impact.

(b) The Secretary shall provide the results of the assessment required under subsection (a) of this section—

(1) in the case of current programs, projects, or activities, in a report made to the Congress not later than one year from December 23, 1985; and

(2) in the case of programs, projects, or activities undertaken after December 23, 1985, on a regular basis.

(Pub. L. 99-198, title XI, § 1162, Dec. 23, 1985, 99 Stat. 1499.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

§ 1736aa. Barter by exporters of agricultural commodities and products for foreign products needed by exporters; technical advice and assistance

(1) The Secretary of Agriculture shall encourage United States exporters of agricultural commodities and the products thereof to barter such commodities and products for foreign products needed by such exporters.

(2) The Secretary shall provide technical advice and assistance relating to the barter of agricultural commodities and the products thereof to any United States exporter who requests such advice or assistance.

(Pub. L. 99-198, title XI, § 1167(d), Dec. 23, 1985, 99 Stat. 1503.)

CODIFICATION

Section is comprised of section 1167(d) of Pub. L. 99-198. Section 1167(a)-(c) of Pub. L. 99-198 enacted provisions set out as a note under section 1727g of this title, amended section 714b(h) of Title 15, Commerce and Trade, and amended section 1727g of this title, respectively.

Section was enacted as part of the Food Security Act of 1985, and not as part of the Agricultural Trade Development and Assistance Act of 1954 which comprises this chapter.

CHAPTER 42—AGRICULTURAL COMMODITY SET-ASIDE

§ 1741. Maximum and minimum quantities for set-aside; definition

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1745 of this title.

CHAPTER 44—WOOL PROGRAM

§ 1782. Price supports; time limitation

(a) The Secretary of Agriculture shall, through the Commodity Credit Corporation, support the prices of wool and mohair, respectively, to the producers thereof by means of loans, purchases, payments, or other oper-

ations. Such price support shall be limited to wool and mohair marketed during the period beginning April 1, 1955, and ending December 31, 1990.

(b) The support price for shorn wool for the 1966 and each subsequent marketing year shall be determined by multiplying 62 cents by the ratio of (i) the average of the parity index (the index of prices paid by farmers, including commodities, and services, interest, taxes, and farm wage rates, as defined in section 1301(a)(1)(C) of this title) for the three calendar years immediately preceding the calendar year in which such price support is determined and announced to (ii) the average parity index for the three calendar years 1958, 1959, and 1960, and rounding the resulting amount to the nearest full cent: *Provided*, That for the marketing years beginning January 1, 1982, and ending December 31, 1990, the support price for shorn wool shall be 77.5 per centum (rounded to the nearest full cent) of the amount calculated according to the foregoing formula.

[*See main edition for text of (c) to (e)*]

(As amended Dec. 23, 1985, Pub. L. 99-198, title II, § 201, 99 Stat. 1378.)

AMENDMENTS

1985—Subsecs. (a), (b). Pub. L. 99-198 substituted "1990" for "1985".

§ 1787. Agreements; marketing cooperatives, trade associations, etc., approval; referendum

The Secretary of Agriculture is authorized to enter into agreements with, or to approve agreements entered into between, marketing cooperatives, trade associations, or others engaged or whose members are engaged in the handling of wool, mohair, sheep, or goats or the products thereof for the purpose of developing and conducting on a national, State, or regional basis advertising and sales promotion programs and programs for the development and dissemination of information on product quality, production management, and marketing improvement, for wool, mohair, sheep, or goats or the products thereof. Advertising and sales promotion programs may be conducted outside of the United States for the purpose of maintaining and expanding foreign markets and uses for wool, mohair, sheep, or goats or the products thereof produced in the United States. Provision may be made in such agreement to obtain the funds necessary to defray the expenses incurred thereunder through pro rata deductions from the payments made under section 1784 of this title to producers within the production area he determines will be benefited by the agreement and for the assignment and transfer of the amounts so deducted to the person or agency designated in the agreement to receive such amounts for expenditure in accordance with the terms and conditions of the agreement. No agreement containing such a provision for defraying expenses through deductions shall become effective until the Secretary determines that at least two-thirds of the producers who, during a representative period determined by the Secretary, have been engaged, within the production area he determines will be benefited by the agreement, in the production for market of the commodity specified therein approve or favor such agreement or that producers who, during such representative period have produced at least two-thirds of the volume of such commodity produced within the area which will be benefited by such agreement, approve or favor such agreement. Approval or disapproval by cooperative associations shall be considered as approval or disapproval by the producers who are members of, stockholders in, or under contract with such cooperative association of producers. The Secretary may conduct a referendum among producers to ascertain their approval or favor. The requirements of approval or favor shall be held to be complied with if two-thirds of the total number of producers, or two-thirds of the total volume of production, as the case may be, represented in such referendum, indicate their approval or favor.

(As amended Dec. 23, 1985, Pub. L. 99-198, title II, § 202, 99 Stat. 1378.)

AMENDMENTS

1985—Pub. L. 99-198 substituted "wool, mohair, sheep, or goats" for "mohair or goats" in second sentence.

CHAPTER 46—SURPLUS DISPOSAL OF AGRICULTURAL COMMODITIES

§ 1854. Agreements limiting imports

EX. ORD. NO. 12475. TEXTILE IMPORT PROGRAM IMPLEMENTATION

Ex. Ord. No. 12475, May 9, 1984, 49 F.R. 19955, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 204 of the Agricultural Act of 1956, as amended (76 Stat. 104, 7 U.S.C. 1854), and Section 301 of Title 3 of the United States Code, and in order to prevent circumvention or frustration of multilateral and bilateral agreements to which the United States is a party and to facilitate efficient and equitable administration of the United States Textile Import Program, it is hereby ordered as follows:

SECTION 1. (a) In accordance with policy guidance provided by the Committee for the Implementation of Textile Agreements (CITA), through its Chairman, in accordance with the provisions of Executive Order No. 11651, as amended [set out above], the Secretary of the Treasury shall issue regulations governing the entry or withdrawal from warehouse for consumption of textiles and textile products subject to Section 204 of the Act [7 U.S.C. 1854].

(b) Initial regulations promulgated under this section shall be promulgated no later than 120 days after the effective date of this order.

(c) To the extent necessary to implement more effectively the United States textile program under Section 204, such regulations shall include:

(i) clarifications in, or revisions to, the country of origin rules for textiles and textile products subject to Section 204 in order to avoid circumvention of multilateral and bilateral textile agreements;

(ii) provisions governing withdrawals from a customs bonded warehouse of articles subject to this Order transformed, changed or manipulated in a warehouse after importation but prior to withdrawal for consumption; and

(iii) any other provisions determined to be necessary for the effective and equitable administration of the Textile Import Program.

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(d) Any such regulations may also include provisions requiring importers to provide additional information and/or documentation on articles subject to this order which are determined to be necessary for the effective and equitable administration of the Textile Import Program.

SEC. 2. (a) The Commissioner of Customs shall establish Textile and Apparel Task Force (the Task Force) within the United States Customs Service to coordinate enforcement of regulations concerning importation under the Textile Import Program.

(b) CITA, through its Chairman, shall, in accordance with the provisions of Executive Order No. 11651, as amended [set out above], provide information and recommendations to the Task Force, through the Department of the Treasury, on implementation and administration of the Textile Import Program.

(c) The Department of Treasury shall, to the extent practicable, inform the Chairman of CITA of the progress of all investigations concerning textile imports; provide notice to CITA of all requests for rulings on matters that could reasonably be expected to affect the implementation of the Textile Import Program; and take into consideration any comments on such requests that CITA, through its Chairman, timely submits.

SEC. 3. This order supplements, but does not supersede or amend, Executive Order No. 11651 of March 3, 1972, as amended [set out above].

SEC. 4. This order shall be effective upon its publication in the Federal Register.

RONALD REAGAN.

CHAPTER 50—AGRICULTURAL CREDIT

SUBCHAPTER I—REAL ESTATE LOANS

Sec.
1927a. Loan interest rates charged by Farmers Home Administration; grant funds associated with loans.

SUBCHAPTER III—EMERGENCY LOANS

1971. Repealed.

SUBCHAPTER IV—ADMINISTRATIVE PROVISIONS

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 940 of this title; title 15 section 636; title 16 sections 3811, 3821; title 21 section 881a; title 38 section 1811; title 40 App. sections 204, 214; title 42 sections 8813, 9817.

§ 1921. Congressional findings

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-258, title VI, § 601, Apr. 10, 1984, 98 Stat. 138, provided that: "This title [enacting section 1981b of this title, amending sections 1943, 1946, 1961, 1964, 1986, and 1994 of this title, enacting provisions set out as notes under sections 1961 and 1981 of this title, and amending provisions set out as a note preceding section 1961 of this title] may be cited as the 'Emergency Agricultural Credit Act of 1984'."

SUBCHAPTER I—REAL ESTATE LOANS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1961, 1963, 1964, 1981b, 1983, 1988, 1994, 2000 of this title.

§ 1922. Persons eligible for loans

(a) The Secretary is authorized to make and insure loans under this subchapter to farmers and ranchers in the United States, and to farm cooperatives and private domestic corporations, partnerships, and joint operations that are controlled by farmers and ranchers and engaged primarily and directly in farming or ranching in the United States, subject to the conditions specified in this section. To be eligible for such loans, applicants who are individuals, or, in the case of cooperatives, corporations, partnerships, and joint operations, individuals holding a majority interest in such entity, must (1) be citizens of the United States, (2) have either training or farming experience that the Secretary determines is sufficient to assure reasonable prospects of success in the proposed farming operations, (3) be or will become owner-operators of not larger than family farms (or in the case of cooperatives, corporations, partnerships, and joint operations in which a majority interest is held by individuals who are related by blood or marriage, as defined by the Secretary, such individuals must be or will become either owners or operators of not larger than a family

farm and at least one such individual must be or will become an operator of not larger than a family farm or, in the case of holders of the entire interest who are related by blood or marriage and all of whom are or will become farm operators, the ownership interest of each such holder separately constitutes not larger than a family farm, even if their interests collectively constitute larger than a family farm, as defined by the Secretary), and (4) be unable to obtain sufficient credit elsewhere to finance their actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. In addition to the foregoing requirements of this section, in the case of corporations, partnerships, and joint operations, the family farm requirement of clause (3) of the preceding sentence shall apply as well to the farm or farms in which the entity has an ownership and operator interest and the requirement of clause (4) of the preceding sentence shall apply as well to the entity in the case of cooperatives, corporations, partnerships, and joint operations.

(b) The Secretary may not restrict eligibility for loans made or insured under this subchapter for purposes set forth in section 1923 of this title solely to borrowers of loans that are outstanding on December 23, 1985.

(As amended Pub. L. 99-198, title XIII, §§ 1301(a), 1302(a), 1303, Dec. 23, 1985, 99 Stat. 1518, 1519.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, §§ 1301(a), 1302(a)(1), designated existing provisions as subsec. (a) and substituted—

(1) ", partnerships, and joint operations" for "and partnerships" wherever appearing after "corporations";

(2) ", partnerships, and joint operations" for ", and partnerships" wherever appearing after "corporations"; and

(3) "individuals" for "members, stockholders, or partners, as applicable," wherever appearing.

Pub. L. 99-198, § 1303, in cl. (3) parenthetical, inserted provision treating blood or marriage related owner-operators of the entire farm interest as separate interest holders of not larger than family farms though collective ownership constitutes a larger than a family farm.

Subsec. (b). Pub. L. 99-198, § 1302(a)(2), added subsec. (b).

§ 1923. Purposes of loans

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1922, 1925, 1927, 1934 of this title.

§ 1926. Water and waste facility loans and grants

(a) Criteria; definitions; limitation on allowable uses of Federal funds; inclusion of interest or other income in gross income on sale of insured loan

[*See main edition for text of (1)*]

(2) The Secretary is authorized to make grants aggregating not to exceed $500,000,000 in any fiscal year to such associations to finance specific projects for works for the development, storage, treatment, purification, or distribution of water or the collection, treatment, or disposal of waste in rural areas: *Provided*, That for fiscal years commencing after September 30, 1981, such grants may not exceed $154,900,000 in any fiscal year. The amount of any grant made under the authority of this paragraph shall not exceed 75 per centum of the development cost of the project to serve the area which the association determines can be feasibly served by the facility and to adequately serve the reasonably foreseeable growth needs of the area. The Secretary shall fix the grant rate for each project in conformity with regulations issued by the Secretary that shall provide for a graduated scale of grant rates establishing higher rates for projects in communities that have lower community population and income levels.

[*See main edition for text of (3) to (15)*]

(16)(A) The Secretary may make grants to private nonprofit organizations for the purpose of enabling them to provide to associations described in paragraph (1) of this subsection technical assistance and training to—

(i) identify, and evaluate alternative solutions to, problems relating to the obtaining, storage, treatment, purification, or distribution of water or the collection, treatment, or disposal of waste in rural areas;

(ii) prepare applications to receive financial assistance for any purpose specified in paragraph (2) of this subsection from any public or private source; and

(iii) improve the operation and maintenance practices at any existing works for the storage, treatment, purification, or distribution of water or the collection, treatment, or disposal of waste in rural areas.

(B) In selecting recipients of grants to be made under subparagraph (A), the Secretary shall give priority to private nonprofit organizations that have experience in providing the technical assistance and training described in subparagraph (A) to associations serving rural areas in which residents have low income and in which water supply systems or waste facilities are unhealthful.

(C) Not less than 1 nor more than 2 per centum of any funds provided in Appropriations Acts to carry out paragraph (2) of this subsection for any fiscal year shall be reserved for grants under subparagraph (A) unless the applications, qualifying for grants, received by the Secretary from eligible nonprofit organizations for the fiscal year total less than 1 per centum of those funds.

(17) In the case of water and waste disposal facility projects serving more than one separate rural community, the Secretary shall use the median population level and the community income level of all the separate communities to be served in applying the standards specified in paragraph (2) of this subsection and section 1927(a)(3)(A) of this title.

(18) Grants under paragraph (2) of this subsection may be used to pay the local share requirements of another Federal grant-in-aid pro-

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gram to the extent permitted under the law providing for such grant-in-aid program.

(19)(A) In the approval and administration of a loan made under paragraph (1) for a water or waste disposal facility, the Secretary shall consider fully any recommendation made by the loan applicant or borrower concerning the technical design and choice of materials to be used for such facility.

(B) If the Secretary determines that a design or materials, other than those that were recommended, should be used in the water or waste disposal facility, the Secretary shall provide such applicant or borrower with a comprehensive justification for such determination.

[*See main edition for text of (b) to (d)*]

(As amended Pub. L. 99-198, title XIII, § 1304(a), Dec. 23, 1985, 99 Stat. 1519.)

AMENDMENTS

1985—Subsec. (a)(2). Pub. L. 99-198 provided for graduated scale of grant rates for each project and higher rates in communities having lower community population and income levels.

Subsec. (a)(16) to (19). Pub. L. 99-198 added pars. (16) to (19).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1927, 1929, 1929a, 1931, 1983, 1992, 2204b of this title; title 16 section 2106; title 42 sections 3122, 5153.

§ 1927. Repayment requirements

(a) Period of repayment; interest rates

[*See main edition for text of (1) and (2)*]

(3)(A) Except as provided in paragraph (6), the interest rates on loans (other than guranteed [1] loans), to public bodies or nonprofit associations (including Indian tribes on Federal and State reservations and other federally recognized Indian tribal groups) for water and waste disposal facilities and essential community facilities shall be set by the Secretary at rates not to exceed the current market yield for outstanding municipal obligations with remaining periods to maturity comparable to the average maturity for such loans, and adjusted to the nearest one-eighth of 1 per centum; and not in excess of 5 per centum per annum for any such loans which are for the upgrading of existing facilities or construction of new facilities as required to meet applicable health or sanitary standards in areas where the median household income of the persons to be served by such facility is below the higher of 80 per centum of the statewide nonmetropolitan median household income or the poverty line established by the Office of Management and Budget, as revised under section 9902(2) of title 42 and in other areas as the Secretary may designate where a significant percentage of the persons to be served by such facilities are of low income, as determined by the Secretary; and not in excess of 7 per centum per annum on loans for such facilities that do not qualify for the 5 per centum per annum interest rate but are located in areas where the median household income of the persons to be served by the facility does not exceed 100 per centum of the statewide nonmetropolitan median household income.

[*See main edition for text of (B), (4) to (6); (b) and (c)*]

(d) Mineral rights as collateral

With respect to a farm ownership loan made after December 23, 1985, unless appraised values of the rights to oil, gas, or other minerals are specifically included as part of the appraised value of collateral securing the loan, the rights to oil, gas, or other minerals located under the property shall not be considered part of the collateral securing the loan. Nothing in this subsection shall prevent the inclusion of, as part of the collateral securing the loan, any payment or other compensation the borrower may receive for damages to the surface of the collateral real estate resulting from the exploration for or recovery of minerals.

(As amended Pub. L. 99-198, title XIII, §§ 1304A, 1305, Dec. 23, 1985, 99 Stat. 1521.)

AMENDMENTS

1985—Subsec. (a)(3)(A). Pub. L. 99-198, § 1304A, substituted "where the median household income of the persons to be served by such facility is below the higher of 80 per centum of the statewide nonmetropolitan median household income or the poverty line established by the Office of Management and Budget, as revised under section 9902(2) of title 42" for "where the median family income of the persons to be served by such facility is below the poverty line prescribed by the Office of Management and Budget as adjusted under section 2971d of title 42" and prescribed a 7 per centum per annuam ceiling on loans for facilities that do not qualify for the 5 per centum per annum interest rate but are located in areas where the median household income of the persons to be served by the facility does not exceed 100 per centum of the statewide nonmetropolitan median household income.

Subsec. (d). Pub. L. 99-198, § 1305, added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1926, 1929, 1931, 1946, 1947, 1968 of this title; title 25 section 492.

§ 1927a. Loan interest rates charged by Farmers Home Administration; grant funds associated with loans

Effective November 12, 1983, and thereafter, upon request of the borrower, the interest rate charged by the Farmers Home Administration to housing, farm, water and waste disposal, and community facility borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing and any Farmers Home Administration grant funds associated with such loans shall be set in amount based on the interest rate in effect at the time of loan approval.

(Pub. L. 99-88, title I, § 100, Aug. 15, 1985, 99 Stat. 296.)

CODIFICATION

Section was enacted as part of the Supplemental Appropriations Act, 1985, and not as part of the Consolidated Farm and Rural Development Act which comprises this chapter.

[1] So in original.

§ 1929. Agricultural Credit Insurance Fund

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1929a, 1931, 1947, 1968, 1983a, 1994, 1999 of this title; title 25 section 488; title 42 sections 1485, 1487, 8813.

§ 1932. Rural industrialization assistance

[See main edition for text of (a)]

(b) Grants for pollution abatement and control projects; limitations

The Secretary may make grants, not to exceed $50,000,000 annually, to eligible applicants under this section for pollution abatement and control projects in rural areas. No such grant shall exceed 50 per centum of the development cost of such a project.

[See main edition for text of (c) to (e); credits]

CODIFICATION

Subsec. (b) is set out in this supplement to correct typographical error appearing in the main edition.

GUARANTEE BY SECRETARY OF AGRICULTURE OF LOANS TO NONPROFIT NATIONAL RURAL DEVELOPMENT AND FINANCE CORPORATIONS

Pub. L. 99-198, title XIII, § 1323, Dec. 23, 1985, 99 Stat. 1534, provided that:

"(a)(1) For the fiscal year ending September 30, 1986, the Secretary of Agriculture (hereafter in this section referred to as the 'Secretary') shall guarantee loans made by public agencies or private organizations (including loans made by financial institutions such as insurance companies) to nonprofit national rural development and finance corporations that establish similar and affiliated statewide rural development and finance programs for the purpose of providing loans, guarantees, and other financial assistance to profit or nonprofit local businesses to improve business, industry, and employment opportunities in a rural area (as determined by the Secretary).

"(2) To be eligible to obtain a loan guarantee under this subsection, a corporation must—

"(A) demonstrate to the Secretary the ability of the corporation to administer a national revolving rural development loan program;

"(B) be prepared to commit financial resources under the control of the corporation to the establishment of affiliated statewide rural development and finance programs; and

"(C) have secured commitments of significant financial support from public agencies and private organizations for such affiliated statewide programs.

"(3) A national rural development and finance corporation receiving a loan guarantee under this subsection shall base a determination to establish an affiliated statewide program in large part on the willingness of States and private organizations to sponsor and make funds available to such program.

"(4) Notwithstanding any other provision of law, for the fiscal year ending September 30, 1986, of the amounts available to guarantee loans in accordance with section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) from the Rural Development Insurance Fund, $20,000,000 shall be used by the Secretary to guarantee loans under the national rural development and finance program established under this subsection, to remain available until expended.

"(b)(1) For the fiscal year ending September 30, 1986, the Secretary shall make grants, from funds transferred under paragraph (2), to national rural development and finance corporations for the purpose of establishing a rural development program to provide financial and technical assistance to compliment the loan guarantees made to such corporations under subsection (a).

"(2) All funds authorized under the Rural Development Loan Fund, including those on deposit and available upon date of enactment [Dec. 23, 1985], under sections 623 and 633 [42 U.S.C. 9812, 9822] of the Community Economic Development Act of 1981 (42 U.S.C. 9801 et seq.) shall be transferred to the Secretary provided that—

"(A) all funds on deposit and available on date of enactment shall be used for the purpose of making grants under paragraph (1) and shall remain available until expended; and

"(B) notwithstanding any other provision of law, all loans to intermediary borrowers made prior to date of enactment, shall upon date of enactment, for the life of such loan, bear a rate of interest not to exceed that in effect upon the date of issuance of such loans."

§ 1933. Guaranteed rural housing loans; Hawaiian home lands

REFERENCES IN TEXT

Section 517(a) of the Housing Act of 1949 [42 U.S.C. 1487(a)] referred to in subsec. (a), was amended by Pub. L. 98-181, title V, § 514(a)(1), Nov. 30, 1983, 98 Stat. 1247, and as so amended does not contain a par. (2).

§ 1934. Low-income farm ownership loan program; eligibility; repayment requirements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1925, 1927, 1942, 1983 of this title.

SUBCHAPTER II—OPERATING LOANS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1961, 1963, 1964, 1981b, 1983, 1988, 1994, 2000 of this title.

§ 1941. Persons eligible for loans

(a) Requirements

The Secretary is authorized to make and insure loans under this subchapter to farmers and ranchers in the United States, and to farm cooperatives and private domestic corporations, partnerships, and joint operations that are controlled by farmers and ranchers and engaged primarily and directly in farming or ranching in the United States, subject to the conditions specified in this section. To be eligible for such loans, applicants who are individuals, or, in the case of cooperatives, corporations, partnerships, and joint operations, individuals holding a majority interest in such entity, must (1) be citizens of the United States, (2) have either training or farming experience that the Secretary determines is sufficient to assure reasonable prospects of success in the proposed farming operations, (3) be or will become operators of not larger than family farms (or in the case of cooperatives, corporations, partnerships, and joint operations in which a majority interest is held by individuals who are related by blood or marriage, as defined by the Secretary, such individuals must be or will become either owners or operators of not larger than a family farm and at least one such individual must be or will become an operator of not larger than a family farm or, in the case of holders of the entire in-

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terest who are related by blood or marriage and all of whom are or will become farm operators, the ownership interest of each such holder separately constitutes not larger than a family farm, even if their interests collectively constitute larger than a family farm, as defined by the Secretary), and (4) be unable to obtain sufficient credit elsewhere to finance their actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. In addition to the foregoing requirements of this subsection, in the case of corporations, partnerships, and joint operations, the family farm requirement of clause (3) of the preceding sentence shall apply as well to the farm or farms in which the entity has an operator interest and the requirement of clause (4) of the preceding sentence shall apply as well to the entity in the case of cooperatives, corporations, partnerships, and joint operations.

[*See main edition for text of* (b)]

(c) Restriction on eligibility

The Secretary may not restrict eligibility for loans made or insured under this subchapter for purposes set forth in section 1942 of this title solely to borrowers of loans that are outstanding on December 23, 1985.

(As amended Pub. L. 99-198, title XIII, §§ 1301(a), 1302(b), 1303, Dec. 23, 1985, 99 Stat. 1518, 1519.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, § 1301(a), substituted—

(1) ", partnerships, and joint operations" for "and partnerships" wherever appearing after "corporations";

(2) ", partnerships, and joint operations" for ", and partnerships" wherever appearing after "corporations"; and

(3) "individuals" for "members, stockholders, or partners, as applicable," wherever appearing.

Pub. L. 99-198, § 1303, in cl. (3) parenthetical, inserted provision treating blood or marriage related owner-operators of the entire farm interest as separate interest holders of not larger than family farms though collective ownership constitutes a larger than a family farm.

Subsec. (c). Pub. L. 99-198, § 1302(b), added subsec. (c).

§ 1942. Purposes of loans; grants for pollution abatement and control projects, limitations; nonsupervised accounts

(a) Loans may be made under this subchapter for (1) paying costs incident to reorganizing the farming system for more profitable operation, (2) purchasing livestock, poultry, and farm equipment (including equipment which utilizes solar energy), (3) purchasing feed, seed, fertilizer, insecticides, and farm supplies and to meet other essential farm operating expenses including cash rent, (4) financing land and water development, use, and conservation, (5) without regard to the requirements of section 1941(a)(2) and (3) of this title, to farmers or ranchers to finance outdoor recreational enterprises or to convert to recreational uses their farming or ranching operations, including those heretofore financed under this chapter, (6) enterprises needed to supplement farm income, (7) refinancing existing indebtedness, (8) other farm and home needs including but not limited to family subsistence, (9) loan closing costs, (10) for assisting farmers or ranchers in effecting additions to or alterations in the equipment, facilities, or methods of operation of their farms or ranches in order to comply with the applicable standards promulgated pursuant to section 655 of title 29 or standards adopted by a State pursuant to a plan approved under section 667 of title 29, if the Secretary determines that any such farmer or rancher is likely to suffer substantial economic injury due to such compliance without assistance under this paragraph, (11) assisting farmers and ranchers in reducing their dependence on nonrenewable energy resources through the development and construction of solar energy systems, including the modification of existing systems. For the purposes of this subchapter, the term "solar energy" means energy derived from sources (other than fossil fuels) and technologies included in the Federal Non-Nuclear Energy Research and Development Act of 1974, as amended [42 U.S.C. 5901 et seq.], and (12) training in maintaining records of farming and ranching operations for limited resource borrowers receiving loans under section 1934 of this title.

[*See main edition for text of* (b) *to* (d)]

(e) Notwithstanding any other provision of this chapter, the Secretary shall reserve not more than 10 percent of any loan made under this subchapter or $5,000 of such loan, whichever is less, to be placed in a nonsupervised bank account which may be used at the discretion of the borrower for necessary family living needs or purposes not inconsistent with previously agreed upon farming or ranching plans. If the borrower exhausts this reserve, the Secretary may review and adjust the farm plan with the borrower and consider rescheduling the loan, extending additional credit, the use of income proceeds to pay necessary farm and home and other expenses, or additional available loan servicing.

(As amended Pub. L. 99-198, title XIII, §§ 1306, 1307, Dec. 23, 1985, 99 Stat. 1521.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, § 1306, added cl. (12).

Subsec. (e). Pub. L. 99-198, § 1307, added subsec. (e).

§ 1943. Limitations and prohibitions on loans

The Secretary shall make or insure no loan under this subchapter (1) that would cause the total principal indebtedness outstanding at any one time for loans made under this subchapter to any one borrower to exceed, in the case of a loan other than a loan guaranteed by the Secretary, $200,000, or, in the case of a loan guaranteed by the Secretary, $400,000; or (2) for the purchasing or leasing of land other than for cash rent, or for carrying on any land leasing or land purchasing program.

(As amended Pub. L. 98-258, title VI, § 604(a), Apr. 10, 1984, 98 Stat. 139.)

AMENDMENTS

1984—Pub. L. 98-258 substituted "$200,000" and "$400,000" for "$100,000" and "$200,000", respectively.

§ 1946. Liability of borrower; determination of interest rates; payment period; consolidation and rescheduling of loans

[See main edition for text of (a)]

(b) Loans made under this subchapter shall be payable in not to exceed seven years. The Secretary may consolidate or reschedule outstanding loans for payment over a period not to exceed seven years (or, in the case of loans for farm operating purposes, fifteen years) from the date of such consolidation or rescheduling, and the amount of unpaid principal and interest of the prior loans so consolidated or rescheduled shall not create a new charge against any loan levels authorized by law. A new loan may be included in a consolidation. Such new loan shall be charged against any loan level authorized by law. Except as otherwise provided for farm loans under section 1981b of this title, the interest rate on such consolidated or rescheduled loans, other than guaranteed loans, may be changed by the Secretary to a rate not to exceed the rate being charged for loans made under this subchapter at the time of the consolidation or rescheduling. The interest rate on any guaranteed loan under this subchapter that may be consolidated or rescheduled for payment shall be such rate as may be agreed upon by the borrower and the lender, but not in excess of a rate as may be determined by the Secretary.

(As amended Pub. L. 98-258, title VI, § 604(b), Apr. 10, 1984, 98 Stat. 139.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-258 inserted "(or, in the case of loans for farm operating purposes, fifteen years)" and substituted "Except as otherwise provided for farm loans under section 1981b of this title, the interest rate" for "The interest rate".

SUBCHAPTER III—EMERGENCY LOANS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1981b, 1983a of this title; title 15 section 647.

EMERGENCY AGRICULTURAL CREDIT

Pub. L. 95-334, title II, §§ 201-211, Aug. 4, 1978, 92 Stat. 429-433, as amended by Pub. L. 96-220, § 1, Mar. 30, 1980, 94 Stat. 129; Pub. L. 97-98, title XVI, § 1605, Dec. 22, 1981, 95 Stat. 1346; Pub. L. 98-258, title VI, § 603, Apr. 10, 1984, 98 Stat. 139; Pub. L. 99-198, title XIII, § 1310(b), Dec. 23, 1985, 99 Stat. 1523, provided that:

[See main edition for text of Secs. 201 to 203]

"SEC. 204. *[See main edition for text of (a) to (d)]*

"(e)(1) The Secretary shall permit a borrower of a loan made or insured under this title to make a prospective payment on such loan with proceeds from—

"(A) the leasing of oil, gas, or other mineral rights to real property used to secure such loan; or

"(B) the sale of oil, gas, or other minerals removed from real property used to secure such loan if the value of the rights to such oil, gas, or other minerals has not been used to secure such loan.

"(2) Paragraph (1) shall not apply to a borrower of a loan made or insured under this title with respect to which a liquidation or foreclosure proceeding is pending on the date of enactment of the Food Security Act of 1985 [Dec. 23 1985].

[See main edition for text of Secs. 205 to 210]

"EFFECTIVE PERIOD

"SEC. 211. (a) The provisions of this title shall become effective upon enactment [Aug. 4, 1978], and the authority to make new contracts of insurance or guarantee under this title shall terminate September 30, 1982: *Provided*, That the Secretary may not make new contracts of insurance or guarantee under this title that will cause the total amount of money borrowed under such contracts during any fiscal year to exceed $600,000,000.

"(b) With respect to the economic emergency loan program operated under this title during the period beginning December 22, 1983, and ending September 30, 1984, the Secretary—

"(1) shall make available to eligible applicants during such period new contracts of insurance totaling, in the aggregate, $310,000,000, and

"(2) as appropriate to achieve the goals of the economic emergency loan program and taking into consideration the amount of funds used for loan guarantees, may make available to eligible applicants during such period additional new contracts of insurance totaling, in the aggregate, not more than $290,000,000.

[See main edition for text of Sec. 212]

§ 1961. Eligibility for loans

(a) Persons eligible

The Secretary shall make and insure loans under this subchapter only to the extent and in such amounts as provided in advance in appropriation Acts to (1) established farmers, ranchers, or persons engaged in aquaculture, who are citizens of the United States and who are owner-operators (in the case of loans for a purpose under subchapter I of this chapter) or operators (in the case of loans for a purpose under subchapter II of this chapter) of not larger than family farms, and (2) farm cooperatives, private domestic corporations, partnerships, or joint operations (A) that are engaged primarily in farming, ranching, or aquaculture, and (B) in which a majority interest is held by individuals who are citizens of the United States and who are owner-operators (in the case of loans for a purpose under subchapter I of this chapter) or operators (in the case of loans for a purpose under subchapter II of this chapter) of not larger than family farms (or in the case of such cooperatives, corporations, partnerships, or joint operations in which a majority interest is held by individuals who are related by blood or marriage, as defined by the Secretary, such individuals must be either owners or operators of not larger than a family farm and at least one such individual must be an operator of not larger than a family farm), where the Secretary finds that the applicants' farming, ranching, or aquaculture operations have been substantially affected by a natural disaster in the United States or by a major disaster or emergency designated by the President under the Disaster Relief Act of 1974 [42 U.S.C.

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5121 et seq.]: *Provided*, That they have experience and resources necessary to assure a reasonable prospect for successful operation with the assistance of such loan and are not able to obtain sufficient credit elsewhere. In addition to the foregoing requirements of this subsection, in the case of farm cooperatives, private domestic corporations, partnerships, and joint operations, the family farm requirement of the preceding sentence shall apply as well to all farms in which the entity has an ownership and operator interest (in the case of loans for a purpose under subchapter I of this chapter) or an operator interest (in the case of loans for a purpose under subchapter II of this chapter). The Secretary shall accept applications from, and make or insure loans pursuant to the requirements of this subchapter to, applicants, otherwise eligible under this subchapter, that conduct farming, ranching, or aquaculture operations in any county contiguous to a county where the Secretary has found that farming, ranching, or aquaculture operations have been substantially affected by a natural disaster in the United States or by a major disaster or emergency designated by the President under the Disaster Relief Act of 1974. The Secretary shall accept applications for assistance under this subchapter from persons affected by a natural disaster at any time during the eight-month period beginning (A) on the date on which the Secretary determines that farming, ranching, or aquaculture operations have been substantially affected by such natural disaster or (B) on the date the President makes the major disaster or emergency designation with respect to such natural disaster, as the case may be.

(b) Persons ineligible

An applicant shall be ineligible for financial assistance under this subchapter for crop losses if crop insurance was available to the applicant for such crop losses under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

[*See main edition for text of* (c) *and* (d)]

(As amended Pub. L. 98-258, title VI, § 602(a), Apr. 10, 1984, 98 Stat. 138; Pub. L. 99-198, title XIII, § 1308(a), (b)(1), Dec. 23, 1985, 99 Stat. 1522.)

REFERENCES IN TEXT

The Federal Crop Insurance Act, referred to in subsec. (b), is title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, as amended, which is classified generally to chapter 36 (§ 1501 et seq.) of this title. For complete classification of this Act to the Code, see section 1501 of this title and Tables.

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-198, § 1308(a), inserted "and who are owner-operators (in the case of loans for a purpose under subchapter I of this chapter) or operators (in the case of loans for a purpose under subchapter II of this chapter) of not larger than family farms" after "United States" in cl. (1) of first sentence, extended applicability to joint operations, and substituted requirement that a majority interest be held by individuals who are citizens of the United States and who are owner-operators (in the case of loans for a purpose under subchapter I of this chapter) or operators (in the case of loans for a purpose under subchapter II of this chapter) of not larger than family farms (or in the case of such cooperatives, corporations, partnerships, or joint operations in which a majority interest is held by individuals who are related by blood or marriage, as defined by the Secretary, that such individuals must be either owners or operators of not larger than a family farm and at least one such individual must be an operator of not larger than a family farm) for requirement that a majority interest be held by members, stockholders or partners who are citizens of the United States, in cl. (2) of first sentence, and added provision extending the family farm requirement to all farms in which the entity has an ownership and operator interest (in the case of loans for a purpose under subchapter I of this chapter) or an operator interest (in the case of loans for a purpose under subchapter II of this chapter).

Subsec. (b). Pub. L. 99-198, § 1308(b)(1), amended subsec. (b) generally, substituting provision declaring a loan applicant ineligible for financial assistance for crop losses where crop insurance was available to the applicant for former provision which made applicants eligible for loans, though able to obtain credit elsewhere, subject to the other terms and conditions for loans under this subchapter and as prescribed under regulations by the Secretary.

1984—Subsec. (a). Pub. L. 98-258 added provisions directing the Secretary to accept applications from, and make or insure loans pursuant to the requirements of this subchapter to, applicants, otherwise eligible under this subchapter, that conduct farming, ranching, or aquaculture operations in any county contiguous to a county where the Secretary has found that farming, ranching, or aquaculture operations have been substantially affected by a natural disaster in the United States or by a major disaster or emergency designated by the President under the Disaster Relief Act of 1974, and further directing the Secretary to accept applications for assistance under this subchapter from persons affected by a natural disaster at any time during the eight-month period beginning (A) on the date on which the Secretary determines that farming, ranching, or aquaculture operations have been substantially affected by such natural disaster or (B) on the date the President makes the major disaster or emergency designation with respect to such natural disaster, as the case may be.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1308(b)(2) of Pub. L. 99-198 provided that: "The amendment made by paragraph (1) [amending this section] shall not apply to a person whose eligibility for an emergency loan is the result of damage to an annual crop planted or harvested before the end of 1986."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 602(c) of Pub. L. 98-258 provided that: "the amendments made by this section [amending sections 1961 and 1964 of this title] shall be applicable to disasters occurring after May 30, 1983."

§ 1964. Loan limitation, interest rates and subsidies, and repayment; grant eligibility

(a) Limitation on loans

No loan made or insured under this subchapter may exceed the amount of the actual loss caused by the disaster or $500,000, whichever is less, for each disaster.

(b) Interest rates

Loans under this subchapter shall be at rates of interest as follows:

(1) For loans or portions of loans up to the amount of the applicant's actual loss caused by the disaster, as limited under subsection

(a)(1) of this section, the interest shall be at rates prescribed by the Secretary, but not in excess of 8 percent per annum; and

[*See main edition for text of (2); (c)*]

(d) Repayment; security; repayment period extension; review

All loans under this subchapter shall be repayable at such times as the Secretary may determine, taking into account the purposes of the loan and the nature and effect of the disaster, but not later than as provided for loans for similar purposes under subchapters I and II of this chapter, and upon the full personal liability of the borrower and upon the best security available, as the Secretary may prescribe: *Provided,* That the security is adequate to assure repayment of the loans, except that if such security is not available because of the disaster, the Secretary shall (1) accept as security such collateral as is available, a portion or all of which may have depreciated in value due to the disaster and which in the opinion of the Secretary, together with the Secretary's confidence in the repayment ability of the applicant, is adequate security for the loan, and (2) make such loan repayable at such times as the Secretary may determine, not later than as provided under subchapters I and II of this chapter, as justified by the needs of the applicant: *Provided further,* That for any disaster occurring after January 1, 1975, the Secretary, if the loan is for a purpose described in subchapter II of the chapter, may make the loan repayable at the end of a period of more than seven years, but not more than twenty years, if the Secretary determines that the need of the loan applicant justifies such a longer repayment period: *Provided further,* That for any direct or insured loan (other than a guaranteed loan) approved under section 1961(b) of this title, three years after the loan is made or insured, and every two years thereafter for the term of the loan, the Secretary shall review the loan; and if, based on such review, the Secretary determines that the borrower is able to obtain a loan from non-Federal sources at reasonable rates and terms for loans for similar purposes and periods of time, the borrower shall on request by the Secretary, apply for and accept such non-Federal loan in sufficient amount to repay the Secretary. If farm assets (including land, livestock, and equipment) are used as collateral to secure a loan made under this subchapter, the Secretary shall value the assets based on the higher of (A) the value of the assets on the day before the date the governor of the State in which the farm is located requests assistance under this subchapter or the Disaster Relief Act of 1974 [42 U.S.C. 5121 et seq.] for any portion of such State affected by the disaster with respect to which the application for the loan is made, or (B) the value of the assets one year before such day.

[*See main edition for text of (e)*]

(As amended Pub. L. 98-258, title VI, § 602(b), Apr. 10, 1984, 98 Stat. 138; Pub. L. 99-198, title XIII, § 1308(b)(3), (c), Dec. 23, 1985, 99 Stat. 1523.)

REFERENCES IN TEXT

The Disaster Relief Act of 1974, referred to in subsec. (d), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, § 1308(c), in amending subsec. (a) generally, struck out par. (1) designation, substituted in the paragraph "No loan" for "Except as otherwise provided in paragraph (2) of this subsection, no loan", and struck out par. (2) authorization of loans through Sept. 30, 1982 for applicants unable to obtain sufficient credit elsewhere, limited to an amount that would not cause the total unpaid principal indebtedness of the loan applicant to exceed: $1,500,000 through end of fiscal year 1980; $1,000,000 during fiscal year 1981; and $500,000 during fiscal year 1982; and restricted loans in excess of amount of actual loss that were for more than $300,000 without a prior determination of the Secretary of applicant's inability to obtain loans to finance actual needs at reasonable rates and terms in the residential community of the applicant for loans for similar purposes and periods of time.

Subsec. (b)(1). Pub. L. 99-198, § 1308(b)(3), substituted provision for interest rates prescribed by the Secretary but "not in excess of 8 percent per annum" for former such provision but "(A) if the applicant is not able to obtain sufficient credit elsewhere, not in excess of 8 per centum per annum, and (B) if the applicant is able to obtain sufficient credit elsewhere, not in excess of the rate prevailing in the private market for similar loans, as determined by the Secretary".

1984—Subsec. (d). Pub. L. 98-258 added provision that, if farm assets (including land, livestock, and equipment) are used as collateral to secure a loan made under this subchapter, the Secretary shall value the assets based on the higher of (A) the value of the assets on the day before the date the governor of the State in which the farm is located requests assistance under this subchapter or the Disaster Relief Act of 1974 for any portion of such State affected by the disaster with respect to which the application for the loan is made, or (B) the value of the assets one year before such day.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-258 applicable to disasters occurring after May 30, 1983, see section 602(c) of Pub. L. 98-258, set out as a note under section 1961 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1963 of this title.

§ 1971. Repealed. Pub. L. 99-198, title XIII, § 1308(d), Dec. 23, 1985, 99 Stat. 1523

Section, Pub. L. 87-128, title III, § 330, as added Pub. L. 94-68, § 8, Aug. 5, 1975, 89 Stat. 382, and amended Pub. L. 96-438, § 3(b)(2), Oct. 13, 1980, 94 Stat. 1875, authorized additional emergency loans.

SUBCHAPTER IV—ADMINISTRATIVE PROVISIONS

§ 1981. Farmers Home Administration; appointment and compensation of Administrator; transfer of powers, duties and assets pertaining to agricultural credit; powers of Secretary of Agriculture

[*See main edition for text of first par.*]

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The Secretary may—

[*See main edition for text of* (a) *to* (c)]

(d) compromise, adjust, reduce, or charge-off claims, and adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Farmers Home Administration under any of its programs, as circumstances may require, to carry out this chapter. The Secretary may release borrowers or others obligated on a debt incurred under this chapter from personal liability with or without payment of any consideration at the time of the compromise, adjustment, reduction, or charge-off of any claim, except that no compromise, adjustment, reduction, or charge-off of any claim may be made or carried out—

(1) on terms more favorable than those recommended by the appropriate county committee utilized pursuant to section 1982 of this title; or

(2) after the claim has been referred to the Attorney General, unless the Attorney General approves;

[*See main edition for text of* (e) *to* (j)]

(As amended Pub. L. 99-198, title XIII, § 1309, Dec. 23, 1985, 99 Stat. 1523.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in introductory paragraph and pars. (a), (d), (e), (i), and (j), see References in Text note set out under section 1921 of this title.

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-198, § 1309, in amending subsec. (d) generally, substituted provisions authorizing the Secretary to compromise, adjust, reduce, or charge-off claims, and adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Farmers Home Administration to carry out this chapter for provisions which had authorized the Secretary to compromise, adjust, or reduce claims, and adjust and modify the terms of mortgages, leases, contracts and agreements entered into or administered by the Administration under any of its programs, but not in the event of claims of $25,000 or more without the approval of the Administrator, substituted provisions authorizing the Secretary to release borrowers or others obligated on a debt incurred under this chapter from personal liability with or without consideration at the time of the compromise, adjustment, reduction or charge-off of any claim for provisions authorizing the Secretary to release from personal liability, with or without payment of any consideration at the time of adjustment of the claims, borrowers who transferred the security property to approved applicants, to other than approved applicants, or for amounts less than the indebtedness secured thereby, struck out provisions that compromise, adjustment, or reduction of the claim shall be based on the value of the security and a determination of the debtor's reasonable ability to pay considering his other assets and income, and struck out provisions relating to any claim due and payable for five years or more and to partial releases and subordination of mortgages.

CONTINUATION OF SMALL FARMER TRAINING AND TECHNICAL ASSISTANCE PROGRAM

Section 1328 of Pub. L. 99-198 provided that: "The Secretary of Agriculture shall, during the period beginning on the date of enactment of this Act [Dec. 23, 1985] and ending on September 30, 1988, maintain at substantially current levels the small farmer training and technical assistance program in the office of the Administrator of the Farmers Home Administration."

REAMORTIZATION OF DISTRESSED FARMERS HOME ADMINISTRATION LOANS FROM REVENUES FROM SOFTWOOD TIMBER CROP PLANTINGS ON MARGINAL LAND

Pub. L. 98-258, title VI, § 608, Apr. 10, 1984, 98 Stat. 140, as amended by Pub. L. 99-198, title XII, § 1254, Dec. 23, 1985, 99 Stat. 1517, provided that:

"(a)(1) Notwithstanding any other provision of law, the Secretary of Agriculture (hereinafter in this section referred to as the 'Secretary') may implement a program, pursuant to the recommendations contained in the study mandated by section 608 of the Agricultural Programs Adjustment Act of 1984 (7 U.S.C. 1421 [1981] note), under which a distressed loan (as determined by the Secretary) made or insured under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), or a portion thereof, may be reamortized with the use of future revenue produced from the planting of softwood timber crops on marginal land (as determined by the Secretary) that—

"(A) was previously used to produce an agricultural commodity or as pasture; and

"(B) secures a loan made or insured under such Act.

"(2) Accrued interest on a loan reamortized under this section may be capitalized and interest charged on such interest.

"(3) All or a portion of the payments on such reamortized loan may be deferred until such softwood timber crop produces revenue or for a term of 45 years, whichever comes first.

"(4) Repayment of such reamortized loan shall be made not later than 50 years after the date of reamortization.

"(b) The interest rate on such reamortized loans shall be determined by the Secretary, but not in excess of the current average yield on outstanding marketable obligations of the United States with periods to maturity comparable to the average maturities of such loans, plus not to exceed 1 percent, as determined by the Secretary and adjusted to the nearest one-eighth of 1 percent.

"(c) To be eligible for such program—

"(1) the borrower of such reamortized loan must place not less than 50 acres of such land in softwood timber production;

"(2) such land (including timber) may not have any lien against such land other than a lien for—

"(A) a loan made or insured under the Consolidated Farm and Rural Development Act [7 U.S.C. 1921 et seq.] to secure such reamortized loan; or

"(B) a loan made under this section, at the time of reamortization or thereafter, that is subject to a lien on such land (including timber) in favor of the Secretary; and

"(3) the total amount of loans secured by such land (including timber) may not exceed $1,000 per acre.

"(d)(1) To assist such borrowers to place such land in softwood timber production, the Secretary may make loans to such borrowers for such purpose in an aggregate amount not to exceed the actual cost of tree planting for land placed in the program.

"(2) Any such loan shall be secured by the land (including timber) on which the trees are planted.

"(3) Such loans shall be made on the same terms and conditions as are provided in this section for reamortized loans.

"(e) The Secretary shall issue such rules as are necessary to carry out this section, including rules prescribing terms and conditions for—

"(1) reamortizing and making loans under this section;

"(2) entering into security instruments and agreements under this section; and

"(3) management and harvesting practices of the timber crop.

"(f) There are authorized to be appropriated such sums as are necessary to carry out this section.

"(g) No more than 50,000 acres may be placed in such program."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2000 of this title.

§ 1981b. Farm loan interest rates

Any loan for farm ownership purposes under subchapter I of this chapter, farm operating purposes under subchapter II of this chapter, or disaster emergency purposes under subchapter III of this chapter, other than a guaranteed loan, that is deferred, consolidated, rescheduled, or reamortized under this chapter shall, notwithstanding any other provision of this chapter, bear interest on the balance of the original loan and for the term of the original loan at a rate that is the lower of (1) the rate of interest on the original loan or (2) the rate being charged by the Secretary for loans, other than guaranteed loans, of the same type at the time of the deferral, consolidation, rescheduling, or reamortization.

(Pub. L. 87-128, title III, § 331B, as added Pub. L. 98-258, title VI, § 605, Apr. 10, 1984, 98 Stat. 139.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see note set out under section 1921 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1946 of this title.

§ 1981c. Oil and gas royalty payments on loans

(a) The Secretary shall permit a borrower of a loan made or insured under this chapter to make a prospective payment on such loan with proceeds from—

(1) the leasing of oil, gas, or other mineral rights to real property used to secure such loan; or

(2) the sale of oil, gas, or other minerals removed from real property used to secure such loan, if the value of the rights to such oil, gas, or other minerals has not been used to secure such loan.

(b) Subsection (a) of this section shall not apply to a borrower of a loan made or insured under this chapter with respect to which a liquidation or foreclosure proceeding is pending on December 23, 1985.

(Pub. L. 87-128, title III, § 331C, as added Pub. L. 99-198, title XIII, § 1310(a), Dec. 23, 1985, 99 Stat. 1523.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 1921 of this title.

§ 1982. County committees

(a) Election and appointment; term; alternates; removal for cause; regulations

In each county or area in which activities are carried out under this chapter, there shall be a county committee composed of three members. Two members shall be elected, from among their number, by farmers deriving the principal part of their income from farming who reside within the county or area, and one member, who shall reside within the county or area, shall be appointed by the Secretary for a term of three years. At the first election of county committee members under this subsection, one member shall be elected for a term of one year and one member shall be elected for a term of two years. Thereafter, elected members of the county committee shall be elected for a term of three years. The Secretary, in selecting the appointed member of the county committee, shall ensure that, to the greatest extent practicable, the committee is fairly representative of the farmers in the county or area. The Secretary may appoint an alternate for each member of the county committee. Appointed and alternate members of the county committee shall be removable by the Secretary for cause. The Secretary shall issue such regulations as are necessary relating to the election and appointment of members and alternate members of the county committees.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 99-198, title XIII, § 1311, Dec. 23, 1985, 99 Stat. 1524.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198 in amending subsec. (a) generally, rephrased, without changes in substance, existing provisions, required the Secretary to appoint one member so that the committee be fairly representative of the county or area farmers, and required the issuance of regulations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1981, 1986 of this title.

§ 1983. Special conditions and limitations on loans

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1932 of this title.

§ 1983a. Prompt approval of loans and loan guarantees

(a) Applications; time for action by Secretary; notice; statement of reasons

(1) The Secretary shall approve or disapprove an application for a loan or loan guarantee made under this chapter, and notify the applicant of such action, not later than 60 days after the Secretary has received a complete application for such loan or loan guarantee.

(2) If an application for a loan or loan guarantee under this chapter is incomplete, the Secretary shall inform the applicant of the reasons such application is incomplete not later than 20 days after the Secretary has received such application.

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(3) If an application for a loan or loan guarantee under this chapter is disapproved by the Secretary, the Secretary shall state the reasons for the disapproval in the notice required under paragraph (1).

(b) Loan proceeds; time for receipt

(1) Except as provided in paragraph (2), if an application for an insured loan under this chapter is approved by the Secretary, the Secretary shall provide the loan proceeds to the applicant not later than 15 days (or such longer period as the applicant may approve) after the application for the loan is approved by the Secretary.

(2) If the Secretary is unable to provide the loan proceeds to the applicant within such 15-day period because sufficient funds are not available to the Secretary for such purpose, the Secretary shall provide the loan proceeds to the applicant as soon as practicable (but in no event later than 15 days unless the applicant agrees to a longer period) after sufficient funds for such purpose become available to the Secretary.

(c) Reconsideration of applications; time for action by Secretary

In [2] an application for a loan or loan guarantee under this chapter is disapproved by the Secretary, but such action is subsequently reversed or revised as the result of an appeal within the Department of Agriculture or to the courts of the United States and the application is returned to the Secretary for further consideration, the Secretary shall act on the application and provide the applicant with notice of the action within 15 days after return of the application to the Secretary.

(d) Approved lender designation applications; time for decision by Secretary

In carrying out the approved lender program established by exhibit A to subpart B of part 1980 of title 7, Code of Federal Regulations, the Secretary shall ensure that each request of a lending institution for designation as an approved lender under such program is reviewed, and a decision made on the application, not later than 15 days after the Secretary has received a complete application for such designation.

(e) Processing loan applications; personnel and other resources made available; use of authorities of law

(1) As soon as practicable after December 23, 1985, the Secretary shall take such steps as are necessary to make personnel, including the payment of overtime for such personnel, and other resources of the Department of Agriculture available to the Farmers Home Administration as are sufficient to enable the Farmers Home Administration to expeditiously process loan applications that are submitted by farmers and ranchers.

(2) In carrying out paragraph (1), the Secretary may use any authority of law provided to the Secretary, including—

(A) the Agricultural Credit Insurance Fund established under section 1929 of this title; and

(B) the employment procedures used in connection with the emergency loan program established under subchapter III of this chapter.

(Pub. L. 87-128, title III, § 333A, as added Pub. L. 99-198, title XIII, § 1312(a), Dec. 23, 1985, 99 Stat. 1524.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a), (b)(1), and (c), see References in Text note set out under section 1921 of this title.

EFFECTIVE DATE

Section 1312(b) of Pub. L. 99-198 provided that: "The amendment made by subsection (a) [enacting this section] shall be effective with respect to applications for loans or loan guarantees under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) received by the Secretary of Agriculture after the date of enactment of this Act [Dec. 23, 1985]."

§ 1983b. Appeals

(a) Regulations; notice of decision; opportunity for meeting and hearing

The Secretary shall provide an applicant for or borrower of a loan, or an applicant for or recipient of a loan guarantee, under this chapter who has been directly and adversely affected by a decision of the Secretary made under this chapter (hereafter [3] in this section referred to as the "appellant") with written notice of the decision, an opportunity for an informal meeting, and an opportunity for a hearing with respect to such decision, in accordance with regulations issued by the Secretary consistent with this section.

(b) Time for notice to appellant; minimization of formal appeals

(1) Not later than 10 days after such adverse decision, the Secretary shall provide the appellant with written notice of the decision, an opportunity for an informal meeting, an opportunity for a hearing, and the procedure to appeal such decision (including any deadlines for filing appeals).

(2) Upon the request of the appellant and in order to provide an opportunity to resolve differences and minimize formal appeals, the Secretary shall hold an informal meeting with the appellant prior to the initiation of any formal appeal of the decision of the Secretary.

(c) Appellant's rights; inspection and reproduction of personal file and payment of reasonable costs; representation

(1) An appellant shall have the right to have—

(A) access to the personal file of the appellant maintained by the Secretary, including a reasonable opportunity to inspect and reproduce the file at an office of the Farmers Home Administration located in the area of the appellant; and

(B) representation by an attorney or nonattorney during the inspection and reproduc-

[2] So in original. Probably should be "If".

[3] So in original. Probably should be "(hereinafter".

tion of files under subparagraph (A) and at any informal meeting or hearing.

(2) The Secretary may charge an appellant for any reasonable costs incurred in reproducing files under paragraph (1)(A).

(Pub. L. 87-128, title III, § 333B, as added Pub. L. 99-198, title XIII, § 1313(a), Dec. 23, 1985, 99 Stat. 1525.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 1921 of this title.

§ 1985. Security servicing; operation or lease of realty; disposition of surplus property; conveyance of complete interest of United States; easements; condemnations; farmland sales and leases; management contracts; installments, selection of purchasers, subdivisions, announcements, conservation practices, and adverse effects prohibition; normal security income

[See main edition for text of (a)]

(b) Except as provided in subsection (e) of this section, real property administered under the provisions of this chapter may be operated or leased by the Secretary for such period or periods as the Secretary may deem necessary to protect the Government's investment therein.

(c) Except as provided in subsection (e) of this section, the Secretary may determine whether real property administered under this chapter is suitable for disposition to persons eligible for assistance under the provisions of any law administered by the Farmers Home Administration. Any property which the Secretary determines to be suitable for such purposes shall, whenever practicable, be sold by the Secretary as expeditiously as possible to such eligible persons in a manner consistent with such provisions. Real property which is not determined suitable for sale to such eligible persons or which has not been purchased by such persons within a period of three years from the date of acquisition, shall be sold by the Secretary after public notice at public sale and, if no acceptable bid is received then by negotiated sale, at the best price obtainable for cash or on secured credit without regard to the laws governing the disposition of excess or surplus property of the United States. The terms of such sale shall require an initial downpayment and the remainder of the sales price payable in installments with interest on unpaid balance at the rate determined by the Secretary, but not in any event at rates and terms more favorable than those legally permissible for eligible borrowers. Any conveyances under this section shall include all of the interest of the United States, including mineral rights, other than easements acquired under section 1997 of this title. Notwithstanding the preceding sentence, the Secretary may for conservation purposes grant or sell an easement, restriction, development rights, or the equivalent thereof, to a unit of local or State government or a private nonprofit organization separately from the underlying fee or sum of all other rights possessed by the United States.

[See main edition for text of (d)]

(e)(1) The Secretary shall to the extent practicable sell or lease farmland administered under this chapter in the following order of priority:

(A) Sale of such farmland to operators (as of the time immediately before such sale) of not larger than family-size farms.

(B) Lease of such farmland to operators (as of the time immediately before such lease is entered into) of not larger than family-size farms.

(2) The Secretary shall not offer for sale or sell any such farmland if the placing of such farmland on the market will have a detrimental effect on the value of farmland in the area.

(3)(A) The Secretary shall consider granting, and may grant, to an operator of not larger than a family-size farm, in conjunction with paragraph (3), a lease with an option to purchase farmland administered under this chapter.

(B) The Secretary shall issue regulations providing for leasing such land, or leasing such land with an option to purchase, on a fair and equitable basis.

(C) In leasing such land, the Secretary shall give special consideration to a previous owner or operator of such land if such owner or operator has financial resources, and farm management skills and experience, that the Secretary determines are sufficient to assure a reasonable prospect of success in the proposed farming operation.

(D) To the extent the Secretary may lease or operate real property under this subsection, the Secretary shall, if the Secretary determines to administer such property through management contracts, offer the contracts on a competitive bid basis, giving preference to persons who will live in, and own and operate qualified small businesses in, the area where the property is located.

(4)(A)(i) The Secretary may sell farmland administered under this chapter through an installment sale or similar device that contains such terms as the Secretary considers necessary to protect the investment of the Federal Government in such land.

(ii) The Secretary may subsequently sell any contract entered into to carry out clause (i).

(B) The Secretary shall offer such land for sale to operators of not larger than family-size farms at a price that reflects the average annual income that may be reasonably anticipated to be generated from farming such land.

(C) If two or more qualified operators of not larger than family-size farms desire to purchase, or lease with an option to purchase, such land, the appropriate county committee shall, by majority vote, select the operator who may purchase such land, on such basis as the Secretary may prescribe by regulation.

(5)(A) If the Secretary determines that farmland administered under this chapter is not suitable for sale or lease to an operator of not larger than a family-size farm because such farmland is in a tract or tracts that the Secretary determines to be larger than that necessary for family-size farms, the Secretary shall

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subdivide such land into tracts suitable for such operator.

(B) The Secretary shall dispose of such subdivided farmland in accordance with this subsection.

(6) If suitable farmland is available for disposition under this subsection, the Secretary shall—

(A) publish an announcement of the availability of such farmland in at least one newspaper that is widely circulated in the county in which the farmland is located; and

(B) post an announcement of the availability of such farmland in a prominent place in the local office of the Farmers Home Administration that serves the county in which the farmland is located.

(7) In the case of farmland administered under this chapter that is highly erodible land (as defined in section 3801 of title 16), the Secretary may require the use of specified conservation practices on such land as a condition of the sale or lease of such land.

(8) Notwithstanding any other provisions of law, compliance by the Secretary with this subsection shall not cause any acreage allotment, marketing quota, or acreage base assigned to such property to lapse, terminate, be reduced, or otherwise be adversely affected.

(f)(1) As used in this subsection, the term "normal income security" has the same meaning given such term in section 1962.17(b) of title 7, Code of Federal Regulations (as of January 1, 1985).

(2) Until such time as the Secretary accelerates a loan made or insured under this chapter, the Secretary shall release from the normal income security provided for such loan an amount sufficient to pay the essential household and farm operating expenses of the borrower, as determined by the Secretary.

(As amended Pub. L. 99-198, title XIII, §§ 1314(a), 1315, 1318(b)(1), Dec. 23, 1985, 99 Stat. 1526, 1528, 1531.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-198, § 1314(a)(1), substituted "Except as provided in subsection (e) of this section, real property" for "Real property".

Subsec. (c). Pub. L. 99-198, § 1314(a)(2), substituted "Except as provided in subsection (e) of this section, the Secretary" for "The Secretary" and added sentence at end providing that notwithstanding the preceding sentence, the Secretary may for conservation purposes grant or sell an easement, restriction, development rights, or the equivalent thereof, to a unit of local or State government or a private nonprofit organization separately from the underlying fee or sum of all other rights possessed by the United States.

Pub. L. 99-198, § 1318(b)(1), which directed the insertion of ", other than easements acquired under section 1997 of this title" at end of last sentence, was executed to fifth sentence of subsec. (c), and not to sixth and last sentence as added by section 1314(a)(2)(B) of Pub. L. 99-198, to reflect the probable intent of Congress.

Subsec. (e). Pub. L. 99-198, § 1314(a)(3), added subsec. (e).

Subsec. (f). Pub. L. 99-198, § 1315, added subsec. (f).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1314(b) of Pub. L. 99-198 provided that: "The Secretary of Agriculture shall implement the amendments made by this section [amending this section] not later than 90 days after the date of enactment of this Act [Dec. 23, 1985]."

§ 1986. Conflicts of interests

(a) Acceptance of fees, commissions, gifts, or other considerations prohibited

No officer, attorney, or other employee of the Secretary shall, directly or indirectly, be the beneficiary of or receive any fee, commission, gift, or other consideration for or in connection with any transaction or business under this chapter other than such salary, fee, or other compensation as he may receive as such officer, attorney, or employee.

(b) Acquisition of interest in land by certain officers or employees of Department of Agriculture prohibited; 3-year period

Except as otherwise provided in this subsection, no officer or employee of the Department of Agriculture who acts on or reviews an application made by any person under this chapter for a loan to purchase land may acquire, directly or indirectly, any interest in such land for a period of three years after the date on which such action is taken or such review is made. This prohibition shall not apply to a former member of a county committee provided for in section 1982 of this title upon a determination by the Secretary, prior to the acquisition of such interest, that such former member acted in good faith when acting on or reviewing such application.

(c) Certifications on loans to family members prohibited

No member of a county committee shall knowingly make or join in making any certification with respect to a loan to purchase any land in which he or any person related to him within the second degree of consanguinity or affinity has or may acquire any interest or with respect to any applicant related to him within the second degree of consanguinity or affinity.

(d) Penalties

Any persons violating any provision of this section shall, upon conviction thereof, be punished by a fine of not more than $2,000 or imprisonment for not more than two years, or both.

(As amended Pub. L. 98-258, title VI, § 606, Apr. 10, 1984, 98 Stat. 140.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a) and (b), see note set out under section 1921 of this title.

AMENDMENTS

1984—Pub. L. 98-258 designated first, second, and third sentences of existing provisions as subsecs. (a), (c), and (d), respectively, and added subsec. (b).

§ 1987. Debt adjustment and credit counseling; "summary period" defined; loan summary statements

(a) The Secretary may provide voluntary debt adjustment assistance between farmers and their creditors and may cooperate with State, territorial, and local agencies and committees

engaged in such debt adjustment, and may give credit counseling.

(b)(1) As used in this subsection, the term "summary period" means—

(A) the period beginning on December 23, 1985, and ending on the date on which the first loan summary statement is issued after December 23, 1985; or

(B) the period beginning on the date of issuance of the preceding loan summary statement and ending on the date of issuance of the current loan summary statement.

(2) On the request of a borrower of a loan made or insured (but not guaranteed) under this chapter, the Secretary shall issue to such borrower a loan summary statement that reflects the account activity during the summary period for each loan made or insured under this chapter to such borrower, including—

(A) the outstanding amount of principal due on each such loan at the beginning of the summary period;

(B) the interest rate charged on each such loan;

(C) the amount of payments made on and their application to each such loan during the summary period and an explanation of the basis for the application of such payments;

(D) the amount of principal and interest due on each such loan at the end of the summary period;

(E) the total amount of unpaid principal and interest on all such loans at the end of the summary period;

(F) any delinquency in the repayment of any such loan;

(G) a schedule of the amount and date of payments due on each such loan; and

(H) the procedure the borrower may use to obtain more information concerning the status of such loans.

(As amended Pub. L. 99-198, title XIII, § 1316, Dec. 23, 1985, 99 Stat. 1528.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (b)(2), see References in Text note set out under section 1921 of this title.

AMENDMENTS

1985—Pub. L. 99-198 designated existing provisions as subsec. (a) and added subsec. (b).

§ 1989. Rules and regulations; delegation of powers

COORDINATED FINANCIAL STATEMENTS; USE OF SUBMISSION REQUIREMENT PROHIBITED

Pub. L. 99-198, title XIII, § 1325, Dec. 23, 1985, 99 Stat. 1540, provided that: "The Secretary of Agriculture shall not use or require the submission of the coordinated financial statement referred to in the proposed regulations of the Farmers Home Administration published in the Federal Register of November 8, 1983 (48 F.R. 51312-51317) in connection with an application submitted on or after the date of the enactment of this Act [Dec. 23, 1985] for any loan under any program of the Department of Agriculture carried out by the Farmers Home Administration."

§ 1991. Definitions

As used in this chapter (1) the term "farmers" shall be deemed to include persons who are engaged in, or who, with assistance afforded under this chapter, intend to engage in, fish farming, and [4] (2) the term "farming" shall be deemed to include fish farming, (3) the term "owner-operator" shall include in the State of Hawaii the lessee-operator of real property in any case in which the Secretary determines that such real property cannot be acquired in fee simple by such lessee-operator, that adequate security is provided for the loan with respect to such real property for which such lessee-operator applies under this chapter, and that there is a reasonable probability of accomplishing the objectives and repayment of such loan, and [4] (4) the word "insure" as used in this chapter includes guarantee, which means to guarantee the payment of a loan originated, held, and serviced by a private financial agency or other lender approved by the Secretary, (5) the term "contract of insurance" includes a contract of guarantee, (6) the terms "United States" and "State" shall include each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, to the extent the Secretary determines it to be feasible and appropriate, the Trust Territory of the Pacific Islands, and (7) the term "joint operation" means a joint farming operation in which two or more farmers work together sharing equally or unequally land, labor, equipment, expenses, and income.

(As amended Pub. L. 99-198, title XIII, § 1301(b), Dec. 23, 1985, 99 Stat. 1519.)

AMENDMENTS

1985—Pub. L. 99-198 added cl. (7).

§ 1994. Maximum amounts for loans authorized; long-term cost projections

[See main edition for text of (a)]

(b) Maximum amounts for loans under Agricultural Credit Insurance and Rural Development Insurance Funds authorized

(1)(A) [5] For each of the fiscal years ending September 30, 1986, through September 30, 1988, real estate and operating loans may be insured, made to be sold and insured, or guaranteed in accordance with subchapter I and II, respectively, of this chapter from the Agricultural Credit Insurance Fund established under section 1929 of this title in an amount equal to $4,000,000,000, of which not less than $520,000,000 shall be for farm ownership loans under subchapter I of this chapter.

(B) Subject to subparagraph (C), such amount shall be apportioned as follows:

(i) For the fiscal year ending September 30, 1986—

(I) $2,000,000,000 for insured loans, of which not less than $260,000,000 shall be for farm ownership loans; and

[4] So in original. The word "and" probably should not appear.
[5] So in original. There is no par. (2).

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(II) $2,000,000,000 for guaranteed loans, of which not less than $260,000,000 shall be for guarantees of farm ownership loans.

(ii) For the fiscal year ending September 30, 1987—

(I) $1,500,000,000 for insured loans, of which not less than $195,000,000 shall be for farm ownership loans; and

(II) $2,500,000,000 for guaranteed loans, of which not less than $325,000,000 shall be for guarantees of farm ownership loans.

(iii) For the fiscal year ending September 30, 1988—

(I) $1,000,000,000 for insured loans, of which not less than $130,000,000 shall be for farm ownership loans; and

(II) $3,000,000,000 for guaranteed loans, of which not less than $390,000,000 shall be for guarantees of farm ownership loans.

(C) For each of the fiscal years referred to in subparagraph (A), the Secretary may transfer not more than 25 percent of the amounts authorized for guaranteed loans to amounts authorized for insured loans.

(D)(i) [6] For each of the fiscal years 1986, 1987, and 1988, emergency loans may be made or insured or guaranteed in accordance with subchapter III of this chapter from the Agricultural Credit Insurance Fund as follows: $1,300,000,000 for fiscal year 1986, $700,000,000 for fiscal year 1987, and $600,000,000 for fiscal year 1988.

(E) Loans for each of the fiscal years 1986, 1987, and 1988 are authorized to be insured, or made to be sold and insured, or guaranteed under the Rural Development Insurance Fund as follows:

(i) Insured water and waste disposal facility loans, $340,000,000.

(ii) Industrial development loans, $250,000,000.

(iii) Insured community facility loans, $115,000,000.

[*See main edition for text of* (c)]

(d) Low-income, limited-resource borrowers

(1) Notwithstanding any other provision of law, not less than 25 per centum of the loans for farm ownership purposes under subchapter I of this chapter, and not less than 25 per centum of the loans for farm operating purposes under subchapter II of this chapter, authorized to be insured, or made to be sold and insured, from the Agricultural Credit Insurance Fund during each fiscal year shall be for low-income, limited-resource borrowers.

(2) The Secretary shall provide notification to farm borrowers under this chapter, as soon as practicable after April 10, 1984, and in the normal course of loan making and loan servicing operations, of the provisions of this chapter relating to low-income, limited-resource borrowers and the procedures by which persons may apply for loans under the low-income, limited-resource borrower program.

(As amended Pub. L. 98-258, title VI, § 607, Apr. 10, 1984, 98 Stat. 140; Pub. L. 99-198, title XIII, § 1317, Dec. 23, 1985, 99 Stat. 1529.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a) and (d)(2), see note set out under section 1921 of this title.

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-198, § 1317(a), amended subsec. (b) generally, substituting provisions setting the maximum amounts for loans under the Agricultural Credit Insurance Fund and the Rural Development Insurance Fund for each of the fiscal years ending September 30, 1986 through September 30, 1988 for provisions setting such amounts for each of the fiscal years 1980, 1981 and 1982.

Subsecs. (d), (e). Pub. L. 99-198, § 1317, struck out subsec. (d) which had authorized special amounts for fiscal year 1982, redesignated subsec. (e) as (d), and in par. (1) substituted "25 per centum" for "20 per centum" wherever appearing and "each fiscal year" for "fiscal year 1984".

1984—Subsec. (e). Pub. L. 98-258 added subsec. (e).

§ 1997. Conservation easements

(a) Definitions

For purposes of this section:

(1) The term "governmental entity" means any agency of the United States, a State, or a unit of local government of a State.

(2) The terms "highly erodible land" and "wetland" have the meanings, respectively, that such terms are given in section 3801 of title 16.

(3) The term "wildlife" means fish or wildlife as defined in section 3371(a) of title 16.

(5) [7] The term "recreational purposes" includes hunting.

(b) Duration; purposes

Subject to subsection (c) of this section, the Secretary may acquire and retain an easement in real property, for a term of not less than 50 years, for conservation, recreational, and wildlife purposes.

(c) Property requirements

Such easement may be acquired or retained for real property if such property—

(1) is wetland, upland, or highly erodible land;

(2) is determined by the Secretary to be suitable for the purposes involved;

(3)(A)(i) secures any loan made under any law administered by the Farmers Home Administration and held by the Secretary; and

(ii) the borrower of such loan is unable, as determined by the Secretary, to repay such loan in a timely manner; or

(B) is administered under this chapter by the Secretary; and

(4) was (except in the case of wetland) row cropped each year of the 3-year period ending on December 23, 1985.

(d) Terms and conditions

The terms and conditions specified in each such easement shall—

[6] So in original. There is no subpar. (ii).

[7] So in original. There is no par. (4).

(1) specify the purposes for which such real property may be used;

(2) identify the conservation measures to be taken, and the recreational and wildlife uses to be allowed, with respect to such real property; and

(3) require such owner to permit the Secretary, and any person or governmental entity designated by the Secretary, to have access to such real property for the purpose of monitoring compliance with such easement.

(e) Purchase; loan cancellation method

Any such easement acquired by the Secretary shall be purchased from the borrower involved by canceling that part of the aggregate amount of such outstanding loans of the borrower held by the Secretary under laws administered by the Farmers Home Administration that bears the same ratio to the aggregate amount of the outstanding loans of such borrower held by the Secretary under all such laws as the number of acres of the real property of such borrower that are subject to such easement bears to the aggregate number of acres securing such loans. In no case shall the amount so cancelled exceed the value of the land on which the easement is acquired.

(f) Consultations with Director of Fish and Wildlife Service

If the Secretary elects to use the authority provided by this section, the Secretary shall consult with the Director of the Fish and Wildlife Service for purposes of—

(1) selecting real property in which the Secretary may acquire easements under this section;

(2) formulating the terms and conditions of such easements; and

(3) enforcing such easements.

(g) Enforcement

The Secretary, and any person or governmental entity designated by the Secretary, may enforce an easement acquired by the Secretary under this section.

(h) Loans made after December 23, 1985; cancellation not subject to easement provisions

This section shall not apply with respect to the cancellation of any part of any loan that was made after December 25, 1985.

(Pub. L. 87-128, title III, § 349, as added Pub. L. 99-198, title XIII, § 1318(a), Dec. 23, 1985, 99 Stat. 1530.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (c)(3)(B), see References in Text note set out under section 1921 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1985 of this title.

§ 1998. Guaranteed farm loan programs

Notwithstanding any other provision of this chapter, the Secretary shall ensure that farm loan guarantee programs carried out under this chapter are designed so as to be responsive to borrower and lender needs and to include provisions under reasonable terms and conditions for advances, before completion of the liquidation process, of guarantee proceeds on loans in default.

(Pub. L. 87-128, title III, § 350, as added Pub. L. 99-198, title XIII, § 1319, Dec. 23, 1985, 99 Stat. 1531.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 1921 of this title.

§ 1999. Interest rate reduction program

(a) Establishment and execution

The Secretary shall establish and carry out in accordance with this section an interest rate reduction program for loans guaranteed under this chapter.

(b) Contracts with lenders

Under such program, the Secretary shall enter into a contract with, and make payments to, a legally organized institution to reduce during the term of such contract the interest rate paid by a borrower on a guaranteed loan made by such institution if—

(1) the borrower—

(A) is unable to obtain sufficient credit elsewhere to finance the actual needs of the borrower at reasonable rates and terms, taking into consideration private and cooperative rates and terms for a loan for a similar purpose and period of time in the community in or near which the borrower resides;

(B) is otherwise unable to make payments on such loan in a timely manner; and

(C) has a total estimated cash income during the 12-month period beginning on the date such contract is entered into (including all farm and nonfarm income) that will equal or exceed the total estimated cash expenses to be incurred by the borrower during such period (including all farm and nonfarm expenses); and

(2) the lender reduces during the term of such contract the annual rate of interest payable on such loan by a minimum percentage specified in such contract.

(c) Payments to lenders

In return for a contract entered into by a lender under subsection (b) of this section for the reduction of the interest rate paid on a loan, the Secretary shall make payments to the lender in an amount equal to not more than 50 percent of the cost of reducing the annual rate of interest payable on such loan, except that such payments may not exceed the cost of reducing such rate by more than 2 percent.

(d) Duration of contracts

The term of a contract entered into under this section to reduce the interest rate on a guaranteed loan may not exceed the outstanding term of such loan, or 3 years, whichever is less.

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(e) Agricultural Credit Insurance Fund use limitation

(1) Notwithstanding any other provision of this chapter, the Agricultural Credit Insurance Fund established under section 1929 of this title may be used by the Secretary to carry out this section.

(2) The total amount of funds used by the Secretary to carry out this section may not exceed $490,000,000.

(Pub. L. 87-128, title III, § 351, as added Pub. L. 99-198, title XIII, § 1320, Dec. 23, 1985, 99 Stat. 1532.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a) and (e)(1), see References in Text note set out under section 1921 of this title.

EFFECTIVE AND TERMINATION DATES

Section 1320 of Pub. L. 99-198 provided in part that this section is effective only for the period beginning Dec. 23, 1985, and ending Sept. 30, 1988.

§ 2000. Homestead protection

(a) Definitions

As used in this section:

(1) The term "Administrator" means the Administrator of the Small Business Administration.

(2) The term "farm program loan" means any loan made by the Administrator under the Small Business Act (15 U.S.C. 631 et seq.) for any of the purposes authorized for loans under subchapters [1] I or II of this chapter.

(3) The term "homestead property" means the principal residence and adjoining property possessed and occupied by a borrower specified in paragraph (2) of this subsection.

(4) The term "Secretary" means the Secretary of Agriculture.

(b) Occupancy of homestead upon foreclosure, bankruptcy, or liquidation; appraisal; period of occupancy

(1) If the Secretary forecloses a loan made or insured under this chapter, the Administrator forecloses a farm program loan made under the Small Business Act (15 U.S.C. 631 et seq.), or a borrower of a loan made or insured by either agency declares bankruptcy or goes into voluntary liquidation to avoid foreclosure or bankruptcy, the Secretary or Administrator may upon application by the borrower, permit the borrower to retain possession and occupancy of any principal residence of the borrower, and a reasonable amount of adjoining land for the purpose of family maintenance.

(2) The value of the homestead property shall be determined insofar as possible by an independent appraisal made within six months from the date of the borrower's application to retain possession and occupancy of the homestead property.

(3) The period of occupancy of homestead property under this subsection may not exceed five years, but in no case shall be [2] the Secretary or the Administrator grant a period of occupancy less than three years, subject to compliance with the requirements of subsection (c) of this section.

(c) Terms and conditions

To be eligible to occupy homestead property, a borrower of a loan made or insured by the Secretary or the Administrator must—

(1) apply for such occupancy during the three-year period beginning on December 23, 1985;

(2) have exhausted all other remedies for the extension or restructuring of such loan, including all remedies afforded under section 1981(d) of this title;

(3) have made gross annual farm sales of at least $40,000 in at least two calendar years during the five-year period beginning on January 1, 1981, and ending on December 31, 1985 (or the equivalent crop or fiscal years);

(4) have received from farming operations at least 60 per centum of the gross annual income of the borrower and any spouse of the borrower during at least two years of such five-year period;

(5) have occupied the homestead property, and engaged in farming or ranching operations on adjoining land, or other land controlled by said borrower, during such five-year period;

(6) during the period of occupancy of the homestead property, pay a reasonable sum as rent for such property to the Secretary or the Administrator in an amount substantially equivalent to rents charged for similar residential properties in the area in which the homestead property is located, and failure to make rental payments in a timely fashion shall constitute cause for the termination of all rights of a borrower to possession and occupancy of the homestead property under this subsection;

(7) during the period of occupancy of homestead property, maintain such property in good condition; and

(8) agree to such other terms and conditions as are prescribed by the Secretary or the Administrator in order to facilitate the administration of this subsection.

(d) First right of refusal of reacquisition

At the end of the period of occupancy described in subsection (c) of this section, the Secretary or the Administrator shall grant to the borrower a first right of refusal to reacquire the homestead property on such terms and conditions (which may include payment of principal in installments) as the Secretary or the Administrator shall determine.

(e) Value as measure of reacquisition payment of principal

At the time any reacquisition agreement is entered into, the Secretary or the Administrator may not demand a total payment of principal that is in excess of the value of the homestead property as established under subsection (b)(2) of this section.

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[1] So in original. Probably should be "subchapter".

[2] So in original. The word "be" probably should not appear.

(Pub. L. 87-128, title III, § 352, as added Pub. L. 99-198, title XIII, § 1321, Dec. 23, 1985, 99 Stat. 1532.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsecs. (a)(2) and (b)(1), is Pub. L. 85-536, July 18, 1958, 72 Stat. 384, as amended, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

For definition of "this chapter", referred to in subsec. (b)(1), see References in Text note set out under section 1921 of this title.

CHAPTER 51—FOOD STAMP PROGRAM

Sec.
2012a. Publicly operated community health centers.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2270, 3175a, 3175b of this title; title 26 section 6103; title 29 sections 49b, 1503; title 42 sections 503, 602, 610, 1320b-7, 1437f, 1758, 1786, 5179, 8624; title 43 section 1626.

§ 2011. Congressional declaration of policy

RULES

Pub. L. 99-198, title XV, § 1583, Dec. 23, 1985, 99 Stat. 1595, provided that: "Not later than April 1, 1987, the Secretary shall issue rules to carry out the amendments made by this title [amending sections 612c, 1431e, 2012 to 2023, and 2025 to 2029 of this title, section 49b of Title 29, Labor, and section 503 of Title 42, The Public Health and Welfare, and amending provisions set out as notes under section 612c of this title]."

§ 2012. Definitions

As used in this chapter, the term:

[*See main edition for text of (a) and (b)*]

(c) "Certification period" means the period for which households shall be eligible to receive authorization cards. For those households that are required to submit periodic reports under section 2015(c)(1) of this title, the certification period shall be at least six months but no longer than twelve months except that the foregoing limits on the certification period may, with the approval of the Secretary, be waived by a State agency for certain categories of households where such waiver will improve the administration of the program. For households that are not required to submit periodic reports, the certification period shall be determined as follows:

[*See main edition for text of (1)*]

(2) In the case of all other households, the period shall be not less than three months: *Provided*, That such period may be up to twelve months for any household consisting entirely of unemployable or elderly or primarily self-employed persons, or as short as circumstances require for those households as to which there is a substantial likelihood of frequent changes in income or household status, and for any household on initial certification, as determined by the Secretary. The maximum limit of twelve months for such period under the foregoing proviso may be waived by the Secretary where such waiver will improve the administration of the program.

[*See main edition for text of (d) and (e)*]

(f) "Drug addiction or alcoholic treatment and rehabilitation program" means any such program conducted by a private nonprofit organization or institution, or a publicly operated community mental health center, under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) to provide treatment that can lead to the rehabilitation of drug addicts or alcoholics.

[*See main edition for text of (g) and (h)*]

(i) "Household" means (1) an individual who lives alone or who, while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others, or (2) a group of individuals who live together and customarily purchase food and prepare meals together for home consumption; except that parents and children, or siblings, who live together shall be treated as a group of individuals who customarily purchase and prepare meals together for home consumption even if they do not do so, unless one of the parents, or siblings, is an elderly or disabled member. Notwithstanding clause (1) of the preceding sentence, an individual who lives with others, who is sixty years of age or older, and who is unable to purchase food and prepare meals because such individual suffers, as certified by a licensed physician, from a disability which would be considered a permanent disability under section 221(i) of the Social Security Act (42 U.S.C. 421(i)) or from a severe, permanent, and disabling physical or mental infirmity which is not symptomatic of a disease shall be considered, together with any of the others who is the spouse of such individual, an individual household, without regard to the purchase of food and preparation of meals, if the income (as determined under section 2014(d) of this title) of the others, excluding the spouse, does not exceed the poverty line, as described in section 2014(c)(1) of this title, by more than 65 per centum. In no event shall any individual or group of individuals constitute a household if they reside in an institution or boarding house, or else live with others and pay compensation to the others for meals. For the purposes of this subsection, residents of federally subsidized housing for the elderly, disabled or blind recipients of benefits under title II or title XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.] who are residents in a public or private nonprofit group living arrangement that serves no more than sixteen residents and is certified by the appropriate State agency or agencies under regulations issued under section 1616(e) of the Social Security Act [42 U.S.C. 1382e(e)], temporary residents of public or private nonprofit shelters for battered women and children, and narcotics addicts or alcoholics who live under the supervision of a private nonprofit institution, or a publicly operated community mental health center, for the purpose

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of regular participation in a drug or alcoholic treatment program shall not be considered residents of institutions and shall be considered individual households.

[*See main edition for text of (j)*]

(k) "Retail food store" means (1) an establishment or recognized department thereof or house-to-house trade route, over 50 per centum of whose food sales volume, as determined by visual inspection, sales records, purchase records, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry, consists of staple food items for home preparation and consumption, such as meat, poultry, fish, bread, cereals, vegetables, fruits, dairy products, and the like, but not including accessory food items, such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices, (2) an establishment, organization, program, or group living arrangement referred to in subsections (g)(3), (4), (5), (7), and (8) of this section, (3) a store purveying the hunting and fishing equipment described in subsection (g)(6) of this section, and (4) any private nonprofit cooperative food purchasing venture, including those in which the members pay for food purchased prior to the receipt of such food.

[*See main edition for text of (l) to (n)*]

(o) "Thrifty food plan" means the diet required to feed a family of four persons consisting of a man and a woman twenty through fifty, a child six through eight, and a child nine through eleven years of age, determined in accordance with the Secretary's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary shall (1) make household-size adjustments (based on the unrounded cost of such diet) taking into account economies of scale, (2) make cost adjustments in the thrifty food plan for Hawaii and the urban and rural parts of Alaska to reflect the cost of food in Hawaii and urban and rural Alaska, (3) make cost adjustments in the separate thrifty food plans for Guam, and the Virgin Islands of the United States to reflect the cost of food in those States, but not to exceed the cost of food in the fifty States and the District of Columbia, (4) through January 1, 1980, adjust the cost of such diet every January 1 and July 1 to the nearest dollar increment to reflect changes in the cost of the thrifty food plan for the six months ending the preceding September 30 and March 31, respectively, (5) on January 1, 1981, adjust the cost of such diet to the nearest dollar increment to reflect changes in the cost of the thrifty food plan for the twelve months ending the preceding September 30, (6) on October 1, 1982, adjust the cost of such diet to reflect changes in the cost of the thrifty food plan for the twenty-one months ending June 30, 1982, reduce the cost of such diet by 1 per centun,[1] and round the result to the nearest lower dollar increment for each household size, (7) on October 1, 1983, and October 1, 1984, adjust the cost of such diet to reflect changes in the cost of the thrifty food plan for the twelve months ending the preceding June 30, reduce the cost of such diet by 1 per centum, and round the result to the nearest lower dollar increment for each household size, and (8) on October 1, 1985, and each October 1 thereafter, adjust the cost of such diet to reflect changes in the cost of the thrifty food plan for the twelve months ending the preceding June 30 and round the result to the nearest lower dollar increment for each household size: *Provided*, That the periods upon which such adjustments are based shall be subject to revision by Act of Congress.

[*See main edition for text of (p) and (q)*]

(r) "Elderly or disabled member" means a member of a household who—

(1) is sixty years of age or older;

(2) receives supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), federally or State administered supplemental benefits of the type described in section 1616(a) of the Social Security Act [42 U.S.C. 1382e(a)] if the Secretary determines that such benefits are conditioned on meeting the disability or blindness criteria used under title XVI of the Social Security Act, or federally or State administered supplemental benefits of the type described in section 212(a) of Public Law 93-66 (42 U.S.C. 1382 note);

(3) receives disability or blindness payments under title I, II, X, XIV, or XVI of the Social Security Act [42 U.S.C. 301 et seq., 401 et seq., 1201 et seq., 1351 et seq., 1381 et seq.] or receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act (42 U.S.C. 421(i));

(4) is a veteran who—

(A) has a service-connected or non-service-connected disability which is rated as total under title 38; or

(B) is considered in need of regular aid and attendance or permanently housebound under such title;

(5) is a surviving spouse of a veteran and—

(A) is considered in need of regular aid and attendance or permanently housebound under title 38; or

(B) is entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under title 38, and has a disability considered permanent under section 221(i) of the Social Security Act (42 U.S.C. 421(i));

(6) is a child of a veteran and—

(A) is considered permanently incapable of self-support under section 414 of title 38; or

(B) is entitled to compensation for a service-connected death or pension benefits for a non-service-connected death under title 38, and has a disability considered perma-

[1] So in original.

nent under section 221(i) of the Social Security Act (42 U.S.C. 421(i)); or

(7) is an individual receiving an annuity under section 2(a)(1)(iv) or 2(a)(1)(v) of the Railroad Retirement Act of 1974 (45 U.S.C. 231a(a)(1)(iv) or 231a(a)(1)(v)), if the individual's service as an employee under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act [42 U.S.C. 301 et seq.], and if an application for disability benefits had been filed.

(As amended Pub. L. 98-204, § 3, Dec. 2, 1983, 97 Stat. 1385; Pub. L. 99-198, title XV, §§ 1501(a), 1502-1504, Dec. 23, 1985, 99 Stat. 1566.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (f), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part B of title XIX of the Act is classified generally to part B (§ 300x et seq.) of subchapter XVII of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Social Security Act, referred to in subsecs. (g), (i), (q), and (r), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42. Titles I, II, X, XIV, XVI, and XVIII of the Social Security Act are classified generally to subchapters I (§ 301 et seq.), II (§ 401 et seq.), X (§ 1201 et seq.), XIV (§ 1351 et seq.), XVI (§ 1381 et seq.), and XVIII (§ 1395 et seq.), respectively, of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (r)(7), is title I of Pub. L. 93-444, Oct. 16, 1974, 88 Stat. 1305, as amended, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see section 231t of Title 45 and Tables.

AMENDMENTS

1985—Subsec. (f). Pub. L. 99-198, § 1501(a)(1), substituted ", or a publicly operated community mental health center, under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) to provide" for "which is certified by the State agency or agencies designated by the Governor as responsible for the administration of the State's programs for alcoholics and drug addicts pursuant to Public Law 91-616 (Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970) and Public Law 92-255 (Drug Abuse Prevention, Treatment, and Rehabilitation Act) as providing".

Subsec. (i). Pub. L. 99-198, § 1501(a)(2), inserted ", or a publicly operated community mental health center," after "private nonprofit institution" in last sentence.

Subsec. (k). Pub. L. 99-198, § 1502, inserted ", as determined by visual inspection, sales records, purchase records, or other inventory or accounting recordkeeping methods that are customary or reasonable in the retail food industry," in cl. (1).

Subsec. (o). Pub. L. 99-198, § 1503, substituted "fifty" for "fifty-four".

Subsec. (r)(2). Pub. L. 99-198, § 1504(1), added ", federally or State administered supplemental benefits of the type described in section 1616(a) of the Social Security Act [42 U.S.C. 1382e(a)] if the Secretary determines that such benefits are conditioned on meeting the disability or blindness criteria used under title XVI of the Social Security Act, or federally or State administered supplemental benefits of the type described in section 212(a) of Public Law 93-66 (42 U.S.C. 1382 note)".

Subsec. (r)(3). Pub. L. 99-198, § 1504(2), inserted "or receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act (42 U.S.C. 421(i))".

Subsec. (r)(4)(A). Pub. L. 99-198, § 1504(3), inserted "or non-service-connected" after "service-connected".

Subsec. (r)(7). Pub. L. 99-198, § 1504(4)-(6), added par. (7).

1983—Subsec. (c). Pub. L. 98-204, § 3(1), substituted "the foregoing limits on the certification period may, with the approval of the Secretary, be waived by a State agency for certain categories of households where such waiver will improve the administration of the program" for "the limit of twelve months may be waived by the Secretary to improve the administration of the program" in the provisions preceding par. (1).

Subsec. (c)(2). Pub. L. 98-204, § 3(2), added provision that "The maximum limit of twelve months for such period under the foregoing proviso may be waived by the Secretary where such waiver will improve the administration of the program."

PUBLICLY OPERATED COMMUNITY HEALTH CENTERS

Pub. L. 98-107, § 101(b), Oct. 1, 1983, 97 Stat. 734, provided in part: "That notwithstanding any other provision of law or this joint resolution, the provisions of subsections (f) and (i) of section 3 and section 10 of the Food Stamp Act of 1977, as amended [7 U.S.C. 2012(f), (i) and 2019], concerning private, nonprofit drug addiction or alcoholic treatment and rehabilitation programs, shall also be applicable to publicly operated community health centers".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2012a, 2014, 2019, 2020 of this title; title 42 section 503.

§ 2012a. Publicly operated community health centers

Notwithstanding any other provision of law, the provisions of subsections (f) and (i) of section 2012 of this title and section 2019 of this title, concerning private, nonprofit drug addiction or alcohol treatment and rehabilitation programs, shall henceforth also be applicable to publicly operated community health centers.

(Pub. L. 99-88, title I, § 100, Aug. 15, 1985, 99 Stat. 297.)

CODIFICATION

Section was enacted as part of the Supplemental Appropriations Act, 1985, and not as part of the Food Stamp Act of 1977 which comprises this chapter.

§ 2013. Establishment of program

(a) Use of coupons; redeemability

Subject to the availability of funds appropriated under section 2027 of this title, the Secretary is authorized to formulate and administer a food stamp program under which, at the request of the State agency, eligible households within the State shall be provided an opportunity to obtain a more nutritious diet through the issuance to them of an allotment, except that a State may not participate in the food stamp program if the Secretary determines that State or local sales taxes are collected within that State on purchases of food made with coupons issued under this chapter. The coupons so received by such households shall be used only to purchase food from retail food stores which have been approved for participation with a food stamp program. Coupons issued

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and used as provided in this chapter shall be redeemable at face value by the Secretary through the facilities of the Treasury of the United States.

(b) Distribution of federally donated foods

Distribution of commodities, with or without the food stamp program, shall be made whenever a request for concurrent or separate food program operations, respectively, is made by a tribal organization. In the event of distribution on all or part of an Indian reservation, the appropriate agency of the State government in the area involved shall be responsible for such distribution, except that, if the Secretary determines that the tribal organization is capable of effectively and efficiently administering such distribution, then such tribal organizations shall administer such distribution: *Provided,* That the Secretary shall not approve any plan for such distribution which permits any household on any Indian reservation to participate simultaneously in the food stamp program and the distribution of federally donated foods. The Secretary is authorized to pay such amounts for administrative costs of such distribution on Indian reservations as the Secretary finds necessary for effective administration of such distribution by a State agency or tribal organization.

[*See main edition for text of* (c)]

(As amended Pub. L. 99-198, title XV, §§ 1505(a), 1506, Dec. 23, 1985, 99 Stat. 1567.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, § 1505(a), inserted ", except that a State may not participate in the food stamp program if the Secretary determines that State or local sales taxes are collected within that State on purchases of food made with coupons issued under this chapter" at end of first sentence.

Subsec. (b). Pub. L. 99-198, § 1506, struck out first sentence which directed that in jurisdictions where the food stamp program is in operation, there shall be no distribution of federally donated foods to households under the authority of any law, except that distribution may be made (1) on a temporary basis under programs authorized by law to meet disaster relief needs, or (2) for the purpose of the commodity supplemental food program, and struck out "also" after "shall" in second sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1505(b) of Pub. L. 99-198 provided that:

"(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall take effect with respect to a State beginning on the first day of the fiscal year that commences in the calendar year during which the first regular session of the legislature of such State is convened following the date of enactment of this Act [Dec. 23, 1985].

"(2) Upon a showing by a State, to the satisfaction of the Secretary, that the application of paragraph (1), without regard to this paragraph, would have an adverse and disruptive effect on the administration of the food stamp program in such State or would provide inadequate time for retail stores to implement changes in sales tax policy required as a result of the amendment made by subsection (a) [amending this section], the Secretary may delay the effective date of subsection (a) with respect to such State to a date not later than October 1, 1987."

§ 2014. Eligible households

(a) Income and other financial resources as substantial limiting factors in obtaining more nutritious diet; recipients under Social Security Act

Participation in the food stamp program shall be limited to those households whose incomes and other financial resources, held singly or in joint ownership, are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Notwithstanding any other provisions of this chapter except sections 2015(b), 2015(d)(2), and 2015(g) of this title and the third sentence of section 2012(i) of this title, and during the period beginning on December 23, 1985, and ending on September 30, 1989, households in which each member receives benefits under a State plan approved under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], supplemental security income benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.], or aid to the aged, blind, or disabled under title I, X, XIV, or XVI of the Social Security Act [42 U.S.C. 301 et seq., 1201 et seq., 1351 et seq., or 1381 et seq.], shall be eligible to participate in the food stamp program. Assistance under this program shall be furnished to all eligible households who make application for such participation.

[*See main edition for text of* (b) *and* (c)]

(d) Income excluded in computing household income

Household income for purposes of the food stamp program shall include all income from whatever source excluding only (1) any gain or benefit which is not in the form of money payable directly to a household, except as provided in subsection (k) of this section, (2) any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter, subject to modification by the Secretary in light of subsection (f) of this section, (3) all educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like to the extent that they are used for tuition and mandatory school fees at an institution of post-secondary education or school for the handicapped, and to the extent loans include any origination fees and insurance premiums, (4) all loans other than educational loans on which repayment is deferred, (5) reimbursements which do not exceed expenses actually incurred and which do not represent a gain or benefit to the household: *Provided,* That no portion of benefits provided under title IV-A of the Social Security Act [42 U.S.C. 601 et seq.], to the extent it is attributable to an adjustment for work-related or child care expenses, no portion of any non-Federal educational loan on which payment is deferred, grant, scholarship, fellowship, veterans' benefits, and the like that are provided for living expenses, and no portion of any Federal educational loan on which payment is deferred, grant, scholarship, fellowship, veterans' benefits, and the like to the extent it provides income assistance beyond that used for tuition and mandatory school fees, shall be con-

sidered such reimbursement, (6) moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member, (7) income earned by a child who is a member of the household, who is a student, and who has not attained his eighteenth birthday, (8) moneys received in the form of nonrecurring lump-sum payments, including, but not limited to, income tax refunds, rebates, or credits, retroactive lump-sum social security or railroad retirement pension payments and retroactive lump-sum insurance settlements: *Provided*, That such payments shall be counted as resources, unless specifically excluded by other laws, (9) the cost of producing self-employed income, but household income that otherwise is included under this subsection shall be reduced by the extent that the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, (10) any income that any other Federal law specifically excludes from consideration as income for purposes of determining eligibility for the food stamp program except as otherwise provided in subsection (k) of this section, (11) any payments or allowances made under (A) any Federal law for the purpose of providing energy assistance, or (B) any State or local laws for the purpose of providing energy assistance, designated by the State or local legislative body authorizing such payments or allowances as energy assistance, and determined by the Secretary to be calculated as if provided by the State or local government involved on a seasonal basis for an aggregate period not to exceed six months in any year even if such payments or allowances (including tax credits) are not provided on a seasonal basis because it would be administratively infeasible or impracticable to do so, (12) through September 30 of any fiscal year, any increase in income attributable to a cost-of-living adjustment made on or after July 1 of such fiscal year under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], section 3(a)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231b(a)(1)), or section 3112 of title 38, if the household was certified as eligible to participate in the food stamp program or received an allotment in the month immediately preceding the first month in which the adjustment was effective, and (13) at the option of a State agency and subject to subsection (m) of this section, child support payments that are excluded under section 402(a)(8)(A)(vi) of the Social Security Act (42 U.S.C. 602(a)(8)(A)(vi)).

(e) Deductions in computing household income

In computing household income for purposes of determining eligibility and benefit levels for households containing an elderly or disabled member and determining benefit levels only for all other households, the Secretary shall allow a standard deduction of $85 a month for each household, except that households in Alaska, Hawaii, Guam, and the Virgin Islands of the United States shall be allowed a standard deduction of $145, $120, $170, and $75, respectively. Such standard deductions shall be adjusted (1) on October 1, 1983, to the nearest lower dollar increment to reflect changes in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics, for items other than food and the homeowners' costs and maintenance and repair component of shelter costs, as appropriately adjusted by the Bureau of Labor Statistics after consultation with the Secretary, for the fifteen months ending the preceding March 31, (2) on October 1, 1984, to the nearest lower dollar increment to reflect such changes for the fifteen months ending the preceding June 30, and (3) on October 1, 1985, and each October 1 thereafter, to the nearest lower dollar increment to reflect such changes for the twelve months ending the preceding June 30. All households with earned income shall be allowed an additional deduction of 20 per centum of all earned income (other than that excluded by subsection (d) of this section), to compensate for taxes, other mandatory deductions from salary, and work expenses. Households, other than those households containing an elderly or disabled member, shall also be entitled, with respect to expenses other than expenses paid on behalf of the household by a third party, to (1) a dependent care deduction, the maximum allowable level of which shall be $160 a month, for the actual cost of payments necessary for the care of a dependent, regardless of the dependent's age, when such care enables a household member to accept or continue employment, or training or education which is preparatory for employment, and (2) an excess shelter expense deduction to the extent that the monthly amount expended by a household for shelter exceeds an amount equal to 50 per centum of monthly household income after all other applicable deductions have been allowed: *Provided*, That the amount of such excess shelter expense deduction shall not exceed $147 a month in the forty-eight contiguous States and the District of Columbia, and shall not exceed, in Alaska, Hawaii, Guam, and the Virgin Islands of the United States, $256, $210, $179, and $109 a month, respectively, adjusted on October 1, 1986, and on each October 1 thereafter, to the nearest lower dollar increment to reflect changes in the shelter (exclusive of homeowners' costs and maintenance and repair component of shelter costs), fuel, and utilities components of housing costs in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, as appropriately adjusted by the Bureau of Labor Statistics after consultation with the Secretary, for the twelve months ending the preceding June 30. In computing the excess shelter expense deduction under clause (2) of the preceding sentence, a State agency may use a standard utility allowance in accordance with regulations promulgated by the Secretary, except that a State agency may use an allowance which does not fluctuate within a year to reflect seasonal variations. An allowance for a heating or cooling expense may not be used for a household that does not incur a heating or cooling expense, as the case may be, or does incur a heating or cooling expense but is located in a public housing unit which has central utility meters and charges households, with regard to such expense, only for excess

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utility costs. No such allowance may be used for a household that shares such expense with, and lives with, another individual not participating in the food stamp program, another household participating in the food stamp program, or both, unless the allowance is prorated between the household and the other individual, household, or both. If a State agency elects to use a standard utility allowance that reflects heating or cooling costs, it shall be made available to households receiving a payment, or on behalf of which a payment is made, under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.) or other similar energy assistance program, provided that the household still incurs out-of-pocket heating or cooling expenses. A State agency may use a separate standard utility allowance for households on behalf of which such payment is made, but may not be required to do so. A State agency not electing to use a separate allowance, and making a single standard utility allowance available to households incurring heating or cooling expenses (other than households described in the sixth sentence of this subsection) may not be required to reduce such allowance due to the provision (direct or indirect) of assistance under the Low-Income Home Energy Assistance Act of 1981. For purposes of the food stamp program, assistance provided under the Low-Income Home Energy Assistance Act of 1981 shall be considered to be prorated over the entire heating or cooling season for which it was provided. A State agency shall allow a household to switch between any standard utility allowance and a deduction based on its actual utility costs at the end of any certification period and up to one additional time during each twelve-month period. Households containing an elderly or disabled member shall also be entitled, with respect to expenses other than expenses paid on behalf of the household by a third party, to—

(A) an excess medical expense deduction for that portion of the actual cost of allowable medical expenses, incurred by elderly or disabled members, exclusive of special diets, that exceed $35 a month;

(B) a dependent care deduction, the maximum allowable level of which shall be the same as that for the excess shelter expense deduction contained in clause (2) of the fourth sentence of this subsection, for the actual cost of payments necessary for the care of a dependent, regardless of the dependent's age, when such care enables a household member to accept or continue employment, or training or education that is preparatory for employment; and

(C) an excess shelter expense deduction to the extent that the monthly amount expended by a household for shelter exceeds an amount equal to 50 per centum of monthly household income after all other applicable deductions have been allowed.

(f) Calculation of household income; prospective or retrospective accounting basis; consistency

(1)(A) Household income for those households that, by contract for other than an hourly or piecework basis or by self-employment, derive their annual income in a period of time shorter than one year shall be calculated by averaging such income over a twelve-month period. Notwithstanding the preceding sentence, if the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business earnings, the State agency shall calculate the self-employment income based on anticipated earnings.

[*See main edition for text of* (B)]

(2)(A) Household income for—

(i) migrant farmworker households, and

(ii) households—

(I) that have no earned income, and

(II) in which all adult members are elderly or disabled members,

shall be calculated on a prospective basis, as provided in paragraph (3)(A).

(B) Household income for households that are permitted to report household circumstances at specified intervals less frequent than monthly under the first sentence of section 2015(c)(1) of this title, may, with the approval of the Secretary, be calculated by a State agency on a prospective basis, as provided in paragraph (3)(A) of this subsection.

(C) Except as provided in subparagraphs (A) and (B), household income for households that have earned income and for households that include any member who has recent work history shall be calculated on a retrospective basis as provided in paragraph (3)(B).

(D) Household income for all other households may be calculated, at the option of the State agency, on a prospective basis as provided in paragraph (3)(A) or on a retrospective basis as provided in paragraph (3)(B).

[*See main edition for text of* (3) *and* (4)]

(g) Allowable financial resources which eligible household may own

The Secretary shall prescribe the types and allowable amounts of financial resources (liquid and nonliquid assets) an eligible household may own, and shall, in so doing, assure that a household otherwise eligible to participate in the food stamp program will not be eligible to participate if its resources exceed $2,000, or, in the case of a household which consists of or includes a member who is 60 years of age or older, if its resources exceed $3,000. The Secretary shall, in prescribing inclusions in, and exclusions from, financial resources, follow the regulations in force as of June 1, 1982 (other than those relating to licensed vehicles and inaccessible resources), and shall, in addition, include in financial resources any boats, snowmobiles, and airplanes used for recreational purposes, any vacation homes, any mobile homes used primarily for vacation purposes, any licensed vehicle (other than one used to produce earned income or that is necessary for transportation of a physically disabled household member and any other property, real or personal, to the extent that it is directly related to the maintenance or use of such vehicle) used for

household transportation or used to obtain or continue employment to the extent that the fair market value of any such vehicle exceeds $4,500, and, regardless of whether there is a penalty for early withdrawal, any savings or retirement accounts (including individual accounts). The Secretary shall exclude from financial resources the value of a burial plot for each member of a household.

(h) Temporary emergency standards of eligibility; Food Stamp Disaster Task Force; direct assistance to State and local officials

[See main edition for text of (1)]

(2) The Secretary shall—

(A) establish a Food Stamp Disaster Task Force to assist States in implementing and operating the disaster program and the regular food stamp program in the disaster area; and

(B) if the Secretary, in the Secretary's discretion, determines that it is cost-effective to send members of the Task Force to the disaster area, the Secretary shall send them to such area as soon as possible after the disaster occurs to provide direct assistance to State and local officials.

[See main edition for text of (i) and (j)]

(k) Assistance to third parties included; educational benefits; exceptions

(1) For purposes of subsection (d)(1) of this section, except as provided in paragraph (2), assistance provided to a third party on behalf of a household by a State or local government shall be considered money payable directly to the household if the assistance is provided in lieu of—

(A) a regular benefit payable to the household for living expenses under a State plan for aid to families with dependent children approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or

(B) a benefit payable to the household for living expenses under—

(i) a State or local general assistance program; or

(ii) another basic assistance program comparable to general assistance (as determined by the Secretary).

(2) Paragraph (1) shall not apply to—

(A) medical assistance;

(B) child care assistance;

(C) energy assistance;

(D) assistance provided by a State or local housing authority; or

(E) emergency and special assistance, to the extent excluded in regulations prescribed by the Secretary.

(3) For purposes of subsection (d)(1) of this section, educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like that are provided to a third party on behalf of a household for living expenses shall be treated as money payable directly to the household.

(l) Earnings to participants of on-the-job training programs; exception

Notwithstanding section 1552(b) of title 29, earnings to individuals participating in on-the-job training programs under section 1604(5) of title 29 shall be considered earned income for purposes of the food stamp program, except for dependents less than 19 years of age.

(m) Reimbursement of Federal Government for exclusion of child-support benefits by State agency

If a State agency excludes payments from income for purposes of the food stamp program under subsection (d)(13) of this section, such State agency shall pay to the Federal Government, in a manner prescribed by the Secretary, the cost of any additional benefits provided to households in such State that arise under such program as the result of such exclusion.

(As amended Pub. L. 98-204, § 4, Dec. 2, 1983, 97 Stat. 1385; Pub. L. 99-198, title XV, §§ 1507(a)(1), 1508-1513(a), 1514, 1515, Dec. 23, 1985, 99 Stat. 1567-1572.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a), (d)(5), (12), (f)(4), (j), and (k)(1)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles I, II, X, XIV, and XVI of the Social Security Act are classified generally to subchapters I (§ 301 et seq.), II (§ 401 et seq.), X (§ 1201 et seq.), XIV (§ 1351 et seq.), and XVI (§ 1381 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. Title IV-A (part A of title IV) of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Low-Income Home Energy Assistance Act of 1981, referred to in subsec. (e), is title XXVI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 893, as amended, which is classified generally to subchapter II (§ 8621 et seq.) of chapter 94 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 8621 of Title 42 and Tables.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, § 1507(a)(1), added sentence providing that, notwithstanding any other provisions of this chapter except sections 2015(b), 2015(d)(2), and 2015(g) and the third sentence of section 2012(i) of this title, and during the period beginning on December 23, 1985, and ending on September 30, 1989, households in which each member receives benefits under a State plan approved under part A of title IV of the Social Security Act, supplemental security income benefits under title XVI of the Social Security Act, or aid to the aged, blind, or disabled under title I, X, XIV, or XVI of the Social Security Act, shall be eligible to participate in the food stamp program.

Subsec. (d)(1). Pub. L. 99-198, § 1508(1), inserted "except as provided in subsection (k) of this section," after "payable directly to a household,". Such amendment was duplicated exactly by section 1509(a)(1) of Pub. L. 99-198 except that the amendment by section 1509(a)(1) adds an "and" at beginning of phrase inserted.

Pub. L. 99-198, § 1509(a)(1), which directed that "and except as provided in subsection (k) of this section," be inserted after "payable directly to a household,", was not executed to text because it exactly duplicates the amendment made by section 1508(1) of Pub. L. 99-198 except that the amendment by section 1508(1) of Pub. L. 99-198 does not contain the "and" at beginning of phrase inserted.

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Subsec. (d)(3). Pub. L. 99-198, § 1509(a)(2), substituted "post-secondary education" for "higher education" and inserted "and to the extent loans include any obligation fees and insurance premiums,".

Subsec. (d)(5). Pub. L. 99-198, § 1509(a)(3), inserted "no portion of any non-Federal educational loan on which payment is deferred, grant, scholarship, fellowship, veterans' benefits, and the like that are provided for living expenses, and no portion of any Federal educational loan on which payment is deferred, grant, scholarship, fellowship, veterans' benefits, and the like to the extent it provides income assistance beyond that used for tuition and mandatory school fees," after "child care expenses,".

Subsec. (d)(9). Pub. L. 99-198, § 1509(a)(4), inserted ", but household income that otherwise is included under this subsection shall be reduced by the extent that the cost of producing self-employment income exceeds the income derived from self-employment as a farmer".

Subsec. (d)(10). Pub. L. 99-198, § 1509(a)(5), inserted "except as otherwise provided in subsection (k) of this section".

Subsec. (d)(13). Pub. L. 99-198, § 1510(1), added cl. (13).

Subsec. (e). Pub. L. 99-198, § 1511(1), substituted "homeowners' costs and maintenance and repair component" for "homeownership component" in second sentence.

Pub. L. 99-198, § 1511(2), substituted "20 per centum" for "18 per centum" in third sentence.

Pub. L. 99-198, § 1511(3)(B), in cl. (1) of the fourth sentence substituted "$160 a month" for "the same as that for the excess shelter expense deduction contained in clause (2) of this subsection".

Pub. L. 99-198, § 1511(3)(C), substituted "and (2)" for "or (2)" in fourth sentence.

Pub. L. 99-198, § 1511(3)(A), amended proviso in cl. (2) generally. Prior to amendment, proviso read as follows: "That the amount of such excess shelter expense deduction shall not exceed $115 a month in the forty-eight contiguous States and the District of Columbia, and shall not exceed, in Alaska, Hawaii, Guam, and the Virgin Islands of the United States, $200, $165, $140, and $85, respectively, adjusted (i) on October 1, 1983, to the nearest lower dollar increment to reflect changes in the shelter (exclusive of homeownership costs), fuel, and utilities components of housing costs in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics, as appropriately adjusted by the Bureau of Labor Statistics after consultation with the Secretary, for the fifteen months ending the preceding March 31, (ii) on October 1, 1984, to the nearest lower dollar increment to reflect such changes for the fifteen months ending the preceding June 30, and (iii) on October 1, 1985, and each October 1 thereafter, to the nearest lower dollar increment to reflect such changes for the twelve months ending the preceding June 30,".

Pub. L. 99-198, § 1511(3)(D), in fourth sentence struck out ", or (3) a deduction combining the dependent care and excess shelter expense deductions under clauses (1) and (2) of this subsection, the maximum allowable level of which shall not exceed the maximum allowable deduction under clause (2) of this subsection, on January 1, 1981, adjusted to the nearest $5 increment to reflect such changes for the eighteen-month period ending the preceding September 30, and, on January 1, 1982, adjusted to the nearest $5 to reflect such changes for the twelve months ending the preceding September 30 and the subsequent three months ending December 31 as projected by the Secretary in light of the best available data, and, on every January 1 thereafter, adjusted annually to the nearest $5 increment to reflect such changes for the nine months ending the preceding September 30 and the subsequent three months ending December 31 projected by the Secretary in light of the best available data".

Pub. L. 99-198, § 1511(4), added five new sentences after the existing seventh sentence beginning, respectively, "If a State agency", "A State agency may use", "A State agency not electing", "For purposes of", and "A State agency shall allow", thereby repositioning the existing sentence beginning "Households containing an elderly or disabled member" to a new position as the 13th sentence of subsec. (e).

Subsec. (f)(1)(A). Pub. L. 99-198, § 1512, inserted sentence at end providing that notwithstanding the preceding sentence, if the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business earnings, the State agency shall calculate the self-employment income based on anticipated earnings.

Subsec. (f)(2)(A). Pub. L. 99-198, § 1513(a)(1), amended subpar. (A) generally, adding reference to households that have no earned income and in which all adult members are elderly or disabled members.

Subsec. (f)(2)(B). Pub. L. 99-198, § 1513(a)(2), substituted "households that are permitted to report household circumstances at specified intervals less frequent than monthly under the first sentence of section 2015(c)(1) of this title, may, with the approval" for "households that (i) are permitted to report household circumstances at specified intervals less frequent than monthly under section 2015(c)(1) of this title, (ii) have no earned income and in which all adult members are elderly or disabled members, or (iii) are any other households, other than a migrant household, not required to report monthly or at less frequent intervals under section 2015(c)(1) of this title, may, with the approval".

Subsec. (f)(2)(C). Pub. L. 99-198, § 1513(a)(3), substituted "Except as provided in subparagraphs (A) and (B), household income for households that have earned income and for households that include any member who has recent work history shall be calculated on a retrospective basis as provided in paragraph (3)(B)" for "Household income for all other households shall be calculated on a retrospective basis as provided in paragraph (3)(B)".

Subsec. (f)(2)(D). Pub. L. 99-198, § 1513(a)(3), added subpar. (D).

Subsec. (g). Pub. L. 99-198, § 1514(1), substituted "$2,000, or, in the case of a household which consists of or includes a member who is 60 years of age or older, if its resources exceed $3,000" for "$1,500, or, in the case of a household consisting of two or more persons, one of whom is age 60 or over, if its resources exceed $3,000".

Pub. L. 99-198, § 1514(2), (3), inserted in second sentence "and inaccessible resources" after "relating to licensed vehicles" and "and any other property, real or personal, to the extent that it is directly related to the maintenance or use of such vehicle" after "physically disabled household member", and added provision directing the Secretary to exclude from financial resources the value of a burial plot for each member of a household.

Subsec. (h)(2). Pub. L. 99-198, § 1515, amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The Secretary shall establish a Food Stamp Disaster Task Force, to assist States in implementing and operating the disaster program, which shall be available to go into a disaster area and provide direct assistance to State and local officials."

Subsec. (k)(1), (2). Pub. L. 99-198, § 1508(2), added subsec. (k) consisting of pars. (1) and (2).

Subsec. (k)(3). Pub. L. 99-198, § 1509(b), added par. (3).

Subsec. (*l*). Pub. L. 99-198, § 1509(c), added subsec. (*l*).

Subsec. (m). Pub. L. 99-198, § 1510(2), added subsec. (m).

1983—Subsec. (f)(2). Pub. L. 98-204 added subpar. (B), and redesignated former subpar. (B) as (C).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1511(2) of Pub. L. 99-198 provided in part that the amendment by section 1511(2) of Pub. L. 99-198 is effective May 1, 1986.

Section 1511(3) of Pub. L. 99-198 provided in part that the amendment by section 1511(3) of Pub. L. 99-198 is effective May 1, 1986.

Section 1514(1) of Pub. L. 99-198 provided in part that the amendment by section 1514(1) of Pub. L. 99-198 is effective May 1, 1986.

INAPPLICABILITY OF SUBSECTION (j) BETWEEN DECEMBER 23, 1985, AND SEPTEMBER 30, 1989

Section 1507(a)(2) of Pub. L. 99-198 provided that: "During the period beginning on the date of the enactment of this Act [Dec. 23, 1985] and ending on September 30, 1989, section 5(j) of the Food Stamp Act of 1977 (7 U.S.C. 2014(j)) shall not apply."

STUDY AND REPORT TO CONGRESSIONAL COMMITTEES ON IMPLEMENTATION OF AMENDMENT TO SUBSECTION (a) BY PUB. L. 99-198

Section 1507(c) of Pub. L. 99-198 provided that: "Not later than 2 years after the date of the enactment of this Act [Dec. 23, 1985], the Secretary shall—

"(1) evaluate the implementation of the second sentence of section 5(a) of the Food Stamp Act of 1977 [7 U.S.C. 2014(a)], as amended by subsection (a) of this section; and

"(2) submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives a report summarizing the results of such evaluation."

§ 2015. Eligibility disqualifications

[See main edition for text of (a) and (b)]

(c) Refusal to provide necessary information

No household shall be eligible to participate in the food stamp program if it refuses to cooperate in providing information to the State agency that is necessary for making a determination of its eligibility or for completing any subsequent review of its eligibility.

(1) State agencies shall require households with respect to which household income is determined on a retrospective basis under section 2014(f)(2)(C) of this title to file periodic reports of household circumstances in accordance with standards prescribed by the Secretary, except that a State agency may, with the prior approval of the Secretary, select categories of households (including all such households) that may report at specified less frequent intervals on a showing by the State agency, which is satisfactory to the Secretary, that to require households in such categories to report monthly would result in unwarranted expenditures for administration of this subsection. The Secretary may permit State agencies to accept, as satisfying the requirement that households report as such specified less frequent intervals, (i) recertifications conducted in accordance with section 2020(e)(4) of this title, (ii) in-person interviews conducted during a certification period, (iii) written reports filed by households, or (iv) such other documentation or actions as the Secretary may prescribe. State agencies may require households, other than households with respect to which household income is required by section 2014(f)(2)(A) of this title to be calculated on a prospective basis, to file periodic reports of household circumstances in accordance with the standards prescribed by the Secretary under the preceding provisions of this paragraph. Each household that is not required to file such periodic reports on a monthly basis shall be required to report or cause to be reported to the State agency, changes in income or household circumstances which the Secretary deems necessary in order to assure accurate eligibility and benefit determinations.

[See main edition for text of (2)]

(3) Reports required to be filed under paragraph (1) of this subsection shall be considered complete if, in accordance with standards prescribed by the Secretary, they contain sufficient information to enable the State agency to determine household eligibility and allotment levels. All report forms, including those related to periodic reports of circumstances, shall contain a description, in understandable terms in prominent and bold face lettering, of the appropriate civil and criminal provisions dealing with violations of this chapter including the prescribed penalties. Reports required to be filed monthly under paragraph (1) shall be the sole reporting requirement for subject matter included in such reports. In promulgating regulations implementing these reporting requirements, the Secretary shall consult with the Secretary of Health and Human Services, and, wherever feasible, households that receive assistance under title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] and that are required to file comparable reports under that Act [42 U.S.C. 301 et seq.] shall be provided the opportunity to file reports at the same time for purposes of this chapter and the Social Security Act.

[See main edition for text of (4) and (5)]

(d) Refusal to register for or accept employment; exemptions; labor disputes and strikes; employment and training programs

(1) Unless otherwise exempted by the provisions of paragraph (d)(2) of this subsection, (A) no person shall be eligible to participate in the food stamp program who is physically and mentally fit person between the ages of sixteen and sixty who (i) refuses at the time of application and once every twelve months thereafter to register for employment in a manner determined by the Secretary; (ii) refuses without good cause to participate in an employment and training program under paragraph (4), to the extent required under paragraph (4), including any reasonable employment requirements as are prescribed by the State agency in accordance with paragraph (4), and the period of ineligibility shall be two months; (iii) refuses without good cause (including the lack of adequate child care for children above the age of five and under the age of twelve) to accept an offer of employment at a wage not less than the higher of either the applicable State or Federal minimum wage, or 80 per centum of the wage that would have governed had the

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minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)), been applicable to the offer of employment, and at a site or plant not then subject to a strike or lockout; and (B) no household shall be eligible to participate in the food stamp program (i) if the head of the household is a physically and mentally fit person between the ages of sixteen and sixty and such individual refuses to do any of those acts described in clause (A) of this sentence, or (ii) if the head of the household voluntarily quits any job without good cause, but, in such case, the period of ineligibility shall be ninety days. An employee of the Federal Government, or of a State or political subdivision of a State, who engaged in a strike against the Federal Government, a State or political subdivision of a State and is dismissed from his job because of his participation in the strike shall be considered to have voluntarily quit such job without good cause. Any period of ineligibility for violations under this paragraph shall end when the household member who committed the violation complies with the requirement that has been violated. If the household member who committed the violation leaves the household during the period of ineligibility, such household shall no longer be subject to sanction for such violation and, if it is otherwise eligible, may resume participation in the food stamp program, but any other household of which such person thereafter becomes the head of the household shall be ineligible for the balance of the period of ineligibility.

(2) A person who otherwise would be required to comply with the requirements of paragraph (1) of this subsection shall be exempt from such requirements if he or she is (A) currently subject to and complying with a work registration requirement under title IV of the Social Security Act, as amended (42 U.S.C. 602), or the Federal-State unemployment compensation system, in which case, failure by such person to comply with any work requirement to which such person is subject that is comparable to a requirement of paragraph (1) shall be the same as failure to comply with that requirement of paragraph (1); (B) a parent or other member of a household with responsibility for the care of a dependent child under age six or of an incapacitated person; (C) a bona fide student enrolled at least half time in any recognized school, training program, or institution of higher education (except that any such person enrolled in an institution of higher education shall be ineligible to participate in the food stamp program unless he or she meets the requirements of subsection (e) of this section); (D) a regular participant in a drug addiction or alcoholic treatment and rehabilitation program; (E) employed a minimum of thirty hours per week or receiving weekly earnings which equal the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)), multiplied by thirty hours; or (F) a person between the ages of sixteen and eighteen who is not a head of a household or who is attending school, or enrolled in an employment training program, on at least a half-time basis.

[See main edition for text of (3)]

(4)(A) Not later than April 1, 1987, each State agency shall implement an employment and training program designed by the State agency and approved by the Secretary for the purpose of assisting members of households participating in the food stamp program in gaining skills, training, or experience that will increase their ability to obtain regular employment.

(B) For purposes of this chapter, an "employment and training program" means a program that contains one or more of the following components:

(i) Job search programs with terms and conditions comparable to those prescribed in subparagraphs (A) and (B) of section 402(a)(35) of part A of title IV of the Social Security Act [42 U.S.C. 602(a)(35)(A), (B)], except that the State agency shall have no obligation to incur costs exceeding $25 per participant per month, as provided in subparagraph (B)(vi), and the State agency shall retain the option to apply employment requirements prescribed under this clause to program applicants at the time of application.

(ii) Job search training programs that include, to the extent determined appropriate by the State agency, reasonable job search training and support activities that may consist of jobs skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs, determined by the State agency to expand the job search abilities or employability of those subject to the program.

(iii) Workfare programs operated under section 2029 of this title.

(iv) Programs designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. An employment or training experience program established under this clause shall—

(I) limit employment experience assignments to projects that serve a useful public purpose in fields such as health, social services, environmental protection, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care;

(II) to the extent possible, use the prior training, experience, and skills of the participating member in making appropriate employment or training experience assignments;

(III) not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(IV) provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(v) As approved by the Secretary, other programs, projects, and experiments such as a

supported work program, aimed an [2] accomplishing the purpose of the employment and training program.

(C) The State agency may provide that participation in an employment and training program may supplement or supplant other employment-related requirements imposed on those subject to the program.

(D)(i) Each State agency may exempt from any requirement for participation in any program under this paragraph categories of household members to which the application of such participation requirement is impracticable as applied to such categories due to factors such as the availability of work opportunities and the cost-effectiveness of the employment requirements. In making such a determination, the State agency may designate a category consisting of all such household members residing in a specific area of the State. Each State may exempt, with the approval of the Secretary, members of households that have participated in the food stamp program 30 days or less.

(ii) Each State agency may exempt from any requirement for participation individual household members not included in any category designated as exempt under clause (i) but with respect to whom such participation is impracticable because of personal circumstances such as lack of job readiness and employability, the remote location of work opportunities, and unavailability of child care.

(iii) Any exemption of a category or individual under this subparagraph shall be periodically evaluated to determine whether, on the basis of the factors used to make a determination under clauses [3] (i) or (ii), the exemption continues to be valid. Such evaluations shall occur no less often than at each certification or recertification in the case of exemptions under clause (ii).

(E) Each State agency shall establish requirements for participation by individuals not exempt under subparagraph (D) in one or more employment and training programs under this paragraph, including the extent to which any individual is required to participate. Such requirements may vary among participants.

(F)(i) The total hours of work in an employment and training program carried out under this paragraph required of members of a household, together with the hours of work of such members in any program carried out under section 2029 of this title, in any month collectively may not exceed a number of hours equal to the household's allotment for such month divided by the higher of the applicable State minimum wage or Federal minimum hourly rate under the Fair Labor Standards Act of 1938 [29 U.S.C. 206(a)(1)].

(ii) The total hours of participation in such program required of any member of a household, individually, in any month, together with any hours worked in another program carried out under section 2029 of this title and any hours worked for compensation (in cash or in kind) in any other capacity, shall not exceed one hundred and twenty hours per month.

(G)(i) The State agency may operate any program component under this paragraph in which individuals elect to participate.

(ii) The State agency shall permit, to the extent it determines practicable, individuals not subject to requirements imposed under subparagraph (E) or who have complied, or are in the process of complying, with such requirements to participate in any program under this paragraph.

(H) The State agency shall reimburse participants in programs carried out under this paragraph, including those participating under subparagraph (G), for the actual costs of transportation, and other actual costs, that are reasonably necessary and directly related to participation in the program, except that the State agency may limit such reimbursement to each participant to $25 per month.

(I) The Secretary shall promulgate guidelines that (i) enable State agencies, to the maximum extent practicable, to design and operate an employment and training program that is compatible and consistent with similar programs operated within the State, and (ii) ensure, to the maximum extent practicable, that employment and training programs are provided for Indians on reservations.

(J)(i) For any fiscal year, the Secretary shall establish performance standards for each State that, in the case of persons who are subject to employment requirements under this section and who are not exempt under subparagraph (D), designate the minimum percentages (not to exceed 50 percent through September 30, 1989) of such persons that State agencies shall place in programs under this paragraph. Such standards need not be uniform for all the States, but may vary among the several States. The Secretary shall consider the cost to the States in setting performance standards and the degree of participation in programs under this paragraph by exempt persons.

(ii) In making any determination as to whether a State agency has met a performance standard under clause (i), the Secretary shall—

(I) consider the extent to which persons have elected to participate in programs under this paragraph;

(II) consider such factors as placement in unsubsidized employment, increases in earnings, and reduction in the number of persons participating in the food stamp program; and

(III) consider other factors determined by the Secretary to be related to employment and training.

(iii) The Secretary shall vary the performance standards established under clause (i) according to differences in the characteristics of persons required to participate and the type of program to which the standard is applied.

(iv) The Secretary may delay establishing performance standards for up to 18 months after national implementation of the provisions of this paragraph, in order to base performance standards on State agency experience in implementing this paragraph.

(K)(i) The Secretary shall ensure that State agencies comply with the requirements of this paragraph and section 2020(e)(22) of this title.

[2] So in original. Probably should be "at".
[3] So in original. Probably should be "clause".

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(ii) If the Secretary determines that a State agency has failed, without good cause, to comply with such a requirement, including any failure to meet a performance standard under subparagraph (J), the Secretary may withhold from such State, in accordance with section 2025(a), (c), and (h) of this title, such funds as the Secretary determines to be appropriate, subject to administrative and judicial review under section 2023 of this title.

(L) The facilities of the State public employment offices and agencies operating programs under the Job Training Partnership Act [29 U.S.C. 1501 et seq.] may be used to find employment and training opportunities for household members under the programs under this paragraph.

(e) Students

No individual who is a member of a household otherwise eligible to participate in the food stamp program under this section shall be eligible to participate in the food stamp program as a member of that or any other household if he or she (1) is physically and mentally fit and is between the ages of eighteen and sixty, (2) is enrolled at least half time in an institution of higher education, or is an individual who is not assigned to or placed in an institution of higher learning through a program under the Job Training Partnership Act [29 U.S.C. 1501 et seq.], and (3)(A) is not employed a minimum of twenty hours per week or does not participate in a federally financed work study program during the regular school year; (B) is not a parent with responsibility for the care of a dependent child under age six; (C) is not a parent with responsibility for the care of a dependent child above the age of five and under the age of twelve for whom adequate child care is not available; (D) is not receiving aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or (E) is not so enrolled as a result of participation in the work incentive program under title IV of the Social Security Act, as amended (42 U.S.C. 602).

(f) Aliens

No individual who is a member of a household otherwise eligible to participate in the food stamp program under this section shall be eligible to participate in the food stamp program as a member of that or any other household unless he or she is (1) a resident of the United States and (2) either (A) a citizen or (B) an alien lawfully admitted for permanent residence as an immigrant as defined by sections 1101(a)(15) and 1101(a)(20) of title 8, excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country; or (C) an alien who entered the United States prior to June 30, 1948, or such subsequent date as is enacted by law, has continuously maintained his or her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 1259 of title 8; or (D) an alien who has qualified for conditional entry pursuant to sections 1157 and 1158 of title 8; or (E) an alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 1182(d)(5) of title 8; or (F) an alien within the United States as to whom the Attorney General has withheld deportation pursuant to section 1253(h) of title 8. No aliens other than the ones specifically described in clauses (B) through (F) of this subsection shall be eligible to participate in the food stamp program as a member of any household. The income (less a pro rata share) and financial resources of the individual rendered ineligible to participate in the food stamp program under this subsection shall be considered in determining the eligibility and the value of the allotment of the household of which such individual is a member.

[*See main edition for text of (g) and (h)*]

(As amended Pub. L. 98-204, §§ 5, 6, Dec. 2, 1983, 97 Stat. 1385, 1386; Pub. L. 99-198, title XV, §§ 1513(b), 1516, 1517(a), Dec. 23, 1985, 99 Stat. 1571-1573.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsecs. (d)(4)(L) and (e)(2), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

AMENDMENTS

1985—Subsec. (c)(1). Pub. L. 99-198, § 1513(b)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: "State agencies shall require certain categories of households, including all households with earned income, except migrant farmworker households, all households with potential earners, including individuals receiving unemployment compensation benefits and individuals required by subsection (d) of this section to register for work, and all households required to file a similar report under title IV-A of the Social Security Act, but not including households that have no earned income and in which all adult members are elderly or disabled members, to file periodic reports of household circumstances in accordance with standards prescribed by the Secretary, except that a State agency may, with the prior approval of the Secretary, select categories of households which may report at specified less frequent intervals upon a showing by the State agency, which is satisfactory to the Secretary, that to require households in such categories to report monthly would result in unwarranted expenditures for administration of this subsection."

Pub. L. 99-198, § 1513(b)(2), added after second sentence, provision empowering State agencies to require households, other than households with respect to which household income is required by section 2014(f)(2)(A) of this title to be calculated on a prospective basis, to file periodic reports of household circumstances in accordance with the standards prescribed by the Secretary under the preceding provisions of this paragraph.

Subsec. (d)(1). Pub. L. 99-198, § 1516(2), added sentences at end of par. (1) directing that any period of ineligibility for violations under this paragraph shall end when the household member who committed the violation complies with the requirement that has been violated, and that if the household member who com-

mitted the violation leaves the household during the period of ineligibility, such household shall no longer be subject to sanction for such violation and, if it is otherwise eligible, may resume participation in the food stamp program, but any other household of which such person thereafter becomes the head of the household shall be ineligible for the balance of the period of ineligibility.

Subsec. (d)(1)(A). Pub. L. 99-198, § 1516(1)(A), (B), designated existing provisions of first sentence of par. (1) as cl. (A) and in provisions of cl. (A) as so designated substituted "no person shall be eligible to participate in the food stamp program who is a physically and mentally fit person between the ages of sixteen and sixty" for "no household shall be eligible for assistance under this chapter if it includes a physically and mentally fit person between the ages of eighteen and sixty" in provisions preceding subcl. (i).

Subsec. (d)(1)(A)(ii). Pub. L. 99-198, § 1517(a)(1), substituted "refuses without good cause to participate in an employment and training program under paragraph (4), to the extent required under paragraph (4), including any reasonable employment requirements as are prescribed by the State agency in accordance with paragraph (4), and the period of ineligibility shall be two months" for "refuses to fulfill whatever reasonable reporting and inquiry about employment requirements as are prescribed by the Secretary, which may include a requirement that, at the option of the State agency, such reporting and inquiry commence at the time of application".

Subsec. (d)(1)(A)(iii), (iv). Pub. L. 99-198, § 1516(1)(C), redesignated cl. (iv) as (iii). Former cl. (iii), relating to a head of household who voluntarily quits any job without good cause, with a proviso that the period of ineligibility would be ninety days, was struck out.

Subsec. (d)(1)(B). Pub. L. 99-198, § 1516(1)(D), added cl. (B).

Subsec. (d)(2)(F). Pub. L. 99-198, § 1516(3), added cl. (F).

Subsec. (d)(4). Pub. L. 99-198, § 1517(a)(2), added par. (4).

Subsec. (e)(2). Pub. L. 99-198, § 1516(4), inserted "or is an individual who is not assigned to or placed in an institution of higher learning through a program under the Job Training Partnership Act,".

Subsec. (f)(2)(D). Pub. L. 99-198, § 1516(5)(A), (B), substituted "sections 1157 and 1158 of title 8" for "section 1153(a)(7) of title 8 because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity".

Subsec. (f)(2)(F). Pub. L. 99-198, § 1516(5)(C), struck out "because of the judgment of the Attorney General that the alien would otherwise be subject to persecution on account of race, religion, or political opinion" after "section 1253(h) of title 8".

1983—Subsec. (c)(1). Pub. L. 98-204, § 5, added sentence authorizing the Secretary to permit State agencies to accept, as satisfying the requirement that households report at such specified less frequent intervals, (i) recertifications conducted in accordance with section 2020(e)(4) of this title, (ii) in-person interviews conducted during a certification period, (iii) written reports filed by households, or (iv) such other documentation or actions as the Secretary may prescribe.

Subsec. (c)(3). Pub. L. 98-204, § 6, substituted "Reports required to be filed monthly under paragraph (1) shall be the sole reporting requirement for subject matter included in such reports" for "The reporting requirements contained in paragraph (1) of this subsection shall be the sole such requirements for reporting changes in circumstances for participating households".

MANDATORY MONTHLY REPORTING-RETROSPECTIVE BUDGETING FOR FOOD STAMP PROGRAM; PROHIBITION

Pub. L. 98-107, § 101(b), Oct. 1, 1983, 97 Stat. 735, provided in part: "That notwithstanding any other provision of this joint resolution, no part of any of the funds appropriated or otherwise made available by this or any other Act may be used to implement mandatory monthly reporting-retrospective budgeting for the food stamp program during the first three months of the fiscal year ending September 30, 1984".

§ 2016. Issuance and use of coupons

[*See main edition for text of* (a) *to* (f)]

(g) Alternative system or documents; costs

(1) If the Secretary determines, in consultation with the Inspector General of the Department of Agriculture, that it would improve the integrity of the food stamp program, the Secretary shall require a State agency—

[*See main edition for text of* (A) *and* (B), (2)]

(h) Staggered issuance procedures; transition period; time of issuance

(1) The State agency may implement a procedure for staggering the issuance of coupons to eligible households throughout the entire month: *Provided*, That the procedure ensures that, in the transition period from other issuance procedures, no eligible household experiences an interval between coupon issuances of more than 40 days, either through regular issuances by the State agency or through supplemental issuances.

(2) For any eligible household that applies for participation in the food stamp program during the last fifteen days of a month and is issued benefits within that period, coupons shall be issued for the first full month of participation by the the [1] eighth day of the first full month of participation.

(As amended Pub. L. 99-198, title XV, §§ 1518, 1519, Dec. 23, 1985, 99 Stat. 1578.)

AMENDMENTS

1985—Subsec. (g)(1). Pub. L. 99-198, § 1519, substituted "shall" for "may" in provisions preceding subpar. (A).

Subsec. (h). Pub. L. 99-198, § 1518, added subsec. (h).

§ 2017. Value of allotment

[*See main edition for text of* (a) *to* (d)]

(e) Simplified application procedures for beneficiaries of other programs; allotments; evaluation; cost sharing; standardized procedures and benefits

(1) The Secretary may permit not more than five statewide projects (upon the request of a State) and not more than five projects in political subdivisions of States (upon the request of a State or political subdivision) to operate a program under which a household shall be considered to have satisfied the application requirements prescribed under section 2014(a) of this title and the income and resource requirements prescribed under subsections (d) through (g) of section 2014 of this title if such household—

(A) includes one or more members who are recipients of—

[1] So in original.

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(i) aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(ii) supplemental security income under title XVI of such Act (42 U.S.C. 1381 et seq.); or

(iii) medical assistance under title XIX of such Act (42 U.S.C. 1396 et seq.); and

(B) has an income that does not exceed the applicable income standard of eligibility described in section 2014(c) of this title.

(2) Except as provided in paragraph (3), a State or political subdivision that elects to operate a program under this subsection shall base the value of an allotment provided to a household under subsection (a) of this section on—

(A)(i) the size of the household; and

(ii)(I) benefits paid to such household under a State plan for aid to families with dependent children approved under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.]; or

(II) the income standard of eligibility for medical assistance under title XIX of such Act [42 U.S.C. 1396 et seq.]; or

(B) at the option of the State or political subdivision, the standard of need for such size household under the programs referred to in clause (A)(ii).

(3) The Secretary shall adjust the value of allotments received by households under a program operated under this subsection to ensure that the average allotment by household size for households participating in such program and receiving such aid to families with dependent children, such supplemental security income, or such medical assistance, as the case may be, is not less than the average allotment that would have been provided under this chapter but for the operation of this subsection, for each category of households, respectively, in a State or political subdivision, for any period during which such program is in operation.

(4) The Secretary shall evaluate the impact of programs operated under this subsection on recipient households, administrative costs, and error rates.

(5) The administrative costs of such programs shall be shared in accordance with section 2025 of this title.

(6) In implementing this section, the Secretary shall consult with the Secretary of Health and Human Services to ensure that to the extent practicable, in the case of households participating in such programs, the processing of applications for, and determinations of eligibility to receive, food stamp benefits are simplified and are unified with the processing of applications for, and determinations of eligibility to receive, benefits under such titles of the Social Security Act (42 U.S.C. 601 et seq.).

(As amended Pub. L. 99-198, title XV, § 1520, Dec. 23, 1985, 99 Stat. 1578.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(1)(A), (2)(A)(ii), (6), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Social Security Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Titles XVI and XIX of the Social Security Act are classified generally to subchapters XVI (§ 1381 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of Title 42, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1985—Subsec. (e). Pub. L. 99-198 added subsec. (e).

§ 2018. Approval of retail food stores and wholesale food concerns

[*See main edition for text of* (a)]

(b) Effective and efficient operation of program; effect of disqualification; posting of bond

(1) No wholesale food concern may be authorized to accept and redeem coupons unless the Secretary determines that its participation is required for the effective and efficient operation of the food stamp program. In addition, no firm may be authorized to accept and redeem coupons as both a retail food store and as a wholesale food concern at the same time.

(2)(A) A buyer or transferee (other than a bona fide buyer or transferee) of a retail food store or wholesale food concern that has been disqualified under section 2021(a) of this title may not accept or redeem coupons until the Secretary receives full payment of any penalty imposed on such store or concern.

(B) A buyer or transferee may not, as a result of the sale or transfer of such store or concern, be required to furnish a bond under section 2021(d) of this title.

(c) Information submitted by applicants; safeguards; disclosure to and use by State agencies

Regulations issued pursuant to this chapter shall require an applicant retail food store or wholesale food concern to submit information which will permit a determination to be made as to whether such applicant qualifies, or continues to qualify, for approval under the provisions of this chapter or the regulations issued pursuant to this chapter. Regulations issued pursuant to this chapter shall provide for safeguards which limit the use or disclosure of information obtained under the authority granted by this subsection to purposes directly connected with administration and enforcement of the provisions of this chapter or the regulations issued pursuant to this chapter, except that such information may be disclosed to and used by State agencies that administer the special supplemental food program for women, infants and children, authorized under section 17 of the Child Nutrition Act of 1966 [42 U.S.C. 1786], for purposes of administering the provisions of that Act [42 U.S.C. 1771 et seq.] and the regulations issued under that Act. Such purposes shall not exclude the audit and examination of such information by the Comptroller General of the United States authorized by any other provision of law.

[*See main edition for text of* (d) *to* (f)]

(As amended Pub. L. 99-198, title XV, §§ 1521, 1532(b), Dec. 23, 1985, 99 Stat. 1579, 1583.)

REFERENCES IN TEXT

That Act, meaning the Child Nutrition Act of 1966, referred to in subsec. (c), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of Title 42 and Tables.

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-198, § 1532(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 99-198, § 1521, inserted provisions relating to the disclosure of information to, and the use by, State agencies which administer the special supplemental food program for women, infants, and children, authorized under section 17 of the Child Nutrition Act of 1966.

§ 2019. Redemption of coupons

Regulations issued pursuant to this chapter shall provide for the redemption of coupons accepted by retail food stores through approved wholesale food concerns or through financial institutions which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or which are insured under the Federal Credit Union Act [12 U.S.C. 1751 et seq.] and have retail food stores or wholesale food concerns in their field of membership, with the cooperation of the Treasury Department, except that retail food stores defined in section 2012(k)(4) of this title shall be authorized to redeem their members' food coupons prior to receipt by the members of the food so purchased, and publicly operated community mental health centers or private nonprofit organizations or institutions which serve meals to narcotics addicts or alcoholics in drug addiction or alcoholic treatment and rehabilitation programs, public and private nonprofit shelters that prepare and serve meals for battered women and children, and public or private nonprofit group living arrangements that serve meals to disabled or blind residents shall not be authorized to redeem coupons through financial institutions which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or the Federal Credit Union Act. No financial institution may impose on or collect from a retail food store a fee or other charge for the redemption of coupons that are submitted to the financial institution in a manner consistent with the requirements, other than any requirements relating to cancellation of coupons, for the presentation of coupons by financial institutions to the Federal Reserve banks.

(As amended Pub. L. 99-198, title XV, §§ 1501(b), 1522, 1523(a), Dec. 23, 1985, 99 Stat. 1566, 1580.)

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in text, is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

AMENDMENTS

1985—Pub. L. 99-198, § 1501(b), added reference to publicly operated community mental health centers.

Pub. L. 99-198, § 1522, inserted ", or which are insured under the Federal Credit Union Act and have retail food stores or wholesale food concerns in their field of membership" and "or the Federal Credit Union Act".

Pub. L. 99-198, § 1523(a), added sentence providing that no financial institution may impose on or collect from a retail food store a fee or other charge for the redemption of coupons that are submitted to the financial institution in a manner consistent with the requirements, other than any requirements relating to cancellation of coupons, for the presentation of coupons by financial institutions to the Federal Reserve banks.

PROMULGATION OF REGULATIONS REGARDING CHARGES FOR REDEMPTION OF COUPONS

Section 1523(b) of Pub. L. 99-198 provided that: "The Secretary of Agriculture, in consultation with the Board of Governors of the Federal Reserve System, shall issue regulations implementing the amendment made by subsection (a) [amending this section]."

PUBLICLY OPERATED COMMUNITY HEALTH CENTERS

Provisions of this section concerning private, nonprofit drug addiction or alcoholic treatment and rehabilitation programs to be applicable to publicly operated community health centers, see section 101(b) of Pub. L. 98-107, set out in part as a note under section 2012 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2012, 2012a of this title; title 42 section 4728.

§ 2020. Administration

[*See main edition for text of (a) to (d)*]

(e) Requisites of State plan of operation

The State plan of operation required under subsection (d) of this section shall provide, among such other provisions as may be required by regulation—

[*See main edition for text of (1)*]

(2) that each household which contacts a food stamp office in person during office hours to make what may reasonably be interpreted as an oral or written request for food stamp assistance shall receive and shall be permitted to file, on the same day that such contact is first made, a simplified, uniform national application form for participation in the food stamp program designed by the Secretary, unless the Secretary approves a deviation from that form by a particular State agency because of the use by that agency of a dual public assistance food stamp application form pursuant to subsection (i) of this section, the requirements of an agency's computer system, or other exigencies as determined by the Secretary. Each application form shall contain a description in understandable terms in prominent and boldface lettering of the appropriate civil and criminal provisions dealing with violations of this chapter, including the penalties therefor, by members of an eligible household. Each application shall also con-

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tain in understandable terms and in prominent and boldface lettering a statement that the information provided by the applicant in connection with the application for a coupon allotment will be subject to verification by Federal, State, and local officials to determine if such information is factual and that if any material part of such information is incorrect, food stamps may be denied to the applicant, and that the applicant may be subjected to criminal prosecution for knowingly providing incorrect information. The State agency shall comply with the standards established by the Secretary for telephone contact by, mail delivery of forms to and mail return of forms by, and subsequent home or telephone interview with, the elderly, physically or mentally handicapped, and persons otherwise unable, solely because of transportation difficulties and similar hardships, to appear in person at a certification office or through a representative pursuant to paragraph (7) of this subsection, so that such persons may have an adequate opportunity to be certified properly; [5] One adult member of a household that is applying for a coupon allotment shall be required to certify in writing, under penalty of perjury, the truth of the information contained in the application for the allotment. The State agency shall provide a method of certifying and issuing coupons to eligible households that do not reside in permanent dwellings or who do not have fixed mailing addresses. In carrying out the preceding sentence, the State agency shall take such steps as are necessary to ensure that participation in the food stamp program is limited to eligible households.[6]

(3) that the State agency shall thereafter promptly determine the eligibility of each applicant household by way of verification of income other than that determined to be excluded by section 2014(d) of this title (in part through the use of the information, if any, obtained under section 2025(e) of this title), household size (in any case such size is questionable), and such other eligibility factors as the Secretary determines to be necessary to implement sections 2014 and 2015 of this title, although the State agency may verify prior to certification whether questionable or not, the size of any applicant household and such other eligibility factors as the State agency determines are necessary, so as to complete certification of and provide an allotment retroactive to the period of application to any eligible household not later than thirty days following its filing of an application;

[*See main edition for text of* (4) *to* (15)]

(16) that the State agency shall require each household certified as eligible to participate by methods other than the out-of-office methods specified in the fourth sentence of paragraph (2) of this subsection in those project areas or parts of project areas in which the Secretary, in consultation with the Department's Inspector General, finds that it would be useful to protect the program's integrity and would be cost effective, to present a photographic identification card when using its authorization card in order to receive its coupons. The State agency may permit a member of a household to comply with this paragraph by presenting a photographic identification card used to receive assistance under a welfare or public assistance program;

[*See main edition for text of* (17) *and* (18)]

(19) that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of the Social Security Act [42 U.S.C. 1320b–7] and that any additional information available from agencies administering State unemployment compensation laws under the provisions of section 303(d) of the Social Security Act [42 U.S.C. 503(d)] shall be requested and utilized by the State agency (described in section 2012(n)(1) of this title) to the extent permitted under the provisions of section 303(d) of the Social Security Act;

[*See main edition for text of* (20) *and* (21)]

(22) the plans of the State agency for carrying out employment and training programs under section 2015(d)(4) of this title, including the nature and extent of such programs, the geographic areas and households to be covered under such program, and the basis, including any cost information, for exemptions of categories and individuals and for the choice of employment and training program components reflected in the plans.[9]

(23) in a project area in which 5,000 or more households participate in the food stamp program, for the establishment and operation of a unit for the detection of fraud in the food stamp program, including the investigation, and assistance in the prosecution, of such fraud; and

(24) at the option of the State, for procedures necessary to obtain payment of uncollected overissuance of coupons from unemployment compensation pursuant to section 2022(c) of this title.

(f) Food and nutrition education program

To encourage the purchase of nutritious foods, the Secretary is authorized to extend food and nutrition education to reach food stamp program participants, using the methods and techniques developed in the expanded food and nutrition education and other programs. State agencies shall encourage food stamp program participants to participate in the expanded food and nutrition education program conducted under section 343(d) of this title, and any program established under sections 3175a through 3175e of this title. At the request of personnel of such education program, State agencies, wherever practicable, shall allow per-

[5] So in original. The semicolon probably should be a period.
[6] So in original. The period probably should be a semicolon.
[9] So in original. The period probably should be a semicolon.

sonnel and information materials of such education program to be placed in food stamp offices.

(g) State noncompliance; correction of failures

If the Secretary determines, upon information received by the Secretary, investigation initiated by the Secretary, or investigation that the Secretary shall initiate upon receiving sufficient information evidencing a pattern of lack of compliance by a State agency of a type specified in this subsection, that in the administration of the food stamp program there is a failure by a State agency without good cause to comply with any of the provisions of this chapter, the regulations issued pursuant to this chapter, the State plan of operation submitted pursuant to subsection (d) of this section, the State plan for automated data processing submitted pursuant to subsection (*o*)(2) of this section, or the Secretary's standards for the efficient and effective administration of the program established under section 2025(b)(1) of this title the Secretary shall immediately inform such State agency of such failure and shall allow the State agency a specified period of time for the correction of such failure. If the State agency does not correct such failure within that specified period, the Secretary may refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance forthwith by the State agency and, upon suit by the Attorney General in an appropriate district court of the United States having jurisdiction of the geographic area in which the State agency is located and a showing that noncompliance has occurred, appropriate injunctive relief shall issue, and, whether or not the Secretary refers such matter to the Attorney General, the Secretary shall proceed to withhold from the State such funds authorized under sections 2025(a), 2025(c), and 2025(g) of this title as the Secretary determines to be appropriate, subject to administrative and judicial review under section 2023 of this title.

[*See main edition for text of* (*h*)]

(i) System development; determination of eligibility

Notwithstanding any other provision of law, the Secretary and the Secretary of Health and Human Services shall develop a system by which (1) a single interview shall be conducted to determine eligibility for the food stamp program and the aid to families with dependent children program under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.]; (2) households in which all members are applicants for or recipients of supplemental security income shall be informed of the availability of benefits under the food stamp program and be assisted in making a simple application to participate in such program at the social security office and be certified for eligibility utilizing information contained in files of the Social Security Administration; (3) households in which all members are included in a federally aided public assistance or State or local general assistance grant shall have their application for participation in the food stamp program contained in the public assistance or general assistance application form; and (4) new applicants, as well as households which have recently lost or been denied eligibility for public assistance or general assistance, shall be certified for participation in the food stamp program based on information in the public assistance or general assistance case file to the extent that reasonably verified information is available in such case file. Each State agency shall implement clauses (1) and (2) and may implement clause (3) or (4), or both such clauses. No household shall have its application to participate in the food stamp program denied nor its benefits under the food stamp program terminated solely on the basis that its application to participate has been denied or its benefits have been terminated under any of the programs carried out under the statutes specified in the second sentence of section 2014(a) of this title and without a separate determination by the State agency that the household fails to satisfy the eligibility requirements for participation in the food stamp program.

(j) Notice of availability of benefits and applications; revision of memorandum of understanding

(1) Any individual who is an applicant for or recipient of social security benefits (under regulations prescribed by the Secretary in conjunction with the Secretary of Health and Human Services) shall be informed of the availability of benefits under the food stamp program and informed of the availability of a simple application to participate in such program at the social security office.

(2) The Secretary and the Secretary of Health and Human Services shall revise the memorandum of understanding in effect on December 23, 1985, regarding services to be provided in social security offices under this subsection and subsection (i) of this section, in a manner to ensure that—

(A) applicants for and recipients of social security benefits are adequately notified in social security offices that assistance may be available to them under this chapter;

(B) applications for assistance under this chapter from households in which all members are applicants for or recipients of supplemental security income will be forwarded immediately to the State agency in an efficient and timely manner; and

(C) the Secretary of Health and Human Services receives from the Secretary reimbursement for costs incurred to provide such services.

[*See main edition for text of* (*k*) *to* (*n*)]

(o) Data processing systems; model plan; comprehensive automation and computerization; State plans; evaluation and report to Congress; corrective measures by State; time for implementation

(1) The Secretary shall develop, after consultation with, and with the assistance of, an advisory group of State agencies appointed by the Secretary without regard to the provisions of the Federal Advisory Committee Act, a model plan for the comprehensive automation of data processing and computerization of information systems under the food stamp program. The plan shall be developed and made available for

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public comment through publication of the proposed plan in the Federal Register not later than October 1, 1986. The Secretary shall complete the plan, taking into consideration public comments received, not later than February 1, 1987. The elements of the plan may include intake procedures, eligibility determinations and calculation of benefits, verification procedures, coordination with related Federal and State programs, the issuance of benefits, reconciliation procedures, the generation of notices, and program reporting. In developing the plan, the Secretary shall take into account automated data processing and information systems already in existence in States and shall provide for consistency with such systems.

(2) Not later than October 1, 1987, each State agency shall develop and submit to the Secretary for approval a plan for the use of an automated data processing and information retrieval system to administer the food stamp program in such State. The State plan shall take into consideration the model plan developed by the Secretary under paragraph (1) and shall provide time frames for completion of various phases of the State plan. If a State agency already has a sufficient automated data processing and information retrieval system, the State plan may, subject to the Secretary's approval, reflect the existing State system.

(3) Not later than April 1, 1988, the Secretary shall prepare and submit to Congress an evaluation of the degree and sufficiency of each State's automated data processing and computerized information systems for the administration of the food stamp program, including State plans submitted under paragraph (2). Such report shall include an analysis of additional steps needed for States to achieve effective and cost-efficient data processing and information systems. The Secretary, thereafter, shall periodically update such report.

(4) Based on the Secretary's findings in such report submitted under paragraph (3), the Secretary may require a State agency, as necessary to rectify identified shortcomings in the administration of the food stamp program in the State, except where such direction would displace State initiatives already under way, to take specified steps to automate data processing systems or computerize information systems for the administration of the food stamp program in the State if the Secretary finds that, in the absence of such systems, there will be program accountability or integrity problems that will substantially affect the administration of the food stamp program in the State.

(5)(A) Subject to subparagraph (B), in the case of a plan for an automated data processing and information retrieval system submitted by a State agency to the Secretary under paragraph (2), such State agency shall—

(i) commence implementation of its plan not later than October 1, 1988; and

(ii) meet the time frames set forth in the plan.

(B) The Secretary shall extend a deadline imposed under subparagraph (A) to the extent the Secretary deems appropriate based on the Secretary's finding of a good faith effort of a State agency to implement its plan in accordance with subparagraph (A).

(As amended Pub. L. 98-204, § 7, Dec. 2, 1983, 97 Stat. 1386; Pub. L. 98-369, div. B, title VI, § 2651(i), July 18, 1984, 98 Stat. 1150; Pub. L. 99-198, title XV, §§ 1507(b), 1517(b), 1525-1531(a), (b), 1535(b)(1), 1537(b), (c), Dec. 23, 1985, 99 Stat. 1568, 1576, 1580-1582, 1584, 1586, 1587.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (o)(1), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1985—Subsec. (e)(2). Pub. L. 99-198, § 1529, added provision directing the State agency to provide a method of certifying and issuing coupons to eligible households that do not reside in permanent dwellings or who do not have fixed mailing addresses and to take such steps as are necessary to ensure that participation in the food stamp program is limited to eligible households.

Pub. L. 99-198, § 1525, added requirement that one adult member of a household that is applying for a coupon allotment certify in writing, under penalty of perjury, the truth of the information contained in the application for the allotment.

Subsec. (e)(3). Pub. L. 99-198, § 1527, struck out "only" after "verification", inserted ", household size (in any case such size is questionable,", and substituted "such other eligibility factors as the State agency determines are necessary" for "any factors of eligibility involving households that fall within the State agency's error-prone household profiles as developed by the State agency from the error rate reduction system conducted under section 2025 of this title and as approved by the Secretary".

Subsec. (e)(16). Pub. L. 99-198, § 1528, substituted "fourth sentence" for "last sentence", inserted "and would be cost effective" after "integrity", and added provision authorizing the State agency to permit a member of a household to comply with this paragraph by presenting a photographic identification card used to receive assistance under a welfare or public assistance program.

Subsec. (e)(22). Pub. L. 99-198, § 1517(b), added par. (22).

Subsec. (e)(23). Pub. L. 99-198, § 1526, added par. (23).

Subsec. (e)(24). Pub. L. 99-198, § 1535(b)(1), added par. (24).

Subsec. (f). Pub. L. 99-198, § 1530, added provisions directing State agencies to encourage food stamp program participants to participate in the expanded food and nutrition education program conducted under section 343(d) of this title and any program established under sections 3175a through 3175e of this title and, at the request of personnel of such education program, allow personnel and information materials of such education program to be placed in food stamp offices.

Subsec. (g). Pub. L. 99-198, § 1537(c), inserted "the State plan for automated data processing submitted pursuant to subsection (o)(2) of this section," and substituted "sections 2025(a), 2025(c), and 2025(g) of this title" for "sections 2025(a) and 2025(c) of this title".

Subsec. (i). Pub. L. 99-198, § 1531(a), in cl. (2) of first sentence, inserted "applicants for or" after "members are" and substituted "informed of the availability of benefits under the food stamp program and be assisted in making a simple application to participate in such program" for "permitted to apply for participation in the food stamp program by executing a simple application", effective Oct. 1, 1986.

Pub. L. 99-198, § 1507(b), added sentence directing that no household shall have its application to participate in the food stamp program denied nor its benefits under the food stamp program terminated solely on the basis that its application to participate has been denied or its benefits have been terminated under any of the programs carried out under the statutes specified in the second sentence of section 2014(a) of this title and without a separate determination by the State agency that the household fails to satisfy the eligibility requirements for participation in the food stamp program.

Subsec. (j). Pub. L. 99-198, § 1531(b), amended subsec. (j) generally, effective Oct. 1, 1986. Prior to amendment, subsec. (j) read as follows: "The Secretary, in conjunction with the Secretary of Health and Human Services, is authorized to prescribe regulations permitting applicants for and recipients of social security benefits to apply for food stamps at social security offices and be certified for food stamp eligibility in such offices in order that the application and certification for food stamp assistance may be accomplished as efficiently and conveniently as possible."

Subsec. (o). Pub. L. 99-198, § 1537(b), added subsec. (o).

1984—Subsec. (e)(19). Pub. L. 98-369 amended par. (19) generally. Prior to amendment, par. (19) read as follows: "that—

"(A) in any case in which information is available from agencies administering State unemployment compensation laws under section 303(d) of the Social Security Act (42 U.S.C. 503(d)), the information shall be requested and utilized by the State agency to the extent permitted under such section; or

"(B) in any case in which information is not available from agencies administering State unemployment compensation laws under section 303(d) of the Social Security Act—

"(i) information available from the Social Security Administration under section 6103(*l*)(7) of title 26 shall be requested and utilized by the State agency to the extent permitted under such section; or

"(ii) similar information available from other sources shall be requested and utilized by the State agency to the extent approved by the Secretary and permitted by any law controlling access to the information;".

1983—Subsec. (e)(19). Pub. L. 98-204 amended par. (19) generally. Prior to amendment par. (19) read: "that information available from the Social Security Administration under the provisions of section 6103(i)(7) of title 26, and information available from agencies administering State unemployment compensation laws under the provisions of section 303(d) of the Social Security Act [42 U.S.C. 503(d)], shall be requested and utilized by the State agency (described in section 2012(n)(1) of this title), to the extent permitted under the provisions of such sections, except that the State agency shall not be required to request such information from the Social Security Administration if such information is available from the agency administering the State unemployment compensation laws;".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1531(a), (b) of Pub. L. 99-198 provided in part that the amendments by section 1531(a), (b) of Pub. L. 99-198 are effective Oct. 1, 1986.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Apr. 1, 1985, unless a waiver has been granted to a State to delay the effective date but in no event beyond Sept. 30, 1986, see section 2651(*l*)(2) of Pub. L. 98-369, set out as a note under section 1320b-7 of Title 42, The Public Health and Welfare.

§ 2021. Civil money penalties and disqualification of retail food stores and wholesale food concerns

[*See main edition for text of (a) to (d)*]

(e) Transfer of ownership; penalty in lieu of disqualification period; action by Attorney General

(1) In the event any retail food store or wholesale food concern that has been disqualified under subsection (a) of this section is sold or the ownership thereof is otherwise transferred to a purchaser or transferee, the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern shall be subjected to a civil money penalty in an amount established by the Secretary through regulations to reflect that portion of the disqualification period that has not yet expired. If the retail food store or wholesale food concern has been disqualified permanently, the civil money penalty shall be double the penalty for a ten-year disqualification period, as calculated under regulations issued by the Secretary. The disqualification period imposed under subsection (b) of this section shall continue in effect as to the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil money penalty under this subsection.

(2) At any time after a civil money penalty imposed under paragraph (1) has become final under the provisions of section 2023(a) of this title, the Secretary may request the Attorney General to institute a civil action against the person or persons subject to the penalty in a district court of the United States for any district in which such person or persons are found, reside, or transact business to collect the penalty and such court shall have jurisdiction to hear and decide such action. In such action, the validity and amount of such penalty shall not be subject to review.

(As amended Pub. L. 99-198, title XV, § 1532(a), Dec. 23, 1985, 99 Stat. 1582.)

AMENDMENTS

1985—Subsec. (e). Pub. L. 99-198 added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2018, 2023 of this title.

§ 2022. Disposition of claims

(a) Authority of Secretary; joint and several liability

(1) The Secretary shall have the power to determine the amount of and settle and adjust any claim and to compromise or deny all or part of any such claim or claims arising under the provisions of this chapter or the regulations issued pursuant to this chapter, including, but not limited to, claims arising from fraudulent and nonfraudulent overissuances to recipients, including the power to waive claims if the Secretary determines that to do so would serve the purposes of this chapter. Such powers with respect to claims against recipients may be delegated by the Secretary to State agencies. The Secretary shall have the power to reduce amounts otherwise due to a State agency under

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section 2025 of this title to collect unpaid claims assessed against the State agency if the State agency has declined or exhausted its appeal rights under section 2023 of this title.

(2) Each adult member of a household shall be jointly and severally liable for the value of any overissuance of coupons.

(b) Reduction of allotment; cash payments; collection by State agencies

(1) [*See main edition for text of (A)*]

(B) State agencies shall collect any claim against a household arising from the overissuance of coupons based on an ineligibility determination under section 2015(b) of this title, other than claims collected pursuant to subparagraph (A), by using other means of collection, unless the State agency demonstrates to the satisfaction of the Secretary that such other means are not cost effective.

[*See main edition for text of (2)*]

(c) Food stamp intercept of unemployment benefits

(1) As used in this subsection, the term "uncollected overissuance" means the amount of an overissuance of coupons, as determined under subsection (b)(1) of this section, that has not been recovered pursuant to subsection (b)(1) of this section.

(2) A State agency may determine on a periodic basis, from information supplied pursuant to section 49b(b) of title 29, whether an individual receiving compensation under the State's unemployment compensation law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law) owes an uncollected overissuance.

(3) A State agency may recover an uncollected overissuance—

(A) by—

(i) entering into an agreement with an individual described in paragraph (2) under which specified amounts will be withheld from unemployment compensation otherwise payable to the individual; and

(ii) furnishing a copy of the agreement to the State agency administering the unemployment compensation law; or

(B) in the absence of an agreement, by obtaining a writ, order, summons, or other similar process in the nature of garnishment from a court of competent jurisdiction to require the withholding of amounts from the unemployment compensation.

(As amended Pub. L. 99-198, title XV, §§ 1533-1535(a), Dec. 23, 1985, 99 Stat. 1583.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, § 1533, designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(1)(B). Pub. L. 99-198, § 1534, substituted "shall" for "may" and inserted ", unless the State agency demonstrates to the satisfaction of the Secretary that such other means are not cost effective".

Subsec. (c). Pub. L. 99-198, § 1535(a), added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2014, 2020, 2023, 2025, 2027 of this title; title 42 section 503.

§ 2023. Administrative and judicial review; restoration of rights

(a) Whenever an application of a retail food store or wholesale food concern to participate in the food stamp program is denied pursuant to section 2018 of this title, or a retail food store or wholesale food concern is disqualified or subjected to a civil money penalty under the provisions of section 2021 of this title, or a retail food store or wholesale food concern forfeits a bond under section 2021(d) of this title, or all or part of any claim of a retail food store or wholesale food concern is denied under the provisions of section 2022 of this title, or a claim against a State agency is stated pursuant to the provisions of section 2022 of this title, notice of such administrative action shall be issued to the retail food store, wholesale food concern, or State agency involved. Such notice shall be delivered by certified mail or personal service. If such store, concern, or State agency is aggrieved by such action, it may, in accordance with regulations promulgated under this chapter, within ten days of the date of delivery of such notice, file a written request for an opportunity to submit information in support of its position to such person or persons as the regulations may designate. If such a request is not made or if such store, concern, or State agency fails to submit information in support of its position after filing a request, the administrative determination shall be final. If such request is made by such store, concern, or State agency, such information as may be submitted by the store, concern, or State agency, as well as such other information as may be available, shall be reviewed by the person or persons designated by the Secretary, who shall, subject to the right of judicial review hereinafter provided, make a determination which shall be final and which shall take effect thirty days after the date of the delivery or service of such final notice of determination. If the store, concern, or State agency feels aggrieved by such final determination, it may obtain judicial review thereof by filing a complaint against the United States in the United States court for the district in which it resides or is engaged in business, or, in the case of a retail food store or wholesale food concern, in any court of record of the State having competent jurisdiction, within thirty days after the date of delivery or service of the final notice of determination upon it, requesting the court to set aside such determination. The copy of the summons and complaint required to be delivered to the official or agency whose order is being attacked shall be sent to the Secretary or such person or persons as the Secretary may designate to receive service of process. The suit in the United States district court or State court shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action in issue. If the court determines that such administrative action is invalid, it shall enter such judgment or order as it determines is in accordance with the law and the evidence. During the pendency of such judicial review, or any appeal therefrom, the administrative action under review shall be and

remain in full force and effect, unless on application to the court on not less than ten days' notice, and after hearing thereon and a consideration by the court of the applicant's likelihood of prevailing on the merits and of irreparable injury, the court temporarily stays such administrative action pending disposition of such trial or appeal.

[*See main edition for text of* (b)]

(As amended Pub. L. 99-198, title XV, § 1536, Dec. 23, 1985, 99 Stat. 1585.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198 substituted "on application" for "an application" and "consideration by the court of the applicant's likelihood of prevailing on the merits and of irreparable injury" for "showing of irreparable injury".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2015, 2018, 2020, 2021, 2022, 2025 of this title.

§ 2025. Administrative cost-sharing and quality control

(a) Administrative costs

The Secretary is authorized to pay to each State agency an amount equal to 50 per centum of all administrative costs involved in each State agency's operation of the food stamp program, which costs shall include, but not be limited to, the cost of (1) the certification of applicant households, (2) the acceptance, storage, protection, control, and accounting of coupons after their delivery to receiving points within the State, (3) the issuance of coupons to all eligible households, and (4) fair hearings: *Provided*, That the Secretary is authorized to pay each State agency an amount not less than 75 per centum of the costs of State food stamp program investigations and prosecutions, and is further authorized at the Secretary's discretion to pay any State agency administering the food stamp program on all or part of an Indian reservation under section 2020(d) of this title such amounts for administrative costs as the Secretary determines to be necessary for effective operation of the food stamp program, as well as to permit each State to retain 50 per centum of the value of all funds or allotments recovered or collected pursuant to subsections (b)(1) and (c) of section 2022 of this title and 25 per centum of the value of all funds or allotments recovered or collected pursuant to section 2022(b)(2) of this title, except the value of funds or allotments recovered or collected pursuant to section 2022(b)(2) of this title which arise from an error of a State agency. The officials responsible for making determinations of ineligibility under this chapter shall not receive or benefit from revenues retained by the State under the provisions of this subsection.

(b) Standards; withholding of funds

The Secretary shall (1) establish standards for the efficient and effective administration of the food stamp program by the States, including standards for the periodic review of the hours that food stamp offices are open during the day, week, or month to ensure that employed individuals are adequately served by the food stamp program, and (2) instruct each State to submit, at regular intervals, reports which shall specify the specific administrative actions proposed to be taken and implemented in order to meet the efficiency and effectiveness standards established pursuant to clause (1) of this subsection.

[*See main edition for text of* (c)]

(d) "Payment error rate" defined; error rate reduction program; reduction of State's federally funded share of administrative costs; report by State agency; administrative and judicial review

[*See main edition for text of* (1)]

(2)(A) The Secretary shall institute an error rate reduction program under which, if a State agency's payment error rate exceeds—

(i) 9 per centum for fiscal year 1983,

(ii) 7 per centum for fiscal year 1984, or

(iii) 5 per centum for fiscal year 1985 or any fiscal year thereafter,

then the Secretary shall, other than for good cause shown or as provided in subparagraph (B), reduce the State agency's federally funded share of administrative costs provided pursuant to subsection (a) of this section, other than the costs already shared in excess of 50 per centum under the proviso in the first sentence of subsection (a) of this section or under subsection (g) of this section, by the amounts required under paragraph (3) less any amount payable as a result of the use by the State agency of correctly processed information received from an automatic information exchange system made available by any Federal department or agency.

[*See main edition for text of* (B), (3) *to* (5)]

(6) To facilitate the implementation of paragraphs (2) and (3), each State agency shall submit to the Secretary expeditiously data regarding its operations in each fiscal year sufficient for the Secretary to establish the payment error rate for the State agency for such fiscal year and determine the amount for which the State agency will be liable for such fiscal year under paragraphs (2) and (3). The Secretary shall make a determination for a fiscal year, and notify the State agency of such determination, within nine months following the end of each fiscal year. The Secretary shall initiate efforts to collect the amount owed by the State agency as a claim established under paragraphs (2) and (3) for a fiscal year, subject to the conclusion of any formal or informal appeal procedure and administrative or judicial review under section 2023 of this title (as provided for in paragraph (5)), before the end of the fiscal year following such fiscal year.

[*See main edition for text of* (e) *to* (g)]

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(h) Authorization of appropriations; additional costs; transportation and other related expenses; restriction on use of funds; study and report to Congressional committees on effectiveness of programs

(1) The Secretary shall allocate among the State agencies in each fiscal year, from funds appropriated for such fiscal year under section 2027(a)(1) of this title, the amount of $40,000,000 for the fiscal year ending September 30, 1986, $50,000,000 for the fiscal year ending September 30, 1987, $60,000,000 for the fiscal year ending September 30, 1988, and $75,000,000 for each of the fiscal years ending September 30, 1989 and September 30, 1990, to carry out the employment and training program under section 2015(d)(4) of this title, except as provided in paragraph (3), during such fiscal year.

(2) If, in carrying out such program during such fiscal year, a State agency incurs costs that exceed the amount allocated to the State agency under paragraph (1), the Secretary shall pay such State agency an amount equal to 50 per centum of such additional costs, subject to the first limitation in paragraph (3).

(3) The Secretary shall also reimburse each State agency in an amount equal to 50 per centum of the total amount of payments made or costs incurred by the State agency in connection with transportation costs and other expenses reasonably necessary and directly related to participation in an employment and training program under section 2015(d)(4) of this title, except that such total amount shall not exceed an amount representing $25 per participant per month and such reimbursement shall not be made out of funds allocated under paragraph (1).

(4) Funds provided to a State agency under this subsection may be used only for operating an employment and training program under section 2015(d)(4) of this title, and may not be used for carrying out other provisions of this chapter.

(5)(A) The Secretary shall monitor the employment and training programs carried out by State agencies under section 2015(d)(4) of this title to measure their effectiveness in terms of the increase in the numbers of household members who obtain employment and the numbers of such members who retain such employment as a result of their participation in such employment and training programs.

(B) The Secretary shall, not later than January 1, 1989, report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the effectiveness of such employment and training programs.

(i) Geographical error-prone profiles; annual report to Congressional committees

(1) The Department of Agriculture may use quality control information made available under this section to determine which project areas have payment error rates (as defined in subsection (d)(1) of this section) that impair the integrity of the food stamp program.

(2) The Secretary may require a State agency to carry out new or modified procedures for the certification of households in areas identified under paragraph (1) if the Secretary determines such procedures would improve the integrity of the food stamp program and be cost effective.

(3) Not later than 12 months after December 23, 1985, and each 12 months thereafter, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that lists project areas identified under paragraph (1) and describes any procedures required to be carried out under paragraph (2).

(As amended Pub. L. 99-198, title XV, §§ 1517(c), 1524, 1535(c)(1), 1537(a), 1539, Dec. 23, 1985, 99 Stat. 1577, 1580, 1585, 1588.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, § 1535(c)(1), substituted "subsections (b)(1) and (c) of section 2022 of this title" for "section 2022(b)(1) of this title".

Subsec. (b)(1). Pub. L. 99-198, § 1524, inserted ", including standards for the periodic review of the hours that food stamp offices are open during the day, week, or month to ensure that employed individuals are adequately served by the food stamp program," after "States".

Subsec. (d)(2)(A). Pub. L. 99-198, § 1537(a)(1), inserted "less any amount payable as a result of the use by the State agency of correctly processed information received from an automatic information exchange system made available by any Federal department or agency".

Subsec. (d)(6). Pub. L. 99-198, § 1537(a)(2), added par. (6).

Subsec. (h). Pub. L. 99-198, § 1517(c), added subsec. (h).

Subsec. (i). Pub. L. 99-198, § 1539, added subsec. (i).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1537(a) of Pub. L. 99-198 provided in part that the amendment by section 1537(a) of Pub. L. 99-198 is effective with respect to the fiscal year beginning Oct. 1, 1985, and each fiscal year thereafter.

QUALITY CONTROL STUDIES AND PENALTY MORATORIUM

Section 1538 of Pub. L. 99-198 provided that:

"(a)(1)(A) The Secretary of Agriculture (hereinafter referred to in this section as the 'Secretary') shall conduct a study of the quality control system used for the food stamp program established under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

"(B) The study shall—

"(i) examine how best to operate such system in order to obtain information that will allow the State agencies to improve the quality of administration; and

"(ii) provide reasonable data on the basis of which Federal funding may be withheld for State agencies with excessive levels of erroneous payments.

"(2)(A) The Secretary shall also contract with the National Academy of Sciences to conduct a concurrent independent study for the purpose described in paragraph (1).

"(B) For purposes of such study, the Secretary shall provide to the National Academy of Sciences any relevant data available to the Secretary at the onset of the study and on an ongoing basis.

"(3) Not later than 1 year after the date of enactment of this Act [Dec. 23, 1985], the Secretary and the National Academy of Sciences shall report the results of their respective studies to the Congress.

"(b)(1) During the 6-month period beginning on the date of enactment of this Act [Dec. 23, 1985] (hereinafter in this section referred to as the 'moratorium

period"), the Secretary shall not impose any reductions in payments to State agencies pursuant to section 16 of the Food Stamp Act of 1977 (7 U.S.C. 2025).

"(2) During the moratorium period, the Secretary and the State agencies shall continue to—

"(A) operate the quality control systems in effect under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; and

"(B) calculate error rates under section 16 of such Act [7 U.S.C. 2025].

"(c)(1) Not later than 18 months after the date of enactment of this Act [Dec. 23, 1985], the Secretary shall publish regulations that shall—

"(A) restructure the quality control system used under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.] to the extent the Secretary determines to be appropriate, taking into account the studies conducted under subsection (a); and

"(B) establish, taking into account the studies conducted under subsection (a), criteria for adjusting the reductions that shall be made for quarters prior to the implementation of the restructured quality control system so as to eliminate reductions for those quarters that would not be required if the restructured quality control system had been in effect during those quarters.

"(2) Beginning 2 years after the date of the enactment of this Act [Dec. 23, 1985] the Secretary shall—

"(A) implement the restructured quality control system; and

"(B) reduce payments to State agencies—

"(i) for quarters after implementation of such system in accordance with the restructured quality control system; and

"(ii) for quarters before implementation of such system, as provided under the regulations described in paragraph (1)(B)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2015, 2017, 2020, 2022, 2027 of this title.

§ 2026. Research, demonstration, and evaluations

[See main edition for text of (a)]

(b) Pilot projects

(1) The Secretary may conduct on a trial basis, in one or more areas of the United States, pilot or experimental projects designed to test program changes that might increase the efficiency of the food stamp program and improve the delivery of food stamp benefits to eligible households, including projects involving the payment of the value of allotments or the average value of allotments by household size in the form of cash to eligible households all of whose members are age sixty-five or over or any of whose members are entitled to supplemental security income benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] or to aid to families with dependent children under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], the use of countersigned food coupons or similar identification mechanisms that do not invade a household's privacy, and the use of food checks or other voucher-type forms in place of food coupons. The Secretary may waive the requirements of this chapter to the degree necessary for such projects to be conducted, except that no project, other than a project involving the payment of the average value of allotments by household size in the form of cash to eligible households, shall be implemented which would lower or further restrict the income or resource standards or benefit levels provided pursuant to sections 2014 and 2017 of this title. Any pilot or experimental project implemented under this paragraph and operating as of October 1, 1981, involving the payment of the value of allotments in the form of cash to eligible households all of whose members are either age sixty-five or over or entitled to supplemental security income benefits under title XVI of the Social Security Act shall be continued through October 1, 1990, if the State so requests.

[See main edition for text of (2); (c)]

(d) "Qualification period" defined; pilot projects for employment of applicants and recipients; exceptions; waiver; reestablishment of eligibility

(1) As used in this subsection, the term "qualification period" means a period of time immediately preceding—

(A) in the case of a new applicant for benefits under this chapter, the date on which application for such benefits is made by the individual; or

(B) in the case of an otherwise continuing recipient of coupons under this chapter, the date on which such coupons would otherwise be issued to the individual.

(2) Upon application of a State or political subdivision thereof, the Secretary may conduct one pilot project involving the employment requirements described in this subsection in each of four project areas selected by the Secretary.

(3) Under the pilot projects conducted pursuant to this subsection, except as provided in paragraphs (4), (5), and (6), an individual who resides in a project area shall not be eligible for assistance under this chapter if the individual was not employed a minimum of twenty hours per week, or did not participate in a workfare program established under section 2029 of this title, during a qualification period of—

(A) thirty or more consecutive days, in the case of an individual whose benefits under a State or Federal unemployment compensation law were terminated immediately before such qualification period began; or

(B) sixty or more consecutive days, in the case of an individual not described in clause (A).

(4) The provisions of paragraph (3) shall not apply in the case of an individual who—

(A) is under eighteen or over fifty-nine years of age;

(B) is certified by a physician as physically or mentally unfit for employment;

(C) is a parent or other member of a household with responsibility for the care of a dependent child under six years of age or of an incapacitated person;

(D) is a parent or other caretaker of a child under six years of age in a household in which there is another parent who, unless covered by clause (A) or (B), or both such clauses, is employed a minimum of twenty hours per week or participating in a workfare program established under section 2029 of this title;

(E) is in compliance with section 2015(d) of this title and demonstrates, in a manner pre-

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scribed by the Secretary, that the individual is able and willing to accept employment but is unable to obtain such employment; or

(F) is a member of any other group described by the Secretary.

(5) The Secretary may waive the requirements of paragraph (3) in the case of all individuals within all or part of a project area if the Secretary finds that such area—

(A) has an unemployment rate of over 10 per centum; or

(B) does not have a sufficient number of jobs to provide employment for individuals subject to this subsection.

(6) An individual who has become ineligible for assistance under this chapter by reason of paragraph (3) may reestablish eligibility for assistance after a period of ineligibility by—

(1) becoming employed for a minimum of twenty hours per week during any consecutive thirty-day period; or

(2) participating in a workfare program established under section 2029 of this title during any consecutive thirty-day period.

(e) Study and report to Congressional committees of effect of reduction of benefits

The Secretary shall conduct a study of the effects of reductions made in benefits provided under this chapter pursuant to part 1 of subtitle A of title I of the Omnibus Budget Reconciliation Act of 1981, the Food Stamp and Commodity Distribution Amendments of 1981, the Food Stamp Act Amendments of 1982, and any other laws enacted by the Ninety-seventh Congress which affect the food stamp program. The study shall include a study of the effect of retrospective accounting and periodic reporting procedures established under such Acts, including the impact on benefit and administrative costs and on error rates and the degree to which eligible households are denied food stamp benefits for failure to file complete periodic reports. The Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an interim report on the results of such study no later than February 1, 1984, and a final report on the results of such study no later than March 1, 1985.

(f) Redesignated (e)

(As amended Pub. L. 99-114, § 4, Oct. 1, 1985, 99 Stat. 488; Pub. L. 99-157, § 2, Nov. 15, 1985, 99 Stat. 818; Pub. L. 99-182, § 2, Dec. 13, 1985, 99 Stat. 1173; Pub. L. 99-198, title XV, § 1540, Dec. 23, 1985, 99 Stat. 1588.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV and title XVI of the Social Security Act are classified generally to part A (§ 601 et seq.) of subchapter IV and subchapter XVI (§ 1381 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Comprehensive Employment and Training Act of 1973, referred to in subsec. (b)(2), is Pub. L. 93-203, Dec. 28, 1973, 87 Stat. 839, as amended. The Act was amended generally by Pub. L. 95-524, Oct. 27, 1978, 92 Stat. 1912, and, as so amended, was known as the Comprehensive Employment and Training Act, which was classified generally to chapter 17 (§ 801 et seq.) of Title 29, Labor, and was repealed by section 184(a)(1) of the Job Training Partnership Act, Pub. L. 97-300, title I, Oct. 13, 1982, 96 Stat. 1357. The Job Training Partnership Act is classified principally to chapter 19 (§ 1501 et seq.) of Title 29, Section 183 of Pub. L. 97-300, classified to section 1592 of title 29, provided in part that references in any other statute to the Comprehensive Employment and Training Act shall be deemed to refer to the Job Training Partnership Act. Sections 821, 845, 848, and 983 of Title 29, also referred to in subsec. (b)(2), are references to sections of the 1973 Act prior to amendment by Pub. L. 95-524. For further details, see the notes set out for those former sections of Title 29.

The Omnibus Budget Reconciliation Act of 1981, referred to in subsec. (e), is Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 357. Part 1 of subtitle A of title I of the Omnibus Budget Reconciliation Act amended this chapter generally. For complete classification of this Act to the Code, see Tables.

The Food Stamp and Commodity Distribution Amendments of 1981, referred to in subsec. (e), is title XIII of Pub. L. 97-98, Dec. 22, 1981, 95 Stat. 1282, which amended this chapter generally. For complete classification of this Act to the Code, see Short Title of 1981 Amendment note set out under section 2011 of this title and Tables.

The Food Stamp Act Amendments of 1982, referred to in subsec. (e), is subtitle E of title I of Pub. L. 97-253, Sept. 8, 1982, 96 Stat. 772, which amended this chapter generally. For complete classification of this Act to the Code, see Short Title of 1982 Amendment note set out under section 2011 of this title and Tables.

AMENDMENTS

1985—Subsec. (b)(1). Pub. L. 99-198, § 1540(a), substituted "October 1, 1990" for "December 31, 1985".

Pub. L. 99-182 substituted "December 31, 1985" for "December 13, 1985".

Pub. L. 99-157 substituted "December 13, 1985" for "November 15, 1985".

Pub. L. 99-114 substituted "through November 15, 1985" for "until October 1, 1985".

Subsecs. (d) to (f). Pub. L. 99-198, § 1540(b), (c), struck out subsec. (d) which had authorized the Secretary to conduct statewide pilot projects respecting the processing of applications for certain recipients, and redesignated subsecs. (e) and (f) as (d) and (e), respectively.

§ 2027. Appropriations and allotments

(a) Authorization of allotments; monthly reports of expenditures to Congressional committees; restriction on use of funds

(1) To carry out the provisions of this chapter, there are hereby authorized to be appropriated not in excess of $5,847,600,000 for the fiscal year ending September 30, 1978; not in excess of $6,778,900,000 for the fiscal year ending September 30, 1979; not in excess of $9,491,000,000 for the fiscal year ending September 30, 1980; not in excess of $11,430,000,000 for the fiscal year ending September 30, 1981; not in excess of $11,300,000,000 for the fiscal year ending September 30, 1982; not in excess of $12,874,000,000 for the fiscal year ending September 30, 1983; not in excess of $13,145,000,000 for the fiscal year ending September 30, 1984; and not in excess of $13,933,000,000 for the fiscal year ending September 30, 1985. To carry out the provisions of

this chapter, there are hereby authorized to be appropriated not in excess of $13,037,000,000 for the fiscal year ending September 30, 1986; not in excess of $13,936,000,000 for the fiscal year ending September 30, 1987; not in excess of $14,741,000,000 for the fiscal year ending September 30, 1988; not in excess of $15,435,000,000 for the fiscal year ending September 30, 1989; and not in excess of $15,970,000,000 for the fiscal year ending September 30, 1990. Not to exceed one-fourth of 1 per centum of the previous year's appropriation is authorized in each such fiscal year to carry out the provisions of section 2026 of this title. The Secretary shall, by the fifteenth day of each month, submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate setting forth the Secretary's best estimate of the second preceding month's expenditure, including administrative costs, as well as the cumulative totals for the fiscal year. In each monthly report, the Secretary shall also state whether there is reason to believe that reductions in the value of allotments issued to households certified to participate in the food stamp program will be necessary under subsection (b) of this section.

[*See main edition for text of* (2)]

(b) Limitation of value of allotments; reduction of allotments

In any fiscal year, the Secretary shall limit the value of those allotments issued to an amount not in excess of the appropriation for such fiscal year. Notwithstanding any other provision of this chapter, if in any fiscal year the Secretary finds that the requirements of participating States will exceed the appropriation amount authorized in subsection (a)(1) of this section, the Secretary shall direct State agencies to reduce the value of such allotments to be issued to households certified as eligible to participate in the food stamp program to the extent necessary to comply with the provisions of this subsection.

[*See main edition for text of* (c) *and* (d)]

(e) Disposition of funds collected pursuant to claims

Funds collected from claims against households or State agencies, including claims collected pursuant to sections 2016(f), 2020(g) and (h), and subsections (b) and (c) of section 2022 of this title, claims resulting from resolution of audit findings, and claims collected from households receiving overissuances, shall be credited to the food stamp program appropriation account for the fiscal year in which the collection occurs. Funds provided to State agencies under section 2025(c) of this title shall be paid from the appropriation account for the fiscal year in which the funds are provided.

(f) Transfer of funds

No funds appropriated to carry out this chapter may be transferred to the Office of the Inspector General, or the Office of the General Counsel, of the Department of Agriculture.

(As amended Pub. L. 99-198, title XV, §§ 1535(c)(2), 1541, 1542(a), Dec. 23, 1985, 99 Stat. 1585, 1589.)

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-198, § 1541(1), added provisions authorizing appropriations for the fiscal years ending Sept. 30, 1986, 1987, 1988, 1989, and 1990.

Subsec. (b). Pub. L. 99-198, § 1541(2), substituted "the appropriation amount authorized in subsection (a)(1) of this section," for "the limitation set herein,".

Subsec. (e). Pub. L. 99-198, § 1535(c)(2), substituted reference to subsections (b) and (c) of section 2022 of this title for reference to 2022(b) of this title.

Subsec. (f). Pub. L. 99-198, § 1542(a), added subsec. (f).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1542(b) of Pub. L. 99-198 provided that: "The amendment made by this section [adding subsec. (f) of this section] shall become effective on October 1, 1986."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2013, 2025 of this title.

§ 2028. Puerto Rico block grant

(a) Appropriations; payment

(1)(A) From the sums appropriated under this chapter the Secretary shall, subject to the provisions of this subsection and subsection (b) of this section, pay to the Commonwealth of Puerto Rico not to exceed $825,000,000 for the fiscal year ending September 30, 1986, $852,750,000 for the fiscal year ending September 30, 1987, $879,750,000 for the fiscal year ending September 30, 1988, $908,250,000 for the fiscal year ending September 30, 1989, and $936,750,000 for the fiscal year ending September 30, 1990, to finance 100 per centum of the expenditures for food assistance provided to needy persons, and 50 per centum of the administrative expenses related to the provision of such assistance.

[*See main edition for text of* (B), (2)]

(b) Plan for provision of assistance; approval; noncompliance

(1)(A) In order to receive payments under this chapter for any fiscal year, the Commonwealth shall have a plan for that fiscal year approved by the Secretary under this section. By July 1 of each year, if the Commonwealth wishes to receive payments, it shall submit a plan for the provision of the assistance described in subsection (a)(1)(A) of this section for the following fiscal year which—

(i) designates the agency or agencies directly responsible for the administration, or supervision of the administration, of the program for the provision of such assistance;

[*See main edition for text of* (ii) *to* (v), (B), (2); (c) *and* (d)]

(As amended Pub. L. 98-204, § 1, Dec. 2, 1983, 97 Stat. 1385; Pub. L. 99-114, § 2, Oct. 1, 1985, 99 Stat. 488; Pub. L. 99-157, § 3, Nov. 15, 1985, 99 Stat. 818; Pub. L. 99-182, § 3, Dec. 13, 1985, 99 Stat. 1173; Pub. L. 99-198, title XV, § 1543, Dec. 23, 1985, 99 Stat. 1589.)

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AMENDMENTS

1985—Subsec. (a)(1)(A). Pub. L. 99-198, § 1543(1), (2), substituted "for the fiscal year ending September 30, 1986, $852,750,000 for the fiscal year ending September 30, 1987, $879,750,000 for the fiscal year ending September 30, 1988, $908,250,000 for the fiscal year ending September 30, 1989, and $936,750,000 for the fiscal year ending September 30, 1990," for "for each fiscal year" and struck out "noncash" after "100 per centum of the expenditures for".

Pub. L. 99-114, Pub. L. 99-157, and Pub. L. 99-182, made identical amendments which temporarily struck out "noncash" after "100 per centum of the expenditures for", for specified periods of time. See Effective and Termination Dates of 1985 Amendments note below.

Subsec. (b)(1)(A)(i). Pub. L. 99-198, § 1543(3), substituted "the agency or agencies directly responsible" for "a single agency which shall be responsible".

1983—Subsec. (a)(1)(A). Pub. L. 98-204 struck out "noncash" after "100 per centum of the expenditures fo-".

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENTS

Section 3 of Pub. L. 99-182 provided in part that the amendment by Pub. L. 99-182 is effective for the period beginning Dec. 14, 1985, and ending Dec. 31, 1985.

Section 3 of Pub. L. 99-157 provided in part that the amendment by Pub. L. 99-157 is effective for the period beginning Nov. 16, 1985, and ending Dec. 13, 1985.

Section 2 of Pub. L. 99-114 provided in part that the amendment by Pub. L. 99-114 is effective for the period beginning Oct. 1, 1985, and ending Nov. 15, 1985.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Section 1 of Pub. L. 98-204 provided in part that the amendment of this section by Pub. L. 98-204 is effective for the period beginning Jan. 1, 1984, and ending Sept. 30, 1985.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 184(b) of Pub. L. 97-253, as amended by Pub. L. 98-107, § 101(b), Oct. 1, 1983, 97 Stat. 734, provided that: "The amendment made by subsection (a) [amending subsec. (a)(1)(A) of this section] shall not apply with respect to any plan submitted under section 19(b) of the Food Stamp Act of 1977 (7 U.S.C. 2028(b)) [subsec. (b) of this section] by the Commonwealth of Puerto Rico in order to receive payments for the fiscal year ending September 30, 1982, or the fiscal year ending September 30, 1983, or for the first three months of the fiscl year ending September 30, 1984."

STUDY OF FOOD ASSISTANCE PROGRAM IN PUERTO RICO; REPORT TO CONGRESS BY MARCH 1, 1985

Section 2 of Pub. L. 98-204 provided that: "The Secretary of Agriculture shall conduct a study of the food assistance program in Puerto Rico carried out under section 19 of the Food Stamp Act of 1977 (7 U.S.C. 2028) which shall include (1) an assessment of its impact on the adequacy of the nutritional level of the diets of households receiving food assistance in the form of cash rather than in a noncash form, (2) an assessment of the expenditure levels for food of such households, and (3) any other factors the Secretary considers appropriate. The Secretary shall submit a final report of the findings of the study to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate no later than March 1, 1985."

§ 2029. Workfare

[See main edition for text of (a)]

(b) Exempt household members; community work experience program; maximum number of hours; value of allotment

(1) A household member shall be exempt from workfare requirements imposed under this section if such member is—

(A) exempt from section 2015(d)(1) of this title as the result of clause (B), (C), (D), (F) or (F) of section 2015(d)(2) of this title;

(B) at the option of the operating agency, subject to and currently actively and satisfactorily participating at least 20 hours a week in a work training program required under title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(C) mentally or physically unfit;

(D) under sixteen years of age;

(E) sixty years of age or older; or

(F) a parent or other caretaker of a child in a household in which another member is subject to the requirements of this section or is employed fulltime.

(2)(A) Subject to subparagraphs (B) and (C), in the case of a household that is exempt from work requirements imposed under this chapter as the result of participation in a community work experience program established under section 409 of the Social Security Act (42 U.S.C. 609), the maximum number of hours in a month for which all members of such household may be required to participate in such program shall equal the result obtained by dividing—

(i) the amount of assistance paid to such household for such month under title IV of such Act, together with the value of the food stamp allotment of such household for such month; by

(ii) the higher of the Federal or State minimum wage in effect for such month.

(B) In no event may any such member be required to participate in such program more than 120 hours per month.

(C) For the purpose of subparagraph (A)(i), the value of the food stamp allotment of a household for a month shall be determined in accordance with regulations governing the issuance of an allotment to a household that contains more members than the number of members in an assistance unit established under title IV of such Act.

[See main edition for text of (c) to (g)]

(As amended Pub. L. 99-198, title XV, § 1517(d), Dec. 23, 1985, 99 Stat. 1577.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-198 in amending subsec. (b) generally, designated existing provisions of subsec. (b) as par. (1), reorganized and expanded the provisions of par. (1) as thus designated, lowered the minimum age for exempted household members from eighteen years to sixteen years, and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2013, 2015, 2026 of this title.

CHAPTER 54—TRANSPORTATION, SALE, AND HANDLING OF CERTAIN ANIMALS

Sec.
2157. Release of trade secrets.
(a) Release of confidential information prohibited.
(b) Wrongful use of confidential information prohibited.
(c) Penalties.
(d) Recovery of damages by injured person; costs; attorney's fee.
(e) Other rights and remedies.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 49 App. section 1553.

§ 2131. Congressional statement of policy

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99-198, title XVII, subtitle F (§§ 1751-1759), § 1759, Dec. 23, 1985, 99 Stat. 1650, provided that: "This subtitle [enacting section 2157 of this title, amending sections 2132, 2143 to 2146, and 2149 of this title, and enacting provisions set out as notes under this section] shall take effect 1 year after the date of the enactment of this Act [Dec. 23, 1985]."

CONGRESSIONAL FINDINGS FOR 1985 AMENDMENT

Pub. L. 99-198, title XVII, subtitle F (§§ 1751-1759), § 1751, Dec. 23, 1985, 99 Stat. 1645, provided that: "For the purposes of this subtitle [see Effective Date of 1985 Amendment note above], the Congress finds that—

"(1) the use of animals is instrumental in certain research and education for advancing knowledge of cures and treatment for diseases and injuries which afflict both humans and animals;

"(2) methods of testing that do not use animals are being and continue to be developed which are faster, less expensive, and more accurate than traditional animal experiments for some purposes and further opportunities exist for the development of these methods of testing;

"(3) measures which eliminate or minimize the unnecessary duplication of experiments on animals can result in more productive use of Federal funds; and

"(4) measures which help meet the public concern for laboratory animal care and treatment are important in assuring that research will continue to progress."

EXTENDED DEFINITION OF "ANIMAL"

Pub. L. 99-198, title XVII, 1756(b), Dec. 23, 1985, 99 Stat. 1650, provided that: "For purposes of this Act [see Tables for classification], the term 'animal' shall have the same meaning as defined in section 2(g) of the Animal Welfare Act (7 U.S.C. 2132(g))."

§ 2132. Definitions

When used in this chapter—

[*See main edition for text of (a) to (h)*]

(i) The term "intermediate handler" means any person including a department, agency, or instrumentality of the United States or of any State or local government (other than a dealer, research facility, exhibitor, any person excluded from the definition of a dealer, research facility, or exhibitor, an operator of an auction sale, or a carrier) who is engaged in any business in which he receives custody of animals in connection with their transportation in commerce;

(j) The term "carrier" means the operator of any airline, railroad, motor carrier, shipping line, or other enterprise, which is engaged in the business of transporting any animals for hire;

(k) The term "Federal agency" means an Executive agency as such term is defined in section 105 of title 5, and with respect to any research facility means the agency from which the research facility receives a Federal award for the conduct of research, experimentation, or testing, involving the use of animals;

(*l*) The term "Federal award for the conduct of research, experimentation, or testing, involving the use of animals" means any mechanism (including a grant, award, loan, contract, or cooperative agreement) under which Federal funds are provided to support the conduct of such research.[1]

(m) The term "quorum" means a majority of the Committee members;

(n) The term "Committee" means the Institutional Animal Committee established under section 2143(b) of this title; and

(*o*) The term "Federal research facility" means each department, agency, or instrumentality of the United States which uses live animals for research or experimentation.

(As amended Pub. L. 99-198, title XVII, § 1756(a), Dec. 23, 1985, 99 Stat. 1650.)

AMENDMENTS

1985—Subsecs. (k) to (*o*). Pub. L. 99-198 added subsecs. (k) to (*o*).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective one year after Dec. 23, 1985, see section 1759 of Pub. L. 99-198, set out as a note under section 2131 of this title.

§ 2143. Standards and certification process for humane handling, care, treatment, and transportation of animals

(a) Promulgation of standards, rules, regulations, and orders; requirements; research facilities; State authority

(1) The Secretary shall promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors.

(2) The standards described in paragraph (1) shall include minimum requirements—

(A) for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation by species where the Secretary finds necessary for humane handling, care, or treatment of animals; and

(B) for exercise of dogs, as determined by an attending veterinarian in accordance with general standards promulgated by the Secretary, and for a physical environment adequate to promote the psychological well-being of primates.

(3) In addition to the requirements under paragraph (2), the standards described in paragraph (1) shall, with respect to animals in research facilities, include requirements—

[1] So in original. The period probably should be a semicolon.

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(A) for animal care, treatment, and practices in experimental procedures to ensure that animal pain and distress are minimized, including adequate veterinary care with the appropriate use of anesthetic, analgesic, tranquilizing drugs, or euthanasia;

(B) that the principal investigator considers alternatives to any procedure likely to produce pain to or distress in an experimental animal;

(C) in any practice which could cause pain to animals—

(i) that a doctor of veterinary medicine is consulted in the planning of such procedures;

(ii) for the use of tranquilizers, analgesics, and anesthetics;

(iii) for pre-surgical and post-surgical care by laboratory workers, in accordance with established veterinary medical and nursing procedures;

(iv) against the use of paralytics without anesthesia; and

(v) that the withholding of tranquilizers, anesthesia, analgesia, or euthanasia when scientifically necessary shall continue for only the necessary period of time;

(D) that no animal is used in more than one major operative experiment from which it is allowed to recover except in cases of—

(i) scientific necessity; or

(ii) other special circumstances as determined by the Secretary; and

(E) that exceptions to such standards may be made only when specified by research protocol and that any such exception shall be detailed and explained in a report outlined under paragraph (7) and filed with the Institutional Animal Committee.

(4) The Secretary shall also promulgate standards to govern the transportation in commerce, and the handling, care, and treatment in connection therewith, by intermediate handlers, air carriers, or other carriers, of animals consigned by any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States or of any State or local government, for transportation in commerce. The Secretary shall have authority to promulgate such rules and regulations as he determines necessary to assure humane treatment of animals in the course of their transportation in commerce including requirements such as those with respect to containers, feed, water, rest, ventilation, temperature, and handling.

(5) In promulgating and enforcing standards established pursuant to this section, the Secretary is authorized and directed to consult experts, including outside consultants where indicated.

(6)(A) Nothing in this chapter—

(i) except as provided in paragraphs [2] (7) of this subsection, shall be construed as authorizing the Secretary to promulgate rules, regulations, or orders with regard to the design, outlines, or guidelines of actual research or experimentation by a research facility as determined by such research facility;

(ii) except as provided [3] subparagraphs (A) and (C) (ii) through (v) of paragraph (3) and paragraph (7) of this subsection, shall be construed as authorizing the Secretary to promulgate rules, regulations, or orders with regard to the performance of actual research or experimentation by a research facility as determined by such research facility; and

(iii) shall authorize the Secretary, during inspection, to interrupt the conduct of actual research or experimentation.

(B) No rule, regulation, order, or part of this chapter shall be construed to require a research facility to disclose publicly or to the Institutional Animal Committee during its inspection, trade secrets or commercial or financial information which is privileged or confidential.

(7)(A) The Secretary shall require each research facility to show upon inspection, and to report at least annually, that the provisions of this chapter are being followed and that professionally acceptable standards governing the care, treatment, and use of animals are being followed by the research facility during actual research or experimentation.

(B) In complying with subparagraph (A), such research facilities shall provide—

(i) information on procedures likely to produce pain or distress in any animal and assurances demonstrating that the principal investigator considered alternatives to those procedures;

(ii) assurances satisfactory to the Secretary that such facility is adhering to the standards described in this section; and

(iii) an explanation for any deviation from the standards promulgated under this section.

(8) Paragraph (1) shall not prohibit any State (or a political subdivision of such State) from promulgating standards in addition to those standards promulgated by the Secretary under paragraph (1).

(b) Research facility Committee; establishment, membership, functions, etc.

(1) The Secretary shall require that each research facility establish at least one Committee. Each Committee shall be appointed by the chief executive officer of each such research facility and shall be composed of not fewer than three members. Such members shall possess sufficient ability to assess animal care, treatment, and practices in experimental research as determined by the needs of the research facility and shall represent society's concerns regarding the welfare of animal subjects used at such facility. Of the members of the Committee—

(A) at least one member shall be a doctor of veterinary medicine;

(B) at least one member—

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[2] So in original. Probably should be "paragraph".

[3] So in original. Probably should be followed by "in".

(i) shall not be affiliated in any way with such facility other than as a member of the Committee;

(ii) shall not be a member of the immediate family of a person who is affiliated with such facility; and

(iii) is intended to provide representation for general community interests in the proper care and treatment of animals; and

(C) in those cases where the Committee consists of more than three members, not more than three members shall be from the same administrative unit of such facility.

(2) A quorum shall be required for all formal actions of the Committee, including inspections under paragraph (3).

(3) The Committee shall inspect at least semiannually all animal study areas and animal facilities of such research facility and review as part of the inspection—

(A) practices involving pain to animals, and

(B) the condition of animals,

to ensure compliance with the provisions of this chapter to minimize pain and distress to animals. Exceptions to the requirement of inspection of such study areas may be made by the Secretary if animals are studied in their natural environment and the study area is prohibitive to easy access.

(4)(A) The Committee shall file an inspection certification report of each inspection at the research facility. Such report shall—

(i) be signed by a majority of the Committee members involved in the inspection;

(ii) include reports of any violation of the standards promulgated, or assurances required, by the Secretary, including any deficient conditions of animal care or treatment, any deviations of research practices from originally approved proposals that adversely affect animal welfare, any notification to the facility regarding such conditions, and any corrections made thereafter;

(iii) include any minority views of the Committee; and

(iv) include any other information pertinent to the activities of the Committee.

(B) Such report shall remain on file for at least three years at the research facility and shall be available for inspection by the Animal and Plant Health Inspection Service and any funding Federal agency.

(C) In order to give the research facility an opportunity to correct any deficiencies or deviations discovered by reason of paragraph (3), the Committee shall notify the administrative representative of the research facility of any deficiencies or deviations from the provisions of this chapter. If, after notification and an opportunity for correction, such deficiencies or deviations remain uncorrected, the Committee shall notify (in writing) the Animal and Plant Health Inspection Service and the funding Federal agency of such deficiencies or deviations.

(5) The inspection results shall be available to Department of Agriculture inspectors for review during inspections. Department of Agriculture inspectors shall forward any Committee inspection records which include reports of uncorrected deficiencies or deviations to the Animal and Plant Health Inspection Service and any funding Federal agency of the project with respect to which such uncorrected deficiencies and deviations occurred.

(c) Federal research facilities; establishment, composition, and responsibilities of Federal Committee

In the case of Federal research facilities, a Federal Committee shall be established and shall have the same composition and responsibilities provided in subsection (b) of this section, except that the Federal Committee shall report deficiencies or deviations to the head of the Federal agency conducting the research rather than to the Animal and Plant Health Inspection Service. The head of the Federal agency conducting the research shall be responsible for—

(1) all corrective action to be taken at the facility; and

(2) the granting of all exceptions to inspection protocol.

(d) Training of scientists, animal technicians, and other personnel involved with animal care and treatment at research facilities

Each research facility shall provide for the training of scientists, animal technicians, and other personnel involved with animal care and treatment in such facility as required by the Secretary. Such training shall include instruction on—

(1) the humane practice of animal maintenance and experimentation;

(2) research or testing methods that minimize or eliminate the use of animals or limit animal pain or distress;

(3) utilization of the information service at the National Agricultural Library, established under subsection (e) of this section; and

(4) methods whereby deficiencies in animal care and treatment should be reported.

(e) Establishment of information service at National Agricultural Library; service functions

The Secretary shall establish an information service at the National Agricultural Library. Such service shall, in cooperation with the National Library of Medicine, provide information—

(1) pertinent to employee training;

(2) which could prevent unintended duplication of animal experimentation as determined by the needs of the research facility; and

(3) on improved methods of animal experimentation, including methods which could—

(A) reduce or replace animal use; and

(B) minimize pain and distress to animals, such as anesthetic and analgesic procedures.

(f) [1] Suspension or revocation of Federal support for research projects; prerequisites; appeal procedure

In any case in which a Federal agency funding a research project determines that condi-

[1] So in original. There are two subsecs. designated "(f)".

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tions of animal care, treatment, or practice in a particular project have not been in compliance with standards promulgated under this chapter, despite notification by the Secretary or such Federal agency to the research facility and an opportunity for correction, such agency shall suspend or revoke Federal support for the project. Any research facility losing Federal support as a result of actions taken under the preceding sentence shall have the right of appeal as provided in sections 701 through 706 of title 5.

(f) [1] Veterinary certificate; contents; exceptions

No dogs or cats, or additional kinds or classes of animals designated by regulation of the Secretary, shall be delivered by any dealer, research facility, exhibitor, operator of an auction sale, or department, agency, or instrumentality of the United States or of any State or local government, to any intermediate handler or carrier for transportation in commerce, or received by any such handler or carrier for such transportation from any such person, department, agency, or instrumentality, unless the animal is accompanied by a certificate issued by a veterinarian licensed to practice veterinary medicine, certifying that he inspected the animal on a specified date, which shall not be more than ten days before such delivery, and, when so inspected, the animal appeared free of any infectious disease or physical abnormality which would endanger the animal or animals or other animals or endanger public health: *Provided, however,* That the Secretary may by regulation provide exceptions to this certification requirement, under such conditions as he may prescribe in the regulations, for animals shipped to research facilities for purposes of research, testing or experimentation requiring animals not eligible for such certification. Such certificates received by the intermediate handlers and the carriers shall be retained by them, as provided by regulations of the Secretary, in accordance with section 2140 of this title.

(g) Age of animals delivered to registered research facilities; power of Secretary to designate additional classes of animals and age limits

No dogs or cats, or additional kinds or classes of animals designated by regulation of the Secretary, shall be delivered by any person to any intermediate handler or carrier for transportation in commerce except to registered research facilities if they are less than such age as the Secretary may by regulation prescribe. The Secretary shall designate additional kinds and classes of animals and may prescribe different ages for particular kinds or classes of dogs, cats, or designated animals, for the purposes of this section, when he determines that such action is necessary or adequate to assure their humane treatment in connection with their transportation in commerce.

(h) Prohibition of C.O.D. arrangements for transportation of animals in commerce; exceptions

No intermediate handler or carrier involved in the transportation of any animal in commerce shall participate in any arrangement or engage in any practice under which the cost of such animal or the cost of the transportation of such animal is to be paid and collected upon delivery of the animal to the consignee, unless the consignor guarantees in writing the payment of transportation charges for any animal not claimed within a period of 48 hours after notice to the consignee of arrival of the animal, including, where necessary, both the return transportation charges and an amount sufficient to reimburse the carrier for all out-of-pocket expenses incurred for the care, feeding, and storage of such animals.

(As amended Pub. L. 99-198, title XVII, § 1752, Dec. 23, 1985, 99 Stat. 1645.)

[1] So in original. There are two subsecs. designated "(f)".

Amendments

1985—Subsec. (a)(1) to (3). Pub. L. 99-198, § 1752(a)(2), substituted pars. (1) to (3) for first two sentences of subsec. (a) which read as follows: "The Secretary shall promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors. Such standards shall include minimum requirements with respect to handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, including the appropriate use of anesthetic, analgesic or tranquilizing drugs, when such use would be proper in the opinion of the attending veterinarian of such research facilities, and separation by species when the Secretary finds such separation necessary for the humane handling, care, or treatment of animals."

Subsec. (a)(4) to (8). Pub. L. 99-198, § 1752(b), designated third and fourth sentences of subsec. (a) as par. (4), designated fifth sentence of subsec. (a) as par. (5), and substituted pars. (6) to (8) for last sentence of subsec. (a) which read as follows: "Nothing in this chapter shall be construed as authorizing the Secretary to promulgate rules, regulations, or orders with regard to design, outlines, guidelines, or performance of actual research or experimentation by a research facility as determined by such research facility: *Provided,* That the Secretary shall require, at least annually, every research facility to show that professionally acceptable standards governing the care, treatment, and use of animals, including appropriate use of anesthetic, analgesic, and tranquilizing drugs, during experimentation are being followed by the research facility during actual research or experimentation."

Subsecs. (b) to (h). Pub. L. 99-198, § 1752(a)(1), (c), added subsecs. (b) to (f) and redesignated existing subsecs. (b) to (d) as (f) to (h), respectively.

Effective Date of 1985 Amendment

Amendment by Pub. L. 99-198 effective one year after Dec. 23, 1985, see section 1759 of Pub. L. 99-198, set out as a note under section 2131 of this title.

Section Referred to in Other Sections

This section is referred to in sections 2132, 2133, 2144, 2145, 2154, 2155 of this title.

§ 2144. Humane standards for animals by United States Government facilities

Any department, agency, or instrumentality of the United States having laboratory animal facilities shall comply with the standards and other requirements promulgated by the Secretary for a research facility under sections [1]

[1] So in original. Probably should be "section".

2143(a), (f), (g), and (h) of this title. Any department, agency, or instrumentality of the United States exhibiting animals shall comply with the standards promulgated by the Secretary under sections [5] 2143(a), (f), (g), and (h) of this title.

(As amended Pub. L. 99-198, title XVII, § 1758, Dec. 23, 1985, 99 Stat. 1650.)

AMENDMENTS

1985—Pub. L. 99-198 substituted "sections 2143(a), (f), (g), and (h) of this title" for "section 2143 of this title" in two places.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective one year after Dec. 23, 1985, see section 1759 of Pub. L. 99-198, set out as a note under section 2131 of this title.

§ 2145. Consultation and cooperation with Federal, State, and local governmental bodies by Secretary of Agriculture

(a) The Secretary shall consult and cooperate with other Federal departments, agencies, or instrumentalities concerned with the welfare of animals used for research, experimentation or exhibition, or administration of statutes regulating the transportation in commerce or handling in connection therewith of any animals when establishing standards pursuant to section 2143 of this title and in carrying out the purposes of this chapter. The Secretary shall consult with the Secretary of Health and Human Services prior to issuance of regulations. Before promulgating any standard governing the air transportation and handling in connection therewith, of animals, the Secretary shall consult with the Secretary of Transportation who shall have the authority to disapprove any such standard if he notifies the Secretary, within 30 days after such consultation, that changes in its provisions are necessary in the interest of flight safety. The Interstate Commerce Commission, the Secretary of Transportation, and the Federal Maritime Commission, to the extent of their respective lawful authorities, shall take such action as is appropriate to implement any standard established by the Secretary with respect to a person subject to regulation by it.

[See main edition for text of (b)]

(As amended Pub. L. 98-443, § 9(i), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 99-198, title XVII, § 1757, Dec. 23, 1985, 99 Stat. 1650.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198 added provision requiring that the Secretary consult with the Secretary of Health and Human Services prior to the issuance of regulations.

1984—Subsec. (a). Pub. L. 98-443 substituted "the Secretary of Transportation" for "the Civil Aeronautics Board".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective one year after Dec. 23, 1985, see section 1759 of Pub. L. 99-198, set out as a note under section 2131 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board under this chapter were transferred to the Secretary of Transportation by section 1553(a)(3) of Title 49, Appendix, Transportation, effective Jan. 1, 1985.

§ 2146. Administration and enforcement by Secretary

(a) Investigations and inspections

The Secretary shall make such investigations or inspections as he deems necessary to determine whether any dealer, exhibitor, intermediate handler, carrier, research facility, or operator of an auction sale subject to section 2142 of this title, has violated or is violating any provision of this chapter or any regulation or standard issued thereunder, and for such purposes, the Secretary shall, at all reasonable times, have access to the places of business and the facilities, animals, and those records required to be kept pursuant to section 2140 of this title of any such dealer, exhibitor, intermediate handler, carrier, research facility, or operator of an auction sale. The Secretary shall inspect each research facility at least once each year and, in the case of deficiencies or deviations from the standards promulgated under this chapter, shall conduct such follow-up inspections as may be necessary until all deficiencies or deviations from such standards are corrected. The Secretary shall promulgate such rules and regulations as he deems necessary to permit inspectors to confiscate or destroy in a humane manner any animal found to be suffering as a result of a failure to comply with any provision of this chapter or any regulation or standard issued thereunder if (1) such animal is held by a dealer, (2) such animal is held by an exhibitor, (3) such animal is held by a research facility and is no longer required by such research facility to carry out the research, test, or experiment for which such animal has been utilized, (4) such animal is held by an operator of an auction sale, or (5) such animal is held by an intermediate handler or a carrier.

[See main edition for text of (b) and (c)]

(As amended Pub. L. 99-198, title XVII, § 1753, Dec. 23, 1985, 99 Stat. 1649.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198 added provision directing that the Secretary inspect each research facility at least once each year and, in the case of deficiencies or deviations from the standards promulgated under this chapter, conduct such follow-up inspections as may be necessary until all deficiencies or deviations from such standards are corrected.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective one year after Dec. 23, 1985, see section 1759 of Pub. L. 99-198, set out as a note under section 2131 of this title.

§ 2149. Violations by licensees

[See main edition for text of (a)]

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(b) Civil penalties for violation of any section, etc.; separate offenses; notice and hearing; appeal; considerations in assessing penalty; compromise of penalty; civil action by Attorney General for failure to pay penalty; district court jurisdiction; failure to obey cease and desist order

Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, that violates any provision of this chapter, or any rule, regulation, or standard promulgated by the Secretary thereunder, may be assessed a civil penalty by the Secretary of not more than $2,500 for each such violation, and the Secretary may also make an order that such person shall cease and desist from continuing such violation. Each violation and each day during which a violation continues shall be a separate offense. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing with respect to the alleged violation, and the order of the Secretary assessing a penalty and making a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States Court of Appeals. The Secretary shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person involved, the gravity of the violation, the person's good faith, and the history of previous violations. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed by a final order under this section, the Secretary shall request the Attorney General to institute a civil action in a district court of the United States or other United States court for any district in which such person is found or resides or transacts business, to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. Any person who knowingly fails to obey a cease and desist order made by the Secretary under this section shall be subject to a civil penalty of $1,500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

[*See main edition for text of* (c)]

(d) Criminal penalties for violation; initial prosecution brought before United States magistrates; conduct of prosecution by attorneys of United States Department of Agriculture

Any dealer, exhibitor, or operator of an auction sale subject to section 2142 of this title, who knowingly violates any provision of this chapter shall, on conviction thereof, be subject to imprisonment for not more than 1 year, or a fine of not more than $2,500, or both. Prosecution of such violations shall, to the maximum extent practicable, be brought initially before United States magistrates as provided in section 636 of title 28, and sections 3401 and 3402 of title 18, and, with the consent of the Attorney General, may be conducted, at both trial and upon appeal to district court, by attorneys of the United States Department of Agriculture.

(As amended Pub. L. 99-198, title XVII, § 1755, Dec. 23, 1985, 99 Stat. 1650.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-198, § 1755(a), substituted "$2,500 for each such violation" for "$1,000 for each such violation" in first sentence, and substituted "$1,500 for each offense" for "$500 for each offense" in sixth sentence.

Subsec. (d). Pub. L. 99-198, § 1755(b), substituted "$2,500" for "$1,000".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective one year after Dec. 23, 1985, see section 1759 of Pub. L. 99-198, set out as a note under section 2131 of this title.

§ 2154. Effective dates

REFERENCES IN TEXT

Subsections (b), (c), and (d) of section 2143 of this title, referred to in text, were redesignated subsecs. (f), (g), and (h), respectively, and new subsecs. (b), (c), and (d) of section 2143 were enacted, by Pub. L. 99-198, title XVII, § 1752(a)(1), (c), Dec. 23, 1985, 99 Stat. 1645, 1647.

§ 2157. Release of trade secrets

(a) Release of confidential information prohibited

It shall be unlawful for any member of an Institutional Animal Committee to release any confidential information of the research facility including any information that concerns or relates to—

(1) the trade secrets, processes, operations, style of work, or apparatus; or

(2) the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures,

of the research facility.

(b) Wrongful use of confidential information prohibited

It shall be unlawful for any member of such Committee—

(1) to use or attempt to use to his advantages; or

(2) to reveal to any other person,

any information which is entitled to protection as confidential information under subsection (a) of this section.

(c) Penalties

A violation of subsection (a) or (b) of this section is punishable by—

(1) removal from such Committee; and

(2)(A) a fine of not more than $1,000 and imprisonment of not more than one year; or

(B) if such violation is willful, a fine of not more than $10,000 and imprisonment of not more than three years.

(d) Recovery of damages by injured person; costs; attorney's fee

Any person, including any research facility, injured in its business or property by reason of a violation of this section may recover all actual and consequential damages sustained by such person and the cost of the suit including a reasonable attorney's fee.

(e) Other rights and remedies

Nothing in this section shall be construed to affect any other rights of a person injured in its business or property by reason of a violation

of this section. Subsection (d) of this section shall not be construed to limit the exercise of any such rights arising out of or relating to a violation of subsections (a) and (b) of this section.

(Pub. L. 89-544, § 27, as added Pub. L. 99-198, title XVII, § 1754, Dec. 23, 1985, 99 Stat. 1649.)

EFFECTIVE DATE

Section effective one year after Dec. 23, 1985, see section 1759 of Pub. L. 99-198, set out as an Effective Date of 1985 Amendment note under section 2131 of this title.

CHAPTER 55—DEPARTMENT OF AGRICULTURE

Sec.
2275. Trade consultations.
2276. Confidentiality of information.
(a) Authorized disclosure.
(b) Duty of Secretary; immunity from disclosure; necessary consent.
(c) Violations; penalties.
(d) Specific provisions for collection of information.

§ 2204. General duties of Secretary; advisory functions; research and development

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2276 of this title.

§ 2242a. User fees for reports, publications, and software

(a) Authority of Secretary

The Secretary of Agriculture may—

(1) furnish, on request, copies of software programs, pamphlets, reports, or other publications, regardless of their form, including electronic publications, prepared in the Department of Agriculture in carrying out any of its missions or programs; and

(2) charge such fees therefor as the Secretary determines are reasonable.

(b) Consistency of charges with provisions of section 9701 of title 31

The imposition of such charges shall be consistent with section 9701 of title 31.

(c) Use and disposition of moneys

All moneys received in payment for work or services performed, or for software programs, pamphlets, reports, or other publications provided, under this section—

(1) shall be available until expended to pay directly the costs of such work, services, software programs, pamphlets, reports, or publications; and

(2) may be credited to appropriations or funds that incur such costs.

(As amended Pub. L. 99-198, title XVII, § 1769, Dec. 23, 1985, 99 Stat. 1656.)

AMENDMENTS

1985—Pub. L. 99-198, in amending section generally, divided existing provisions into subsecs. (a), (b), and (c) and inserted references to software programs and electronic publications.

§ 2248. Statistics relating to turpentine and rosin

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2276 of this title.

§ 2266. Congressional reaffirmation of policy to foster and encourage family farms; annual report to Congress

[*See main edition for text of* (a)]

(b)(1) In order that Congress may be better informed regarding the status of the family farm system of agriculture in the United States, the Secretary of Agriculture shall submit to Congress, by July 1 of each year, a written report containing current information on trends in family farm operations and comprehensive national and State-by-State data on nonfamily farm operations in the United States.

(2) The Secretary shall also include in each such report—

(A) information on how existing agricultural and agriculture-related programs are being administered to enhance and strengthen the family farm system of agriculture in the United States;

(B) an assessment of how tax, credit, and other current Federal income, excise, estate, and other tax laws, and proposed changes in such laws, may affect the structure and organization of, returns to, and investment opportunities by family and nonfamily farm owners and operators, both foreign and domestic;

(C) identification and analysis of new food and agricultural production and processing technological developments, especially in the area of biotechnology, and evaluation of the potential effect of such developments on—

(i) the economic structure of the family farm system;

(ii) the competitive status of domestically-produced agricultural commodities and foods in foreign markets; and

(iii) the achievement of Federal agricultural program objectives;

(D) an assessment of the credit needs of family farms and the extent to which those needs are being met, and an analysis of the effects of the farm credit situation on the economic structure of the family farm system;

(E) an assessment of how economic policies and trade policies of the United States affect the financial operation of, and prospects for, family farm operations;

(F) an assessment of the effect of Federal farm programs and policies on family farms and non-family farms that—

(i) derive the majority of their income from non-farm sources; and

(ii) derive the majority of their income from farming operations; and

(G) such other information as the Secretary considers appropriate or determines would aid Congress in protecting, preserving, and strengthening the family farm system of agriculture in the United States.

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(As amended Pub. L. 99-198, title XIV, § 1441, Dec. 23, 1985, 99 Stat. 1560.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-198 designated first and second sentences as pars. (1) and (2), respectively, and amended par. (2), as so designated, generally. Prior to redesignation and amendment, the second sentence read as follows: "The Secretary shall also include in each such report (1) information on how existing agricultural and agriculture-related programs are being administered to enhance and strengthen the family farm system of agriculture in the United States, (2) an assessment of how tax, credit, and other Federal laws may encourage the growth of nonfamily farm operations and investment in agriculture by nonfamily farm interests, both foreign and domestic, and (3) such other information as the Secretary deems appropriate or determines would aid Congress in protecting, preserving, and strengthening the family farm system of agriculture in the United States."

§ 2267. Emergency feed program

[*See main edition for text of* (a)]

(b) Conditions

The Secretary shall not provide assistance under this section to any person unless all of the following conditions created by the emergency are present:

[*See main edition for text of* (1)]

(2) The person does not have sufficient feed that has adequate nutritive value and is suitable for each of such person's respective particular types of livestock or poultry for the estimated period of the emergency; and

[*See main edition for text of* (3); (c) *to* (g)]

(As amended Pub. L. 99-198, title XVII, § 1763(a), Dec. 23, 1985, 99 Stat. 1651.)

AMENDMENTS

1985—Subsec. (b)(2). Pub. L. 99-198 substituted "feed that has adequate nutritive value and is suitable for each of such person's respective particular types of livestock" for "feed for such person's livestock".

§ 2275. Trade consultations

(a) The Secretary of Agriculture shall require consultation between the Administrator of the Foreign Agricultural Service and the heads of other appropriate agencies and offices of the Department of Agriculture, including the Administrator of the Animal and Plant Health Inspection Service, before relaxing or removing any restriction on the importation of any agricultural commodity or a product thereof into the United States.

(b) The Secretary shall consult with the United States Trade Representative before relaxing or removing any restriction on the importation of any agricultural commodity or a product thereof into the United States.

Pub. L. 99-198, title XI, § 1151, Dec. 23, 1985, 99 Stat. 1497.)

§ 2276. Confidentiality of information

(a) Authorized disclosure

In the case of information furnished under a provision of law referred to in subsection (d) of this section, neither the Secretary of Agriculture, any other officer or employee of the Department of Agriculture or agency thereof, nor any other person may—

(1) use such information for a purpose other than the development or reporting of aggregate data in a manner such that the identity of the person who supplied such information is not discernible and is not material to the intended uses of such information; or

(2) disclose such information to the public, unless such information has been transformed into a statistical or aggregate form that does not allow the identification of the person who supplied particular information.

(b) Duty of Secretary; immunity from disclosure; necessary consent

(1) In carrying out a provision of law referred to in subsection (d) of this section, no department, agency, officer, or employee of the Federal Government, other than the Secretary of Agriculture, shall require a person to furnish a copy of statistical information provided to the Department of Agriculture.

(2) A copy of such information—

(A) shall be immune from mandatory disclosure of any type, including legal process; and

(B) shall not, without the consent of such person, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding.

(c) Violations; penalties

Any person who shall publish, cause to be published, or otherwise publicly release information collected pursuant to a provision of law referred to in subsection (d) of this section, in any manner or for any purpose prohibited in section [1] (a) of this section, shall be fined not more than $10,000 or imprisoned for not more than 1 year, or both.

(d) Specific provisions for collection of information

For purposes of this section, a provision of law referred to in this subsection means—

(1) the first section of the Act entitled "An Act authorizing the Secretary of Agriculture to collect and publish statistics of the grade and staple length of cotton", approved March 3, 1927 (7 U.S.C. 471) (commonly referred to as the "Cotton Statistics and Estimates Act");

(2) the first section of the Act entitled "An Act to provide for the collection and publication of statistics of tobacco by the Department of Agriculture", approved January 14, 1929 (7 U.S.C. 501);

(3) the first section of the Act entitled "An Act to provide for the collection and publication of statistics of peanuts by the Department of Agriculture", approved June 24, 1936 (7 U.S.C. 951);

(4) section 203(g) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(g));

(5) section 526(a) of the Revised Statutes (7 U.S.C. 2204(a));

(6) the Act entitled "An Act providing for the publication of statistics relating to spirits

[1] So in original. Probably should be "subsection".

of turpentine and resin", approved August 15, 1935 (7 U.S.C. 2248);

(7) section 42 of title 13;

(8) section 4 of the Act entitled "An Act to establish the Department of Commerce and Labor", approved February 14, 1903 (15 U.S.C. 1516); or

(9) section 2 of the joint resolution entitled "Joint resolution relating to the publication of economic and social statistics for Americans of Spanish origin or descent", approved June 16, 1976 (15 U.S.C. 1516a).

(Pub. L. 99-198, title XVII, § 1770, Dec. 23, 1985, 99 Stat. 1657.)

CHAPTER 55A—DEPARTMENT OF AGRICULTURE ADVISORY COMMITTEES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 4501, 3122, 3152 of this title; title 19 section 2155.

§ 2281. Congressional declaration of purpose

SOYBEAN RESEARCH ADVISORY INSTITUTE; ESTABLISHMENT, COMPOSITION, ETC.

Section 1446 of Pub. L. 97-98, which had provided for the establishment of a Soybean Research Advisory Institute for the purpose of preparing and submitting to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture, not later than March 1, 1983, a comprehensive report, with appropriate recommendations, on the findings of the Institute regarding research on soybean production and utilization, was repealed by Pub. L. 99-198, title XIV, § 1434, Dec. 23, 1985, 99 Stat. 1557.

CHAPTER 57—PLANT VARIETY PROTECTION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1562, 1611 of this title; title 35 section 201.

SUBCHAPTER II—PROTECTABILITY OF PLANT VARIETIES AND CERTIFICATES OF PROTECTION

PART D—PROTECTABILITY OF PLANT VARIETIES

§ 2401. Definitions and rules of construction

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 35 section 201.

PART G—APPEALS TO COURTS AND OTHER REVIEW

§ 2461. Appeals

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2404, 2463, 2568 of this title; title 28 section 1295.

CHAPTER 58—POTATO RESEARCH AND PROMOTION

§ 2617. Required terms and conditions of plans

Any plan issued pursuant to this chapter shall contain the following terms and conditions:

[*See main edition for text of* (a)]

(b) Membership of board

Providing that the board shall be composed of representatives of producers and the public appointed by the Secretary from nominations submitted in accordance with this subsection. Representatives of producers shall be nominated by producers in such manner as may be prescribed by the Secretary. Public representatives shall be nominated by the board in such manner as may be prescribed by the Secretary. If producers fail to select nominees for appointment to the board, or the board fails to nominate public representatives, the Secretary may appoint persons on the basis of representation as provided for in such plan. The requirement for inclusion of public representatives on the board shall not be subject to producer approval in a referendum.

[*See main edition for text of* (c) *and* (d)]

(e) Assessment rate per poundage handled; limitation

Providing that the board shall recommend to the Secretary and the Secretary shall fix the assessment rate at not more than one cent per one hundred pounds of potatoes handled; except that if approved by producers pursuant to section 2623 of this title, the rate of assessment shall not exceed one-half of 1 per centum of the immediate past ten-calendar-year United States average price received for potatoes by growers as reported by the Department of Agriculture.

(f) Restrictions

Providing that—

(1) funds collected by the board shall be used for research, development, advertising, or promotion of potatoes and potato products and such other expenses for the administration, maintenance, and functioning of the board, as may be authorized by the Secretary, including any referendum and administrative costs incurred by the Department of Agriculture under this chapter: *Provided,* That the provision for payment to the Department of Agriculture for any referendum and administrative costs so incurred shall not be subject to producer approval in a referendum;

[*See main edition for text of* (2) *and* (3); (g) *to* (j)]

(As amended Pub. L. 98-171, § 2(a), Nov. 29, 1983, 97 Stat. 1117.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-171, § 2(a)(1), inserted "The requirement for inclusion of public representatives on the board shall not be subject to producer approval in a referendum.".

Subsec. (e). Pub. L. 98-171, § 2(a)(2), amended subsec. (e) generally, substituting requirement that the Secretary fix "the assessment rate at not more than one cent per one hundred pounds of potatoes handled" for "the assessment rate required for such costs as may be incurred under subsection (d) of this section, including any referendum and administrative costs estimated to be incurred by the United States Department of Agriculture under this chapter" and provision "except that if approved by producers pursuant to section 2623 of this title, the rate of assessment shall not exceed" for "*Provided,* That the rate of assessment for fiscal year 1982 and each fiscal year thereafter shall not exceed".

Subsec. (f)(1). Pub. L. 98-171, § 2(a)(3), inserted "*Provided,* That the provision for payment to the De-

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partment of Agriculture for any referendum and administrative costs so incurred shall not be subject to producer approval in a referendum".

§ 2623. Referendum

CONSTRUCTION OF 1982 REFERENDUM ON AMENDMENTS TO PLAN

Pub. L. 98-171, § 2(b), Nov. 29, 1983, 97 Stat. 1118, provided that: "The failure of potato producers in December 1982 to approve amendments to the plan issued under this title [probably means title III of Pub. L. 91-670 which is classified to this chapter] shall not be deemed to invalidate the plan."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2617 of this title.

CHAPTER 59—RURAL FIRE PROTECTION, DEVELOPMENT, AND SMALL FARM RESEARCH AND EDUCATION

SUBCHAPTER II—RURAL DEVELOPMENT AND SMALL FARM RESEARCH AND EDUCATION

§ 2662. Programs authorized

The Secretary of Agriculture may conduct, in cooperation and coordination with colleges and universities, the following programs to carry out the purposes and achieve the goals of this subchapter.

[*See main edition for text of* (a) *to* (e)]

(f) Special grants for financially stressed and dislocated farmers

(1)(A) The Secretary shall provide special grants for programs to develop income alternatives for farmers who have been adversely affected by the current farm and rural economic crisis and those displaced from farming.

(B) Such programs shall consist of educational and counseling services to farmers to—

(i) assess human and nonhuman resources;

(ii) assess income earning alternatives;

(iii) identify resources and opportunities available to the farmer in the local community, county, and State;

(iv) implement financial planning and management strategies; and

(v) provide linkages to specific resources and opportunities that are available to the farmer, such as reentering agriculture, new business opportunities, other off-farm jobs, job search programs, and retraining skills.

(C) The Secretary also may provide support to mental health officials in developing outreach programs in rural areas.

(2) Grants may be made under paragraph (1) during the period beginning on December 23, 1985, and ending 3 years after such date.

(As amended Pub. L. 99-198, title XIV, § 1440(a), Dec. 23, 1985, 99 Stat. 1560.)

AMENDMENTS

1985—Subsec. (f). Pub. L. 99-198 added subsec. (f).

§ 2663. Funding

[*See main edition for text of* (a) *and* (b)]

(c) Additional distributions

Such sums as are appropriated to carry out the provisions of section 2662(e) and section 2662(f) of this title shall be distributed by the Secretary to colleges and universities, on a competitive or matching fund basis, according to the Secretary's determination of the projects and manner of funding that show the most promise of fulfilling the objectives of section 2662(e) and section 2662(f) of this title.

[*See main edition for text of* (d) *to* (g)]

(As amended Pub. L. 99-198, title XIV, § 1440(b), Dec. 23, 1985, 99 Stat. 1560.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-198 inserted references to section 2662(f) of this title.

CHAPTER 62—BEEF RESEARCH AND INFORMATION

Sec.

2901. Congressional findings and declaration of policy.
2902. Definitions.
2903. Issuance of orders.
2904. Required terms in orders.
2905. Certification of organizations to nominate.
(a) Eligibility of State organization certified by Secretary; eligibility criteria.
(b) State cattle association or State general farm organization.
(c) Factual report basis for certification of State cattle association and State general farm association.
(d) Certification of more than one State organization; caucus.
2906. Requirement of referendum.
(a) Continuation or termination of order.
(b) Additional referendum to determine suspension or termination of order.
(c) Reimbursement for cost of referendum; time and place of referendum; certification by producers; absentee mail ballot.
2907. Refunds.
(a) Establishment of escrow account.
(b) Funding escrow account.
(c) Demand and receipt of one-time refund.
(d) Form and time period for demand for one-time refund.
(e) Submission of proof for one-time refund.
(f) Insufficiency of funds in escrow account; proration of funds among eligible persons.
2908. Enforcement.
(a) Restraining order; civil penalty.
(b) Jurisdiction of district court.
(c) Civil action to be referred to Attorney General.
2909. Investigations by Secretary; oaths and affirmations; subpenas; judicial enforcement; contempt proceedings; service of process.
2910. Preemption of other Federal and State programs; applicability of provisions to amendments to orders.
2911. Authorization of appropriations.
2912 to 2918. Omitted.

§ 2901. Congressional findings and declaration of policy

(a) Congress finds that—

(1) beef and beef products are basic foods that are a valuable part of human diet;

(2) the production of beef and beef products plays a significant role in the Nation's economy, beef and beef products are produced by thousands of beef producers and processed by numerous processing entities, and beef and beef products are consumed by millions of people throughout the United States and foreign countries;

(3) beef and beef products should be readily available and marketed efficiently to ensure that the people of the United States receive adequate nourishment;

(4) the maintenance and expansion of existing markets for beef and beef products are vital to the welfare of beef producers and those concerned with marketing, using, and producing beef products, as well as to the general economy of the Nation;

(5) there exist established State and national organizations conducting beef promotion, research, and consumer education programs that are invaluable to the efforts of promoting the consumption of beef and beef products; and

(6) beef and beef products move in interstate and foreign commerce, and beef and beef products that do not move in such channels of commerce directly burden or affect interstate commerce of beef and beef products.

(b) It, therefore, is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided herein, of an orderly procedure for financing (through assessments on all cattle sold in the United States and on cattle, beef, and beef products imported into the United States) and carrying out a coordinated program of promotion and research designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products. Nothing in this chapter shall be construed to limit the right of individual producers to raise cattle.

(As amended Pub. L. 99-198, title XVI, § 1601(b), Dec. 23, 1985, 99 Stat. 1597.)

AMENDMENTS

1985—Pub. L. 99-198 amended section generally.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1601(c) of Pub. L. 99-198 provided that: "The amendments made by this section [amending sections 2901 to 2911 of this title, omitting sections 2912 to 2918 of this title and provisions set out as a note under this section, and enacting provisions set out as a note under this section] shall take effect on January 1, 1986."

SHORT TITLE OF 1985 AMENDMENT

Section 1601(a) of Pub. L. 99-198 provided that: "This section [amending sections 2901 to 2911 of this title, omitting sections 2912 to 2918 of this title and provisions set out as a note under this section, and enacting provisions set out as a note under this section] may be cited as the 'Beef Promotion and Research Act of 1985'."

SEPARABILITY OF PROVISIONS

Section 19 of Pub. L. 94-294, which provided that if any provision of this Act [enacting this chapter and provisions set out as notes under this section] or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby, was omitted in the general revision of sections 2 through 20 of Pub. L. 94-294 by Pub. L. 99-198, title XVI, § 1601(b), Dec. 28, 1985, 99 Stat. 1597.

§ 2902. Definitions

For purposes of this chapter—

(1) the term "beef" means flesh of cattle;

(2) the term "beef products" means edible products produced in whole or in part from beef, exclusive of milk and products made therefrom;

(3) the term "Board" means the Cattlemen's Beef Promotion and Research Board established under section 2904(1) of this title;

(4) the term "cattle" means live domesticated bovine animals regardless of age;

(5) the term "Committee" means the Beef Promotion Operating Committee established under section 2904(5) of this title;

(6) the term "consumer information" means nutritional data and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of beef and beef products;

(7) the term "Department" means the Department of Agriculture.[1]

(8) the term "importer" means any person who imports cattle, beef, or beef products from outside the United States;

(9) the term "industry information" means information and programs that will lead to the development of new markets, marketing strategies, increased efficiency, and activities to enhance the image of the cattle industry;

(10) The [2] term "order" means a beef promotion and research order issued under section 2903 of this title.[1]

(11) the term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity;

(12) the term "producer" means any person who owns or acquires ownership of cattle, except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee;

(13) the term "promotion" means any action, including paid advertising, to advance the image and desirability of beef and beef products with the express intent of improving the competitive position and stimulating sales of beef and beef products in the marketplace;

(14) the term "qualified State beef council" means a beef promotion entity that is author-

[1] So in original. The period probably should be a semicolon.

[2] So in original. Probably should not be capitalized.

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ized by State statute or is organized and operating within a State, that receives voluntary contributions and conducts beef promotion, research, and consumer information programs, and that is recognized by the Board as the beef promotion entity within such State;

(15) the term "research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of beef and beef products, other related food science research, and new product development;

(16) the term "Secretary" means the Secretary of Agriculture;

(17) The [3] term "State" means each of the 50 States; and

(18) the term "United States" means the several States and the District of Columbia.

(As amended Pub. L. 99-198, title XVI, § 1601(b), Dec. 23, 1985, 99 Stat. 1598.)

AMENDMENTS

1985—Pub. L. 99-198 amended section generally.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective Jan. 1, 1986, see section 1601(c) of Pub. L. 99-198, set out as a note under section 2901 of this title.

§ 2903. Issuance of orders

(a) During the period beginning on January 1, 1986, and ending thirty days after receipt of a proposal for a beef promotion and research order, the Secretary shall publish such proposed order and give due notice and opportunity for public comment on such proposed order. Such proposal may be submitted by any organization meeting the requirements for certification under section 2905 of this title or any interested person, including the Secretary.

(b) After notice and opportunity for public comment are given, as provided for in subsection (a) of this section, the Secretary shall issue a beef promotion and research order. The order shall become effective not later than one hundred and twenty days following publication of the proposed order.

(As amended Pub. L. 99-198, title XVI, § 1601(b), Dec. 23, 1985, 99 Stat. 1599.)

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, substituting provisions relating to issuance of orders for provisions relating to orders of Secretary to producers and slaughterers.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective Jan. 1, 1986, see section 1601(c) of Pub. L. 99-198, set out as a note under section 2901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2902, 2904, 2911 of this title.

§ 2904. Required terms in orders

An order issued under section 2903(b) of this title shall contain the following terms and conditions:

(1) The order shall provide for the establishment and selection of a Cattlemen's Beef Promotion and Research Board. Members of the Board shall be cattle producers and importers appointed by the Secretary from (A) nominations submitted by eligible State organizations certified under section 2905 of this title (or, if the Secretary determines that there is no eligible State organization in a State, the Secretary may provide for nominations from such State to be made in a different manner), and (B) nominations submitted by importers under such procedures as the Secretary determines appropriate. In determining geographic representation for cattle producers on the Board, whole States shall be considered as a unit. Each State that has a total cattle inventory greater than five hundred thousand head shall be entitled to at least one representative on the Board. A State that has a total inventory of fewer than 500,000 cattle shall be grouped, as far as practicable, with other States each of which has a combined total inventory of not less than 500,000 cattle, into geographically contiguous units in a manner prescribed in the order. A unit may be represented on the Board by more than one member. For each additional million head of cattle within a unit, such unit shall be entitled to an additional member on the Board. The Board may recommend a change in the level of inventory per unit necessary for representation on the Board and, on such recommendation, the Secretary may change the level necessary for representation on the Board. The number of members on the Board that represent importers shall be determined by the Secretary on a proportional basis, by converting the volume of imported beef and beef products into live animal equivalencies.

(2) The order shall define the powers and duties of the Board, which shall be exercised at an annual meeting, and shall include only the following powers:

(A) To administer the order in accordance with its terms and provisions.

(B) To make rules and regulations to effectuate the terms and provisions of the order.

(C) To elect members of the Board to serve on the Committee.

(D) To approve or disapprove budgets submitted by the Committee.

(E) To receive, investigate, and report to the Secretary complaints of violations of the order.

(F) To recommend to the Secretary amendments to the order.

In addition, the order shall determine the circumstances under which special meetings of the Board may be held.

(3) The order shall provide that the term of appointment to the Board shall be three years with no member serving more than two consecutive terms, except that initial appointments shall be proportionately for one-year, two-year, and three-year terms; and that Board members shall serve without compensation, but shall be reimbursed for their rea-

[3] So in original. Probably should not be capitalized.

sonable expenses incurred in performing their duties as members of the Board.

(4)(A) The order shall provide that the Board shall elect from its membership ten members to serve on the Beef Promotion Operating Committee, which shall be composed of ten members of the Board and ten producers elected by a federation that includes as members the qualified State beef councils. The producers elected by the federation shall be certified by the Secretary as producers that are directors of a qualified State beef council. The Secretary also shall certify that such directors are duly elected by the federation as representatives to the Committee.

(B) The Committee shall develop plans or projects of promotion and advertising, research, consumer information, and industry information, which shall be paid for with assessments collected by the Board. In developing plans or projects, the Committee shall—

(i) to the extent practicable, take into account similarities and differences between certain beef, beef products, and veal; and

(ii) ensure that segments of the beef industry that enjoy a unique consumer identity receive equitable and fair treatment under this chapter.

(C) The Committee shall be responsible for developing and submitting to the Board, for its approval, budgets on a fiscal year basis of its anticipated expenses and disbursements, including probable costs of advertising and promotion, research, consumer information, and industry information projects. The Board shall approve or disapprove such budgets and, if approved, shall submit such budget to the Secretary for the Secretary's approval.

(D) The total costs of collection of assessments and administrative staff incurred by the Board during any fiscal year shall not exceed 5 per centum of the projected total assessments to be collected by the Board for such fiscal year. The Board shall use, to the extent possible, the resources, staffs, and facilities of existing organizations.

(5) The order shall provide that terms of appointment to the Committee shall be one year, and that no person may serve on the Committee for more than six consecutive terms. Committee members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Committee. The Committee may utilize the resources, staffs, and facilities of the Board and industry organizations. An employee of an industry organization may not receive compensation for work performed for the Committee, but shall be reimbursed from assessments collected by the Board for reasonable expenses incurred in performing such work.

(6) The order shall provide that, to ensure coordination and efficient use of funds, the Committee shall enter into contracts or agreements for implementing and carrying out the activities authorized by this chapter with established national nonprofit industry-governed organizations, including the federation referred to in paragraph (4), to implement programs of promotion, research, consumer information, and industry information. Any such contract or agreement shall provide that—

(A) the person entering the contract or agreement shall develop and submit to the Committee a plan or project together with a budget or budgets that shows estimated costs to be incurred for the plan or project;

(B) the plan or project shall become effective on the approval of the Secretary; and

(C) the person entering the contract or agreement shall keep accurate records of all of its transactions, account for funds received and expended, and make periodic reports to the Committee of activities conducted, and such other reports as the Secretary, the Board, or the Committee may require.

(7) The order shall require the Board and the Committee to—

(A) maintain such books and records, which shall be available to the Secretary for inspection and audit, as the Secretary may prescribe;

(B) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and

(C) account for the receipt and disbursement of all funds entrusted to them.

(8)(A) The order shall provide that each person making payment to a producer for cattle purchased from the producer shall, in the manner prescribed by the order, collect an assessment and remit the assessment to the Board. The Board shall use qualified State beef councils to collect such assessments.

(B) If an appropriate qualified State beef council does not exist to collect an assessment in accordance with paragraph (1), such assessment shall be collected by the Board.

(C) The order also shall provide that each importer of cattle, beef, or beef products shall pay an assessment, in the manner prescribed by the order, to the Board. The assessments shall be used for payment of the costs of plans and projects, as provided for in paragraph (4), and expenses in administering the order, including more administrative costs incurred by the Secretary after the order has been promulgated under this chapter, and to establish a reasonable reserve. The rate of assessment prescribed by the order shall be one dollar per head of cattle, or the equivalent thereof in the case of imported beef and beef products. A producer who can establish that the producer is participating in a program of an established qualified State beef council shall receive credit, in determining the assessment due from such producer, for contributions to such program of up to 50 cents per head of cattle or the equivalent thereof. There shall be only one qualified State beef council in each State. Any person marketing from [4] beef from cattle of the person's own

[4] So in original. The word "from" probably should not appear.

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production shall remit the assessment to the Board in the manner prescribed by the order.

(9) The order shall provide that the Board, with the approval of the Secretary, may invest, pending disbursement, funds collected through assessments only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

(10) The order shall prohibit any funds collected by the Board under the order from being used in any manner for the purpose of influencing governmental action or policy, with the exception of recommending amendments to the order.

(11) The order shall require that each person making payment to a producer, any person marketing beef from cattle of the person's own production directly to consumers, and any importer of cattle, beef, or beef products maintain and make available for inspection such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order. Such information shall be made available to the Secretary as is appropriate to the administration or enforcement of this chapter, the order, or any regulation issued under this chapter. In addition, the Secretary shall authorize the use of information regarding persons paying producers that is accumulated under a law or regulation other than this chapter or regulations under this chapter.

All information so obtained shall be kept confidential by all officers and employees of the Department, and only such information so obtained as the Secretary deems relevant may be disclosed by them and then only in a suit or administrative hearing brought at the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the order. Nothing in this paragraph may be deemed to prohibit—

(A) the issuance of general statements, based on the reports, of the number of persons subject to the order or statistical data collected therefrom, which statements do not identify the information furnished by any person; or

(B) the publication, by direction of the Secretary, of the name of any person violating the order, together with a statement of the particular provisions of the order violated by the person.

No information obtained under the authority of this chapter may be made available to any agency or officer of the United States for any purpose other than the implementation of this chapter and any investigatory or enforcement act necessary for the implementation of this chapter. Any person violating the provisions of this paragraph shall be subject to a fine of not more than $1,000, or to imprisonment for not more than one year, or both, and if an officer or employee of the Board or the Department, shall be removed from office.

(12) The order shall contain terms and conditions, not inconsistent with the provisions of this chapter, as necessary to effectuate the provisions of the order.

(As amended Pub. L. 99-198, title XVI, § 1601(b), Dec. 23, 1985, 99 Stat. 1599.)

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, substituting provisions relating to required terms in orders for provisions relating to notice and hearing upon proposed orders.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective Jan. 1, 1986, see section 1601(c) of Pub. L. 99-198, set out as a note under section 2901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2902, 2905, 2907 of this title.

§ 2905. Certification of organizations to nominate

(a) Eligibility of State organization certified by Secretary; eligibility criteria

The eligibility of any State organization to represent producers and to participate in the making of nominations under section 2904(1) of this title shall be certified by the Secretary. The Secretary shall certify any State organization that the Secretary determines meets the eligibility criteria established under subsection (b) of this section and such determination as to eligibility shall be final.

(b) State cattle association or State general farm organization

A State cattle association or State general farm organization may be certified as described in subsection (a) of this section if such association or organization meets all of the following eligibility criteria:

(1) The association or organization's total paid membership is comprised of at least a majority of cattle producers or the association or organization's total paid membership represents at least a majority of the cattle producers in the State.

(2) The association or organization represents a substantial number of producers that produce a substantial number of cattle in the State.

(3) The association or organization has a history of stability and permanency.

(4) A primary or overriding purpose of the association or organization is to promote the economic welfare of cattle producers.

(c) Factual report basis for certification of State cattle association and State general farm association

Certification of State cattle associations and State general farm organizations shall be based on a factual report submitted by the association or organization involved.

(d) Certification of more than one State organization; caucus

If more than one State organization is certified in a State (or in a unit referred to in section 2904(1) of this title), such organizations may caucus to determine any of such State's (or such unit's) nominations under section 2904(1) of this title.

(As amended Pub. L. 99-198, title XVI, § 1601(b), Dec. 23, 1985, 99 Stat. 1603.)

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, substituting provisions relating to certification of organizations to nominate for provisions relating to findings and issuance of orders.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective Jan. 1, 1986, see section 1601(c) of Pub. L. 99-198, set out as a note under section 2901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2903, 2904 of this title.

§ 2906. Requirement of referendum

(a) Continuation or termination of order

For the purpose of determining whether the initial order shall be continued, not later than 22 months after the issuance of the order (or any earlier date recommended by the Board), the Secretary shall conduct a referendum among persons who have been producers or importers during a representative period, as determined by the Secretary. The order shall be continued only if the Secretary determines that it has been approved by not less than a majority of the producers voting in the referendum who, during a representative period as determined by the Secretary, have been engaged in the production of cattle. If continuation of the order is not approved by a majority of those voting in the referendum, the Secretary shall terminate collection of assessments under the order within six months after the Secretary determines that continuation of the order is not favored by a majority voting in the referendum and shall terminate the order in an orderly manner as soon as practicable after such determination.

(b) Additional referendum to determine suspension or termination of order

After the initial referendum, the Secretary may conduct a referendum on the request of a representative group comprising 10 per centum or more of the number of cattle producers to determine whether cattle producers favor the termination or suspension of the order. The Secretary shall suspend or terminate collection of assessments under the order within six months after the Secretary determines that suspension or termination of the order is favored by a majority of the producers voting in the referendum who, during a representative period as determined by the Secretary, have been engaged in the production of cattle and shall terminate or suspend the order in an orderly manner as soon as practicable after such determination.

(c) Reimbursement for cost of referendum; time and place of referendum; certification by producers; absentee mail ballot

The Department shall be reimbursed from assessments collected by the Board for any expenses incurred by the Department in connection with conducting any referendum under this section, except for the salaries of Government employees. Any referendum conducted under this section shall be conducted on a date established by the Secretary, whereby producers shall certify that they were engaged in the production of cattle during the representative period and, on the same day, shall be provided an opportunity to vote in the referendum. Each referendum shall be conducted at county extension offices, and there shall be provision for an absentee mail ballot on request.

(As amended Pub. L. 99-198, title XVI, § 1601(b), Dec. 23, 1985, 99 Stat. 1604.)

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, substituting provisions relating to requirement of referendum for provisions relating to permissive terms and conditions in orders.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective Jan. 1, 1986, see section 1601(c) of Pub. L. 99-198, set out as a note under section 2901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2907 of this title.

§ 2907. Refunds

(a) Establishment of escrow account

During the period prior to the approval of the continuation of an order pursuant to the referendum required under section 2906(a) of this title, subject to subsection (f) of this section, the Board shall—

(1) establish an escrow account to be used for assessment refunds;

(2) place funds in such account in accordance with subsection (b) of this section; and

(3) refund assessments to persons in accordance with this section.

(b) Funding escrow account

Subject to subsection (f) of this section, the Board shall place in such account, from assessments collected under section 2906 of this title during the period referred to in subsection (a) of this section, an amount equal to the product obtained by multiplying—

(1) the total amount of assessments collected under section 2906 of this title during such period; by

(2) the greater of—

(A) the average rate of assessment refunds provided to producers under State beef promotion, research, and consumer information programs financed through producer assessments, as determined by the Board; or

(B) 15 percent.

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(c) Demand and receipt of one-time refund

Subject to subsections (d), (e), and (f) of this section and notwithstanding any other provision of this chapter,[5] any person shall have the right to demand and receive from the Board a one-time refund of all assessments collected under section 2906 of this title from such person during the period referred to in subsection (a) of this section if such person—

(1) is responsible for paying such assessment; and

(2) does not support the program established under this chapter.

(d) Form and time period for demand for one-time refund

Such demand shall be made in accordance with regulations, on a form, and within a time period prescribed by the Board.

(e) Submission of proof for one-time refund

Such refund shall be made on submission of proof satisfactory to the Board that the producer, person, or importer—

(1) paid the assessment for which refund is sought; and

(2) did not collect such assessment from another producer, person, or importer.

(f) Insufficiency of funds in escrow account; proration of funds among eligible persons

(1) If the amount in the escrow account required to be established by subsection (a) of this section is not sufficient to refund the total amount of assessments demanded by all eligible persons under this section and the continuation of an order is approved pursuant to the referendum required under section 2906(a)[5] of this title, the Board shall—

(A) continue to place in such account, from assessments collected under section 2904 of this title, the amount required under subsection (b) of this section, until such time as the Board is able to comply with subparagraph (B); and

(B) provide to all eligible persons the total amount of assessments demanded by all eligible producers.

(2) If the amount in the escrow account required to be established by subsection (a) of this section is not sufficient to refund the total amount of assessments demanded by all eligible persons under this section and the continuation of an order is not approved pursuant to the referendum required under section 2906(a) of this title, the Board shall prorate the amount of such refunds among all eligible persons who demand such refund.

(As amended Pub. L. 99-198, title XVI, § 1601(b), Dec. 23, 1985, 99 Stat. 1604.)

REFERENCES IN TEXT

This chapter, referred to in provisions preceding par. 1 of subsec. (c), was in the original "this subtitle", and was translated as reading "this Act" to reflect the probable intent of Congress.

Section 2906(a) of this title, referred to in subsec. (f)(1), was in the original a reference to section 10(a) of Pub. L. 94-294, section 2909(a) of this title, and was translated as section 2906(a) of this title as the probable intent of Congress, in view of section 2909 of this title not containing a subsec. (a) and the subject matter of section 2906(a) which relates to a referendum.

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, substituting provisions relating to refunds for provisions relating to required terms and conditions in orders.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective Jan. 1, 1986, see section 1601(c) of Pub. L. 99-198, set out as a note under section 2901 of this title.

§ 2908. Enforcement

(a) Restraining order; civil penalty

If the Secretary believes that the administration and enforcement of this chapter or an order would be adequately served by such procedure, following an opportunity for an administrative hearing on the record, the Secretary may—

(1) issue an order to restrain or prevent a person from violating an order; and

(2) assess a civil penalty of not more than $5,000 for violation of such order.

(b) Jurisdiction of district court

The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain a person from violating, an order or regulation made or issued under this chapter.

(c) Civil action to be referred to Attorney General

A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action.

(As amended Pub. L. 99-198, title XVI, § 1601(b), Dec. 23, 1985, 99 Stat. 1605.)

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, substituting provisions relating to enforcement for provisions relating to referendum and cattle producer approval of orders, reimbursement of expenses by Secretary, procedural requirements, and bonding requirements.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective Jan. 1, 1986, see section 1601(c) of Pub. L. 99-198, set out as a note under section 2901 of this title.

§ 2909. Investigations by Secretary; oaths and affirmations; subpenas; judicial enforcement; contempt proceedings; service of process

The Secretary may make such investigations as the Secretary deems necessary for the effective administration of this chapter or to determine whether any person subject to this chapter has engaged or is about to engage in any act that constitutes or will constitute a violation of this chapter, the order, or any rule or regulation issued under this chapter. For the purpose of such investigation, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of

[5] See References in Text note below.

witnesses and the production of records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of the person and the production of records. The court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony regarding the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. Process in any such case may be served in the judicial district in which such person is an inhabitant or wherever such person may be found.

(As amended Pub. L. 99-198, title XVI, § 1601(b), Dec. 23, 1985, 99 Stat. 1606.)

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, substituting provisions relating to investigations, power to subpoena and take oaths and affirmations, and aid of courts, for provisions relating to termination or suspension of orders.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective Jan. 1, 1986, see section 1601(c) of Pub. L. 99-198, set out as a note under section 2901 of this title.

§ 2910. Preemption of other Federal and State programs; applicability of provisions to amendments to orders

(a) Nothing in this chapter may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State.

(b) The provisions of this chapter applicable to the order shall be applicable to amendments to the order.

(As amended Pub. L. 99-198, title XVI, § 1601(b), Dec. 23, 1985, 99 Stat. 1606.)

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, substituting administrative provisions for provisions relating to applicability of provisions to amendments to orders.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective Jan. 1, 1986, see section 1601(c) of Pub. L. 99-198, set out as a note under section 2901 of this title.

§ 2911. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this chapter. Sums appropriated to carry out this chapter shall not be available for payment of the expenses or expenditures of the Board or the Committee in administering any provisions of the order issued under section 2903(b) of this title.

(As amended Pub. L. 99-198, title XVI, § 1601(b), Dec. 23, 1985, 99 Stat. 1606.)

AMENDMENTS

1985—Pub. L. 99-198 amended section generally, substituting provisions relating to authorization of appropriations for provisions relating to refund of assessment from Beef Board.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-198 effective Jan. 1, 1986, see section 1601(c) of Pub. L. 99-198, set out as a note under section 2901 of this title.

§§ 2912 to 2918. Omitted

CODIFICATION

Sections 2912 to 2918 of this title were omitted in the general revision of this chapter by Pub. L. 99-198, title XVI, § 1601(b), Dec. 23, 1985, 99 Stat. 1597.

Section 2912, Pub. L. 94-294, § 13, May 28, 1976, 90 Stat. 535, related to administrative review of orders, petition for such review, a hearing, and judicial review.

Section 2913, Pub. L. 94-294, § 14, May 28, 1976, 90 Stat. 536, related to enforcement of orders, referral of civil actions to the Attorney General, penalties for willful violations, and availability of additional remedies. See section 2908 of this title.

Section 2914, Pub. L. 94-294, § 15, May 28, 1976, 90 Stat. 536, related to certification of organizations and the contents of a factual report as criteria. See section 2905 of this title.

Section 2915, Pub. L. 94-294, § 16, May 28, 1976, 90 Stat. 537, provided that nothing in this chapter be construed to interfere with the workings of any State beef board, council, or other promotion entity. See section 2910(a) of this title.

Section 2916, Pub. L. 94-294, § 17, May 28, 1976, 90 Stat. 537, authorized the Secretary to promulgate regulations to carry out this chapter.

Section 2917, Pub. L. 94-294, § 18, May 28, 1976, 90 Stat. 537, related to investigations by the Secretary, oaths and affirmations, subpenas, judicial enforcement, contempt proceedings, and service of process. See section 2909 of this title.

Section 2918, Pub. L. 94-294, § 20, May 28, 1976, 90 Stat. 538, authorized appropriations to carry out this chapter. See section 2911 of this title.

CHAPTER 64—AGRICULTURAL RESEARCH, EXTENSION, AND TEACHING

SUBCHAPTER IV—NATIONAL FOOD AND HUMAN NUTRITION RESEARCH AND EXTENSION PROGRAM

Sec.

3174. Repealed.
3175a. Nutrition and consumer education; Congressional findings.
3175b. Expansion of effective food, nutrition, and consumer education services.
3175c. Program of food, nutrition, and consumer education by State cooperative extension services.
3175d. Administration of program of food, nutrition, and consumer education by State cooperative extension services.
(a) Administration by Secretary of Agriculture.
(b) Evaluation and report.
3175e. Authorization of appropriations.
3176, 3177. Repealed.
3178a. Nutrition monitoring.

SUBCHAPTER VI—1890 LAND GRANT COLLEGE FUNDING

3224. Grants to upgrade 1890 land-grant college extension facilities.
(a) Congressional declaration of intent.
(b) Authorization of appropriations.

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Sec.

(c) Administration of grants program; provision of facilities for extension work.
(d) Authority of Secretary of Agriculture.
(e) Overhead costs.
(f) Rules and regulations.

SUBCHAPTER VIII—INTERNATIONAL AGRICULTURAL RESEARCH AND EXTENSION

3292. Grants to States for international trade development centers.
(a) Establishment of program; purpose; matching formula.
(b) Preference to States using land-grant colleges and universities as sites; criteria.
(c) Permissible activities of centers.
(d) Authorization of appropriations.

SUBCHAPTER IX—STUDIES

3301 to 3304. Repealed.

SUBCHAPTER X—FUNDING AND MISCELLANEOUS PROVISIONS

3319a. Cost-reimbursable agreements.
3319b. Technology development for small- and medium-sized farming operations.
3319c. Special technology development research program.
(a) Cooperative agreements with private agencies, organizations and individuals.
(b) Authorization of expenditures.
(c) Eligibility; matching funds; deposit in separate accounts; permitted uses of funds; limitation on assistance.
3319d. Supplemental and alternative crops.
(a) Research and pilot project program.
(b) Importance to producers.
(c) Research funding, special or competitive grants, etc.; program requiremetns; agreements, grants and other arrangements.
(d) Use of expertise and resources of other Federal agencies and land-grant colleges and universities.

SUBCHAPTER XI—AQUACULTURE

3323. Repealed.

SUBCHAPTER I—FINDINGS, PURPOSES, AND DEFINITIONS

§ 3101. Congressional findings

Congress finds that—

[*See main edition for text of* (1) *to* (7)]

(8) new Federal initiatives are needed in the areas of—

[*See main edition for text of* (A) *to* (M)]

(N) research to develop new crops, in order to expand our use of varied soils and increase the choice of nutritional and economically viable crops available for cultivation;

(O) investigation and analysis of the practicability, desirability, and feasibility of using organic waste materials to improve soil tilth and fertility, and extension programs to disseminate practical information resulting from such investigations and analyses; and

(P) research on new or improved food processing (such as food irradiation) or value-added food technologies;

[*See main edition for text of* (9)]

(10) it is and has been the policy of the United States to support food and agricultural research, extension, and teaching in the broadest sense of these terms. The partnership between the Federal Government and the States, as consummated in legislation and cooperative agreements, and the cooperative nature of efforts to implement this policy in cooperation with the food and agricultural industry has been eminently successful. Cooperative research, extension, and teaching programs have provided the United States with the most productive and efficient food and agricultural system in the world. This system is the basis of our national affluence and it provides vast amounts of food and fiber to other people around the world. However, the food and agricultural system is dynamic and constantly changing. The research, extension, and teaching programs must be maintained and constantly adjusted to meet ever-changing challenges. National support of cooperative research, extension, and teaching efforts must be reaffirmed and strengthened to meet major needs and challenges in the following areas:

[*See main edition for text of* (A)]

(B) The effects of technological, economic, sociological, and environmental developments on the agricultural structure of the United States are strong and continuous. It is critical that emerging agricultural-related technologies, economic changes, and sociological and environmental developments, both national and international, be analyzed on a continuing basis in an interdisciplinary fashion to determine the effect of those forces on the structure of agriculture and to improve agricultural policy decisionmaking.

(C) Programs to identify and develop new crop and animal sources of food, fiber, and energy must be undertaken to meet future needs.

(D) Much of the current agricultural technology is relatively energy intensive. It is critical that alternative technologies be developed to increase agricultural energy efficiency and to reduce dependence on petroleum based products. Furthermore, agriculture provides the United States with alternative potential sources of energy that must be assessed and developed.

(E) Biotechnology guidelines and regulations must be made consistent throughout the Federal Government so they may promote scientific development and protect the public. The biotechnology risk assessment processes used by various Federal agencies must be standardized.

(F) Improved management of soil, water, forest, and range resources is vital to maintain the resource base for food, fiber, and

wood production. An expanded research program in the areas of soil and water conservation and forest and range production practices is needed to develop more economical and effective management systems. Key objectives of this research are—

(i) incorporating water and soil-saving technologies into current and evolving production practices;

(ii) developing more cost-effective and practical conservation technologies;

(iii) managing water in stressed environments;

(iv) protecting the quality of the surface water and groundwater resources of the United States;

(v) establishing integrated multidisciplinary organic farming research projects, including research on alternative farming systems, that will identify options from which individual farmers may select the production components that are most appropriate for their individual situations;

(vi) developing better targeted pest management systems; and

(vii) improving forest and range management technologies that meet demands more efficiently, better protect multiresource options, and enhance quality of output.

(G) The basic objectives of food and agricultural research, extension, and teaching programs are to make the maximum contribution to the health and welfare of people and the economy of the United States through the enhancement of family farms, to improve community services and institutions, to increase the quality of life in rural America, and to improve the well-being of consumers. The rapid rate of social change, economic instability, and current energy problems increase the need for expanded programs of research and extension in family financial management, housing and home energy consumption, food preparation and consumption, human development (including youth programs), and development of community services and institutions.

(H) The challenge to meet the food needs of the world continues, but there is an increasing need to address nutrition research and educational issues associated with diet resulting from changing life styles and with respect to special groups such as the elderly, teenagers, infants, and pregnant women.

(I) United States agricultural production has proven its ability to produce abundant quantities of food for an expanding world population. Despite rising expectation for improved diets in the world today, there are instances of drought, civil unrest, economic crisis, or other conditions that preclude the local production or distribution of food. There are instances where localized problems impede the ability of farmers to produce needed food products. It is also recognized that many nations have progressive and effective agricultural research programs that produce results of interest and applicability to United States agriculture. The exchange of knowledge and information between nations is essential to the well-being of all nations. A dedicated effort involving the Federal Government, the State cooperative institutions, and other colleges and universities is needed to expand international food and agricultural research, extension, and teaching programs. Improved cooperation and communication by the Department of Agriculture and the cooperators with international agricultural research centers, counterpart agencies, and universities in other nations are necessary to improve food and agricultural progress throughout the world.

(11) long-range planning for research, extension, and teaching is a key element in meeting the objectives of this title; accordingly, all of the elements in the food and agricultural science and education system are encouraged to expand their planning and coordination efforts; and

(12) the agricultural system of the United States—

(A) is increasingly dependent on science and technology to maintain and improve productivity levels, manage the resource base, provide high quality products, and protect the environment; and

(B) requires a constant source of food and agricultural scientific expertise to maintain this dynamic system.

(As amended Pub. L. 99-198, title XIV, § 1402, Dec. 23, 1985, 99 Stat. 1542.)

AMENDMENTS

1985—Par. (8)(N) to (P). Pub. L. 99-198, § 1402(1), struck out "and" at end of subpar. (N), inserted "and" at end of subpar. (O), and added subpar. (P).

Par. (10). Pub. L. 99-198, § 1402(2)(A), in introductory penultimate sentence deleted "that support the food and agricultural system" before "must be maintained" and substituted "ever-changing" for "ever changing", and in introductory final sentence substituted "strengthened" for "expanded at this time".

Par. (10)(B) to (D). Pub. L. 99-198, § 1402(2)(B), (C), added subpar. (B) and redesignated former subpars. (B), (C), and (D) as (C), (D), and (F), respectively.

Par. (10)(E). Pub. L. 99-198, § 1402(2)(B), (D), added subpar. (E) and redesignated former subpar. (E) as (G).

Par. (10)(F). Pub. L. 99-198, § 1402(2)(B), (E), redesignated former subpar. (D) as (F) and, in amending subpar. (F) generally, substituted in first sentence "Improved management" and "is" for "Improved management and conservation" and "are", respectively, and provided for maintenance of resource base for "wood" production; substituted in second sentence "An expanded research program in the areas of soil and water conservation and forest and range production practices" for "An expanded program in the area of soil and water conservation research" preceding "is needed" and substituted "management systems" for "conservation systems"; substituted cl. (i) "incorporating water and soil-saving technologies into current and evolving production practices" for "sustaining soil productivity"; reenacted cls. (ii) and (iii); substituted in cl. (iv) "the surface water and groundwater resources of the United States" for "the Nation's surface water and groundwater resources"; substituted in cl. (v) "projects, including research on alternative farming systems, that will identify options from which individual farmers may select the production components

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that are most appropriate for their individual situations" for "projects designed to foster the implementation of the major recommendations of the Department of Agriculture Report and Recommendations on Organic Farming, July 1980"; and added cls. (vi) and (vii). Former subpar. (F) redesignated (H).

Par. (10)(G). Pub. L. 99-198, § 1402(2)(B), (F), redesignated former subpar. (E) as (G) and in first sentence struck out "to" and "owner-operated" before "the economy" and "family farms", respectively. Former subpar. (G) redesignated (I).

Par. (10)(H). Pub. L. 99-198, § 1402(2)(B), redesignated former subpar. (F) as (H).

Par. (10)(I). Pub. L. 99-198, § 1402(B), (G), redesignated former subpar. (G) as (I) and amended subpar. (I) generally. Prior to amendment, such provisions read as follows: "The greatest challenge facing mankind through the next two decades will be to produce adequate food for an expanding world population. This challenge demands a dedicated effort by the Federal Government and the State cooperative institutions, and other colleges and universities to expand international food and agricultural research, extension, and teaching programs. Improved cooperation and communications by the Department of Agriculture and the cooperators with international agricultural research centers, counterpart agencies and universities in other countries, is necessary to improve food and agricultural progress throughout the world; and".

Pars. (11), (12). Pub. L. 99-198, § 1402(3), (4), substituted "; and" for the period at end of par. (11) and added par. (12).

SHORT TITLE OF 1985 AMENDMENT

Section 1401 of title XIV of Pub. L. 99-198 provided that: "This title [enacting sections 1632, 3224, 3292, 3319a to 3319d, and 4701 to 4710 of this title, amending sections 178c, 342, 343, 390 to 390d, 390f, 390h, 390i, 390j, 450i, 2266, 2662, 2663, 3101, 3103, 3121 to 3123, 3124a, 3125, 3151, 3152, 3194 to 3196, 3221 to 3223, 3291, 3311, 3312, 3318, 3319, 3322, 3324, 3335, and 3336 of this title, repealing sections 390e, 390g, 3174, 3177, 3301 to 3304, and 3323 of this title, enacting provisions set out as notes under sections 343, 390, 390c, 450i, 3173, 3292, 3311, 3312, and 4701 of this title, amending provisions set out as a note under section 3222 of this title, and repealing provisions set out as a note under section 2281 of this title] may be cited as the 'National Agricultural Research, Extension, and Teaching Policy Act Amendments of 1985'."

§ 3103. Definitions

When used in this chapter—

[*See main edition for text of* (1) *to* (7)]

(8) the term "food and agricultural sciences" means basic, applied, and developmental research, extension, and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences, in the broadest sense of these terms, including but not limited to, activities relating to:

[*See main edition for text of* (A) *to* (G)]

(H) domestic and export market expansion for United States agricultural products;

(I) production inputs, such as energy, to improve productivity; and

(J) international food and agricultural issues, such as agricultural development, development of institutions, germ plasm collection and preservation, information exchange and storage, and scientific exchanges;

[*See main edition for text of* (9) *to* (16)]

(As amended Pub. L. 99-198, title XIV, § 1403, Dec. 23, 1985, 99 Stat. 1544.)

AMENDMENTS

1985—Par. (8)(J). Pub. L. 99-198 added subpar. (J).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3319, 3292, 4701 of this title.

SUBCHAPTER II—COORDINATION AND PLANNING OF AGRICULTURAL RESEARCH, EXTENSION, AND TEACHING

§ 3121. Responsibilities of Secretary and Department of Agriculture

The Department of Agriculture is designated as the lead agency of the Federal Government for agricultural research (except with respect to the biomedical aspects of human nutrition concerned with diagnosis or treatment of disease), extension, and teaching in the food and agricultural sciences, and the Secretary, in carrying out the Secretary's responsibilities, shall—

[*See main edition for text of* (1) *to* (9)]

(10) coordinate all agricultural research, extension, and teaching activities conducted or financed by the Department of Agriculture with the periodic renewable resource assessment and program provided for in sections 1601 and 1602 of title 16 and the appraisal and program provided for in sections 2004 and 2005 of title 16;

(11) coordinate the efforts of States, State cooperative institutions, State extension services, the Joint Council, the Advisory Board, and other appropriate institutions in assessing the current status of, and developing a plan for, the effective transfer of new technologies, including biotechnology, to the farming community, with particular emphasis on addressing the unique problems of small- and medium-sized farms in gaining information about those technologies; and

(12) establish appropriate controls with respect to the development and use of the application of biotechnology to agriculture.

(As amended Pub. L. 99-198, title XIV, § 1404, Dec. 23, 1985, 99 Stat. 1544.)

AMENDMENTS

1985—Pars. (11), (12). Pub. L. 99-198 added pars. (11) and (12) and struck out former par. (11) which required the Secretary to "take the initiative in overcoming barriers to long-range planning by developing, in conjunction with the States, State cooperative institutions, the Joint Council, the Advisory Board, and other appropriate institutions, a long-term needs assessment for food, fiber, and forest products, and by determining the research requirements necessary to meet the identified needs."

§ 3122. Joint Council on Food and Agricultural Sciences

(a) Establishment within Department of Agriculture

The Secretary shall establish within the Department of Agriculture a committee to be known as the Joint Council on Food and Agricultural Sciences which shall have a term that expires September 30, 1990.

(b) Membership

The Joint Council shall be composed of not fewer than twenty-five representatives of organizations or agencies which conduct or assist in conducting programs of research, extension, or teaching in the food and agricultural sciences, including State cooperative institutions; other colleges and universities having a demonstrable capacity to carry out food and agricultural research, extension, or teaching; agencies within the Department of Agriculture which have significant research, extension, or teaching responsibilities; the Office of Science and Technology Policy; other Federal agencies determined by the Secretary to be appropriate, and other public and private institutions, producers, and representatives of the public who are interested in and have a potential to contribute, as determined by the Secretary, to the formulation of national policy in the food and agricultural sciences. Members shall be appointed for a term of up to three years by the Secretary from nominations made by the organizations and agencies described in the preceding sentence. The terms of members shall be staggered. To ensure that regional differences are properly considered, at least one-half of the members of the Joint Council shall be appointed by the Secretary from among distinguished persons engaged in agricultural research, extension, or teaching programs at land-grant colleges and universities and State agricultural experiment stations. To ensure that other agricultural institutional views are considered by the Joint Council, two of the members of the Joint Council shall be appointed by the Secretary from among persons who are distinguished representatives of other colleges and universities having a demonstrable capacity to carry out food and agricultural research, extension, or teaching. To ensure that the views of food technologists are considered by the Joint Council, one of the members of the Joint Council shall, as determined to be appropriate by the Secretary, be appointed by the Secretary from among distinguished persons who are food technologists from accredited or certified departments of food technology, as determined by the Secretary. The Joint Council shall be jointly chaired by the Assistant Secretary of Agriculture responsible for research, extension, and teaching, and a person to be elected from among the non-Federal membership of the Joint Council.

[*See main edition for text of* (c)]

(d) Responsibilities

[*See main edition for text of* (1)]

(2) The Joint Council's responsibilities shall also be to—

[*See main edition for text of* (A) *to* (E)]

(F) develop, and review the effectiveness of, guidelines for use by the Secretary in making competitive grants under section 450i(b) of this title;

(G) submit a report—

[*See main edition for text of* (i) *to* (iii)]

Each such report shall be submitted to the Secretary of Agriculture. Minority views, if timely submitted, shall be included in such report; and

(H) coordinate with the Secretary in assessing the current status of, and developing a plan for, the effective transfer of new technologies to the farming community.

[*See main edition for text of* (e) *and* (f)]

(As amended Pub. L. 99-198, title XIV, § 1405, Dec. 23, 1985, 99 Stat. 1545.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, § 1405(a), substituted "1990" for "1985".

Subsec. (b). Pub. L. 99-198, § 1405(b), added provision that one of the members of the Joint Council shall be appointed by the Secretary from among distinguished persons who are food technologists from accredited or certified departments of food technology.

Subsec. (d)(2)(H). Pub. L. 99-198, § 1405(c), added subpar. (H).

§ 3123. National Agricultural Research and Extension Users Advisory Board

(a) Establishment within Department of Agriculture

The Secretary shall establish within the Department of Agriculture a board to be known as the National Agricultural Research and Extension Users Advisory Board which shall have a term that expires September 30, 1990.

[*See main edition for text of* (b) *to* (e)]

(f) Responsibilities

[*See main edition for text of* (1)]

(2) The Advisory Board shall have the specific responsibilities for—

[*See main edition for text of* (A) *to* (D)]

(E) preparing and submitting to the Secretary, not later than July 1 of each year, a statement of recommendations as to allocations of responsibilities and levels of funding among federally supported agricultural research and extension programs, which shall include a review and an assessment of the allocation of funds for agricultural research and extension made for the preceding fiscal year by the organizations represented on the Joint Council. Minority views, if timely submitted, shall be included in the submission. The Secretary shall submit copies of the statement to the Subcommittee on Food and Renewable Resources of the Federal Coordinating Council for Science, Engineering, and Technology, and the Joint Council;

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(F) not later than February 20 of each year submitting a report on its appraisal of the President's proposed budget for the food and agricultural sciences for the fiscal year beginning in such year and the recommendations of the Secretary contained in the annual report submitted by the Secretary pursuant to the provisions of section 3125 of this title. Such report shall be submitted to the President, the House Committee on Agriculture, the House Committee on Appropriations, the Senate Committee on Agriculture, Nutrition, and Forestry, and the Senate Committee on Appropriations. The report may include the separate views of members of the Advisory Board. The first report shall be due not later than March 1, 1979; and

(G) coordinating with the Secretary in assessing the current status of, and developing a plan for, the effective transfer of new technologies to the farming community.

(As amended Pub. L. 99–198, title XIV, § 1406, Dec. 23, 1985, 99 Stat. 1545.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–198, § 1406(a), substituted "1990" for "1985".

Subsec. (f)(2)(G). Pub. L. 99–198, § 1406(b), added subpar. (G).

§ 3124a. Federal-State partnership and coordination

(a) Covered programs; statement of purposes

A unique partnership arrangement exists in food and agricultural research, extension, and teaching between the Federal Government and the governments of the several States whereby the States have accepted and have supported, through legislation and appropriations—

[*See main edition for text of (1)*]

(2) extension programs under subchapter VI of this chapter and the Act of May 8, 1914 (7 U.S.C. 341 et seq.), commonly known as the Smith-Lever Act;

(3) teaching programs under—

(A) the Act of July 2, 1862 (7 U.S.C. 301 et seq.), commonly known as the First Morrill Act;

(B) the Act of August 30, 1890 (7 U.S.C. 321 et seq.), commonly known as the Second Morrill Act; and

(C) the Act of June 29, 1935 (7 U.S.C. 329, commonly known as the Bankhead-Jones Act; and

(4) international agricultural programs under title XII of the Foreign Assistance Act of 1961 (22 U.S.C. 2220a et seq.).

This partnership in publicly supported agricultural research, extension, and teaching involving the programs of Federal agencies and the programs of the States has played a major role in the outstanding successes achieved in meeting the varied, dispersed, and in many cases, site-specific needs of American agriculture. This partnership must be preserved and enhanced.

[*See main edition for text of (b) and (c)*]

(d) Designation of State cooperative institutions; reports; research grants

(1) To promote research for purposes of developing agricultural policy alternatives, the Secretary is encouraged—

(A) to designate at least one State cooperative institution to conduct research in an interdisciplinary fashion; and

(B) to report on a regular basis with respect to the effect of emerging technological, economic, sociological, and environmental developments on the structure of agriculture.

(2) Support for this effort should include grants to examine the role of various food production, processing, and distribution systems that may primarily benefit small- and medium-sized family farms, such as diversified farm plans, energy, water, and soil conservation technologies, direct and cooperative marketing, production and processing cooperatives, and rural community resource management.

(e) Designation of State agricultural experiment stations and Agricultural Research Service facilities; pilot projects; additional research

To address more effectively the critical need for reducing farm input costs, improving soil, water, and energy conservation on farms and in rural areas, using sustainable agricultural methods, adopting alternative processing and marketing systems, and encouraging rural resources management, the Secretary is encouraged to designate at least one State agricultural experiment station and one Agricultural Research Service facility to examine these issues in an integrated and comprehensive manner, while conducting ongoing pilot projects contributing additional research through the Federal-State partnership.

(As amended Pub. L. 99–198, title XIV, § 1407, Dec. 23, 1985, 99 Stat. 1545.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a)(4), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended. Title XII of the Foreign Assistance Act of 1961 probably means title XII of chapter 2 of part I of the Act, which is classified generally to subpart XII (§ 2220a et seq.) of part II of subchapter I of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

AMENDMENTS

1985—Subsec. (a)(4). Pub. L. 99–198, § 1407(a), added par. (4).

Subsecs. (d), (e). Pub. L. 99–198, § 1407(b), added subsecs. (d) and (e).

§ 3125. Annual report of Secretary of Agriculture to President and Congress

The Secretary shall submit to the President and Congress by January 1 of each year a report on the Nation's agricultural research, extension, and teaching activities, and such report shall include—

[*See main edition for text of (1)*]

(2) the statements of recommendations of the Joint Council developed pursuant to the provisions of section 3122(d)(2)(G) of this title and the statement of recommendations of the Advisory Board developed pursuant to the provisions of section 3123(f)(2)(E) of this title; and

(3) in the second and succeeding years, a five-year projection of national priorities with respect to agricultural research, extension, and teaching, taking into account both domestic and international needs.

(As amended Pub. L. 99-198, title XIV, § 1408, Dec. 23, 1985, 99 Stat. 1546.)

AMENDMENTS

1985—Par. (4). Pub. L. 99-198 struck out par. (4) which provided for inclusion "in the report of January 1, 1984, the Secretary's needs assessment developed pursuant to the provisions of section 3121(11) of this title".

SUBCHAPTER III—AGRICULTURAL RESEARCH AND EDUCATION GRANTS AND FELLOWSHIPS

§ 3151. Grants to establish or expand schools of veterinary medicine

[*See main edition for text of* (a) *and* (b)]

(c) Apportionment and distribution of funds

Funds appropriated to carry out this section for any fiscal year shall be apportioned and distributed as follows:

(1) Five per centum shall be retained by the Department of Agriculture for administration, program assistance to eligible States, and program coordination.

[*See main edition for text of* (2)]

(As amended Pub. L. 99-198, title XIV, § 1410, Dec. 23, 1985, 99 Stat. 1547.)

AMENDMENTS

1985—Subsec. (c)(1). Pub. L. 99-198 substituted "Five" for "Four".

§ 3152. Federal support of higher education in the food and agricultural sciences

(a) Grant categories

[*See main edition for text of* (1)]

(2) The Secretary may make grants to land-grant colleges and universities, and to other colleges and universities having a demonstrable capacity to carry out food and agricultural teaching, for a period not to exceed five years—

[*See main edition for text of* (A) *to* (D)]

Each recipient institution shall have a significant ongoing commitment to the food and agricultural sciences generally and to the specific subject area for which such grant is to be used.

(3) The Secretary may make competitive grants to colleges and universities for a period not to exceed five years—

[*See main edition for text of* (A) *and* (B)]

Each recipient institution shall have a significant ongoing commitment to the food and agricultural sciences generally and to the specific subject area for which such grant is to be used.

[*See main edition for text of* (b) *and* (c)]

(d) Authorization of appropriations

There are authorized to be appropriated for purposes of carrying out this section $50,000,000 for each of the fiscal years ending September 30, 1982, through September 30, 1990.

(e) Applicability of other laws

The Federal Advisory Committee Act (5 U.S.C. App.) and title XVIII of the Food and Agriculture Act of 1977 (7 U.S.C. 2281 et seq.) shall not apply to a panel or board created for the purpose of reviewing applications or proposals submitted under this section.

(As amended Pub. L. 99-198, title XIV, § 1412, Dec. 23, 1985, 99 Stat. 1548.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Food and Agriculture Act of 1977, referred to in subsec. (e), is Pub. L. 95-113, Sept. 29, 1977, 91 Stat. 913, as amended. Title XVIII of the Act is classified generally to chapter 55A (§ 2281 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1281 of this title and Tables.

AMENDMENTS

1985—Subsec. (a)(2). Pub. L. 99-198, § 1412(a)(1), substituted "Each" for "Such grants shall be made without regard to matching funds, but each".

Subsec. (a)(3). Pub. L. 99-198, § 1412(a)(2), substituted "Each recipient institution shall have a significant ongoing commitment to the food and agricultural sciences generally and to the specific subject area for which such grant is to be used." for "Such grants shall be made without regard to matching funds provided by recipients."

Subsec. (d). Pub. L. 99-198, § 1412(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "There are hereby authorized to be appropriated for the purposes of carrying out the provisions of this section $25,000,000 for the fiscal year ending September 30, 1978, $30,000,000 for the fiscal year ending September 30, 1979, $35,000,000 for the fiscal year ending September 30, 1980, $40,000,000 for the fiscal year ending September 30, 1981, and $50,000,000 for each of the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985, and not in excess of such sums as may after the date of enactment of this title be authorized by law for any subsequent fiscal year."

Subsec. (e). Pub. L. 99-198, § 1412(c), added subsec. (e).

SUBCHAPTER IV—NATIONAL FOOD AND HUMAN NUTRITION RESEARCH AND EXTENSION PROGRAM

§ 3173. Research by Department of Agriculture

NATIONAL FOOD AND HUMAN NUTRITION RESEARCH PROGRAM; CONGRESSIONAL FINDINGS; COMPREHENSIVE PLAN; ANNUAL REPORT; JOINT DIETARY ASSESSMENT, STUDIES AND REPORTS; SUBMISSION OF PLAN AND REPORTS TO CONGRESSIONAL COMMITTEES

Pub. L. 99-198, title XIV, subtitle B, §§ 1451-1453, Dec. 23, 1985, 99 Stat. 1561, 1562, provided that:

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"FINDINGS

"SEC. 1451. Congress finds that—

"(1) nutrition and health considerations are important to United States agricultural policy;

"(2) section 1405 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3121) designates the Department of Agriculture as the lead agency of the Federal Government for human nutrition research (except with respect to the biomedical aspects of human nutrition concerned with diagnosis or treatment of disease);

"(3) section 1423 of such Act (7 U.S.C. 3173) requires the Secretary of Agriculture to establish research into food and human nutrition as a separate and distinct mission of the Department of Agriculture;

"(4) the Secretary has established a nutrition education program; and

"(5) nutrition research continues to be of great importance to those involved in agricultural production.

"HUMAN NUTRITION RESEARCH

"SEC. 1452. (a) Not later than 1 year after the date of enactment of this Act [Dec. 23, 1985], the Secretary of Agriculture (hereafter in this subtitle referred to as the 'Secretary') shall submit to the appropriate committees of Congress a comprehensive plan for implementing a national food and human nutrition research program, including recommendations relating to research directions, educational activities, and funding levels necessary to carry out such plan.

"(b) Not later than 1 year after the date of the submission of the plan required under subsection (a), and each year thereafter, the Secretary shall submit to such committees an annual report on the human nutrition research activities conducted by the Secretary.

"DIETARY ASSESSMENT AND STUDIES

"SEC. 1453. (a) The Secretary of Agriculture and the Secretary of Health and Human Services shall jointly conduct an assessment of existing scientific literature and research relating to—

"(1) the relationship between dietary cholesterol and blood cholesterol and human health and nutrition; and

"(2) dietary calcium and its importance in human health and nutrition.

In conducting the assessments under this subsection, the Secretaries shall consult with agencies of the Federal Government involved in related research. On completion of such assessments, the Secretaries shall each recommend such further studies as the Secretaries consider useful.

"(b) Not later than 1 year after the date of enactment of this Act [Dec. 23, 1985], the Secretary of Agriculture and the Secretary of Health and Human Services shall each submit to the House Committees on Agriculture and Energy and Commerce and the Senate Committees on Agriculture, Nutrition, and Forestry and Labor and Human Resources a report that shall include the results of the assessments conducted under subsection (a) and recommendations made under such subsection, for more complete studies of the issues examined under such subsection, including a protocol, feasibility assessment, budget estimates and a timetable for such research as each Secretary shall consider appropriate."

§ 3174. Repealed. Pub. L. 99-198, title XIV, § 1413, Dec. 23, 1985, 99 Stat. 1549

Section, Pub. L. 95-113, title XIV, § 1424, Sept. 29, 1977, 91 Stat. 1000, provided for a study assessing potential value and cost of establishing regional food and human nutrition research centers and a report thereon, with findings and recommendations, to be submitted to the Congress not later than one year after Oct. 1, 1977.

§ 3175. Nutrition education program

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3175e of this title.

§ 3175a. Nutrition and consumer education; Congressional findings

Congress finds that individuals in households eligible to participate in programs under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.] and other low-income individuals, including those residing in rural areas, should have greater access to nutrition and consumer education to enable them to use their food budgets, including food assistance, effectively and to select and prepare foods that satisfy their nutritional needs and improve their diets.

(Pub. L. 99-198, title XV, § 1584, Dec. 23, 1985, 99 Stat. 1596.)

REFERENCES IN TEXT

The Food Stamp Act of 1977, referred to in text, is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2020, 3175b, 3175e of this title.

§ 3175b. Expansion of effective food, nutrition, and consumer education services

The purpose of the program provided for under sections 3175a through 3175e of this title is to expand effective food, nutrition, and consumer education services to the greatest practicable number of low-income individuals, including those participating in or eligible to participate in the programs under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.], to assist them to—

(1) increase their ability to manage their food budgets, including food stamps and other food assistance;

(2) increase their ability to buy food that satisfies nutritional needs and promotes good health; and

(3) improve their food preparation, storage, safety, preservation, and sanitation practices.

(Pub. L. 99-198, title XV, § 1585, Dec. 23, 1985, 99 Stat. 1596.)

REFERENCES IN TEXT

The Food Stamp Act of 1977, referred to in text, is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2020, 3175c, 3175e of this title.

§ 3175c. Program of food, nutrition, and consumer education by State cooperative extension services

The cooperative extension services of the States shall, with funds made available under this subtitle, carry out an expanded program of food, nutrition, and consumer education for low-income individuals in a manner designed to achieve the purpose set forth in section 3175b of this title. In operating the program, the cooperative extension services may use the expanded food and nutrition education program, and other food, nutrition, and consumer education activities of the cooperative extension services or similar activities carried out by them in collaboration with other public or private nonprofit agencies or organizations. In carrying out their responsibilities under the program, the cooperative extension services are encouraged to—

(1) provide effective and meaningful food, nutrition, and consumer education services to as many low-income individuals as possible;

(2) employ educational methodologies, including innovative approaches, that accomplish the purpose set forth in section 3175b of this title; and

(3) to the extent practicable, coordinate activities carried out under the program with the delivery to low-income individuals of benefits under food assistance programs.

(Pub. L. 99-198, title XV, § 1586, Dec. 23, 1985, 99 Stat. 1596.)

REFERENCES IN TEXT

This "subtitle", referred to in text, is subtitle C (§§ 1581-1589) of title XV of Pub. L. 99-198 which is classified as follows: sections 1581 and 1582 are not classified to the Code; section 1583 is set out as a note under section 2011 of this title; sections 1584 through 1588 are classified, respectively, to sections 3175a to 3175e of this title; and section 1589 is classified to section 3178a of this title.

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2020, 3175b, 3175d, 3175e of this title.

§ 3175d. Administration of program of food, nutrition, and consumer education by State cooperative extension services

(a) Administration by Secretary of Agriculture

The program provided for under section 3175c of this title shall be administered by the Secretary of Agriculture through the Extension Service, in consultation with the Food and Nutrition Service and the Human Nutrition Information Service. The Secretary shall ensure that the Extension Service coordinates activities carried out under this subtitle with the ongoing food, nutrition, and consumer education activities of other agencies of the Department of Agriculture.

(b) Evaluation and report

The Secretary of Agriculture, not later than April 1, 1989, shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report evaluating the effectiveness of the program provided for under section 3175c of this title.

(Pub. L. 99-198, title XV, § 1587, Dec. 23, 1985, 99 Stat. 1596.)

REFERENCES IN TEXT

This "subtitle", referred to in subsec. (a), is subtitle C (§§ 1581-1589) of title XV of Pub. L. 99-198, which is classified as follows: sections 1581 and 1582 are not classified to the Code; section 1583 is set out as a note under section 2011 of this title; sections 1584 through 1588 are classified, respectively, to sections 3175a to 3175e of this title; and section 1589 is classified to section 3178a of this title.

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2020, 3175b, 3175e of this title.

§ 3175e. Authorization of appropriations

(a) There are hereby authorized to be appropriated to carry out sections 3175a through 3175e of this title $5,000,000 for the fiscal year ending September 30, 1986; $6,000,000 for the fiscal year ending September 30, 1987; and $8,000,000 for each of the fiscal years ending September 30, 1988, September 30, 1989, and September 30, 1990.

(b) Any funds appropriated under this section for a fiscal year shall be allocated in the manner specified in subparagraphs (A) and (B) of section 3175(c)(2) of this title.

(c) Any funds appropriated to carry out sections 3175a through 3175e of this title shall supplement any other funds appropriated to the Department of Agriculture for use by the Department and the cooperative extension services of the States for food, nutrition, and consumer education for low-income households.

(Pub. L. 99-198, title XV, § 1588, Dec. 23, 1985, 99 Stat. 1597.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2020, 3175b of this title.

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§ 3177. Repealed. Pub. L. 99-198, title XIV, § 1413, Dec. 23, 1985, 99 Stat. 1549

Section, Pub. L. 95-113, title XIV, § 1427, Sept. 29, 1977, 91 Stat. 1000; Pub. L. 97-98, title XIV, § 1425(a), Dec. 22, 1981, 95 Stat. 1308, required the submission to Congress of a plan for a human nutrition research management system.

§ 3178a. Nutrition monitoring

The Secretary of Agriculture shall—

(1) in conducting the Department of Agriculture's continuing survey of food intakes of individuals and any nationwide food consumption survey, include a sample that is representative of low-income individuals and, to the extent practicable, the collection of information on food purchases and other household expenditures by such individuals;

(2) to the extent practicable, continue to maintain the nutrient data base established by the Department of Agriculture; and

(3) encourage research by public and private entities relating to effective standards, methodologies, and technologies for accurate assessment of the nutritional and dietary status of individuals.

(Pub. L. 99-198, title XV, § 1589, Dec. 23, 1985, 99 Stat. 1597.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 which comprises this chapter.

SUBCHAPTER V—ANIMAL HEALTH AND DISEASE RESEARCH

§ 3194. Animal Health Science Research Advisory Board

(a) Establishment; membership

The Secretary shall establish a board to be known as the Animal Health Science Research Advisory Board which shall have a term that expires September 30, 1990, and which shall be composed of the following eleven members—

[*See main edition for text of (1) to (5), concluding sentence; (b)*]

(As amended Pub. L. 99-198, title XIV, § 1414(a), Dec. 23, 1985, 99 Stat. 1549.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198 substituted "1990" for "1985".

§ 3195. Continuing animal health and disease research programs

(a) Authorization of appropriations

There are authorized to be appropriated such funds as Congress may determine necessary to support continuing animal health and disease research programs at eligible institutions, but not to exceed $25,000,000 annually for the period beginning October 1, 1981, and ending September 30, 1990, and not in excess of such sums as may after September 29, 1977, be authorized by law for any subsequent fiscal year. Funds appropriated under this section shall be used: (1) to meet expenses of conducting animal health and disease research, publishing and disseminating the results of such research, and contributing to the retirement of employees subject to the provisions of section 331 of this title; (2) for administrative planning and direction; and (3) to purchase equipment and supplies necessary for conducting such research.

[*See main edition for text of (b) to (f)*]

(As amended Pub. L. 99-198, title XIV, § 1414(b), Dec. 23, 1985, 99 Stat. 1549.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198 substituted "1990" for "1985".

§ 3196. Research on national and regional animal health or disease problems

(a) Authorization of appropriations

There are authorized to be appropriated such funds as Congress may determine necessary to support research on specific national or regional animal health or disease problems, but not to exceed $35,000,000 annually for the period beginning October 1, 1981, and ending September 30, 1990, and not in excess of such sums as may after September 29, 1977, be authorized by law for any subsequent fiscal year.

[*See main edition for text of (b) to (e)*]

(As amended Pub. L. 99-198, title XIV, § 1414(c), Dec. 23, 1985, 99 Stat. 1549.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198 substituted "1990" for "1985".

SUBCHAPTER VI—1890 LAND GRANT COLLEGE FUNDING

§ 3221. Extension at 1890 land grant colleges, including Tuskegee Institute

(a) Authorization of appropriations

There are authorized to be appropriated annually such sums as Congress may determine necessary to support continuing agricultural and forestry extension at colleges eligible to receive funds under the Act of August 30, 1890 (26 Stat. 417-419, as amended; 7 U.S.C. 321-326 and 328), including Tuskegee Institute (hereinafter in this section referred to as "eligible institutions"). Beginning with the fiscal year ending September 30, 1979, and ending with the fiscal year ending September 30, 1981, there shall be appropriated under this section for each fiscal year an amount not less than 4 per centum of the total appropriations for such year under the Act of May 8, 1914 (38 Stat. 372-374, as amended; 7 U.S.C. 341-349): *Provided*, That the amount appropriated for the fiscal year ending September 30, 1979, shall not be less than the amount made available for the fiscal year ending September 30, 1978, to such eligible institutions under section 3(d) of the Act of May 8, 1914 (38 Stat. 373, as amended; 7 U.S.C. 343(d). Beginning with the fiscal year ending September 30, 1982, there shall be appropriated under this section an amount not

less than 5½ per centum, and for each fiscal year thereafter an amount not less than 6 per centum of the total appropriations for such year under the Act of May 8, 1914 (7 U.S.C. 341 et seq.), and related acts pertaining to cooperative extension work at the land-grant institutions identified in the Act of May 8, 1914 (38 Stat. 372, chapter 79; 7 U.S.C. 341 et seq.). Funds appropriated under this section shall be used for expenses of conducting extension programs and activities, and for contributing to the retirement of employees subject to the provisions of section 331 of this title. No more than 20 per centum of the funds received by an institution in any fiscal year may be carried forward to the succeeding fiscal year.

[*See main edition for text of (b) to (g)*]

(As amended Pub. L. 99-198, title XIV, § 1415, Dec. 23, 1985, 99 Stat. 1549.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198 in third sentence, struck out ", through the fiscal year ending September 30, 1985," after "fiscal year thereafter" and inserted at the end ", and related acts pertaining to cooperative extension work at the land-grant institutions identified in the Act of May 8, 1914 (38 Stat. 372, chapter 79; 7 U.S.C. 341 et seq.)".

§ 3222. Agricultural research at 1890 land grant colleges, including Tuskegee Institute

(a) Authorization of appropriations

There are authorized to be appropriated annually such sums as Congress may determine necessary to support continuing agricultural research at colleges eligible to receive funds under the Act of August 30, 1890 (26 Stat. 417-419, as amended; 7 U.S.C. 321-326 and 328), including Tuskegee Institute (hereinafter referred to in this section as "eligible institutions"). Beginning with the fiscal year ending September 30, 1979, there shall be appropriated under this section for each fiscal year an amount not less than 15 per centum of the total appropriations for such year under section 361c of this title: *Provided*, That the amount appropriated for the fiscal year ending September 30, 1979, shall not be less than the amount made available in the fiscal year ending September 30, 1978, to such eligible institutions under the Act of August 4, 1965 (79 Stat. 431, 7 U.S.C. 450i). Funds appropriated under this section shall be used for expenses of conducting agricultural research, printing, disseminating the results of such research, contributing to the retirement of employees subject to the provisions of section 331 of this title, administrative planning and direction, and purchase and rental of land and the construction, acquisition, alteration, or repair of buildings necessary for conducting agricultural research. The eligible institutions are authorized to plan and conduct agricultural research in cooperation with each other and such agencies, institutions, and individuals as may contribute to the solution of agricultural problems, and moneys appropriated pursuant to this section shall be available for paying the necessary expenses of planning, coordinating, and conducting such cooperative research. No more than 5 percent of the funds received by an institution in any fiscal year, under this section, may be carried forward to the succeeding fiscal year.

[*See main edition for text of (b) to (f)*]

(g) Entitlement; unexpended appropriations; reports to Congress

[*See main edition for text of (1)*]

(2) If it appears to the Secretary from the annual statement of receipts and expenditures of funds by any eligible institution that an amount in excess of 5 percent of the preceding annual appropriation allotted to that institution under this section remains unexpended, such amount in excess of 5 percent of the preceding annual appropriation allotted to that institution shall be deducted from the next succeeding annual allotment to the institution.

[*See main edition for text of (3) and (4); (h)*]

(As amended Pub. L. 99-198, title XIV, § 1417, Dec. 23, 1985, 99 Stat. 1550.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, § 1417(a), provided that not more than 5 percent of the funds received by an institution in any fiscal year, under this section, may be carried forward to the succeeding fiscal year.

Subsec. (g)(2). Pub. L. 99-198, § 1417(b), in amending par. (2) generally, substituted "If it appears" for "Whenever it shall appear" before "to the Secretary" and "that an amount in excess of 5 percent" for "that any portion" before "of the preceding annual appropriation" and inserted "in excess of 5 percent of the preceding annual appropriation allotted to that institution" before "shall be deducted".

GRANT FOR DAIRY GOAT RESEARCH PROGRAM

Section 1432(b) of Pub. L. 97-98, as amended by Pub. L. 99-198, title XIV, § 1432, Dec. 23, 1985, 99 Stat. 1557, provided that:

[*See main edition for text of (1) to (4)*]

"(5) There is authorized to be appropriated to the Secretary to carry out this subsection, for each of the fiscal years ending September 30, 1986, through September 30, 1990, an amount equal to one per centum of the aggregate amount of funds appropriated under section 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3222) in the fiscal year preceding the fiscal year for which funds are authorized to be appropriated under this paragraph."

[Section 1432 of Pub. L. 99-198 provided in part that the amendment to section 1432(b) of Pub. L. 97-98, by Pub. L. 99-198 is effective Oct. 1, 1985.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 450i of this title; title 40 section 483.

§ 3223. Grants for acquisition and improvement of research facilities and equipment

(a) Eligible institutions; statement of purposes

It is hereby declared to be the intent of Congress to assist the institutions eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 et seq.), including Tuskegee Institute (hereinafter referred to in this section as "eligible institutions"), in the acquisition and improvement of research facilities and equipment,

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including agricultural libraries, so that eligible institutions may participate fully with the State agricultural experiment stations in a balanced attack on the research needs of the people of their States.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary of Agriculture for the purpose of carrying out the provisions of this section $10,000,000 for each of the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987, such sums to remain available until expended.

[*See main edition for text of* (c) *to* (f)]

(As amended Pub. L. 99-198, title XIV, § 1433, Dec. 23, 1985, 99 Stat. 1557.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, § 1432(a), inserted ", including agricultural libraries," after "equipment". Subsec. (b). Pub. L. 99-198, § 1432(b), authorized appropriations for fiscal year ending Sept. 30, 1987.

§ 3224. Grants to upgrade 1890 land-grant college extension facilities

(a) Congressional declaration of intent

It is the intent of Congress to assist institutions eligible to receive funds under the Act of August 30, 1890 (26 Stat. 417, chapter 841; 7 U.S.C. 321 et seq.), including Tuskegee Institute (hereafter in this section referred to as "eligible institutions"), in the acquisition and improvement of extension facilities and equipment so that eligible institutions may participate fully with the State cooperative extension services in a balanced way in meeting the extension needs of the people of their respective States.

(b) Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out this section $10,000,000 for each of the fiscal years ending September 30, 1986, through September 30, 1990, such sums to remain available until expended.

(c) Administration of grants program; provision of facilities for extension work

Four percent of the sums appropriated under this section shall be available to the Secretary of Agriculture for administration of the grants program under this section. The remaining funds shall be made available for grants to the eligible institutions for the purpose of assisting the institutions in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings, to provide adequate facilities to conduct extension work in their respective States.

(d) Authority of Secretary of Agriculture

Grants awarded under this section shall be made in such amounts and under such terms and conditions as the Secretary of Agriculture shall determine necessary for carrying out this section.

(e) Overhead costs

Federal funds provided under this section may not be used for the payment of any overhead costs of the eligible institutions.

(f) Rules and regulations

The Secretary of Agriculture may promulgate such rules and regulations as the Secretary considers necessary to carry out this section.

(Pub. L. 99-198, title XIV, § 1416, Dec. 23, 1985, 99 Stat. 1549.)

REFERENCES IN TEXT

Act of August 30, 1890, referred to in subsec. (a), is act Aug. 30, 1890, ch. 841, 26 Stat. 417, as amended, popularly known as the Agricultural College Act of 1890 and also as the Second Morrill Act, which is classified generally to subchapter II (§ 321 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 321 of this title and Tables.

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 which comprises this chapter.

SUBCHAPTER VIII—INTERNATIONAL AGRICULTURAL RESEARCH AND EXTENSION

§ 3291. Authorized activities

(a) Activities coordinated with other Federal officials, departments, and agencies

The Secretary, subject to such coordination with other Federal officials, departments, and agencies as the President may direct, is authorized to—

[*See main edition for text of* (1) *and* (2)]

(3) work with developed and transitional countries on food, agricultural and related research and extension, including providing technical assistance, training, and advice to persons from such countries engaged in such activities and the stationing of scientists at national and international institutions in such countries;

(4) assist United States colleges and universities in strengthening their capabilities for food, agricultural, and related research and extension relevant to agricultural development activities in other countries through the development of highly qualified scientists with specialization in international development; and

[*See main edition for text of* (5); (b) *and* (c)]

(As amended Pub. L. 99-198, title XIV, § 1418, Dec. 23, 1985, 99 Stat. 1550.)

AMENDMENTS

1985—Subsec. (a)(3). Pub. L. 99-198 substituted "providing technical assistance, training, and advice to" for "the training of".

Subsec. (a)(4). Pub. L. 99-198 inserted "through the development of highly qualified scientists with specialization in international development" after "countries".

§ 3292. Grants to States for international trade development centers

(a) Establishment of program; purpose; matching formula

The Secretary shall establish and carry out a program to make grants to States for the establishment and operation of international trade development centers, or the expansion of existing international trade development centers, in the United States to enhance the exportation of agricultural products and related products. Such grants shall be based on a matching formula of 50 per centum Federal and 50 per centum State funding (including funds received by the State from private sources and from units of local government).

(b) Preference to States using land-grant colleges and universities as sites; criteria

In making grants under subsection (a) of this section, the Secretary shall give preference to States that intend to use, as sites for international trade development centers, land-grant colleges and universities (as defined in section 3103(10) of this title) that—

(1) operate agricultural programs;

(2) have existing international trade programs that use an interdisciplinary approach and are operated jointly with State and Federal agencies to address international trade problems; and

(3) have an effective and progressive communications system that might be linked on an international basis to conduct conferences or trade negotiations.

(c) Permissible activities of centers

Such centers may—

(1) through research, establish a permanent data base to address the problems faced by potential exporters, including language barriers, interaction with representatives of foreign governments, transportation of goods and products, insurance and financing within foreign countries, and collecting international marketing data;

(2) be used to house permanent or temporary exhibits that will stimulate and educate trade delegations from foreign nations with respect to agricultural products and related products produced in the United States and be made available for use by State and regional entities for exhibits, trade seminars, and negotiations involving such products; and

(3) carry out such other activities relating to the exportation of agricultural products and related products as the Secretary may approve.

(d) Authorization of appropriations

There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this section.

(Pub. L. 95-113, title XIV, § 1458A, as added Pub. L. 99-198, title XIV, § 1419(a), Dec. 23, 1985, 99 Stat. 1550.)

EFFECTIVE DATE

Section 1419(a) of Pub. L. 99-198 provided in part that this section is effective Oct. 1, 1985.

SUBCHAPTER IX—STUDIES

§§ 3301 to 3304. Repealed. Pub. L. 99-198, title XIV, § 1421, Dec. 23, 1985, 99 Stat. 1552

Section 3301, Pub. L. 95-113, title XIV, § 1459, Sept. 29, 1977, 91 Stat. 1016, required the Secretary of Agriculture to transmit to Congress, not later than March 31, 1979, an evaluation of economic and social consequences of programs of Extension Service and cooperative extension services.

Section 3302, Pub. L. 95-113, title XIV, § 1460, Sept. 29, 1977, 91 Stat. 1016, required the Secretary to conduct a comprehensive study of effects of changing climate and weather on crop and livestock productivity and submit a report, with recommendations, to the President and Congress within twelve months after Sept. 29, 1977.

Section 3303, Pub. L. 95-113, title XIV, § 1461, Sept. 29, 1977, 91 Stat. 1016, required the Secretary to conduct, and, within twelve months after September 29, 1977, submit to the President and Congress a report containing results of and Secretary's recommendations concerning an investigation and analysis of practicability, desirability, and feasibility of collecting organic waste materials.

Section 3304, Pub. L. 95-113, title XIV, § 1462, Sept. 29, 1977, 91 Stat. 1017, required the Secretary to conduct a comprehensive study of status and future needs of agricultural research facilities and, within fourteen months after September 29, 1977, submit to the President and Congress a report on this study, with recommendations.

SUBCHAPTER X—FUNDING AND MISCELLANEOUS PROVISIONS

§ 3311. Authorization of appropriations

(a) Existing programs

Notwithstanding any authorization for appropriations for agricultural research in any Act enacted prior to September 29, 1977, there are hereby authorized to be appropriated for the purposes of carrying out the provisions of this chapter, except subchapter VII of this chapter and sections 390 to 390j, 3152, 3154, and 2669 of this title, and the competitive grants program provided for in section 450i of this title, and except that the authorization for moneys provided under the Act of March 2, 1887 (24 Stat. 440-442, as amended; 7 U.S.C. 361a-361i), is excluded and is provided for in subsection (b) of this section, $600,000,000 for the fiscal year ending September 30, 1986, $610,000,000 for the fiscal year ending September 30, 1987, $620,000,000 for the fiscal year ending September 30, 1988, $630,000,000 for the fiscal year ending September 30, 1989, and $640,000,000 for the fiscal year ending September 30, 1990.

(b) Agricultural research at State agricultural experiment stations

Notwithstanding any authorization for appropriations for agricultural research at State agricultural experiment stations in any Act enacted prior to September 29, 1977, there are authorized to be appropriated for the purpose of conducting agricultural research at State agricultural experiment stations pursuant to the Act of March 2, 1887 (24 Stat. 440-442, as amended; 7 U.S.C. 361a-361i), $270,000,000 for the fiscal year ending September 30, 1986, $280,000,000 for the fiscal year ending September 30, 1987, $290,000,000 for the fiscal year ending Septem-

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ber 30, 1988, $300,000,000 for the fiscal year ending September 30, 1989, and $310,000,000 for the fiscal year ending September 30, 1990.

[*See main edition for text of* (c)]

(As amended Pub. L. 99-198, title XIV, § 1422, Dec. 23, 1985, 99 Stat. 1552.)

REFERENCES IN TEXT

The Native Latex Commercialization and Economic Development Act of 1978, referred to in subsec. (c), is Pub. L. 95-592, Nov. 4, 1978, 92 Stat. 2529, as amended, which, as amended by Pub. L. 98-284, May 16, 1984, 98 Stat. 181, is known as the Critical Agricultural Materials Act and is classified principally to subchapter II (§ 178 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 178 of this title and Tables.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, § 1422(a), substituted "$600,000,000 for the fiscal year ending September 30, 1986, $610,000,000 for the fiscal year ending September 30, 1987, $620,000,000 for the fiscal year ending September 30, 1988, $630,000,000 for the fiscal year ending September 30, 1989, and $640,000,000 for the fiscal year ending September 30, 1990" for "$505,000,000 for the fiscal year ending September 30, 1978, $575,000,000 for the fiscal year ending September 30, 1979, $645,000,000 for the fiscal year ending September 30, 1980, $715,000,000 for the fiscal year ending September 30, 1981, $780,000,000 for the fiscal year ending September 30, 1982, $780,000,000 for the fiscal year ending September 30, 1983, $835,000,000 for the fiscal year ending September 30, 1984, and $890,000,000 for the fiscal year ending September 30, 1985, and not in excess of such sums as may after the date of enactment of this title be authorized by law for any subsequent fiscal year".

Subsec. (b). Pub. L. 99-198, § 1422(b), substituted "$270,000,000 for the fiscal year ending September 30, 1986, $280,000,000 for the fiscal year ending September 30, 1987, $290,000,000 for the fiscal year ending September 30, 1988, $300,000,000 for the fiscal year ending September 30, 1989, and $310,000,000 for the fiscal year ending September 30, 1990" for "$120,000,000 for the fiscal year ending September 30, 1978, $145,000,000 for the fiscal year ending September 30, 1979, $170,000,000 for the fiscal year ending September 30, 1980, $195,000,000 for the fiscal year ending September 30, 1981, $220,000,000 for the fiscal year ending September 30, 1982, $230,000,000 for the fiscal year ending September 30, 1983, $240,000,000 for the fiscal year ending September 30, 1984, and $250,000,000 for the fiscal year ending September 30, 1985, and not in excess of such sums as may after September 29, 1977 be authorized by law for any subsequent fiscal year".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1422(a) and (b) of Pub. L. 99-198 provided in part that the amendments by section 1422(a) and (b) of Pub. L. 99-198 are effective Oct. 1, 1985.

§ 3312. Authorization of appropriations for extension education

Notwithstanding any authorization for appropriations for the Cooperative Extension Service in any Act enacted prior to September 29, 1977, there are hereby authorized to be appropriated for the purposes of carrying out the extension programs of the Department of Agriculture $370,000,000 for the fiscal year ending September 30, 1986, $380,000,000 for the fiscal year ending September 30, 1987, $390,000,000 for the fiscal year ending September 30, 1988, $400,000,000 for the fiscal year ending September 30, 1989, and $420,000,000 for the fiscal year ending September 30, 1990.

(As amended Pub. L. 99-198, title XIV, § 1423, Dec. 23, 1985, 99 Stat. 1552.)

AMENDMENTS

1985—Pub. L. 99-198 substituted "$370,000,000 for the fiscal year ending September 30, 1986, $380,000,000 for the fiscal year ending September 30, 1987, $390,000,000 for the fiscal year ending September 30, 1988, $400,000,000 for the fiscal year ending September 30, 1989, and $420,000,000 for the fiscal year ending September 30, 1990" for "$260,000,000 for the fiscal year ending September 30, 1978, $280,000,000 for the fiscal year ending September 30, 1979, $300,000,000 for the fiscal year ending September 30, 1980, $320,000,000 for the fiscal year ending September 30, 1981, $350,000,000 for the fiscal year ending September 30, 1982, $360,000,000 for the fiscal year ending September 30, 1983, $370,000,000 for the fiscal year ending September 30, 1984, and $380,000,000 for the fiscal year ending September 30, 1985, and not in excess of such sums as may after September 29, 1977, be authorized by law for any subsequent fiscal year".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1423 of Pub. L. 99-198 provided in part that the amendment by Pub. L. 99-198 is effective Oct. 1, 1985.

§ 3318. Contract, grant, and cooperative agreement authorities

[*See main edition for text of* (a)]

(b) Authority of Secretary; legal effect of agreement; participation by other Federal agencies

(1) Notwithstanding chapter 63 of title 31, the Secretary may use a cooperative agreement as the legal instrument reflecting a relationship between the Secretary and a State cooperative institution, State department of agriculture, college, university, other research or educational institution or organization, Federal or private agency or organization, individual, or any other party, if the Secretary determines that—

(A) the objectives of the agreement will serve a mutual interest of the parties to the agreement in agricultural research, extension, and teaching activities, including statistical reporting; and

(B) all parties will contribute resources to the accomplishment of those objectives.

(2) Notwithstanding any other provision of law, any Federal agency may participate in any such cooperative agreement by contributing funds through the appropriate agency of the Department of Agriculture or otherwise if it is mutually agreed that the objectives of the agreement will further the authorized programs of the contributing agency.

(c) Duration and eligibility

The Secretary may enter into contracts, grants, or cooperative agreements, for periods not to exceed five years, with State agricultural experiment stations, State cooperative extension services, all colleges and universities, other research or education institutions and organizations, Federal and private agencies and organizations, individuals, and any other contractor

or recipient, either foreign or domestic, to further research, extension, or teaching programs in the food and agricultural sciences of the Department of Agriculture.

(d) Vesting of title

The Secretary may vest title to expendable and nonexpendable equipment and supplies and other tangible personal property in the contractor or recipient when the contractor or recipient purchases such equipment, supplies, and property with contract, grant, or cooperative agreement funds and the Secretary deems such vesting of title a furtherance of the agricultural research, extension, or teaching objectives of the Department of Agriculture.

(e) Applicable requirements

Unless otherwise provided in this chapter, the Secretary may enter into contracts, grants, or cooperative agreements, as authorized by this section, without regard to any requirements for competition, the provisions of section 5 of title 41, and the provisions of section 529 of title 31.

(As amended Pub. L. 99-198, title XIV, § 1424, Dec. 23, 1985, 99 Stat. 1552.)

AMENDMENTS

1985—Subsecs. (b) to (e). Pub. L. 99-198 added subsec. (b) and redesignated former subsecs. (b) to (d) as (c) to (e), respectively.

§ 3319. Restriction on treatment of indirect costs and tuition remission

Funds made available by the Secretary under established Federal-State partnership arrangements to State cooperative institutions under the Acts referred to in section 3103(16) of this title and funds made available under subsection (c)(2) and subsection (d) of section 450i of this title shall not be subject to reduction for indirect costs or for tuition remission. No indirect costs or tuition remission shall be charged against funds in connection with cooperative agreements between the Department of Agriculture and State cooperative institutions if the cooperative program or project involved is of mutual interest to all the parties and if all the parties contribute to the cooperative agreement involved. The prohibition on the use of such funds for the reimbursement of indirect costs shall not apply to funds for international agricultural programs conducted by a State cooperative institution and administered by the Secretary or to funds provided by a Federal agency for such cooperative program or project through a fund transfer, advance, or reimbursement. The Secretary shall limit the amount of such reimbursement to an amount necessary to carry out such program or agreement.

(As amended Pub. L. 99-198, title XIV, § 1425, Dec. 23, 1985, 99 Stat. 1553.)

AMENDMENTS

1985—Pub. L. 99-198 added provisions making prohibition on use of funds for reimbursement of indirect costs inapplicable to funds for international agricultural programs but required the Secretary to limit the reimbursement to amounts necessary to carry out the programs.

§ 3319a. Cost-reimbursable agreements

Notwithstanding any other provision of law, the Secretary of Agriculture may enter into cost-reimbursable agreements with State cooperative institutions without regard to any requirement for competition, for the acquisition of goods or services, including personal services, to carry out agricultural research, extension, or teaching activities of mutual interest. Reimbursable costs under such agreements shall include the actual direct costs of performance, as mutually agreed on by the parties, and the indirect costs of performance, not exceeding 10 percent of the direct cost.

(Pub. L. 95-113, title XIV, § 1473A, as added Pub. L. 99-198, title XIV, § 1426, Dec. 23, 1985, 99 Stat. 1553.)

§ 3319b. Technology development for small- and medium-sized farming operations

It is the sense of Congress that the agricultural research, extension, and teaching activities conducted by the Secretary of Agriculture relating to the development, application, transfer, or delivery of agricultural technology, and, to the greatest extent practicable, any funding that is received by the Secretary of Agriculture for such activities, should be directed to technology that can be used effectively by small- and medium-sized farming operations.

(Pub. L. 95-113, title XIV, § 1473B, as added Pub. L. 99-198, title XIV, § 1427, Dec. 23, 1985, 99 Stat. 1554.)

§ 3319c. Special technology development research program

(a) Cooperative agreements with private agencies, organizations and individuals

Notwithstanding chapter 63 of title 31, the Secretary may enter into a cooperative agreement with a private agency, organization, or individual to share the cost of a research project, or to allow the use of a Federal facility or service on a cost-sharing or cost reimbursable basis, to develop new agricultural technology to further a research program of the Secretary.

(b) Authorization of expenditures

For each of the fiscal years ending September 30, 1986, through September 30, 1990, not more than $3,000,000 of the funds appropriated to the Agricultural Research Service for such fiscal year may be used to carry out this section.

(c) Eligibility; matching funds; deposit in separate accounts; permitted uses of funds; limitation on assistance

(1) To be eligible to receive a contribution under this section, matching funds in an amount equal to at least 50 percent of such contribution shall be provided from non-Federal sources by the recipient or recipients of such contribution.

(2) Funds received by the Secretary under this section shall be deposited in a separate account or accounts, to be available until expended. Such funds may be used to pay directly the

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costs of such research projects and to repay or make advances to appropriations or funds that do or will initially bear all or part of such costs.

(3) The amount of funds or in kind assistance that may be made available under this section by the Secretary for a particular research project may not exceed—

(A) an amount of $50,000 in any fiscal year; or

(B) a total amount of $150,000.

(Pub. L. 95–113, title XIV, § 1473C, as added Pub. L. 99–198, title XIV, § 1427, Dec. 23, 1985, 99 Stat. 1554.)

§ 3319d. Supplemental and alternative crops

(a) Research and pilot project program

Notwithstanding any other provision of law, during the period beginning October 1, 1986, and ending September 30, 1990, the Secretary shall develop and implement a research and pilot project program for the development of supplemental and alternative crops, using such funds as are appropriated to the Secretary each fiscal year under this chapter.

(b) Importance to producers

The development of supplemental and alternative crops is of critical importance to producers of agricultural commodities whose livelihood is threatened by the decline in demand experienced with respect to certain of their crops due to changes in consumption patterns or other related causes.

(c) Research funding, special or competitive grants, etc.; program requirements; agreements, grants and other arrangements

(1) The Secretary shall use such research funding, special or competitive grants, or other means, as the Secretary determines, to further the purposes of this section in the implementation of a comprehensive and integrated program.

(2) The program developed and implemented by the Secretary shall include—

(A) an examination of the adaptation of supplemental and alternative crops;

(B) the establishment and extension of various methods of planting, cultivating, harvesting, and processing supplemental and alternative crops at pilot sites in areas adversely affected by declining demand for crops grown in the area;

(C) the transfer of such applied research from pilot sites to on-farm practice as soon as practicable;

(D) the establishment through grants, cooperative agreements, or other means of such processing, storage, and transportation facilities near such pilot sites for supplemental and alternative crops as the Secretary determines will facilitate the achievement of a successful pilot program; and

(E) the application of such other resources and expertise as the Secretary considers appropriate to support the program.

(3) The pilot program may include, but shall not be limited to, agreements, grants, and other arrangements—

(A) to conduct comprehensive resource and infrastructure assessments;

(B) to develop and introduce supplemental and alternative income-producing crops;

(C) to develop and expand domestic and export markets for such crops; and

(D) to provide technical assistance to farm owners and operators, marketing cooperatives, and others.

(d) Use of expertise and resources of other Federal agencies and land-grant colleges and universities

The Secretary shall use the expertise and resources of the Agricultural Research Service, the Cooperative State Research Service, the Extension Service, and the land-grant colleges and universities for the purpose of carrying out this section.

(Pub. L. 95–113, title XIV, § 1473D, as added Pub. L. 99–198, title XIV, § 1428, Dec. 23, 1985, 99 Stat. 1554.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see note set out under section 3102 of this title.

SUBCHAPTER XI—AQUACULTURE

§ 3322. Assistance programs

[See main edition for text of (a)]

(b) Grants; eligible institutions; purposes

The Secretary may make grants to—

(1) land-grant colleges and universities;

(2) State agricultural experiment stations;

(3) colleges, universities, and Federal laboratories having a demonstrable capacity to conduct aquacultural research, as determined by the Secretary; and

(4) nonprofit private research institutions;

for research and extension to facilitate or expand promising advances in the production and marketing of aquacultural food species and products. Except in the case of Federal laboratories, no grant may be made under this subsection unless the State in which the grant recipient is located makes a matching grant (of which amount an in-kind contribution may not exceed 50 percent) to such recipient equal to the amount of the grant to be made under this subsection, and unless the grant is in implementation of the national aquaculture development plan, and revisions thereto, developed under the National Aquaculture Act of 1980 [16 U.S.C. 2801 et seq.].

[See main edition for text of (c)]

(d) Research, development, and demonstration centers; establishment, funds, etc.

To provide for aquacultural research, development, and demonstration projects having a national or regional application, the Secretary may establish in existing Federal facilities or in cooperation with any of the non-Federal entities specified in subsection (b) of this section up to four aquacultural research, development, and demonstration centers in the United States for the performance of aquacultural research, extension work, and demonstration projects. Funds made available for the operation of such

regional centers may be used for the rehabilitation of existing buildings or facilities to house such centers, but may not be used for the construction or acquisition of new buildings or facilities. To the extent practicable, the aquaculture research, development, and demonstration centers established under this subsection shall be geographically located so that they are representative of the regional aquaculture opportunities in the United States.

(e) Reporting requirements

Not later than one year after the effective date of this subchapter and not later than March 1 of each subsequent year, the Secretary shall submit a report to the President, the House Committee on Agriculture, the House Committee on Merchant Marine and Fisheries, the House Committee on Appropriations, the Senate Committee on Agriculture, Nutrition, and Forestry, and the Senate Committee on Appropriations, containing a summary outlining the progress of the Department of Agriculture in meeting the purposes of the programs established under this subchapter.

(As amended Pub. L. 99-198, title XIV, § 1429(a), Dec. 23, 1985, 99 Stat. 1555.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-198, § 1429(a)(1), (2), added par. (4) and inserted "(of which amount an in-kind contribution may not exceed 50 percent)" after "matching grant".

Subsec. (d). Pub. L. 99-198, § 1429(a)(3), (4), substituted in first sentence "any of the non-Federal entities specified in subsection (b) of this section" for "State agencies (including State departments of agriculture), and land-grant colleges and universities," and added provision respecting geographic location of aquaculture research, development, and demonstration centers.

Subsec. (e). Pub. L. 99-198, § 1429(a)(5), inserted "the House Committee on Merchant Marine and Fisheries,".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3321 of this title.

§ 3323. Repealed. Pub. L. 99-198, title XIV, § 1429(b), Dec. 23, 1985, 99 Stat. 1556

Section, Pub. L. 95-113, title XIV, § 1476, as added Pub. L. 97-98, title XIV, § 1440(a), Dec. 22, 1981, 95 Stat. 1317, related to the establishment, duration, and meetings of the Aquaculture Advisory Board, and appointment and compensation of Board members.

§ 3324. Authorization of appropriations

There is authorized to be appropriated $7,500,000 for each fiscal year beginning after the effective date of this subchapter, and ending with the fiscal year ending September 30, 1990.

(As amended Pub. L. 99-198, title XIV, § 1429(c), Dec. 23, 1985, 99 Stat. 1556.)

AMENDMENTS

1985—Pub. L. 99-198 in amending section generally, struck out subsec. (a) designation, substituted "fiscal year ending September 30, 1990" for "fiscal year ending September 30, 1985, and not in excess of such sums as may after December 22, 1981, be authorized by law for any subsequent fiscal year", and struck out subsec. (b) relating to allocation of funds and consultations by the Secretary with the Board in development of plans for use of the funds.

SUBCHAPTER XII—RANGELAND RESEARCH

§ 3335. Rangeland Research Advisory Board; establishment, duration, etc.

(a) The Secretary shall establish a board to be known as the Rangeland Research Advisory Board which shall have a term that expires September 30, 1990, and which shall be composed of the following twelve members appointed by the Secretary:

[*See main edition for text of (1) to (3), concluding sentence; (b)*]

(As amended Pub. L. 99-198, title XIV, § 1430(a), Dec. 23, 1985, 99 Stat. 1556.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198 substituted "1990" for "1985".

§ 3336. Authorization of appropriations; allocation of funds

(a) There are authorized to be appropriated, to implement the provisions of this subchapter, such sums not to exceed $10,000,000 annually for the period beginning October 1, 1981, and ending September 30, 1990.

[*See main edition for text of (b)*]

(As amended Pub. L. 99-198, title XIV, § 1430(b), Dec. 23, 1985, 99 Stat. 1556.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198 substituted "1990" for "1985, and thereafter such sums as may after the date of enactment of this subchapter be authorized by law for any subsequent fiscal year".

CHAPTER 71—AGRICULTURAL TRADE SUSPENSION ADJUSTMENT

§ 4004. Food bank special nutrition projects

COMMUNITY SERVICES ADMINISTRATION

The Community Services Administration, which was established by section 601 of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2941), was terminated when the Economic Opportunity Act of 1964, Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, was repealed, except for titles VIII and X, effective Oct. 1, 1981, by section 683(a) of Pub. L. 97-35, title VI, Aug. 13, 1981, 95 Stat. 519, which is classified to 42 U.S.C. 9912(a). An Office of Community Services, headed by a Director, was established in the Department of Health and Human Services by section 676 of Pub. L. 97-35, which is classified to 42 U.S.C. 9905.

CHAPTER 72—NATIONAL AGRICULTURAL COST OF PRODUCTION STANDARDS REVIEW BOARD

§ 4102. Membership of Board

[*See main edition for text of (a) and (b)*]

(c) Number of terms

A person may serve as a member of the Board for one or more terms.

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[*See main edition for text of (d)*]

(As amended Pub. L. 99-198, title X, § 1023(a), Dec. 23, 1985, 99 Stat. 1460.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-198 amended subsec. (c) generally, substituting provision authorizing a person to serve as a member of the Board for one or more terms for provision limiting a person to two terms of service with the Board, with the exception of the member provided for in subsec. (a)(3) of this section.

§ 4110. Termination

The Board established in this chapter shall cease to exist on September 30, 1990.

(As amended Pub. L. 99-198, title X, § 1023(b), Dec. 23, 1985, 99 Stat. 1460.)

AMENDMENTS

1985—Pub. L. 99-198 substituted '1990" for "1985".

CHAPTER 73—FARMLAND PROTECTION POLICY

§ 4202. Identifying effects of Federal programs on conversion of farmland to nonagricultural uses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4209 of this title.

§ 4207. Reporting requirement

On January 1, 1987, and at the beginning of each subsequent calendar year.[1] the Secretary of Agriculture shall report to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives on the progress made in implementing the provisions of this chapter. Such report shall include information on—

[*See main edition for text of (1) and (2)*]

(As amended Pub. L. 99-198, title XII, § 1255(a), Dec. 23, 1985, 99 Stat. 1518.)

AMENDMENTS

1985—Pub. L. 99-198 substituted "On January 1, 1987, and at the beginning of each subsequent calendar year." for "Within one year after December 22, 1981,".

§ 4209. Prohibition on maintenance of actions

This chapter shall not be deemed to provide a basis for any action, either legal or equitable, by any person or class of persons challenging a Federal project, program, or other activity that may affect farmland: *Provided*, That the Governor of an affected State where a State policy or program exists to protect farmland may bring an action in the Federal district court of the district where a Federal program is proposed to enforce the requirements of section 4202 of this title and regulations issued pursuant thereto.

(As amended Pub. L. 99-198, title XII, § 1255(b), Dec. 23, 1985, 99 Stat. 1518.)

[1] So in original. The period probably should be a comma.

AMENDMENTS

1985—Pub. L. 99-198 substituted "by any person" for "by any State, local unit of government, or any person" and added the proviso.

CHAPTER 76—DAIRY RESEARCH AND PROMOTION

SUBCHAPTER I—DAIRY PROMOTION PROGRAM

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SUBCHAPTER I—DAIRY PROMOTION PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4533, 4535 of this title.

§ 4501. Congressional findings and declaration of policy

(a) Congress finds that—

(1) dairy products are basic foods that are a valuable part of the human diet;

(2) the production of dairy products plays a significant role in the Nation's economy the milk from which dairy products are manufactured is produced by thousands of milk producers, and dairy products are consumed by millions of people throughout the United States;

(3) dairy products must be readily available and marketed efficiently to ensure that the people of the United States receive adequate nourishment;

(4) the maintenance and expansion of existing markets for dairy products are vital to the welfare of milk producers and those concerned with marketing, using, and producing dairy products, as well as to the general economy of the Nation; and

(5) dairy products move in interstate and foreign commerce, and dairy products that do not move in such channels of commerce directly burden or affect interstate commerce of dairy products.

(b) It, therefore, is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided herein, of an orderly procedure for financing (through assessments on all milk produced in the United States for commercial use) and carrying out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products produced in the United States. Nothing in this subchapter may be construed to provide for the control of production or otherwise limit the right of individual milk producers to produce milk.

(Pub. L. 98-180, title I, § 110, Nov. 29, 1983, 97 Stat. 1136.)

SHORT TITLE

For short title of title I of Pub. L. 98-180 as the "Dairy Production Stabilization Act of 1983", see Short Title of 1983 Amendment note set out under section 1421 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4502 of this title.

§ 4502. Definitions

As used in this subchapter—

(a) the term "Board" means the National Dairy Promotion and Research Board established under section 4504 of this title;

(b) the term "Department" means the Department of Agriculture;

(c) the term "Secretary" means the Secretary of Agriculture;

(d) the term "milk" means any class of cow's milk produced in the United States;

(e) the term "dairy products" means products manufactured for human consumption which are derived from the processing of milk, and includes fluid milk products;

(f) the term "fluid milk products" means those milk products normally consumed in liquid form as a beverage;

(g) the term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity;

(h) the term "producer" means any person engaged in the production of milk for commercial use;

(i) the term "promotion" means actions such as paid advertising, sales promotion, and publicity to advance the image and sales of and demand for dairy products;

(j) the term "research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for milk and dairy products;

(k) the term "nutrition education" means those activities intended to broaden the understanding of sound nutritional principles including the role of milk and dairy products in a balanced diet; and

(*l*) the term "United States" as used in sections 4501 through 4508 of this title means the forty-eight contiguous States in the continental United States.

(Pub. L. 98-180, title I, § 111, Nov. 29, 1983, 97 Stat. 1136.)

§ 4503. Issuance of orders

(a) Notice and opportunity for public comment

During the period beginning with November 29, 1983, and ending thirty days after receipt of a proposal for an initial dairy products promotion and research order, the Secretary shall publish such proposed order and give due notice and opportunity for public comment upon the proposed order. The proposal for an order may be submitted by an organization certified under section 4505 of this title or by any interested person affected by the provisions of this subchapter.

(b) Effective date of orders

After notice and opportunity for public comment are given, as provided for in subsection (a) of this section, the Secretary shall issue a dairy products promotion and research order. Such order shall become effective not later than ninety days following publication of the proposal.

(c) Amendment of orders

The Secretary may, from time to time, amend a dairy products promotion and research order.

(Pub. L. 98-180, title I, § 112, Nov. 29, 1983, 97 Stat. 1137.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4502 of this title.

§ 4504. Required terms in orders

Any order issued under this subchapter shall contain terms and conditions as follows:

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(a) The order shall provide for the establishment and administration of appropriate plans or projects for advertisement and promotion of the sale and consumption of dairy products, for research projects related thereto, for nutrition education projects, and for the disbursement of necessary funds for such purposes. Any such plan or project shall be directed toward the sale and marketing or use of dairy products to the end that the marketing and use of dairy products may be encouraged, expanded, improved, or made more acceptable. No such advertising or sales promotion program shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

(b) The order shall provide for the establishment and appointment by the Secretary of a National Dairy Promotion and Research Board that shall consist of not less than thirty-six members. Members of the Board shall be milk producers appointed by the Secretary from nominations submitted by eligible organizations certified under section 4505 of this title, or, if the Secretary determines that a substantial number of milk producers are not members of, or their interests are not represented by, any such eligible organization, then from nominations made by such milk producers in the manner authorized by the Secretary. In making such appointments, the Secretary shall take into account, to the extent practicable, the geographical distribution of milk production volume throughout the United States. In determining geographic representation, whole States shall be considered as a unit. A region may be represented by more than one director and a region may be made up of more than one State. The term of appointment to the Board shall be for three years with no member serving more than two consecutive terms, except that initial appointments shall be proportionately for one-year, two-year, and three-year terms. The Board shall appoint from its members an executive committee whose membership shall equally reflect each of the different regions in the United States in which milk is produced. The executive committee shall have such duties and powers as are conferred upon it by the Board. Board members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Board including a per diem allowance as recommended by the Board and approved by the Secretary.

(c) The order shall define the powers and duties of the Board that shall include only the powers enumerated in this section. These shall include, in addition to the powers set forth elsewhere in this section, the powers to (1) receive and evaluate, or on its own initiative develop, and budget for plans or projects to promote the use of fluid milk and dairy products as well as projects for research and nutrition education and to make recommendations to the Secretary regarding such proposals, (2) administer the order in accordance with its terms and provisions, (3) make rules and regulations to effectuate the terms and provisions of the order, (4) receive, investigate, and report to the Secretary complaints of violations of the order, and (5) recommend to the Secretary amendments to the order. The Board shall solicit, among others, research proposals that would increase the use of fluid milk and dairy products by the military and by persons in developing nations, and that would demonstrate the feasibility of converting surplus nonfat dry milk to casein for domestic and export use.

(d) The order shall provide that the Board shall develop and submit to the Secretary for approval any promotion, research, or nutrition education plan or project and that any such plan or project must be approved by the Secretary before becoming effective.

(e) The order shall require the Board to submit to the Secretary for approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of the order, including projected costs of dairy products promotion and research projects.

(f) The order shall provide that the Board, with the approval of the Secretary, may enter into agreements for the development and conduct of the activities authorized under the order as specified in subsection (a) of this section and for the payment of the cost thereof with funds collected through assessments under the order. Any such agreement shall provide that (1) the contracting party shall develop and submit to the Board a plan or project together with a budget or budgets that shall show estimated costs to be incurred for such plan or project, (2) the plan or project shall become effective upon the approval of the Secretary, and (3) the contracting party shall keep accurate records of all of its transactions, account for funds received and expended, and make periodic reports to the Board of activities conducted, and such other reports as the Secretary or the Board may require.

(g) The order shall provide that each person making payment to a producer for milk produced in the United States and purchased from the producer shall, in the manner as prescribed by the order, collect an assessment based upon the number of hundredweights of milk for commercial use handled for the account of the producer and remit the assessment to the Board. The assessment shall be used for payment of the expenses in administering the order, with provision for a reasonable reserve, and shall include those administrative costs incurred by the Department after an order has been promulgated under this subchapter. The rate of assessment prescribed by the order shall be 15 cents per hundredweight of milk for commercial use or the equivalent thereof. A milk producer or the producer's cooperative who can establish that the producer is participating in active, ongoing qualified State or regional dairy product promotion or nutrition education programs intended to increase consumption of milk and dairy products generally shall receive credit in determining the assessment due from such producer for contributions to such programs of up to 10 cents per hundredweight of milk marketed or, for the period ending six months after November 29, 1983, up to the aggregate rate in effect on November 29, 1983, of such contributions to such programs (but not to exceed 15

cents per hundredweight of milk marketed) if such aggregate rate exceeds 10 cents per hundredweight of milk marketed. Any person marketing milk of that person's own production directly to consumers shall remit the assessment directly to the Board in the manner prescribed by the order.

(h) The order shall require the Board to (1) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe, (2) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe, and (3) account for the receipt and disbursement of all funds entrusted to it.

(i) The order shall provide that the Board, with the approval of the Secretary, may invest, pending disbursement under a plan or project, funds collected through assessments authorized under this subchapter only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

(j) The order shall prohibit any funds collected by the Board under the order from being used in any manner for the purpose of influencing governmental policy or action except as provided by subsection (c)(5) of this section.

(k) The order shall require that each person receiving milk from farmers for commercial use, and any person marketing milk of that person's own production directly to consumers, maintain and make available for inspection such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order. Such information shall be made available to the Secretary as is appropriate to the administration or enforcement of this subchapter, or any order or regulation issued under this subchapter. All information so obtained shall be kept confidential by all officers and employees of the Department, and only such information so obtained as the Secretary deems relevant may be disclosed by them and then only in a suit or administrative hearing brought at the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the order with reference to which the information to be disclosed was obtained. Nothing in this subsection may be deemed to prohibit (1) the issuance of general statements, based upon the reports, of the number of persons subject to an order or statistical data collected therefrom, which statements do not identify the information furnished by any person, or (2) the publication, by direction of the Secretary, of the name of any person violating any order, together with a statement of the particular provisions of the order violated by such person. No information obtained under the authority of this subchapter may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of this subchapter and any investigatory or enforcement action necessary for the implementation of this subchapter. Any person violating the provisions of this subsection shall, upon conviction, be subject to a fine of not more than $1,000, or to imprisonment for not more than one year, or both, and, if an officer or employee of the Board or the Department, shall be removed from office.

(l) The order shall provide terms and conditions, not inconsistent with the provisions of this subchapter, as necessary to effectuate the provisions of the order.

(Pub. L. 98-180, title I, § 113, Nov. 29, 1983, 97 Stat. 1137.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4502, 4505 of this title.

§ 4505. Certification of organizations

(a) The eligibility of any organization to represent milk producers, and to participate in the making of nominations under section 4504 of this title shall be certified by the Secretary. The Secretary shall certify any organization that the Secretary determines meets the eligibility criteria established by the Secretary under this section and the Secretary's determination as to eligibility shall be final.

(b) Certification shall be based, in addition to other available information, on a factual report submitted by the organization, which shall contain information deemed relevant and specified by the Secretary, including, but not limited to, the following:

(1) geographic territory covered by the organization's active membership;

(2) nature and size of the organization's active membership including the proportion of the total number of active milk producers represented by the organization;

(3) evidence of stability and permanency of the organization;

(4) sources from which the organization's operating funds are derived;

(5) functions of the organization; and

(6) the organization's ability and willingness to further the aims and objectives of this subchapter.

The primary considerations in determining the eligibility of an organization shall be whether its membership consists primarily of milk producers who produce a substantial volume of milk and whether the primary or overriding interest of the organization is in the production or processing of fluid milk and dairy products and promotion of the nutritional attributes of fluid milk and dairy products.

(Pub. L. 98-180, title I, § 114, Nov. 29, 1983, 97 Stat. 1140.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4502, 4503, 4504, 4533 of this title.

§ 4506. Requirement of referendum

(a) Within the sixty-day period immediately preceding September 30, 1985, the Secretary shall conduct a referendum among producers who, during a representative period (as deter-

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mined by the Secretary), have been engaged in the production of milk for commercial use for the purpose of ascertaining whether the order then in effect shall be continued. Such order shall be continued only if the Secretary determines that it has been approved by not less than a majority of the producers voting in the referendum, who during a representative period (as determined by the Secretary) have been engaged in the production of milk for commercial use. If continuation of the order is not approved by a majority of the producers voting in the referendum, the Secretary shall terminate collection of assessments under the order within six months after the Secretary determines that such action is favored by a majority of the producers voting in the referendum and shall terminate the order in an orderly manner as soon as practicable after such determination.

(b) The Secretary shall be reimbursed from assessments collected by the Board for any expenses incurred by the Department in connection with the conduct of any referendum under this section and section 4507 of this title, except for the salaries of Government employees.

(Pub. L. 98-180, title I, § 115, Nov. 29, 1983, 97 Stat. 1141.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4502 of this title.

§ 4507. Suspension and termination of orders

(a) Determination by Secretary

After September 30, 1985, the Secretary shall, whenever the Secretary finds that any order issued under this subchapter or any provision thereof obstructs or does not tend to effectuate the declared policy of this subchapter, terminate or suspend the operation of such order or such provisions thereof.

(b) Referendum

After September 30, 1985, the Secretary may conduct a referendum at any time, and shall hold a referendum on request of a representative group comprising 10 per centum or more of the number of producers subject to the order, to determine whether the producers favor the termination or suspension of the order. The Secretary shall suspend or terminate collection of assessments under the order within six months after the Secretary determines that suspension or termination of the order is favored by a majority of the producers voting in the referendum who, during a representative period (as determined by the Secretary), have been engaged in the production of milk for commercial use and shall terminate the order in an orderly manner as soon as practicable after such determination.

(c) Action not considered an order

The termination or suspension of any order, or any provision thereof, shall not be considered an order within the meaning of this subchapter.

(Pub. L. 98-180, title I, § 116, Nov. 29, 1983, 97 Stat. 1141.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4502, 4506 of this title.

§ 4508. Cooperative association representation

Whenever, under the provisions of this subchapter, the Secretary is required to determine the approval or disapproval of producers, the Secretary shall consider the approval or disapproval by any cooperative association of producers, engaged in a bona fide manner in marketing milk or the products thereof, as the approval or disapproval of the producers who are members of or under contract with such cooperative association of producers. If a cooperative association of producers elects to vote on behalf of its members, such cooperative association shall provide each producer, on whose behalf the cooperative association is expressing approval or disapproval, a description of the question presented in the referendum together with a statement of the manner in which the cooperative association intends to cast its vote on behalf of the membership. Such information shall inform the producer of procedures to follow to cast an individual ballot should the producer so choose within the period of time established by the Secretary for casting ballots. Such notification shall be made at least thirty days prior to the referendum and shall include an official ballot. The ballots shall be tabulated by the Secretary and the vote of the cooperative association shall be adjusted to reflect such individual votes.

(Pub. L. 98-180, title I, § 117, Nov. 29, 1983, 97 Stat. 1141.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4502 of this title.

§ 4509. Petition and review

(a) Any person subject to any order issued under this subchapter may file with the Secretary a petition stating that any such order or any provision of such order or any obligation imposed in connection therewith is not in accordance with law and requesting a modification thereof or an exemption therefrom. The petitioner shall thereupon be given an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary. After such hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with law.

(b) The district courts of the United States in any district in which such person is an inhabitant or carries on business are hereby vested with jurisdiction to review such ruling, if a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had on the Secretary by delivering a copy of the complaint to the Secretary. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such fur-

ther proceedings as, in its opinion, the law requires.

(Pub. L. 98-180, title I, § 118, Nov. 29, 1983, 97 Stat. 1142.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4535 of this title.

§ 4510. Enforcement

(a) Restraining order; civil action; minor violation

The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued under this subchapter. Any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General minor violations of this subchapter whenever the Secretary believes that the administration and enforcement of this subchapter would be adequately served by suitable written notice or warning to any person committing such violation.

(b) Civil penalties

Any person who willfully violates any provision of any order issued by the Secretary under this subchapter shall be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation and, in the case of a willful failure to pay, collect, or remit the assessment as required by the order, in addition to the amount due, a penalty equal to the amount of the assessment on the quantity of milk as to which the failure applies. The amount of any such penalty shall accrue to the United States and may be recovered in a civil suit brought by the United States.

(c) Availability of other remedies

The remedies provided in subsections (a) and (b) of this section shall be in addition to, and not exclusive of, other remedies that may be available.

(Pub. L. 98-180, title I, § 119, Nov. 29, 1983, 97 Stat. 1142.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4535 of this title.

§ 4511. Investigations, power to subpena and take oaths and affirmations; aid of courts

The Secretary may make such investigations as the Secretary deems necessary for the effective administration of this subchapter or to determine whether any person subject to the provisions of this subchapter has engaged or is about to engage in any act that constitutes or will constitute a violation of any provision of this subchapter or of any order, or rule or regulation issued under this subchapter. For the purpose of such investigation, the Secretary may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of records. The court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. Process in any such case may be served in the judicial district in which such person is an inhabitant or wherever such person may be found.

(Pub. L. 98-180, title I, § 120, Nov. 29, 1983, 97 Stat. 1143.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4535 of this title.

§ 4512. Administrative provisions

(a) Nothing in this subchapter may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

(b) The provisions of this subchapter applicable to orders shall be applicable to amendments to orders.

(Pub. L. 98-180, title I, § 121, Nov. 29, 1983, 97 Stat. 1143.)

§ 4513. Authorization of appropriations

There are hereby authorized to be appropriated such funds as are necessary to carry out the provisions of this subchapter. The funds so appropriated shall not be available for payment of the expenses or expenditures of the Board in administering any provisions of any order issued under the terms of this subchapter.

(Pub. L. 98-180, title I, § 122, Nov. 29, 1983, 97 Stat. 1143.)

§ 4514. Dairy reports

The Secretary of Agriculture shall submit to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry the following reports:

(1) Not later than July 1, 1984, a report on the effect of applying, nationally, standards similar to the current California standards for fluid milk products in their final consumer form, as they would relate to—

(A) consumer acceptance, overall consumer consumption trends, and total per capita consumption;

(B) nutritional augmentation, particularly for young and older Americans;

(C) implementing improved interagency enforcement of minimum standards to prevent consumer fraud and deception;

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(D) multiple component pricing for producer milk;

(E) reduced Commodity Credit Corporation purchases;

(F) consistency of product quality throughout the year and between marketing regions of the United States; and

(G) consumer prices.

(2) Not later than December 31, 1984, a report on (A) recommendations for changes in the application of the parity formula to milk so as to make the formula more consistent with modern production methods and with special attention to the cost of producing milk as a result of changes in productivity, and (B) the feasibility of imposing a limitation on the total amount of payments and other assistance a producer of milk may receive during a year under section 1446(d) of this title.

(3) Not later than April 15, 1985, a report on the effectiveness of the paid diversion program carried out under section 1446(d) of this title.

(4)Not later than July 1, 1985, and July 1 of each year after the date of enactment of this title,[1] an annual report describing activities conducted under the dairy products promotion and research order issued under this subchapter, and accounting for the receipt and disbursement of all funds received by the National Dairy Promotion and Research Board under such order including an independent analysis of the effectiveness of the program.

(Pub. L. 98–180, title III, § 301, Nov. 29, 1983, 97 Stat. 1150.)

REFERENCES IN TEXT

The date of enactment of this title, referred to in par. (4), means the date of enactment of title III of Pub. L. 98–180, which was approved Nov. 29, 1983.

CODIFICATION

Section was enacted as part of Pub. L. 98–180, known as the Dairy and Tobacco Adjustment Act of 1983, and not as part of title I of Pub. L. 98–180, known as the Dairy Production Stabilization Act of 1983, subtitle B of which comprises this subchapter.

SUBCHAPTER II—DAIRY RESEARCH PROGRAM

§ 4531. Definitions

For purposes of this subchapter—

(1) the term "board" means the board of trustees of the Institute;

(2) the term "Department" means the Department of Agriculture;

(3) the term "dairy products" means manufactured products that are derived from the processing of milk, and includes fluid milk products;

(4) the term "fluid milk products" means those milk products normally consumed in liquid form as a beverage;

(5) the term "Fund" means the Dairy Research Trust Fund established by section 4536 of this title;

(6) the term "Institute" means the National Dairy Research Endowment Institute established by section 4532 of this title;

(7) the term "milk" means any class of cow's milk marketed in the United States;

(8) the term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity;

(9) the term "producer" means any person engaged in the production of milk for commercial use;

(10) the term "research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for milk and dairy products;

(11) the term "Secretary" means the Secretary of Agriculture unless the context specifies otherwise; and

(12) the term "United States" means the several States and the territories and possessions of the United States, except that for purposes of sections 4532, 4534(a), and 4537 of this title, and paragraph (7) of this section, such term means the forty-eight contiguous States in the continental United States.

(Pub. L. 98–180, title I, § 130, as added Pub. L. 99–198, title I, § 121, Dec. 23, 1985, 99 Stat. 1367.)

§ 4532. Establishment of National Dairy Research Endowment Institute

The Secretary of Agriculture may establish in the Department of Agriculture a National Dairy Research Endowment Institute whose function shall be to aid the dairy industry through the implementation of the dairy products research order, which its board of trustees shall administer, and the use of monies made available to its board of trustees from the Dairy Research Trust Fund to implement the order. In implementing the order, the Institute shall provide a permanent system for funding scientific research activities designed to facilitate the expansion of markets for milk and dairy products marketed in the United States. The Institute shall be headed by a board of trustees composed of the members of the National Dairy Promotion and Research Board. The board may appoint from among its members an executive committee whose membership shall reflect equally each of the different regions in the United States in which milk is produced. The executive committee shall have such duties and powers as are delegated to it by the board. The members of the board shall serve without compensation. While away from their homes or regular places of business in the performance of services for the board, members of the board shall be allowed reasonable travel expenses, including a per diem allowance in lieu of subsistence, as recommended by the board and approved by the Secretary, except that there shall be no duplication of payment for such expenses.

[1] See References in Text note below.

(Pub. L. 98-180, title I, § 131, as added Pub. L. 99-198, title I, § 121, Dec. 23, 1985, 99 Stat. 1368.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4531, 4536 of this title.

§ 4533. Issuance of order

(a) Publication in Federal Register; public comment; submission

After receipt of a proposed dairy products research order, the Secretary may publish such proposed order in the Federal Register and shall give notice and reasonable opportunity for public comment on such proposed order. Such proposed order may be submitted by an organization certified under section 4505 of this title or by any interested person affected by the provisions of subchapter I of this chapter.

(b) Effective date of order

After the Secretary provides for such publication and a reasonable opportunity for a hearing under subsection (a) of this section, the Secretary may issue the dairy products research order. The order so issued shall become effective not later than 90 days after publication in the Federal Register of the order.

(c) Amendment of order

The Secretary may amend, from time to time, the dairy products research order issued under subsection (b) of this section.

(Pub. L. 98-180, title I, § 132, as added Pub. L. 99-198, title I, § 121, Dec. 23, 1985, 99 Stat. 1369.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4534, 4535, 4536, 4533 of this title.

§ 4534. Required terms of order; agreements under order; records

(a) Required terms

The dairy products research order issued under section 4533(b) of this title shall—

(1) provide for the establishment and administration, by the Institute, of appropriate scientific research activities designed to facilitate the expansion of markets for dairy products marketed in the United States;

(2) specify the powers of the board, including the powers to—

(A) receive and evaluate, or on its own initiative develop and budget for, research plans or projects designed to—

(i) increase the knowledge of human nutritional needs and the relationship of milk and dairy products to these needs;

(ii) improve dairy processing technologies, particularly those appropriate to small- and medium-sized family farms;

(iii) develop new dairy products; and

(iv) appraise the effect of such research on the marketing of dairy products;

(B) make recommendations to the Secretary regarding such plans and projects;

(C) administer the order in accordance with its terms and provisions;

(D) make rules and regulations to effectuate the terms and provisions of the order;

(E) receive, investigate, and report to the Secretary complaints of violations of the order;

(F) recommend to the Secretary amendments to the order;

(G) enter into agreements, with the approval of the Secretary, for the conduct of activities authorized under the order and for payment of the cost of such activities with any monies in the Fund other than monies appropriated or transferred by the Secretary to the Fund;

(H) with the approval of the Secretary, establish advisory committees composed of individuals other than members of the board, and pay the necessary and reasonable expenses and fees of the members of such committees; and

(I) with the approval of the Secretary, appoint or employ such persons, other than members of the board, as the board deems necessary and define the duties and determine the compensation of each;

(3) specify the duties of the board, including the duties to—

(A) develop, and submit to the Secretary for approval before implementation, any research plan or project to be carried out under this subchapter;

(B) submit to the Secretary for approval, budgets, on a fiscal year basis, of the board's anticipated expenses and disbursements in the administration of the order, including projected costs of carrying out dairy products research plans and projects;

(C) prepare and make public, at least annually, a report of the board's activities and an accounting for funds received and expended by the board;

(D) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe;

(E) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and

(F) account for the receipt and disbursement of all funds entrusted to the board;

(4) prohibit any monies received under this subchapter by the board to be used in any manner for the purpose of influencing governmental policy or actions, except as provided in paragraph (2)(F); and

(5) require that each person receiving milk from producers for commercial use and any person marketing milk of that person's own production directly to consumers maintain and make available for inspection by the Secretary such books and records as may be required by the order and file with the Secretary reports at the time, in the manner, and having the content prescribed by the order.

(b) Agreements under order

Any agreement made under subsection (a)(2)(G) of this section shall provide that—

(1) the person with whom such agreement is made shall develop and submit to the board

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a research plan or project together with a budget that shows estimated costs to be incurred to carry out such plan or project;

(2) such plan or project shall become effective on the approval of the Secretary; and

(3) such person shall keep accurate records of all of its transactions, account for funds received and expended, make periodic reports to the board of activities conducted to carry out such plan or project, and submit such other reports as the Secretary or the board may require.

(c) Confidentiality of records; disclosure exceptions; penalty for violation

(1) Information, books, and records made available to, and reports filed with, the Secretary under subsection (a)(6) of this section shall be kept confidential by all officers and employees of the Department, except that such information, books, records, and reports as the Secretary deems relevant may be disclosed by such officers and employees in any suit or administrative proceeding that is brought at the request of the Secretary or to which the Secretary or any officer of the United States is a party, and that involves the order issued under section 4533(b) of this title.

(2) Paragraph (1) shall not be construed to prohibit—

(A) the issuance of general statements, based on such information, books, records, and reports, of the number of persons subject to the order or of statistical data collected from such persons if such statements do not specifically identify the data furnished by any one of such persons; or

(B) the publication, at the direction of the Secretary, of the name of any person violating the order, together with a statement of the particular provisions of the order violated by the person.

(3) No information obtained under the authority of this section may be made available to any agency, officer, or employee of the United States for any purpose other than the implementation of this subchapter and any investigatory or enforcement action necessary to implement this subchapter. Any person who violates this paragraph shall be subject to a fine of not more than $1,000, or to imprisonment for not more than one year, or both, and, if such person is employed by the board or the Department, shall be terminated from such employment.

(Pub. L. 98–180, title I, § 133, as added Pub. L. 99–198, title I, § 121, Dec. 23, 1985, 99 Stat. 1369.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4531 of this title.

§ 4535. Petition and review; enforcement; investigations

The provisions of sections 4509, 4510, and 4511 of this title shall apply, except when inconsistent with this subchapter, to the Institute, the board, the persons subject to the order issued under section 4533(b) of this title, the jurisdiction of district courts of the United States, and the authority of the Secretary under this subchapter in the same manner as such sections apply with respect to subchapter I of this chapter.

(Pub. L. 98–180, title I, § 134, as added Pub. L. 99–198, title I, § 121, Dec. 23, 1985, 99 Stat. 1371.)

§ 4536. Dairy Research Trust Fund

(a) Establishment

There may be established in the Treasury of the United States a trust fund to be known as the "Dairy Research Trust Fund" if the Institute is established under section 4532 of this title and a dairy products research order issued under section 4533 of this title is effective during such fiscal year.

(b) Authorization of appropriations; transfer of moneys; investments

(1) There is authorized to be appropriated to the Fund or transferred from moneys available to the Commodity Credit Corporation for deposit in the Fund, $100,000,000.

(2) Moneys deposited in the Fund under paragraph (1) shall be invested by the Secretary of the Treasury in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States. Interest, dividends, and other payments that accrue from such investments shall be deposited in the Fund and also shall be so invested, subject to subsection (c) of this section.

(c) Availability of moneys for authorized and approved activities

Moneys in the Fund, other than moneys appropriated or transferred under paragraph (1) of subsection (b) of this section, shall be available to the board, in such amounts, and for such activities authorized by this subchapter, as the Secretary may approve.

(Pub. L. 98–180, title I, § 135, as added Pub. L. 99–198, title I, § 121, Dec. 23, 1985, 99 Stat. 1371.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4531 of this title.

§ 4537. Termination of order, Institute, and Fund

(a) Termination or suspension of order

The Secretary, whenever the Secretary finds that the order issued under this subchapter or any provision of such order obstructs or does not tend to facilitate the expansion of markets for milk and dairy products marketed in the United States, shall terminate or suspend the operation of the order or such provision.

(b) Dissolution of Institute

If the Secretary terminates the order, the Institute shall be dissolved 180 days after the termination of the order.

(c) Disposal of moneys in Fund

If the Institute is dissolved for any reason, the moneys remaining in the Fund shall be disposed of as shall be agreed to by the board and the Secretary.

(Pub. L. 98-180, title I, § 136, as added Pub. L. 99-198, title I, § 121, Dec. 23, 1985, 99 Stat. 1371.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4531 of this title.

§ 4538. Additional authority

(a) No provision of this subchapter shall be construed to preempt or supersede any other program relating to milk or dairy products research organized and operated under the laws of the United States or any State.

(b) The provisions of this subchapter applicable to the order issued under section 4533(b) of this title shall be applicable to any amendment to the order.

(Pub. L. 98-180, title I, § 137, as added Pub. L. 99-198, title I, § 121, Dec. 23, 1985, 99 Stat. 1372.)

CHAPTER 77—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

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§ 4601. Congressional findings and statement of purpose

The Congress finds that:

(1) Honey is produced by many individual producers in every State in the United States.

(2) Honey and honey products move in large part in the channels of interstate and foreign commerce, and honey which does not move in such channels directly burdens or affects interstate commerce.

(3) In recent years, large quantities of low-cost, imported honey have been brought into the United States, replacing domestic honey in the normal trade channels.

(4) The maintenance and expansion of existing honey markets and the development of new or improved markets or uses are vital to the welfare of honey producers and those concerned with marketing, using, and processing honey, along with those engaged in general agricultural endeavors requiring bees for pollinating purposes.

(5) The honey production industry within the United States is comprised mainly of small- and medium-sized businesses.

(6) The development and implementation of coordinated programs of research, promotion, and consumer education necessary for the maintenance of markets and the development of new markets have been inadequate.

(7) Without cooperative action in providing for and financing such programs, honey producers, honey handlers, wholesalers, and retailers are unable to implement programs of research, promotion, and consumer education necessary to maintain and improve markets for these products.

(b)(1) [1] It is, therefore, the purpose of this chapter to authorize the establishment of an

[1] So in original. Section enacted without a subsec. (a).

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orderly procedure for the development and financing, through an adequate assessment, of an effective and coordinated program of research, promotion, and consumer education designed to strengthen the position of the honey industry in the marketplace and maintain, develop, and expand markets for honey and honey products.

(2) Nothing in this chapter may be construed to dictate quality standards for honey, provide for control of its production, or otherwise limit the right of the individual honey producer to produce honey. This chapter treats foreign producers equitably, and nothing in this chapter may be construed as a trade barrier to honey produced in foreign countries.

(Pub. L. 98-590, § 2, Oct. 30, 1984, 98 Stat. 3115.)

SHORT TITLE

Section 1 of Pub. L. 98-590 provided that: "This Act [enacting this chapter] may be cited as the 'Honey Research, Promotion, and Consumer Information Act'."

§ 4602. Definitions

As used in this chapter:

(1) The term "honey" means the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb by honey bees.

(2) The term "honey products" means products produced, in whole or part, from honey.

(3) The term "Secretary" means the Secretary of Agriculture.

(4) The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(5) The term "producer" means any person who produces honey in the United States for sale in commerce.

(6) The term "handler" means any person who handles honey.

(7) The term "handle" means to sell, package, or process honey.

(8) The term "importer" means any person who imports honey or honey products into the United States or who acts as an agent, broker, or consignee for any person or nation that produces honey outside of the United States for sale in the United States.

(9) The term "producer-packer" means any person who is both a producer and handler of honey.

(10) The term "promotion" means any action, including paid advertising, pursuant to this chapter, to present a favorable image for honey or honey products to the public with the express intent of improving the competitive position and stimulating sales of honey or honey products.

(11) The term "research" means any type of research designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products.

(12) The term "consumer education" means any action to provide information on the usage and care of honey or honey products.

(13) The term "marketing" means the sale or other disposition in commerce of honey or honey products.

(14) The term "Committee" means the National Honey Nominations Committee provided for under section 4606(b) of this title.

(15) The term "Honey Board" means the board provided for under section 4606(c) of this title.

(16) The term "State association" means that organization of beekeepers in a State which is generally recognized as representing the beekeepers of that State.

(17) The term "State" means any of the several States, the District of Columbia and the Commonwealth of Puerto Rico.

(Pub. L. 98-590, § 3, Oct. 30, 1984, 98 Stat. 3116.)

§ 4603. Honey research, promotion, and consumer information order

To effectuate the declared policy of this chapter, the Secretary shall, subject to the provisions of this chapter, issue and, from time to time, amend orders applicable to persons engaged in the production, sale, or handling of honey and honey products in the United States and the importation of honey and honey products into the United States.

(Pub. L. 98-590, § 4, Oct. 30, 1984, 98 Stat. 3116.)

§ 4604. Notice and hearing

Whenever the Secretary has reason to believe that the issuance of an order will assist in carrying out the purpose of this chapter, the Secretary shall provide due notice of and opportunity for a hearing upon a proposed order. Such hearing may be requested and a proposal for an order submitted by any organization or interested person affected by the provisions of this chapter.

(Pub. L. 98-590, § 5, Oct. 30, 1984, 98 Stat. 3117.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4605 of this title.

§ 4605. Findings and issuance of order

After notice of and opportunity for a hearing has been provided in accordance with section 4604 of this title, the Secretary shall issue an order if the Secretary finds, and sets forth in such order, that, upon the evidence introduced at such hearing, the issuance of such order and all the terms and conditions thereof will assist in carrying out the purpose of this chapter.

(Pub. L. 98-590, § 6, Oct. 30, 1984, 98 Stat. 3117.)

§ 4606. Required terms of order

(a) Terms and conditions of order

Any order issued by the Secretary under this chapter shall contain the terms and conditions described in this section and, except as provided in section 4607 of this title, no others.

(b) National Honey Nominations Committee; composition; nominations; terms; Chairman; compensation; meetings; voting

(1) Such order shall provide for the establishment and appointment by the Secretary of a National Honey Nominations Committee which shall consist of not more than one member from each State, from nominations submitted by each State association. If a State association

does not submit a nomination, the Secretary may provide for nominations from that State to be made in a different manner, except that if a State which is not one of the top twenty honey-producing States in the United States (as determined by the Secretary) does not submit a nomination, such State shall not be represented on the Committee.

(2) Members of the Committee shall serve for three-year terms with no member serving more than two consecutive three-year terms, except that the initial appointments to the Committee shall be staggered with an equal number of members appointed, to the maximum extent possible, to one-year, two-year, and three-year terms.

(3) The Committee shall select its Chairman by a majority vote.

(4) The members of the Committee shall serve without compensation but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Committee.

(5) The Committee shall nominate the members and alternates of the Honey Board and submit such nominations to the Secretary. In making such nominations, the Committee shall meet annually, except that after the first annual meeting, when determined by the Chairman, the Committee may conduct its business by mail ballot in lieu of an annual meeting. In order to nominate members to the Honey Board, at least 50 per centum of the members from the twenty leading honey producing States must vote. A majority of the National Honey Nominations Committee shall constitute a quorum for voting at an annual meeting. In the case of a mail ballot, votes must be received from a majority of the Committee.

(c) Honey Board; membership; terms; alternates; compensation; powers; duties

(1) The order described in subsection (a) of this section shall provide for the establishment and appointment by the Secretary of a Honey Board in accordance with this subsection.

(2) The membership of the Honey Board shall consist of—

(A) seven members who are honey producers appointed from nominations submitted by the National Honey Nominations Committee, one from each of seven regions of the United States which shall be established by the Secretary on the basis of the production of honey in the different areas of the country;

(B) two members who are handlers of honey appointed from nominations submitted by the Committee from recommendations made by industry organizations representing handler interests;

(C) two members who are importers appointed from nominations submitted by the Committee from recommendations made by industry organizations representing importer interests;

(D) one member who is an officer or employee of a honey marketing cooperative appointed from nominations submitted by the Committee; and

(E) one member selected by the Secretary from the general public.

The Committee shall also nominate an alternate or alternates for each member of the Honey Board described in subparagraphs (A) through (D), and the Secretary shall appoint an alternate for the member described in subparagraph (E). Such alternates shall be appointed in the same manner as members are and shall serve only whenever the member is absent from a meeting or is disqualified.

(3) Members of the Honey Board shall serve for three-year terms with no member serving more than two consecutive three-year terms except that the initial appointments to the Honey Board shall be staggered with an equal number of members appointed, to the maximum extent possible, to one-year, two-year, and three-year terms.

(4) In the event any member of the Honey Board ceases to be a member of the category of members from which the member was appointed to the Honey Board, such person shall be automatically replaced by an alternate.

(5) The members of the Honey Board shall serve without compensation but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Honey Board.

(6) The powers and duties of the Honey Board shall be to—

(A) administer any order, issued by the Secretary under this chapter, in accordance with its terms and provisions and consistent with the provisions of this chapter;

(B) prescribe rules and regulations to effectuate the terms and provisions of such an order;

(C) receive, investigate, and report to the Secretary, accounts of violations of such an order;

(D) make recommendations to the Secretary with respect to amendments which should be made to such order; and

(E) employ a manager and staff.

(d) Budget; administration of order

The Honey Board shall prepare and submit to the Secretary, for the Secretary's approval, a budget (on a fiscal period basis) of its anticipated expenses and disbursements in the administration of the order, including probable costs of research, promotion, and consumer information.

(e) Assessment; collection; rate; exemption

(1) The Honey Board shall administer collection of the assessment provided for in this paragraph to finance the expenses described in subsections (d) and (f) of this section. For the first year in which the plan is in effect, the assessment rate shall be $0.01 per pound, with payment to be made in the manner described in section 4608 of this title. After the first year, the Honey Board may submit to the Secretary a request for an increase in the assessment rate not to exceed 0.5 cent per year, but at no time may the total assessment rate exceed $0.04 per pound.

(2) A producer or producer-packer who produces, or handles, or produces and handles less than six thousand pounds of honey per year or an importer who imports less than six thousand

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pounds of honey per year shall be exempt from the assessment. In order to claim such an exemption, a person shall submit an application to the Honey Board stating that their production, handling, or importation of honey shall not exceed six thousand pounds for the year for which the exemption is claimed.

(f) Funds; use of; reimbursement; Secretary

Funds collected by the Honey Board from the assessments shall be used by the Honey Board for financing research, promotion, and consumer information, other expenses as described in subsection (d) of this section, such other expenses for the administration, maintenance, and functioning of the Honey Board as may be authorized by the Secretary, any reserve established under section 4607(5) of this title, and those administrative costs incurred by the Department of Agriculture pursuant to this chapter after an order has been promulgated under this chapter. The Secretary shall be reimbursed from assessments collected by the Honey Board for any expenses incurred for the conduct of referenda.

(g) False or unwarranted claims or statements

No promotion funded with assessments collected under this chapter may make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product.

(h) Influencing governmental policy or action

No funds collected through assessments authorized by this chapter may, in any manner, be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided for in this chapter.

(i) Plans or projects; contracts

The Honey Board shall develop and submit to the Secretary, for approval, plans for research, promotion, and consumer information. Any such plans or projects must be approved by the Secretary before becoming effective. The Honey Board may enter into contracts or agreements with the approval of the Secretary for the development and carrying out of research, promotion, and consumer information, and for the payment of the cost thereof with funds collected pursuant to this chapter.

(j) Books and records; reports

The Honey Board shall maintain books and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it and cause a complete audit report to be submitted to the Secretary at the end of each fiscal year.

(Pub. L. 98-590, § 7, Oct. 30, 1984, 98 Stat. 3117.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4602, 4611 of this title.

§ 4607. Permissive terms and provisions

On the recommendation of the Honey Board, and with the approval of the Secretary, an order issued pursuant to this chapter may contain one or more of the following provisions:

(1) Providing authority to exempt from the provisions of the order honey used for exporting and providing authority for the Honey Board to require satisfactory safeguards against improper use of such exemption.

(2) Providing that in a State with an existing marketing order with respect to honey, the objectives of which the Secretary determines are comparable to the program established under this chapter, there shall be paid to the Honey Board as provided in section 4608 of this title that portion of the national assessment which is above the State assessment, if any, actually paid on such honey.

(3) Providing for authority to designate different handler payment and reporting schedules to recognize differences in marketing practices and procedures.

(4) Providing that the Honey Board may convene from time to time working groups drawn from producers, honey handlers, importers, exporters, members of the wholesale or retail outlets for honey, or other members of the public to assist in the development of research and marketing programs for honey.

(5) Providing for authority to accumulate reserve funds from assessments collected pursuant to this chapter to permit an effective and continuous coordinated program of research, promotion, and consumer information, in years when the production and assessment income may be reduced, but the total reserve fund may not exceed the amount budgeted for one year's operation.

(6) Providing for the authority to use funds collected under this chapter with the approval of the Secretary for the development and expansion of honey and honey product sales in foreign markets.

(7) Providing for terms and conditions incidental to, and not inconsistent with, the terms and conditions specified in this chapter and necessary to effectuate the other provisions of such an order.

(Pub. L. 98-590, § 8, Oct. 30, 1984, 98 Stat. 3119.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4606 of this title.

§ 4608. Collection of assessments; refunds

(a) First handler of honey

Except as provided by subsections (c), (d), and (e) of this section, the first handler of honey shall be responsible for the collection from the producer, and payment to the Honey Board, of assessments authorized by this chapter.

(b) Records

The first handler shall maintain a separate record on each producer's honey so handled, including honey owned by the handler.

(c) Time for payment; remission

The assessment on imported honey and honey products shall be paid by the importer at the time of entry into the United States and shall be remitted to the Honey Board.

(d) Loans; Honey Loan Price Support Program; redemption

In any case in which a loan is made with respect to any honey under the Honey Loan Price Support Program, the Secretary shall provide that the assessment shall be deducted from the proceeds of the loan and that the amount of such assessment shall be forwarded to the Honey Board. When such loan is redeemed, the Secretary shall provide the producer with proof of payment of the assessment.

(e) Producer-packers

Producer-packers shall pay to the Honey Board the assessment on the honey they produce.

(f) Inspection; books and records

Handlers, importers, and producer-packers responsible for payment of assessments shall maintain and make available for inspection by the Secretary such books and records as are required by the order and file reports at the times, in the manner, and having the content prescribed by the order, so that information and data shall be made available to the Honey Board and to the Secretary which is appropriate or necessary to the effectuation, administration, or enforcement of the [2] chapter or of any order or regulation issued pursuant to this chapter.

(g) Confidentiality of information; disclosure

All information obtained pursuant to subsection (f) of this section shall be kept confidential by all officers and employees of the Department of Agriculture and of the Honey Board. Only such information as the Secretary deems relevant shall be disclosed and only in a suit or administrative hearing brought at the request of the Secretary or to which the Secretary or any officer of the United States is a party involving the order with reference to which the information was furnished or acquired. Nothing in this section prohibits—

(1) issuance of general statements based upon the reports of a number of handlers subject to any order, if such statements do not identify the information furnished by any person; or

(2) the publication by direction of the Secretary, of the name of any person violating any order issued under this chapter, together with a statement of the particular provisions of the order violated by such person.

(h) Refunds

Any producer or importer may obtain a refund of the assessment collected from the producer or importer if demand is made within the time and in the manner prescribed by the Honey Board and approved by the Secretary; except that, during any year, the amount of refunds made to importers, as a percentage of total assessments collected from importers, shall not exceed the amount of refunds made to domestic producers, as a percentage of total assessments collected from such producers. Such refund shall be made by the Honey Board in June and December of each year.

(Pub. L. 98-590, § 9, Oct. 30, 1984, 98 Stat. 3120.)

[2] So in original. Probably should be "this".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4606, 4607 of this title.

§ 4609. Petition and review

(a) Filing of petition; hearing

Any person subject to an order may file, within a period prescribed by the Secretary, a written petition with the Secretary, stating that such order or any provision of such order or any obligation imposed in connection therewith is not in accordance with law and requesting a modification thereof or to be exempted therefrom. Such person shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary. After such hearing, the Secretary shall make a ruling upon such petition which shall be final, if in accordance with law.

(b) District court; jurisdiction; review; rulings

The district courts of the United States in any district in which such person is an inhabitant, or carries on business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to the Secretary a copy of the complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to subsection (a) of this section shall not impede, hinder, or delay the United States or the Secretary from obtaining relief pursuant to section 4610 of this title.

(Pub. L. 98-590, § 10, Oct. 30, 1984, 98 Stat. 3121.)

§ 4610. Enforcement

(a) District courts; jurisdiction; Attorney General

The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any plan or regulation issued under this chapter. The facts relating to any civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action. Nothing in this chapter shall be construed as requiring the Secretary to refer to the Attorney General violations of this chapter whenever the Secretary believes that the administration and enforcement of any such plan or regulation would be adequately served by administrative action under subsection (b) of this section or suitable written notice or warning to any person committing such violations.

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(b) Civil penalties; notice and hearing; review; courts of appeals; cease and desist orders; failure to obey; Attorney General

(1) Any person who violates any provision of any plan or regulation issued by the Secretary under this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of such person thereunder, may be assessed a civil penalty by the Secretary of not less than $500 nor more than $5,000 for each such violation. Each violation shall be a separate offense. In addition to or in lieu of such civil penalty the Secretary may issue an order requiring such person to cease and desist from continuing such violations. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation, and the order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under paragraph (1) may obtain review in the court of appeals of the United States for the circuit in which such person resides or carries on business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

(3) Any person who fails to obey a cease and desist order after it has become final and unappealable, or after the appropriate court of appeals has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in paragraphs (1) and (2) of not more than $500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(Pub. L. 98-590, § 11, Oct. 30, 1984, 98 Stat. 3122.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4609 of this title.

§ 4611. Requirements of referendum

For the purpose of ascertaining whether issuance of an order is approved or favored by producers and importers, the Secretary shall conduct a referendum among those producers and importers not exempt under section 4606(e)(2) of this title who, during a representative period determined by the Secretary, have been engaged in the production and importation of honey. No order issued pursuant to this chapter shall be effective unless the Secretary determines that the issuance of such an order is approved or favored by not less than two-thirds of the producers and importers voting in such referendum or by a majority of the producers and importers voting in such referendum if such majority produced and imported not less than two-thirds of the honey produced and imported during the representative period. The ballots and other information or reports which reveal, or tend to reveal, the vote of any producer or importer of honey shall be held strictly confidential and shall not be disclosed.

(Pub. L. 98-590, § 12, Oct. 30, 1984, 98 Stat. 3123.)

§ 4612. Suspension and termination

(a) Authority of Secretary

Whenever the Secretary finds that any order issued under this chapter, or any provisions thereof, obstructs or does not tend to effectuate the declared purpose of this chapter, the Secretary shall terminate or suspend the operation of such order or such provisions thereof.

(b) Referendum; time for conducting by Secretary

Five years from the date on which the Secretary issues an order authorizing the collection of assessments on honey under provisions of this chapter, and every five years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the continuation, termination, or suspension of the order.

(c) Honey Board; referendum; request

The Secretary shall hold a referendum on the request of the Honey Board or when petitioned by 10 per centum or more of the honey producers and importers to determine if the honey producers and importers favor termination or suspension of the order.

(d) Marketing year; termination or suspension at end of

The Secretary shall terminate or suspend such order at the end of the marketing year whenever the Secretary determines that such suspension or termination of the order is favored by a majority of those voting in a referendum and that the producers and importers comprising this majority produce and import more than 50 per centum of the volume of honey produced and imported by those voting in the referendum.

(Pub. L. 98-590, § 13, Oct. 30, 1984, 98 Stat. 3123.)

CHAPTER 78—AGRICULTURAL PRODUCTIVITY RESEARCH

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§ 4701. Definitions

For purposes of this chapter:

(1) The term "extension" shall have the same meaning given to such term by section 3103(7) of this title.

(2) The term "Secretary" means the Secretary of Agriculture.

(3) The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(4) The term "State agricultural experiment stations" shall have the meaning given to such term by section 3103(13) of this title.

(Pub. L. 99-198, title XIV, § 1461, Dec. 23, 1985, 99 Stat. 1562.)

EFFECTIVE DATE

Section 1471 of subtitle C (§§ 1461-1471) of title XIV of Pub. L. 99-198 provided that: "This subtitle [enacting this chapter] shall become effective on October 1, 1985."

§ 4702. Findings

Congress finds that—

(1) highly productive and efficient agricultural systems and sound conservation practices are essential to ensure the long-term agricultural viability and profitability of farms and ranches in the United States;

(2) agricultural research and technology transfer activities of the Secretary (including activities of the Extension Service, the Agricultural Research Service, and the Cooperative State Research Service), State cooperative extension services, land-grant and other colleges and universities, and State agricultural experiment stations—

(A) have contributed greatly to innovation in agriculture; and

(B) have a continuing role to play in improving agricultural productivity;

(3) the annual irretrievable loss of billions of tons of precious topsoil through wind and water erosion reduces agricultural productivity;

(4) many farmers and ranchers are highly dependent on machines and energy resources for agricultural production;

(5) public funding of a properly planned and balanced agricultural research program is essential to improving efficiency in agricultural production and conservation practices; and

(6) expanded agricultural research and extension efforts are needed to assist farmers and ranchers to—

(A) improve agricultural productivity; and

(B) implement soil, water, and energy conservation practices.

(Pub. L. 99-198, title XIV, § 1462, Dec. 23, 1985, 99 Stat. 1563.)

§ 4703. Purposes

It is the purpose of this chapter to—

(1) facilitate and promote scientific investigation in order to—

(A) enhance agricultural productivity;

(B) maintain the productivity of land;

(C) reduce soil erosion and loss of water and plant nutrients; and

(D) conserve energy and natural resources; and

(2) facilitate the conduct of research projects in order to study agricultural production systems that—

(A) are located, to the extent practicable, in areas that possess various soil, climatic, and physical characteristics;

(B) have been, and will continue to be, managed using farm production practices that rely on—

(i) items purchased for the production of an agricultural commodity; and

(ii) a variety of conservation practices; and

(C) are subjected to a change from the practices described in subparagraph (B)(i) to the practices described in subparagraph (B)(ii).

(Pub. L. 99-198, title XIV, § 1463, Dec. 23, 1985, 99 Stat. 1563.)

§ 4704. Information study

(a) Subject to section 4708 of this title, the Secretary shall inventory and classify by subject matter all studies, reports, and other materials developed by any person or governmental agency with the participation or financial assistance of the Secretary, that could be used to promote the purposes of this chapter.

(b) In carrying out subsection (a) of this section, the Secretary shall—

(1) identify, assess, and classify existing information and research reports that will further the purposes of this chapter, including information and research relating to legume-crop rotation, the use of green manure, animal manures, and municipal wastes in agricultural production, soil acidity, liming in relation to nutrient release, intercropping, the role of organic matter in soil productivity

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and erosion control, the effect of topsoil loss on soil productivity, and biological methods of weed, disease, and insect control;

(2) identify which of such reports provide useful information and make such useful reports available to farmers and ranchers; and

(3) identify gaps in such information and carry out a research program to fill such gaps.

(Pub. L. 99-198, title XIV, § 1464, Dec. 23, 1985, 99 Stat. 1564.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4707, 4708, 4709 of this title.

§ 4705. Research projects

(a) Cooperation with Federal and State research agencies and agricultural producers

Subject to section 4708 of this title, in cooperation with Federal and State research agencies and agricultural producers, the Secretary shall conduct such research projects as are needed to obtain data, draw conclusions, and demonstrate technologies necessary to promote the purposes of this chapter.

(b) Areas broadly representative of United States agricultural production

In carrying out subsection (a) of this section, the Secretary shall conduct projects and studies in areas that are broadly representative of United States agricultural production, including production on small farms.

(c) Projects conducted on individual fields or other areas of land

In carrying out subsection (a) of this section, the Secretary may conduct research projects involving crops, soils, production methods, and weed, insect, and disease pests on individual fields or other areas of land.

(d) Term of project; sequence of crops

In the case of a research project conducted under this section that involves the planting of a sequence of crops, the Secretary shall conduct such project for a term of—

(1) at least 5 years; and

(2) to the extent practicable, 12 to 15 years.

(e) Notice to farmers and ranchers; accessibility to public

(1) In coordination with the Extension Service and State cooperative extension services, the Secretary shall take such steps as are necessary to ensure that farmers and ranchers are aware of projects conducted under this section.

(2) The Secretary shall ensure that such projects are open for public observation at specified times.

(f) Indemnification

(1) Subject to paragraph (2), the Secretary may indemnify an operator of a project conducted under this section for damage incurred or undue losses sustained as a result of a rigid requirement of research or demonstration under such project that is not experienced in normal farming operations.

(2) An indemnity payment under paragraph (1) shall be subject to any agreement between a project grantee and operator entered into prior to the initiation of such project.

(Pub. L. 99-198, title XIV, § 1465, Dec. 23, 1985, 99 Stat. 1564.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4707, 4708, 4709 of this title.

§ 4706. Coordination

The Secretary shall—

(1) establish a panel of experts consisting of representatives of the Agricultural Research Service, Cooperative State Research Service, Soil Conservation Service, Extension Service, State cooperative extension services, State agricultural experiment stations, and other specialists in agricultural research and technology transfer; and

(2) ensure that a research project under this chapter is designed after taking into consideration the views of such panel.

(Pub. L. 99-198, title XIV, § 1466, Dec. 23, 1985, 99 Stat. 1565.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4707 of this title.

§ 4707. Reports

The Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate—

(1) not later than 180 days after October 1, 1985, a report describing the design of research projects established in accordance with sections 4705 and 4706 of this title;

(2) not later than 15 months after October 1, 1985, a report describing the results of the program carried out under section 4704 of this title; and

(3) not later than April 1, 1987, and each April 1 thereafter, a report describing the progress of projects conducted under this chapter, including—

(A) a summary and analysis of data collected under such projects; and

(B) recommendations based on such data for new basic or applied research.

(Pub. L. 99-198, title XIV, § 1467, Dec. 23, 1985, 99 Stat. 1565.)

§ 4708. Agreements

The Secretary may carry out sections 4704 and 4705 of this title through agreements with land-grant colleges or universities, other universities, State agricultural experiment stations, nonprofit organizations, or Federal or State governmental entities, that have demonstrated appropriate expertise in agricultural research and technology transfer.

(Pub. L. 99-198, title XIV, § 1468, Dec. 23, 1985, 99 Stat. 1565.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4704, 4705 of this title.

§ 4709. Dissemination of data

The Secretary shall—

(1) make available through the Extension Service and State cooperative extension services—

(A) the information and research reports identified under section 4704 of this title; and

(B) the information and conclusions resulting from any research project conducted under section 4705 of this title; and

(2) otherwise take such steps as are necessary to ensure that such material is made available to the public.

(Pub. L. 99-198, title XIV, § 1469, Dec. 23, 1985, 99 Stat. 1565.)

§ 4710. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this chapter, to remain available until expended.

(Pub. L. 99-198, title XIV, § 1470, Dec. 23, 1985, 99 Stat. 1566.)

CHAPTER 79—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

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§ 4801. Congressional findings and declaration of purpose

(a) Congress finds that—

(1) pork and pork products are basic foods that are a valuable and healthy part of the human diet;

(2) the production of pork and pork products plays a significant role in the economy of the United States because pork and pork products are—

(A) produced by thousands of producers, including many small- and medium-sized producers; and

(B) consumed by millions of people throughout the United States on a daily basis;

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(3) pork and pork products must be available readily and marketed efficiently to ensure that the people of the United States receive adequate nourishment;

(4) the maintenance and expansion of existing markets, and development of new markets, for pork and pork products are vital to—

(A) the welfare of pork producers and persons concerned with producing and marketing pork and pork products; and

(B) the general economy of the United States;

(5) pork and pork products move in interstate and foreign commerce;

(6) pork and pork products that do not move in such channels of commerce directly burden or affect interstate commerce in pork and pork products; and

(7) in recent years, increasing quantities of low-cost, imported pork and pork products have been brought into the United States and replaced domestic pork and pork products in normal channels of trade.

(b)(1) It is the purpose of this chapter to authorize the establishment of an orderly procedure for financing, through adequate assessments, and carrying out an effective and coordinated program of promotion, research, and consumer information designed to—

(A) strengthen the position of the pork industry in the marketplace; and

(B) maintain, develop, and expand markets for pork and pork products.

(2) Such procedure shall be implemented, and such program shall be conducted, at no cost to the Federal Government.

(3) Nothing in this chapter may be construed to—

(A) permit or require the imposition of quality standards for pork or pork products;

(B) provide for control of the production of pork or pork products; or

(C) otherwise limit the right of an individual pork producer to produce pork and pork products.

(Pub. L. 99-198, title XVI, § 1612, Dec. 23, 1985, 99 Stat. 1607.)

EFFECTIVE DATE

Section 1631 of subtitle B (§§ 1611-1631) of title XVI of Pub. L. 99-198 provided that: "This subtitle [enacting this chapter] shall become effective on January 1, 1986."

SHORT TITLE

Section 1611 of subtitle B (§§ 1611-1631) of title XVI of Pub. L. 99-198 provided that: "This subtitle [enacting this chapter] may be cited as the 'Pork Promotion, Research, and Consumer Information Act of 1985'."

§ 4802. Definitions

For purposes of this chapter:

(1) The term "Board" means the National Pork Board established under section 4808 of this title.

(2) The term "consumer information" means an activity intended to broaden the understanding of sound nutritional attributes of pork or pork products, including the role of pork or pork products in a balanced, healthy diet.

(3) The term "Delegate Body" means the National Pork Producers Delegate Body established under section 4806 of this title.

(4) The term "imported" means entered, or withdrawn from a warehouse for consumption, in the customs territory of the United States.

(5) The term "importer" means a person who imports porcine animals, pork, or pork products into the United States.

(6) The term "order" means a pork and pork products promotion, research, and consumer information order issued under section 4803 of this title.

(7) The term "person" means an individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity.

(8) The term "porcine animal" means a swine raised for—

(A) feeder pigs;

(B) seedstock; or

(C) slaughter.

(9) The term "pork" means the flesh of a porcine animal.

(10) The term "pork product" means a product produced or processed in whole or in part from pork.

(11) The term "producer" means a person who produces porcine animals in the United States for sale in commerce.

(12) The term "promotion" means an action, including paid advertising, taken to present a favorable image for porcine animals, pork, or pork products to the public with the intent of improving the competitive position and stimulating sales of porcine animals, pork, or pork products.

(13) The term "research" means—

(A) research designed to advance, expand, or improve the image, desirability, nutritional value, usage, marketability, production, or quality of porcine animals, pork, or pork products; or

(B) dissemination to a person of the results of such research.

(14) The term "Secretary" means the Secretary of Agriculture.

(15) The term "State" means each of the 50 States.

(16) The term "State association" means—

(A) the single organization of pork producers in a State that is—

(i) organized under the laws of the State in which such association operates; and

(ii) recognized by the chief executive officer of such State as representing the pork producers of such State; or

(B) if such organization does not exist on January 1, 1986, an organization that represents not fewer than 50 pork producers who market annually, in the aggregate, not less than 10 percent of the volume (measured in pounds) of porcine animals marketed in such State.

(17) The term "to market" means to sell or to otherwise dispose of a porcine animal, pork, or pork product in commerce.

(Pub. L. 99-198, title XVI, § 1613, Dec. 23, 1985, 99 Stat. 1607.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4809 of this title.

§ 4803. Pork and pork product orders

(a) To carry out this chapter, the Secretary shall, in accordance with this chapter, issue and, from time to time, amend orders applicable to persons engaged in—

(1) the production and sale of porcine animals, pork, and pork products in the United States; and

(2) the importation of porcine animals, pork, or pork products into the United States.

(b) The Secretary may issue such regulations as are necessary to carry out this chapter.

(Pub. L. 99-198, title XVI, § 1614, Dec. 23, 1985, 99 Stat. 1609.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4802 of this title.

§ 4804. Notice and hearing

During the period beginning on January 1, 1986, and ending 30 days after receipt of a proposal for an initial order submitted by any person affected by this chapter, the Secretary shall—

(1) publish such proposed order; and

(2) give due notice of and opportunity for public comment on such proposed order.

(Pub. L. 99-198, title XVI, § 1615, Dec. 23, 1985, 99 Stat. 1609.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4805 of this title.

§ 4805. Findings and issuance of orders

(a) Necessary findings

After notice and opportunity for public comment have been provided in accordance with section 4804 of this title, the Secretary shall issue and publish an order if the Secretary finds, and sets forth in such order, that the issuance of such order and all terms and conditions thereof will assist in carrying out this chapter.

(b) Number of orders in effect at a time

Not more than one order may be in effect at a time.

(c) Effective date

An order shall become effective on a date that is not more than 90 days following the publication of such order.

(d) Terms and conditions

An order shall contain such terms and conditions as are required in sections 4806 through 4809 of this title and, except as provided in section 4810 of this title, no others.

(Pub. L. 99-198, title XVI, § 1616, Dec. 23, 1985, 99 Stat. 1609.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4809 of this title.

§ 4806. National Pork Producers Delegate Body

(a) Establishment and appointment

The order shall provide for the establishment and appointment by the Secretary, not later than 60 days after the effective date of such order, of a National Pork Producers Delegate Body.

(b) Membership; number of producer members; number of importer members

(1) The Delegate Body shall consist of—

(A) producers, as appointed by the Secretary in accordance with paragraph (2), from nominees submitted as follows:

(i) in the case of the initial Delegate Body appointed by each State in accordance with section 4807 of this title.

(ii) in the case of each succeeding Delegate Body, each State association shall submit nominations selected by such association pursuant to a selection process that—

(I) is approved by the Secretary;

(II) requires public notice of the process to be given at least one week in advance by publication in a newspaper or newspaper of general circulation in such State and in pork production and agriculture trade publications; and

(III) that provides complete and equal access to the nominating process to every producer who has paid all assessments due under section 4809 of this title and not demanded a refund under section 4813 of this title,

or pursuant to an election of nominees conducted in accordance with section 4807 of this title.

(iii) In the case of a State that has a State association that does not submit nominations or that does not have a State association, such State shall submit nominations in a manner prescribed by the Secretary; and

(B) importers, as appointed by the Secretary in accordance with paragraph (3).

(2) The number of producer members appointed to the Delegate Body from each State shall equal at least two members, and additional members, allocated as follows:

(A) Shares shall be assigned to each State—

(i) for the 1986 calendar year, on the basis of one share for each $400,000 of farm market value of porcine animals marketed from such State (as determined by the Secretary based on the annual average of farm market value in the most recent 3 calendar years preceding such year), rounded to the nearest $400,000; and

(ii) for each calendar year thereafter, on the basis of one share for each $1,000 of the aggregate amount of assessments collected (minus refunds under section 4813 of this title) in such State from persons described

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in section 4809(a)(1)(A) and (B) of this title, rounded to the nearest $1,000.

(B) If during a calendar year the number of such shares of a State is—

(i) less than 301, the State shall receive a total of two producer members;

(ii) more than 300 but less than 601, the State shall receive a total of three producer members;

(iii) more than 600 but less than 1,001, the State shall receive a total of four producer members; and

(iv) more than 1,000, the State shall receive four producer members, plus one additional member for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(3) The number of importer members appointed to the Delegate Body shall be determined as follows:

(A) Shares shall be assigned to importers—

(i) for the 1986 calendar year, on the basis of one share for each $575,000 of market value of marketed porcine animals, pork, or pork products (as determined by the Secretary based on the annual average of imports in the most recent 3 calendar years preceding such year), rounded to the nearest $575,000; and

(ii) for each calendar year thereafter, on the basis of one share for each $1,000 of the aggregate amount of assessments collected (minus refunds under section 4813 of this title) from importers, rounded to the nearest $1,000.

(B) The number of importer members appointed to the Delegate Body shall equal a total of—

(i) three members for the first 1,000 such shares; and

(ii) one additional member for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(c) Voting; quorum; votes necessary for decision

(1) A producer member of the Delegate Body may, in a vote conducted by the Delegate Body for which the member is present, cast a number of votes equal to—

(A) the number of shares attributable to the State of the member; divided by

(B) the number of producer members from such State.

(2) An importer member of the Delegate Body may, in a vote conducted by the Delegate Body for which the member is present, cast a number of votes equal to—

(A) the number of shares allocated to importers; divided by

(B) the number of importer members.

(3) Members entitled to cast a majority of the votes (including fractions thereof) on the Delegate Body shall constitute a quorum.

(4) A majority of the votes (including fractions thereof) cast at a meeting at which a quorum is present shall be decisive of a motion or election presented to the Delegate Body for a vote.

(d) Term of office

A member of the Delegate Body shall serve for a term of 1 year, except that the term of a member of the Delegate Body shall continue until the successor of such member, if any, is appointed in accordance with subsection (b)(1) of this section.

(e) Chairman

(1) At the first annual meeting, the Delegate Body shall select a Chairman by a majority vote.

(2) At each annual meeting thereafter, the President of the Board shall serve as the Chairman of the Delegate Body.

(f) Compensation

A member of the Delegate Body shall serve without compensation, but may be reimbursed by the Board from assessments collected under section 4809 of this title for transportation expenses incurred in performing duties as a member of the Delegate Body.

(g) Nomination of members to National Pork Board; annual meeting; majority vote in person to nominate

(1) The Delegate Body shall—

(A) nominate—

(i) not less than 23 persons for appointment to the Board, for the first year for which nominations are made; and

(ii) not less than 1½ persons (rounded up to the nearest person) for each vacancy in the Board that requires nominations thereafter; and

(B) submit such nominations to the Secretary.

(2) The Delegate Body shall meet annually to make such nominations.

(3) A majority of the Delegate Body shall vote in person in order to nominate members to the Board.

(h) Duties and functions

The Delegate Body shall—

(1) recommend the rate of assessment prescribed by the initial order and any increase in such rate pursuant to section 4809(5)[1] of this title, and

(2) determine the percentage of the aggregate amount of assessments collected in a State that each State association shall receive under section 4809(c)(1) of this title.

(Pub. L. 99-198, title XVI, § 1617, Dec. 23, 1985, 99 Stat. 1609.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4802, 4805, 4807, 4808 of this title.

§ 4807. Selection of Delegate Body

(a) Nominations

(1) Not later than 30 days after the effective date of the order, the Secretary shall call for the nomination within each State of candidates

[1] So in original. Probably should be "section 4809(b)".

for appointment as producer members of the initial Delegate Body.

(2) Each State association may nominate producers who are residents of such State to serve as such candidates.

(3)(A) [2] Additional producers who are residents of a State may be nominated as candidates of such State by written petition signed by 100 producers or 5 percent of the pork producers in such State, whichever is less. The Secretary shall establish and publicize the procedures governing the time and place for filing petitions.

(b) Election; eligibility to vote; notice of election; number of members nominated

(1) After the Secretary has received the nominations required under subsection (a) of this section and not later than 45 days after the effective date of the order, the Secretary shall call for an election within each State of persons for appointment as producer members of the initial Delegate Body.

(2) To be eligible to vote in an election held in a State, a person must be a producer who is a resident of such State.

(3)(A) Notice of each such election shall be given by the Secretary—

(i) by publication in a newspaper or newspapers of general circulation in each State, and in pork production and agriculture trade publications, at least 1 week prior to the election; and

(ii) in any other reasonable manner determined by the Secretary.

(B) The notice shall set forth the period of time and places for voting and such other information as the Secretary considers necessary.

(4) Each State shall nominate to the Delegate Body the number of producer members required under section 4806(b)(2)(B) of this title.

(5) The producers who receive the highest number of votes in each State shall be nominated for appointment as members of the Delegate Body from such State.

(c) Subsequent nominations and elections to be administered by Board; time of election; voting eligibility

(1) Except as provided in paragraph (3), after the election of the producer members of the initial Delegate Body, the Board shall administer all subsequent nominations and elections of the producer members to be nominated for appointment as members of the Delegate Body, with the assistance of the Secretary and in accordance with subsections (a)(3) and (b) of this section.

(2) The Board shall determine the timing of an election referred to in paragraph (1).

(3) To be eligible to vote in such an election in a State, a person must—

(A) be a producer who is a resident of such State;

(B) have paid all assessments due under section 4809 of this title; and

(C) not demanded a refund of an assessment under section 4813 of this title.

[2] So in original. There is no subpar. (B).

(d) Nominating committee; appointment; nomination to fill position for pending election

(1) Prior to the expiration of the term of any producer member of the Delegate Body, the Board shall appoint a nominating committee of producers who are residents of the State represented by such member.

(2) Such committee shall nominate producers of such State as candidates to fill the position for which an election is to be held.

(3) Additional producers who are residents of a State may be nominated to fill such positions in accordance with subsection (a)(3) of this section.

(Pub. L. 99-198, title XVI, § 1618, Dec. 23, 1985, 99 Stat. 1611.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4805, 4806 of this title.

§ 4808. National Pork Board

(a)(1) The order shall provide for the establishment and appointment by the Secretary of a 15-member National Pork Board.

(2) The Board shall consist of producers representing at least 12 States and importers appointed by the Secretary from nominations submitted under section 4806(g) of this title.

(2) [3] The Board shall consist of producers or importers appointed by the Secretary from nominations submitted under section 4806(g) of this title.

(3) A member of the Board shall serve for a 3-year term, with no such member serving more than two consecutive 3-year terms, except that initial appointments to the Board shall be staggered with an equal number of members appointed, to the maximum extent possible, to 1-year, 2-year, and 3-year terms, except that the term of a member of the Board shall continue until the successor of such member, if any, is appointed in accordance with paragraph (2).

(4) The Board shall select its President by a majority vote.

(5)(A) A majority of the members of the Board shall constitute a quorum at a meeting of the Board.

(B) A majority of votes cast at a meeting at which a quorum is present shall determine a motion or election.

(6) A member of the Board shall serve without compensation, but shall be reimbursed by the Board from assessments collected under section 4809 of this title for reasonable expenses incurred in performing duties as a member of the Board.

(b)(1) The Board shall—

(A) develop, at the initiative of the Board or other person, proposals for promotion, research, and consumer information plans and projects;

(B) submit such plans and projects to the Secretary for approval;

(C) administer the order, in accordance with the order and this chapter;

[3] So in original. Two pars. designated "(2)" have been enacted.

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(D) prescribe such rules as are necessary to carry out such order;

(E) receive, investigate, and report to the Secretary complaints of violations of such order;

(F) make recommendations to the Secretary with respect to amendments to such order; and

(G) employ a staff and conduct routine business.

(2) The Board shall prepare and submit to the Secretary, for the approval of the Secretary, a budget for each fiscal year of anticipated expenses and disbursements of the Board in the administration of the order, including the projected cost of—

(A) any promotion, research or consumer information plan or project to be conducted by the Board directly or by way of contract or agreement; and

(B) the budgets, plans, or projects for which State associations are to receive funds pursuant to section 4809(c)(1) of this title.

(3) No plan, project, or budget referred to in paragraph (1) or (2) may become effective unless approved by the Secretary.

(4)(A) The Board, with the approval of the Secretary, may enter into contracts or agreements with a person for—

(i) the development and conduct of activities authorized under an order; and

(ii) the payment of the cost thereof with funds collected through assessments under such order.

(B) Such contract or agreement shall require that—

(i) the contracting party develop and submit to the Board a plan or project, together with a budget or budgets that include the estimated cost to be incurred under such plan or project;

(ii) such plan or project become effective on the approval of the Secretary; and

(iii) the contracting party—

(I) keep accurate records of all relevant transactions of the party;

(II) make periodic reports to the Board of—

(aa) relevant activities the party has conducted; and

(bb) an accounting for funds received and expended under such contract; and

(III) make such other reports as the Secretary or Board may require.

(Pub. L. 99-198, title XVI, § 1619, Dec. 23, 1985, 99 Stat. 1612.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4802, 4805, 4809 of this title.

§ 4809. Assessments

(a) Collection and remission to Board; persons required to pay

(1) The order shall provide that, not later than 30 days after the effective date of the order under section 4805(c) of this title an assessment shall be paid, in the manner prescribed in the order. Upon the appointment of the Board, the assessments held in escrow shall be distributed to the Board. Except as provided in paragraph (3), assessments shall be payable by—

(A) each producer for each porcine animal described in subparagraph (A) or (C) of section 4802(8) of this title produced in the United States that is sold or slaughtered for sale;

(B) each producer for each porcine animal described in subsection [1] 4802(8)(B) of this title that is sold; and

(C) each importer for each porcine animal, pork, or pork product that is imported into the United States.

(2) Such assessment shall be collected and remitted to the Board once it is appointed pursuant to section 4808 of this title, but, until that time, to the Secretary, who shall promptly proceed to distribute the funds received by him in accordance with the provisions of subsection (c) of this section, except that the Secretary shall retain the funds to be received by the Board until such time as the Board is appointed pursuant to section 4808 of this title, by—

(A) in the case of subparagraph (A) of paragraph (1), the purchaser of the porcine animal referred to in such subparagraph;

(B) in the case of subparagraph (B) of paragraph (1), the producer of the porcine animal referred to in such subparagraph; and

(C) in the case of subparagraph (C) of paragraph (1), the importer referred to in such subparagraph.

(3) A person is not required to pay an assessment for a porcine animal, pork, or pork product under paragraph (1) if such person proves to the Board that an assessment was paid previously under such paragraph by a person for such porcine animal (of the same category described in subparagraph (A), (B), or (C) of section 4802(8) of this title), pork, or pork product.

(b) Rate of assessment; increase; waiver of collection of assessment

(1) Except as provided in paragraph (2), the rate of assessment prescribed by the initial order shall be the lesser of—

(A) 0.25 percent of the market value of the porcine animal, pork, or pork product sold or imported; or

(B) an amount established by the Secretary based on a recommendation of the Delegate Body.

(2) Except as provided in paragraph (3), the rate of assessment in the initial order may be increased by not more than 0.1 percent per year on recommendation of the Delegate Body.

(3) The rate of assessment may not exceed 0.50 percent of such market value unless—

(A) after the initial referendum required under section 4811(a) of this title, the Delegate Body recommends an increase in such rate above 0.50 percent; and

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[1] So in original. Probably should be "section".

(B) such increase is approved in a referendum conducted under section 4811(b) of this title.

(4)(A) Pork or pork products imported into the United States shall be assessed based on the equivalent value of the live porcine animal from which such pork or pork products were produced, as determined by the Secretary.

(B) The Secretary may waive the collection of assessments on a type of such imported pork or pork products if the Secretary determines that such collection is not practicable.

(c) Distribution and use

Funds collected by the Board from assessments collected under this section shall be distributed and used in the following manner:

(1)(A) Each State association, shall receive an amount of funds equal to the product obtained by multiplying—

(i) the aggregate amount of assessments attributable to porcine animals produced in such State by persons described in subsection (a)(1)(A) and (B) of this section minus that State's share of refunds determined pursuant to paragraph (4) by such persons pursuant to section 4813 of this title; and

(ii) a percentage applicable to such State association determined by the Delegate Body, but in no event less than sixteen and one-half percent, or

(B) in the case of a State association that was conducting a pork promotion program in the period from July 1, 1984, to June 30, 1985, if greater than (A) an amount of funds equal to the amount of funds that would have been collected in such State pursuant to the pork promotion program in existence in such State from July 1, 1984, to June 30, 1985, had the porcine animals, subject to assessment and to which no refund was received in such State in each year following December 23, 1985, been produced from July 1, 1984, to June 30, 1985, and been subject to the rates of assessments then in effect and the rate of return then in effect from each State to the Council described in paragraph (2)(A), and other national entities involved in pork promotion, research and consumer information.

(C) A State association shall use such funds and any proceeds from the investment of such funds for financing—

(i) promotion, research, and consumer information plans and projects, and

(ii) administrative expenses incurred in connection with such plans and projects.

(2)(A) The National Pork Producers Council, a nonprofit corporation of the type described in section 501(c)(3) of title 26 and incorporated in the State of Iowa, shall receive an amount of funds equal to—

(i) 37½ percent of the aggregate amount of assessments collected under this section throughout the United States from the date assessment commences pursuant to subsection (a)(1) of this section until the first day of the month following the month in which the Board is appointed pursuant to section 4808 of this title.[5]

(ii) 35 percent thereafter until the referendum is conducted pursuant to section 4811 of this title,

(iii) 25 percent until twelve months after the referendum is conducted, and

(iv) no funds thereafter except in so far as it obtains such funds from the Board pursuant to sections [6] 4808 or 4809 of this title, each of which amounts determined under (i), (ii), and (iii) shall be less the Council's share of refunds determined pursuant to paragraph (4).

(B) The Council shall use such funds and proceeds from the investment of such funds for financing—

(i) promotion, research, and consumer information plans and projects, and

(ii) administrative expenses of the Council.

(3)(A) The Board shall receive the amount of funds that remain after the distribution required under paragraphs (1) and (2).

(B) The Board shall use such funds and any proceeds from the investment of such funds pursuant to subsection (g) of this section for—

(i) financing promotion, research, and consumer information plans and projects in accordance with this chapter; [7]

(ii) such expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary;

(iii) accumulation of a reasonable reserve to permit an effective promotion, research, and consumer information program to continue in years when the amount of assessments may be reduced; and

(iv) administrative costs incurred by the Secretary to carry out this chapter,[7] including any expenses incurred for the conduct of a referendum under this chapter.[7]

(4)(A) Each State's share of refunds shall be determined by multiplying the aggregate amount of refunds received by producers in such State by the percentage applicable to such State pursuant to paragraph (1)(A)(ii).

(B) The National Pork Producers Council's share of refunds shall be determined by multiplying its applicable percent of the aggregate amount of assessments by the product of—

(i) subtracting from the aggregate amount of refunds received by all producers the aggregate amount of State share or refunds in every State determined pursuant to subparagraph (A), and

(ii) adding to that sum the aggregate amount of refunds received by importers.

(d) Prohibited promotions

No promotion funded with assessments collected under this chapter may make—

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[5] So in original. The period probably should be a comma.

[6] So in original. Probably should be "section".

[7] See References in Text note below.

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(1) a false or misleading claim on behalf of pork or a pork product; or

(2) a false or misleading statement with respect to an attribute or use of a competing product.

(e) Influencing legislation prohibited

No funds collected through assessments authorized by this section may, in any manner, be used for the purpose of influencing legislation, as defined in section 4911(d) and (e)(2) of title 26.

(f) Maintenance of books and records; audits

The Board shall—

(1) maintain such books and records, and prepare and submit to the Secretary such reports from time to time, as may be required by the Secretary for appropriate accounting of the receipt and disbursement of funds entrusted to the Board or a State association, as the case may be; and

(2) cause a complete audit report to be submitted to the Secretary at the end of each fiscal year.

(g) Investment by Board of funds collected

The Board, with the approval of the Secretary, may invest funds collected through assessments authorized under this section, pending disbursement for a plan or project, only in—

(1) an obligation of the United States, or of a State or political subdivision thereof;

(2) an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(3) an obligation fully guaranteed as to principal and interest by the United States.

(Pub. L. 99-198, title XVI, § 1620, Dec. 23, 1985, 99 Stat. 1614.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(3)(B)(i) and (iv), was in the original "this title" and was translated as reading "this subtitle", meaning subtitle B of Title XVI of Pub. L. 99-198, which enacted this chapter, as the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4805, 4806, 4807, 4808, 4813, 4817, 4819 of this title.

§ 4810. Permissive provisions

(a) Recordkeeping and reporting requirements; incidental and necessary terms and conditions

On the recommendation of the Board, and with the approval of the Secretary, an order may contain one or more of the following provisions:

(1) Each person purchasing a porcine animal from a producer for commercial use, and each importer, shall—

(A) maintain and make available for inspection such books and records as may be required by the order; and

(B) file reports at the time, in the manner, and having the content prescribed by the order,

including documentation of the State of origin of a purchased porcine animal or the place of origin of an imported porcine animal, pork, or pork product.

(2) A term or condition—

(A) incidental to, and not inconsistent with, the terms and conditions specified in this chapter; and

(B) necessary to effectuate the other provisions of such order.

(b) Availability of information to Secretary and Board; confidentiality; disclosure; issuance of general statement, statistical data, or name of violator of order

(1) Information referred to in subsection (a)(1) of this section shall be made available to the Secretary and the Board as is appropriate or necessary for the effectuation, administration, or enforcement of this chapter or an order.

(2)(A) Except as provided in subparagraphs (B) and (C), information obtained under subsection (a)(1) of this section shall be kept confidential by officers or employees of the Department of Agriculture or the Board.

(B) Such information may be disclosed only—

(i) in a suit or administrative hearing involving the order with respect to which the information was furnished or acquired—

(I) brought at the direction or on the request of the Secretary; or

(II) to which the Secretary or an officer of the United States is a party; and

(ii) if the Secretary considers such information to be relevant to such suit or hearing.

(C) Nothing in this section prohibits—

(i) the issuance of a general statement based on the reports of a number of persons subject to an order, or statistical data collected therefrom, if such statement or data does not identify the information furnished by any person; or

(ii) the publication, by direction of the Secretary, of the name of a person violating an order, together with a statement of the particular provisions of the order violated by such person.

(c) Penalty for willful violations

A person who willfully violates subsection (a)(1) or (b) of this section shall, on conviction, be—

(1) subject to a fine of not more than $1,000 or imprisoned for not more than 1 year, or both; and

(2) if such person is an employee of the Department of Agriculture or the Board, removed from office.

(Pub. L. 99-198, title XVI, § 1621, Dec. 23, 1985, 99 Stat. 1617.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4805 of this title.

§ 4811. Referendum

(a) Continuation of order

For the purpose of determining whether an order then [1] effect shall be continued during

[1] So in original. Probably should be followed by "in".

the period beginning not earlier than 24 months after the issuance of the order and ending not later than 30 months after the issuance of the order, the Secretary shall conduct a referendum among persons who have been pork producers and importers during a representative period, as determined by the Secretary.

(b) Factors determining continuation; termination of order

(1) Such order shall be continued only if the Secretary determines that such order has been approved by not less than a majority of the producers and importers voting in the referendum.

(2) If the continuation of such order is not approved by a majority of the producers and importers voting in the referendum, the Secretary shall terminate—

(A) collection of assessments under the order not later than 6 months after the date of such determination; and

(B) the order in an orderly manner as soon as practicable after the date of such determination.

(c) Reimbursement for cost

The Secretary shall be reimbursed from assessments collected by the Board for any expenses incurred in connection with a referendum conducted under this section or section 4812 of this title.

(d) Manner of conducting

A referendum shall be conducted in such manner as prescribed by the Secretary.

(e) Amendment of initial order

A referendum to amend the initial order shall be conducted pursuant to this section.

(Pub. L. 99-198, title XVI, § 1622, Dec. 23, 1985, 99 Stat. 1618.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4809, 4812, 4813, 4817 of this title.

§ 4812. Suspension and termination of orders

(a) Authority of Secretary

If after the initial referendum provided for in section 4811(a) of this title the Secretary determines that an order, or a provision of the order, obstructs or does not tend to effectuate the declared policy of this chapter, the Secretary shall terminate or suspend the operation of such order or provision.

(b) Referendum to terminate or suspend; eligible voters; requirements for approval; termination or suspension date; one referendum within 2-year period

(1)(A) Except as provided in paragraph (2), after the initial referendum provided for in section 4811(a) of this title, on the request of a number of persons equal to at least 15 percent of persons who have been producers and importers during a representative period, as determined by the Secretary, the Secretary shall conduct a referendum to determine whether the producers and importers favor the termination or suspension of the order.

(B) The Secretary shall—

(i) suspend or terminate collection of assessments under the order not later than 6 months after the date the Secretary determines that suspension or termination of the order is favored by a majority of the producers and importers voting in the referendum; and

(ii) terminate the order in an orderly manner as soon as practicable after the date of such determination.

(2) Except with respect to a referendum required to be conducted under section 4811 of this title, the Secretary shall not be required by paragraph (1) to conduct more than one referendum under this chapter in a 2-year period.

(c) Termination or suspension not to be considered an order

The termination or suspension of an order, or a provision of an order, shall not be considered an order within the meaning of this chapter.

(Pub. L. 99-198, title XVI, § 1623, Dec. 23, 1985, 99 Stat. 1618.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4811 of this title.

§ 4813. Refunds

(a) Demand for refund; persons eligible

Notwithstanding any other provision of this chapter, prior to the approval of the continuation of an order pursuant to the referendum required under section 4811(a) of this title, any person shall have the right to demand and receive from the Board a refund of an assessment collected under section 4809 of this title if such person—

(1) is responsible for paying such assessment; and

(2) does not support the program established under this chapter.

(b) Form and time within which demand to be made

Such demand shall be made in accordance with regulations, on a form, and within a time period prescribed by the Board and approved by the Secretary, but not later than 30 days after the end of the month in which the assessment was paid.

(c) Payment of refund on submission of satisfactory proof

Such refund shall be made not later than 30 days after demand is received therefore [9] on submission of proof satisfactory to the Board that the producer, person, or importer—

(1) paid the assessment for which refund is sought; and

(2) did not collect such assessment from another producer, person, or importer.

(Pub. L. 99-198, title XVI, § 1624, Dec. 23, 1985, 99 Stat. 1619.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4806, 4807, 4809 of this title.

[9] So in original. Probably should be "therefor".

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§ 4814. Petition and review

(a)(1) A person subject to an order may file with the Secretary a petition—

(A) stating that such order, a provision of such order, or an obligation imposed in connection with such order is not in accordance with law; and

(B) requesting a modification of such order or an exemption from such order.

(2) Such person shall be given an opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) After such hearing, the Secretary shall make a determination granting or denying such petition.

(b)(1) A district court of the United States in the district in which such person resides or does business shall have jurisdiction to review such determination if a complaint for such purpose is filed not later than 20 days after the date such person receives notice of such determination.

(2) Service of process in such proceeding may be made on the Secretary by delivering a copy of the complaint to the Secretary.

(3) If a court determines that such determination is not in accordance with law, the court shall remand such proceedings to the Secretary with directions to—

(A) make such ruling as the court shall determine to be in accordance with law; or

(B) take such further proceedings as, in the opinion of the court, the law requires.

(Pub. L. 99–198, title XVI, § 1625, Dec. 23, 1985, 99 Stat. 1619.)

§ 4815. Enforcement

(a) Jurisdiction of district court; referral of civil actions to Attorney General

(1) A district court of the United States shall have jurisdiction specifically to enforce, and to prevent and restrain a person from violating an order, rule, or regulation issued under this chapter.

(2) A civil action authorized to be brought under this subsection shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this chapter if the Secretary believes that the administration and enforcement of this chapter would be adequately served by providing a suitable written notice or warning to a person who committed such violation or by administrative action under subsection (b) of this section.

(b) Penalties for willful violations; issuance of cease-and-desist orders; judicial review of orders; penalty for failure to obey cease-and-desist order

(1)(A) A person who willfully violates an order, rule, or regulation issued by the Secretary under this chapter may be assessed—

(i) a civil penalty by the Secretary of not more than $1,000 for each such violation; and

(ii) in the case of a willful failure to pay, collect, or remit an assessment as required by an order, an additional penalty equal to the amount of such assessment.

(B) Each such violation shall be a separate offense.

(C) In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring such person to cease and desist from violating such order, rule, or regulation.

(D) No penalty may be assessed or cease-and-desist order issued unless the Secretary gives such person notice and opportunity for a hearing on the record with respect to such violation.

(E) An order issued under this paragraph by the Secretary shall be final and conclusive unless such person files an appeal from such order with the appropriate United States court of appeals not later than 30 days after such person receives notice of such order.

(2)(A) A person against whom an order is issued under paragraph (1) may obtain review of such order in the court of appeals of the United States for the circuit in which such person resides or does business, or in the United States Court of Appeals for the District of Columbia Circuit, by—

(i) filing a notice of appeal in such court not later than 30 days after the date of such order; and

(ii) simultaneously sending a copy of such notice by certified mail to the Secretary.

(B) The Secretary shall file promptly in such court a certified copy of the record on which such violation was found.

(C) A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(3)(A) A person who fails to obey a valid cease-and-desist order issued under paragraph (1) by the Secretary, after an opportunity for a hearing, shall be subject to a civil penalty assessed by the Secretary of not more than $500 for each offense.

(B) Each day during which such failure continues shall be considered a separate violation of such order.

(4)(A) If a person fails to pay a valid civil penalty imposed under this subsection by the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in an appropriate district court of the United States.

(B) In such action, the validity and appropriateness of the order imposing such civil penalty shall not be subject to review.

(c) Availability of additional remedies

The remedies provided in subsections (a) and (b) of this section shall be in addition to, and not exclusive of, other remedies that may be available.

(Pub. L. 99–198, title XVI, § 1626, Dec. 23, 1985, 99 Stat. 1620.)

§ 4816. Investigations

(a) Purposes

The Secretary may make such investigations as the Secretary considers necessary—

(1) for the effective administration of this chapter; or

(2) to determine whether a person subject to this chapter has engaged, or is about to engage, in an act that constitutes, or will con-

stitute, a violation of this chapter or an order, rule, or regulation issued under this chapter.

(b) Oaths and affirmations; subpenas

(1) For the purpose of such investigation, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry.

(2) Such attendance of witnesses and the production of such records may be required from any place in the United States.

(c) Judicial enforcement; contempt proceedings; service of process

(1) In the case of contumacy, or refusal to obey a subpoena, by a person, the Secretary may invoke the aid of a court of the United States with jurisdiction over such investigation or proceeding, or where such person resides or does business, in requiring the attendance and testimony of such person and the production of such records.

(2) The court may issue an order requiring such person to appear before the Secretary to produce records or to give testimony touching the matter under investigation.

(3) A failure to obey an order issued under this section by the court may be punished by the court as a contempt thereof.

(4) Process in such case may be served in the judicial district in which such person is an inhabitant or wherever such person may be found.

(Pub. L. 99-198, title XVI, § 1627, Dec. 23, 1985, 99 Stat. 1621.)

§ 4817. Preemption

(a) Promotion and consumer education; funds from pork producers

This chapter is intended to occupy the field of—

(1) promotion and consumer education involving pork and pork products; and

(2) obtaining funds therefor from pork producers.

(b) Additional or different State regulation prohibited

The regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from this chapter may not be imposed by a State.

(c) Application of section

This section shall apply only during a period beginning on the date of the commencement of the collection of assessments under section 4809 of this title and ending on the date of the termination of the collection of assessments under section 4811(a)(3) or 4811(b)(1)(B) [10] of this title.

[10] So in original. Probably should be "section 4811(b)(2)(A) or 4812(b)(1)(B)".

(Pub. L. 99-198, title XVI, § 1628, Dec. 23, 1985, 99 Stat. 1621.)

§ 4818. Administrative provision

The provisions of this chapter applicable to orders shall be applicable to amendments to orders.

(Pub. L. 99-198, title XVI, § 1629, Dec. 23, 1985, 99 Stat. 1621.)

§ 4819. Authorization of appropriations

(a) There are authorized to be appropriated such sums as may be necessary for the Secretary to carry out this chapter, subject to reimbursement from the Board under section 4809(c)(3)(B)(iv) of this title.

(b) Sums appropriated to carry out this chapter shall not be available for payment of an expense or expenditure incurred by the Board in administering an order.

(Pub. L. 99-198, title XVI, § 1630, Dec. 23, 1985, 99 Stat. 1621.)

CHAPTER 80—WATERMELON RESEARCH AND PROMOTION

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§ 4901. Congressional findings and declaration of policy

(a) Congress finds that—

(1) the per capita consumption of watermelons in the United States has declined steadily in recent years;

(2) watermelons are an important cash crop to many farmers in the United States and are an economical, enjoyable, and healthful food for consumers;

(3) approximately 2,607,600,000 pounds of watermelons with a farm value of $158,923,000 were produced in 1981 in the United States;

(4) watermelons move in the channels of interstate commerce, and watermelons that do not move in such channels directly affect interstate commerce;

(5) the maintenance and expansion of existing markets and the establishment of new or improved markets and uses for watermelons are vital to the welfare of watermelon growers and those concerned with marketing, using, and handling watermelons, as well as the general economic welfare of the Nation; and

(6) the development and implementation of coordinated programs of research, development, advertising, and promotion are necessary to maintain and expand existing markets and establish new or improved markets and uses for watermelons.

(b) It is declared to be the policy of Congress that it is essential in the public interest, through the exercise of the powers provided herein, to authorize the establishment of an orderly procedure for the development, financing (through adequate assessments on watermelons harvested in the United States for commercial use), and carrying out of an effective, continuous, and coordinated program of research, development, advertising, and promotion designed to strengthen the watermelon's competitive position in the marketplace, and establish, maintain, and expand domestic and foreign markets for watermelons produced in the United States. The purpose of this chapter is to so authorize the establishment of such procedure and the development, financing, and carrying out of such program. Nothing in this chapter may be construed to dictate quality standards nor provide for the control of production or otherwise limit the right of individual watermelon producers to produce watermelons.

(Pub. L. 99-198, title XVI, § 1642, Dec. 23, 1985, 99 Stat. 1622.)

SHORT TITLE

Section 1641 of subtitle C (§§ 1641-1657) of title XVI of Pub. L. 99-198 provided that: "This subtitle [enacting this chapter] may be cited as the 'Watermelon Research and Promotion Act'."

§ 4902. Definitions

As used in this chapter—

(1) the term "Secretary" means the Secretary of Agriculture;

(2) the term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity;

(3) the term "watermelon" means all varieties of watermelon grown by producers in the forty-eight contiguous States of the United States;

(4) the term "handler" means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons in a manner specified in a plan issued under this chapter or in regulations promulgated thereunder;

(5) the term "producer" means any person engaged in the growing of five or more acres of watermelons;

(6) the term "promotion" means any action taken by the Board, under this chapter, to present a favorable image for watermelons to the public with the express intent of improving the competitive position of watermelons in the marketplace and stimulating sales of watermelons, and shall include, but not be limited to, paid advertising; and

(7) the term "Board" means the National Watermelon Promotion Board provided for in section 4903 of this title.

(Pub. L. 99-198, title XVI, § 1643, Dec. 23, 1985, 99 Stat. 1623.)

REFERENCES IN TEXT

The National Watermelon Promotion Board, referred to in par. (7), was provided for in section 4906 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4912 of this title.

§ 4903. Issuance of plans

To effectuate the declared policy of this chapter, the Secretary shall, under the provisions of this chapter, issue, and from time to time may amend, orders (applicable to producers and handlers of watermelons) authorizing the collection of assessments on watermelons under this chapter and the use of such funds to cover the costs of research, development, advertising, and promotion with respect to watermelons under this chapter. Any order issued by the Secretary under this chapter shall hereinafter in this chapter be referred to as a "plan". Any plan shall be applicable to watermelons produced in the forty-eight contiguous States of the United States.

(Pub. L. 99-198, title XVI, § 1644, Dec. 23, 1985, 99 Stat. 1623.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4902 of this title.

§ 4904. Notice and hearings

(a) When sufficient evidence, as determined by the Secretary, is presented to the Secretary by watermelon producers and handlers, or whenever the Secretary has reason to believe that a plan will tend to effectuate the declared policy of this chapter, the Secretary shall give due notice and opportunity for a hearing on a proposed plan. Such hearing may be requested by watermelon producers or handlers or by any other interested person, including the Secretary, when the request for such hearing is accompanied by a proposal for a plan.

(b) After notice and opportunity for hearing as provided in subsection (a) of this section, the Secretary shall issue a plan if the Secretary finds, and sets forth in such plan, on the evidence introduced at the hearing that the issuance of the plan and all the terms and conditions thereof will tend to effectuate the declared policy of this chapter.

(Pub. L. 99-198, title XVI, § 1645, Dec. 23, 1985, 99 Stat. 1623.)

§ 4905. Regulations

The Secretary may issue such regulations as may be necessary to carry out the provisions of this chapter and the powers vested in the Secretary under this chapter.

(Pub. L. 99-198, title XVI, § 1646, Dec. 23, 1985, 99 Stat. 1624.)

§ 4906. Required terms in plans

(a) Description of terms and provisions

Any plan issued under this chapter shall contain the terms and provisions described in this section.

(b) Establishment and powers of National Watermelon Promotion Board

The plan shall provide for the establishment by the Secretary of the National Watermelon Promotion Board and for defining its powers and duties, which shall include the powers to—

(1) administer the plan in accordance with its terms and conditions;

(2) make rules and regulations to effectuate the terms and conditions of the plan;

(3) receive, investigate, and report to the Secretary complaints of violations of the plan; and

(4) recommend to the Secretary amendments to the plan.

(c) Membership of Board; representation of interests; appointment; nomination

The plan shall provide that the Board shall be composed of representatives of producers and handlers, and one representative of the public, appointed by the Secretary from nominations submitted in accordance with this subsection. An equal number of representatives of producers and handlers shall be nominated by producers and handlers, and the representative of the public shall be nominated by the producer and handler members of the Board, in such manner as may be prescribed by the Secretary. If producers and handlers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided for in the plan. If the Board fails to nominate a public representative, the Secretary shall choose such representative for appointment.

(d) Compensation and expenses of Board

The plan shall provide that all Board members shall serve without compensation, but shall be reimbursed for reasonable expenses incurred in performing their duties as members of the Board.

(e) Budget on fiscal period basis

The plan shall provide that the Board shall prepare and submit to the Secretary for the Secretary's approval a budget, on a fiscal period basis, of its anticipated expenses and disbursements in the administration of the plan, including probable costs of research, development, advertising, and promotion.

(f) Assessments; collections

The plan shall provide for the fixing by the Secretary of assessments to cover costs incurred under the budgets provided for in subsection (e) of this section, and under section 4907(f) of this title, based on the Board's recommendation as to the appropriate rate of assessment, and for the collection of the assessments by the Board.

(g) Scope of expenditures; restrictions; assessments on per-unit basis

The plan shall provide that—

(1) funds collected by the Board shall be used for research, development, advertising, or promotion of watermelons and such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, including any referendum and administrative costs incurred by the Department of Agriculture under this chapter;

(2) no advertising or sales promotion program under this chapter shall make any reference to private brand names nor use false or unwarranted claims in behalf of watermelons or their products or false or unwarranted statements with respect to attributes or use of any competing products;

(3) no funds collected by the Board shall in any manner be used for the purpose of influencing governmental policy or action, except as provided by subsections (b)(4) and (f) of this section; and

(4) assessments shall be made on watermelons produced by producers and watermelons handled by handlers, and the rate of such assessments shall be the same, on a per-unit basis, for producers and handlers. If a person performs both producing and handling functions, both assessments shall be paid by such person.

(h) Refunds

The plan shall provide that, notwithstanding any other provisions of this chapter, any water-

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melon producer or handler against whose watermelons an assessment is made and collected under this chapter and who is not in favor of supporting the research, development, advertising, and promotion program provided for under this chapter shall have the right to demand a refund of the assessment from the Board, under regulations, and on a form and within a time period (not less than 90 days), prescribed by the Board and approved by the Secretary. A producer or handler who timely makes demand in accord with the regulations, on submission of proof satisfactory to the Board that the producer or handler paid the assessment for which the refund is sought, shall receive such refund within 60 days after demand therefor.

(i) Submission of programs or projects; approval by Secretary

The plan shall provide that the Board, subject to the provisions of subsections (e), (f), and (g) of this section, shall develop and submit to the Secretary, for the Secretary's approval, any research, development, advertising, or promotion program or project, and that a program or project must be approved by the Secretary before becoming effective.

(j) Contract authority

The plan shall provide the Board with authority to enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of research, development, advertising, or promotion programs or projects, and the payment of the cost thereof with funds collected under this chapter.

(k) Recordkeeping; accounting and audit reports

The plan shall provide that the Board shall (1) maintain books and records, (2) prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it, and (3) cause a complete audit report to be submitted to the Secretary at the end of each fiscal period.

(Pub. L. 99–198, title XVI, § 1647, Dec. 23, 1985, 99 Stat. 1624.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4907, 4908 of this title.

§ 4907. Permissive terms in plans

(a) Description of terms and provisions; prohibition

Any plan issued under this chapter may contain one or more of the terms and provisions described in this section, but except as provided in section 4906 of this title no others.

(b) Exemptions

The plan may provide for the exemption, from the provisions of the plan, of watermelons used for nonfood uses, and authority for the Board to establish satisfactory safeguards against improper use of such exemption.

(c) Designation of different handler payment and reporting schedules for assessments

The plan may provide for the designation of different handler payment and reporting schedules with respect to assessments, as provided for in sections 4906 and 4908 of this title, to recognize differences in marketing practices and procedures used in different production areas.

(d) Advertising and sales promotion programs or projects

The plan may provide for the establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and other sales promotion of watermelons and for the disbursement of necessary funds for such purposes. Any such program or project shall be directed toward increasing the general demand for watermelons, and promotional activities shall comply with the provisions of section 4906(g) of this title.

(e) Marketing objectives of research and development projects and studies

The plan may provide for establishing and carrying out research and development projects and studies to the end that the marketing and use of watermelons may be encouraged, expanded, improved, or made more efficient, and for the disbursement of necessary funds for such purposes.

(f) Reserve funds; limitation

The plan may provide authority for the accumulation of reserve funds from assessments collected under this chapter, to permit an effective and continuous coordinated program of research, development, advertising, and promotion in years when watermelon production and assessment income may be reduced, except that the total reserve fund may not exceed the amount budgeted for two years operation.

(g) Foreign market sales

The plan may provide for the use of funds from assessments collected under this chapter, with the approval of the Secretary, for the development and expansion of sales of watermelons in foreign markets.

(h) Other terms and conditions

The plan may contain terms and conditions incidental to and not inconsistent with the terms and conditions specified in this chapter and necessary to effectuate the other provisions of the plan.

(Pub. L. 99–198, title XVI, § 1648, Dec. 23, 1985, 99 Stat. 1625.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4906, 4912 of this title.

§ 4908. Assessment procedures

(a) Persons responsible for remittance of assessments; recordkeeping; equal and unitary assessments

Each handler required to pay assessments under a plan, as provided for under section 4906(f) of this title, shall be responsible for payment to the Board, as it may direct, of the assessments. A handler also shall collect from any producer, or shall deduct from the proceeds paid to any producer, on whose watermelons a producer assessment is made, the assess-

ments required to be paid by the producer. The handler shall remit producer assessments to the Board as the Board directs. Such handler shall maintain a separate record with respect to each producer for whom watermelons were handled. Such records shall indicate the total quantity of watermelons handled by the handler, including those handled for producers and for the handler, the total quantity of watermelons handled by the handler that are included under the terms of the plan, as well as those that are exempt under the plan, and such other information as may be prescribed by the Board. To facilitate the collection and payment of assessments, the Board may designate different handlers or classes of handlers to recognize differences in marketing practices or procedures used in any State or area. The handler shall be assessed an equal amount as the producer. No more than one assessment on a producer nor more than one assessment on a handler shall be made on any watermelons.

(b) Inspection of records

Handlers responsible for payment of assessments under subsection (a) of this section shall maintain and make available for inspection by the Secretary such books and records as required by the plan and file reports at the times, in the manner, and having the content prescribed by the plan, to the end that information and data shall be made available to the Board and to the Secretary that is appropriate or necessary to the effectuation, administration, or enforcement of this chapter or of any plan or regulation issued under this chapter.

(c) Confidentiality of information; disclosure authority; general or violation statements; penalties; removal from office

All information obtained under subsections (a) and (b) of this section shall be kept confidential by all officers and employees of the Department of Agriculture and of the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the plan with reference to which the information to be disclosed was furnished or acquired. Nothing in this subsection shall be deemed to prohibit—

(1) the issuance of general statements based on the reports of a number of handlers subject to a plan if such statements do not identify the information furnished by any person; or

(2) the publication by direction of the Secretary of the name of any person violating any plan together with a statement of the particular provisions of the plan violated by such person.

Any such officer or employee violating the provisions of this subsection shall be subject to a fine of not more than $1,000 or imprisonment for not more than one year, or both, and shall be removed from office.

(Pub. L. 99-198, title XVI, § 1649, Dec. 23, 1985, 99 Stat. 1626.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4907, 4912 of this title.

§ 4909. Petition and review

(a) Any person subject to a plan may file a written petition with the Secretary, stating that the plan or any provision of the plan, or any obligation imposed in connection therewith, is not in accordance with law and praying for a modification thereof or to be exempted therefrom. The person shall be given an opportunity for a hearing on the petition, in accordance with regulations prescribed by the Secretary. After the hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with the law.

(b) The district courts of the United States in any district in which the person is an inhabitant, or in which the person's principal place of business is located, are hereby vested with jurisdiction to review such ruling, provided that a complaint for that purpose is filed within twenty days from the date of the entry of the ruling. Service of process in such proceedings may be had on the Secretary by delivering to the Secretary a copy of the complaint. If the court determines that the ruling is not in accordance with law, it shall remand the proceedings to the Secretary with directions either to (1) make such ruling as the court shall determine to be in accordance with law, or (2) take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted under subsection (a) of this section shall not impede or delay the United States or the Secretary from obtaining relief under section 4910(a) [1] of this title.

(Pub. L. 99-198, title XVI, § 1650, Dec. 23, 1985, 99 Stat. 1627.)

REFERENCES IN TEXT

Section 4910(a) of this title, referred to in subsec. (b), was in the original "section 1851(a)", a nonexistent section in Pub. L. 99-198, and has been translated as if the reference had been to "section 1651(a)" to reflect the probable intent of Congress.

§ 4910. Enforcement

(a) The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any plan or regulation made or issued under this chapter. The facts relating to any civil action that may be brought under this subsection shall be referred to the Attorney General for appropriate action, except that nothing in this chapter shall be construed as requiring the Secretary to refer to the Attorney General violations of this chapter whenever the Secretary believes that the administration and enforcement of the plan or regulation would be adequately served by administrative action under subsection (b) of this section or suitable written notice or warning to any person committing the violations.

[1] See References in Text note below.

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(b)(1) Any person who violates any provision of any plan or regulation issued by the Secretary under this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee required of the person thereunder, may be assessed a civil penalty by the Secretary of not less than $500 nor more than $5,000 for each violation. Each violation shall be a separate offense. In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring the person to cease and desist from continuing the violation. No penalty shall be assessed nor cease and desist order issued unless the person is given notice and opportunity for a hearing before the Secretary with respect to the violation. The order of the Secretary assessing a penalty or imposing a cease and desist order shall be final and conclusive unless the person affected by the order files an appeal from the Secretary's order with the appropriate United States court of appeals.

(2) Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under paragraph (1) may obtain review in the court of appeals of the United States for the circuit in which such person resides or carries on business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within thirty days after the date of the order and by simultaneously sending a copy of the notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record on which the violation was found. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence.

(3) Any person who fails to obey a cease and desist order after it has become final and unappealable, or after the appropriate court of appeals has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in paragraphs (1) and (2), of not more than $500 for each offense. Each day during which the failure continues shall be deemed a separate offense.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(Pub. L. 99-198, title XVI, § 1651, Dec. 23, 1985, 99 Stat. 1627.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4909 of this title.

§ 4911. Investigation and power to subpoena

(a) The Secretary may make such investigations as the Secretary deems necessary to carry out effectively the Secretary's responsibilities under this chapter or to determine whether a handler or any other person has engaged or is engaging in any acts or practices that constitute a violation of any provision of this chapter, or of any plan or regulation issued under this chapter. For the purpose of an investigation, the Secretary may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents that are relevant to the inquiry. The attendance of witnesses and the production of records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena issued to, any person, including a handler, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring the person to appear before the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by the court as contempt thereof. All process in any such case may be served in the judicial district in which the person is an inhabitant or wherever the person may be found. The site of any hearing held under this subsection shall be within the judicial district in which the handler or other person is an inhabitant or in which the person's principal place of business is located.

(b) No person shall be excused from attending and testifying or from producing books, papers, and documents before the Secretary, or in obedience to the subpoena of the Secretary, or in any cause or proceeding, criminal or otherwise, based on, or growing out of, any alleged violation of this chapter, or of any plan or regulation issued thereunder, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. However, no person shall be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter, or thing concerning which the person is compelled, after having claimed the person's privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(Pub. L. 99-198, title XVI, § 1652, Dec. 23, 1985, 99 Stat. 1628.)

§ 4912. Requirement of referendum

The Secretary shall conduct a referendum among producers and handlers not exempt under sections 4902(5) and 4907(b) of this title who, during a representative period determined by the Secretary, have been engaged in the production or handling of watermelons, for the purpose of ascertaining whether the issuance of a plan is approved or favored by producers and

handlers. The referendum shall be conducted at the county extension offices. No plan issued under this chapter shall be effective unless the Secretary determines that the issuance of the plan is approved or favored by not less than two-thirds of the producers and handlers voting in such referendum, or by the producers and handlers of not less than two-thirds of the watermelons produced and handled during the representative period by producers and handlers voting in such referendum, and by not less than a majority of the producers and a majority of the handlers voting in the referendum. The ballots and other information or reports that reveal or tend to reveal the vote of any producer or handler or the person's volume of watermelons produced or handled shall be held strictly confidential and shall not be disclosed. Any officer or employee of the Department of Agriculture violating the provisions hereof shall be subject to the penalties provided in section 4908(c) of this title.

(Pub. L. 99-198, title XVI, § 1653, Dec. 23, 1985, 99 Stat. 1629.)

§ 4913. Suspension or termination of plans

(a) Whenever the Secretary finds that a plan or any provision thereof obstructs or does not tend to effectuate the declared policy of this chapter, the Secretary shall terminate or suspend the operation of the plan or provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or 10 per centum or more of the watermelon producers and handlers eligible to vote in a referendum, to determine if watermelon producers and handlers favor the termination or suspension of the plan. The Secretary shall terminate or suspend the plan at the end of the marketing year whenever the Secretary determines that the termination or suspension is favored by a majority of those voting in the referendum, and who produce or handle more than 50 per centum of the volume of the watermelons produced by the producers or handled by the handlers voting in the referendum. Any such referendum shall be conducted at county extension offices.

(Pub. L. 99-198, title XVI, § 1654, Dec. 23, 1985, 99 Stat. 1630.)

§ 4914. Amendment procedure

The provisions of this chapter applicable to plans shall be applicable to amendments to plans.

(Pub. L. 99-198, title XVI, § 1655, Dec. 23, 1985, 99 Stat. 1630.)

§ 4915. Separability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this chapter and the application of such provision to other persons and circumstances shall not be affected thereby.

(Pub. L. 99-198, title XVI, § 1656, Dec. 23, 1985, 99 Stat. 1630.)

§ 4916. Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out the provisions of this chapter, except that the funds so appropriated shall not be available for the payment of any expenses or expenditures of the Board in administering any provision of any plan issued under authority of this chapter.

(Pub. L. 99-198, title XVI, § 1657, Dec. 23, 1985, 99 Stat. 1630.)

CHAPTER 81—NATIONAL AGRICULTURAL POLICY COMMISSION

Sec.

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§ 5001. Definitions

As used in this chapter—

(1) the term "Commission" means the National Commission on Agricultural Policy established under section 5002 of this title;

(2) the term "Governor" means the chief executive officer of a State; and

(3) the term "State" means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, or the Trust Territory of the Pacific Islands.

(Pub. L. 99-198, title XVII, § 1722, Dec. 23, 1985, 99 Stat. 1637.)

SHORT TITLE

Section 1721 of subtitle C (§§ 1721-1728) of title XVII of Pub. L. 99-198 provided that: "This subtitle [enacting this chapter] may be cited as the 'National Agricultural Policy Commission Act of 1985'."

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§ 5002. Establishment of Commission

(a) Functions and duties

There is established a National Commission on Agricultural Policy to conduct a study of—

(A) the structure, procedures, and methods of formulating and administering agricultural policies, programs, and practices of the United States; and

(B) conditions in rural areas of the United States and the manner in which such conditions relate to the provision of public services by Federal, State, and local governments.

(b) Appointment of members by President; nominations from State Governors

In addition to the members specified in subsection (c) of this section, the Commission shall be composed of fifteen members appointed by the President and selected as follows:

(1) The President shall request Governors of States to nominate members representing individuals and industries directly affected by agricultural policies, including—

(A) producers of major agricultural commodities or the products thereof in the United States;

(B) processors or refiners of United States agricultural commodities or the products thereof;

(C) exporters, transporters, or shippers of United States agricultural commodities or the products thereof;

(D) suppliers of agricultural equipment or materials to United States farmers;

(E) providers of financing or credit for agricultural purposes; and

(F) consumers of United States agricultural commodities or the products thereof.

(2) The Governor of a State may submit to the President a list of not less than two, nor more than four, nominees to serve on the Commission who represent individuals and industries referred to in paragraph (1).

(3)(A) Except as provided in subparagraphs (B) and (C), the President shall appoint 15 individuals from a total of, to the extent practicable, not less than sixty individuals nominated by States under paragraph (2) to serve on the Commission.

(B) The President may appoint to the Commission not more than—

(i) one individual nominated by a particular State; and

(ii) seven individuals of the same political party.

(C) If the President determines that the individuals nominated by States under paragraph (2) are not broadly representative of the individuals and industries referred to in paragraph (1), the President may substitute no more than three other individuals to serve on the Commission who represent such individuals and industries.

(c) Ex officio members; voting rights; substitutions

(1) The chairmen and ranking minority members of the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate shall—

(A) serve as ex officio members of the Commission; and

(B) have the same voting rights as the members of the Commission selected and appointed under subsection (b) of this section.

(2) The chairmen and ranking minority members may designate other members of the respective committees to serve in their stead as members of the Commission.

(d) Vacancies

A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(e) Chairman

The Commission shall elect a chairman from among the members of the Commission who are selected and appointed under the provisions of subsection (b) of this section.

(f) Meetings

The Commission shall meet at the call of the chairman or a majority of the Commission.

(Pub. L. 99-198, title XVII, § 1723, Dec. 23, 1985, 99 Stat. 1637.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5001 of this title.

§ 5003. Study on structure, procedures, and methods of formulating and administering agricultural policies, etc., and on conditions in rural areas and the manner in which such conditions relate to provision of public health services

The Commission shall study—

(1) the structure, procedures, and methods of formulating and administering agricultural policies, programs, and practices of the United States, including—

(A) the effectiveness of existing agricultural programs in improving farm income;

(B) the manner in which the programs may be improved to retain a family-farm system of agricultural production;

(C) the effect of legislative and administrative changes in agricultural policy on planning and long-term profitability of farmers;

(D) the effect on farmers of the existing system and structure of formulating and implementing agriculture [1] policy;

(E) the effect of national and international economic trends on United States agricultural production;

(F) the means of adjusting the agricultural policies, programs, and practices of the United States to meet changing economic conditions;

(G) potential areas of conflict and compatibility between the structure of making agricultural policy and long-term stability in policy and practices;

(H) changing demographic trends and the manner in which such trends affect agriculture and agricultural policy consistency; and

[1] So in original. Probably should be "agricultural".

(I) the role of State and local governments in future agricultural policy; and

(2) conditions in rural areas of the United States and the manner in which such conditions relate to the provision of public services by Federal, State, and local governments, including an analysis of—

(A) conditions that reflect the declining rural economy, including economic and demographic trends, rural and agricultural income and debt, and other appropriate social and economic indicators of such conditions;

(B) trends and fiscal conditions of rural local governments;

(C) trends and patterns in the delivery of rural public services;

(D) the impact of the deregulation of transportation, telecommunications, and banking on the rural economy and delivery of public services; and

(E) trends and patterns of Federal, State, and local government financing, delivery, and regulation of public services in rural areas of the United States.

(Pub. L. 99-198, title XVII, § 1724, Dec. 23, 1985, 99 Stat. 1638.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5004 of this title.

§ 5004. Annual reports to President and Congress

Not later than twelve months after December 23, 1985, and each twelve months thereafter during the existence of the Commission, the Commission shall submit an annual report to the President and Congress containing the findings and recommendations of the Commission with respect to the matters referred to in section 5003 of this title. The Commission may not comment on legislation pending before Congress unless specifically requested to do so by the Chairman of an appropriate committee.

(Pub. L. 99-198, title XVII, § 1725, Dec. 23, 1985, 99 Stat. 1639.)

§ 5005. Administrative provisions

(a) Availability of information from other Federal agencies

The heads of executive agencies, the General Accounting Office, the International Trade Commission, and the Congressional Budget Office, to the extent permitted by law, shall provide the Commission with such information as the Commission may require in carrying out the duties and functions of the Commission.

(b) Compensation of members

(1) Except as provided in paragraph (2), members of the Commission shall serve without any additional compensation for work performed on the Commission.

(2) Such members who are private citizens of the United States may be allowed travel expenses, including a per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service under sections 5701 through 5707 of title 5.

(c) Appointment and compensation of director and additional staff

Subject to the availability of funds appropriated in advance and such rules as may be adopted by the Commission and without regard to the provisions of title 5 governing appointments in the competitive service or the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to the classification and General Schedule pay rates, the Chairman of the Commission may appoint and fix the compensation of a director and such additional staff personnel as the Commission determines are necessary to carry out duties and functions of the Commission.

(d) Personnel and support services from other Federal agencies; reimbursement

(1) On the request of the Commission, the Secretary of Agriculture shall furnish the Commission with such personnel and support services as are necessary to assist the Commission in carrying out duties and functions of the Commission.

(2) On the request of the Commission, the heads of other executive agencies and the General Accounting Office may furnish the Commission with such personnel and support services as the head of the agency or Office and the Chairman of the Commission agree are necessary to assist the Commission in carrying out duties and functions of the Commission.

(3) The Commission shall not be required to pay or reimburse an agency or the Office for personnel and support services provided under this section.

(e) Maintenance of records; availability of records for audit and examination

(1) In accordance with section 12 of the Federal Advisory Committee Act, the Secretary of Agriculture shall maintain records of—

(A) the disposition of any funds that may be at the disposal of the Commission; and

(B) the nature and extent of activities of the Commission.

(2) The Comptroller General of the United States shall have access to such records for the purpose of audit and examination.

(f) Exemptions

The Commission shall be exempt from sections 7(d), 10(e), 10(f), and 14 of the Federal Advisory Committees [2] Act and sections 4301 through 4308 [3] of title 5.

(Pub. L. 99-198, title XVII, § 1726, Dec. 23, 1985, 99 Stat. 1639.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (c), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsecs. (e)(1) and (f), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

[2] So in original. Probably should be "Committee".

[3] See References in Text note below.

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Sections 4306 to 4308 of title 5, referred to in subsec. (f), were eliminated in the general revision of chapter 43 of title 5 by Pub. L. 95-454, title II, § 203(a), Oct. 13, 1978, 92 Stat. 1131.

§ 5006. Authorization of appropriations

(a) There are authorized to be appropriated such sums as are necessary to carry out this chapter.

(b) To the maximum extent practicable, this chapter shall be carried out using funds otherwise available to the Secretary of Agriculture for the expenses of advisory committees.

(Pub. L. 99-198, title XVII, § 1727, Dec. 23, 1985, 99 Stat. 1640.)

§ 5007. Termination of Commission

This chapter and the Commission shall terminate five years after December 23, 1985.

(Pub. L. 99-198, title XVII, § 1728, Dec. 23, 1985, 99 Stat. 1640.)

CHAPTER 6—IMMIGRATION

SUBCHAPTER I—IMMIGRATION AND NATURALIZATION AGENCIES, OFFICERS, AND STATIONS

§§ 103, 103a. Omitted

CODIFICATION

Section 103, acts Mar. 2, 1895, ch. 177, § 1, 28 Stat. 780; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; Ex. Ord. No. 6166, § 14, June 10, 1933; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2423, 54 Stat. 1238, which related to the administration of alien contract laws, was transferred to section 342h of former Title 5, Executive Departments and Government Officers and Employees, and subsequently eliminated from the Code on enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378. See section 1103 of this title.

Section 103a, act July 9, 1947, ch. 211, title II, § 201, 61 Stat. 292, which related to reimbursement by the Attorney General of certain expenses incurred by other agencies in connection with administration and enforcement of laws relating to immigration, etc., was from the Department of Justice Appropriation Act, 1948, and was not repeated in the Department of Justice Appropriation Act, 1949, act June 3, 1948, ch. 400, title II, § 201, 62 Stat. 316.

SIMILAR PROVISIONS

Similar provisions were carried in the following prior appropriation acts:

July 5, 1946, ch. 541, title II, § 201, 60 Stat. 462.
May 21, 1945, ch. 129, title II, § 201, 59 Stat. 185.
June 28, 1944, ch. 294, title II, § 201, 58 Stat. 412.
July 1, 1943, ch. 182, title II, § 201, 57 Stat. 288.
July 2, 1942, ch. 472, title II, § 201, 56 Stat. 483.
June 28, 1941, ch. 258, title III, 55 Stat. 292.

§§ 109a to 109d. Transferred

CODIFICATION

Sections 109a to 109c transferred to sections 1353a, 1353b, and 1353d, respectively, of this title.

Section 109d, acts July 1, 1943, ch. 182, title II, § 1, 57 Stat. 288; June 28, 1944, ch. 294, title II, § 1, 58 Stat. 413; May 21, 1945, ch. 129, title II, 59 Stat. 186; July 5, 1946, ch. 541, title II, 60 Stat. 463; July 9, 1947, ch. 211, title II, § 201, 61 Stat. 292; June 3, 1948, ch. 400, title II, § 201, 62 Stat. 316; July 20, 1949, ch. 354, title II, § 201, 63 Stat. 460; Sept. 6, 1950, ch. 896, ch. III, title II, § 201, 64 Stat. 618, which related to employment of interpreters in the Immigration and Naturalization Service, was transferred to section 342f of former Title 5, Executive Departments and Government Officers and Employees, and subsequently repealed by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378, 632, which enacted Title 5, Government Organization and Employees. See section 1555 of this title.

§ 111. Transferred

CODIFICATION

Section 111 transferred to section 1554 of this title.

§ 112. Omitted

CODIFICATION

Section, act Mar. 4, 1915, ch. 147, § 1, 38 Stat. 1151; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2423, 54 Stat. 1238, which related to employment of officers and clerks enforcing alien contract labor laws, was transferred to section 342i of former Title 5, Executive Departments and Government Officers and Employees, and subsequently eliminated from the Code on enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378. See section 1103 of this title.

§ 114. Omitted

CODIFICATION

Section, act Aug. 15, 1919, ch. 50, 41 Stat. 280; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2423, 54 Stat. 1238, authorized the lease for other than governmental purposes of the Charleston immigration station and dock connected therewith. See section 471 et seq. of Title 40, Public Buildings, Property, and Works.

Section was also classified to section 342k of former Title 5, Executive Departments and Government Officers and Employees, and subsequently eliminated from the Code on enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

§§ 117, 118. Omitted

Section 117, acts July 12, 1943, ch. 221, title II, § 201, 57 Stat. 507; June 28, 1944, ch. 302, title II, § 201, 58 Stat. 558, related to use of the hospital at Ellis Island Immigration Station for the care of Public Health Service patients. See section 1356(a) of this title and section 220 of Title 42, The Public Health and Welfare.

Similar provisions were carried in the following prior appropriation acts, which were repealed by section 1313, formerly section 611, of act July 1, 1944, ch. 373, 58 Stat. 714, 718.

July 2, 1942, ch. 475, title II, § 1, 56 Stat. 581.
July 1, 1941, ch. 269, title II, 55 Stat. 481.
June 26, 1940, ch. 428, title II, 54 Stat. 585.
May 6, 1939, ch. 115, title I, § 1, 53 Stat. 668.
Mar. 28, 1938, ch. 55, § 1, 52 Stat. 133.
May 14, 1937, ch. 180, title I, 50 Stat. 149.
June 23, 1936, ch. 725, § 1, 49 Stat. 1839.
May 14, 1935, ch. 110, 49 Stat. 229.
Mar. 15, 1934, ch. 70, title I, § 1, 48 Stat. 435.
Mar. 3, 1933, ch. 212, title I, § 1, 47 Stat. 1500.
July 5, 1932, ch. 430, title I, § 1, 47 Stat. 591.
Feb. 23, 1931, ch. 277, title I, § 1, 46 Stat. 1228.
May 15, 1930, ch. 289, title I, § 1, 46 Stat. 347.
Dec. 20, 1928, ch. 39, title I, § 1, 45 Stat. 1039.
Mar. 5, 1928, ch. 126, title I, § 1, 45 Stat. 174.
Jan. 26, 1927, ch. 58, § 1, 44 Stat. 1038.
Mar. 2, 1926, ch. 43, § 1, 44 Stat. 147.
Jan. 22, 1925, ch. 87, title I, 43 Stat. 775.
Apr. 4, 1924, ch. 84, title I, 43 Stat. 75.
Jan. 3, 1923, ch. 22, 42 Stat. 1101.

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RENUMBERING OF REPEALING ACT

Section 611 of act July 1, 1944, which repealed this section, was renumbered 711 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049, 713 by act Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47, 813 by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 720, 913 by Pub. L. 88-581, § 4(b), Sept. 4, 1964, 78 Stat. 919, 1013 by Pub. L. 89-239, § 3(b), Oct. 6, 1965, 79 Stat. 931, 1113 by Pub. L. 91-572, § 6(b), Dec. 24, 1970, 84 Stat. 1506, 1213 by Pub. L. 92-294, § 3(b) May 16, 1972, 86 Stat. 137, 1313 by Pub. L. 93-154, § 2(b)(2), Nov. 16, 1973, 87 Stat. 604, and was repealed by Pub. L. 93-222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

Section 118, act Apr. 18, 1930, ch. 184, title IV, § 1, 46 Stat. 216, which related to motor vehicles and horses for enforcement of immigration and Chinese exclusion laws, expired with the appropriation act of which it was a part.

Similar provisions were carried in the following prior appropriation acts:

Jan. 25, 1929, ch. 102, title IV, 45 Stat. 1137.
Feb. 15, 1928, ch. 57, title IV, 45 Stat. 107.
Feb. 24, 1927, ch. 189, title IV, 44 Stat. 1223.
Apr. 29, 1926, ch. 195, title IV, 44 Stat. 371.
Feb. 27, 1925, ch. 364, title IV, 43 Stat. 1049.
May 28, 1924, ch. 204, title IV, 43 Stat. 240.
Jan. 5, 1923, ch. 24, title II, 42 Stat. 1127.
Mar. 28, 1922, ch. 117, title II, 42 Stat. 487.
June 12, 1917, ch. 27, § 1, 40 Stat. 170.

SUBCHAPTER II—REGULATION AND RESTRICTION OF IMMIGRATION IN GENERAL

§ 131. Omitted

CODIFICATION

Section, acts Feb. 14, 1903, ch. 552, § 7, 32 Stat. 828; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2423, 54 Stat. 1238, which related to control of immigration, was transferred to section 342a of former Title 5, Executive Departments and Government Officers and Employees, and subsequently eliminated from the Code on enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

§ 174. Omitted

CODIFICATION

Section, acts Aug. 18, 1894, ch. 301, § 1, 28 Stat. 390; Feb. 14, 1903, ch. 552, § 7, 32 Stat. 828; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; 1940 Reorg. Plan No. V, eff. June 14, 1940, 5 F.R. 2423, 54 Stat. 1238, which related to finality of decisions of immigration officers, was transferred to section 342j of former Title 5, Executive Departments and Government Officers and Employees, and subsequently eliminated from the Code on enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

CHAPTER 12—IMMIGRATION AND NATIONALITY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 7 sections 1996, 2020, 3508; title 10 sections 510, 591, 3253, 8253; title 18 sections 1203, 3077; title 22 sections 2454, 3303; title 25 section 1300b-13; title 42 section 6705; title 50 sections 47c, 47f.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1101. Definitions

(a) As used in this chapter—

[*See main edition for text of (1) to (8)*]

(9) The term "consular officer" means any consular, diplomatic, or other officer of the United States designated under regulations prescribed under authority contained in this chapter, for the purpose of issuing immigrant or nonimmigrant visas.

[*See main edition for text of (10) to (42); (b) to (g)*]

(As amended Oct. 30, 1984, Priv. L. 98-47, § 3, 98 Stat. 3435.)

AMENDMENTS

1984—Subsec. (a)(9). Priv. L. 98-47 struck out provisions which had directed that in the Canal Zone and the outlying possessions of the United States the term "consular officer" meant an officer designated by the Governor of the Canal Zone, or the governors of the outlying possessions for purposes of issuing immigrant or nonimmigrant visas under this chapter.

ALIEN EMPLOYEES OF AMERICAN UNIVERSITY OF BEIRUT

Priv. L. 98-53, Oct. 30, 1984, 98 Stat. 3437, provided: "That an alien lawfully admitted to the United States for permanent residence shall be considered, for purposes of section 101(a)(27)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(A)), to be temporarily visiting abroad during any period (before or after the date of the enactment of this Act [Oct. 30, 1984]) in which the alien is employed by the American University of Beirut."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1102, 1151, 1152, 1153, 1154, 1157, 1158, 1159, 1181, 1182, 1184, 1184a, 1201, 1251, 1254, 1255, 1255b, 1257, 1258, 1282, 1303, 1481 of this title; title 2 section 441e; title 7 section 2015; title 18 sections 613, 831, 1203, 3077, 3142; title 22 sections 1474, 2395, 2508, 3508; title 26 sections 871, 872, 1441, 3121, 3231, 3306, 7701; title 29 section 1802; title 42 sections 410, 1436a; title 45 sections 231, 351; title 46 section 2101; title 50 sections 424, 1801; title 50 App. sections 453, 456.

SUBCHAPTER II—IMMIGRATION

PART I—SELECTION SYSTEM

§ 1153. Allocation of immigrant visas

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1152, 1154, 1182, 1255 of this title; title 26 section 3304; title 42 sections 602, 615, 1382c, 1382j.

§ 1157. Annual admission of refugees and admission of emergency situation refugees

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1151, 1159, 1181, 1182, 1522 of this title; title 7 section 2015; title 22 section 4703; title 42 sections 602, 615, 1382j, 1436a.

§ 1158. Asylum procedure

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1151 of this title; title 7 section 2015; title 22 section 4703; title 42 sections 602, 615, 1436a.

PART II—ADMISSION QUALIFICATIONS FOR ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

§ 1182. Excludable aliens

(a) General classes

Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

[*See main edition for text of (1) to (3)*]

(4) Aliens afflicted with psychopathic personality, or sexual deviation, or a mental defect;

[*See main edition for text of (5) to (33); (b) to (d)*]

(e) Educational visitor status; foreign residence requirement; waiver

No person admitted under section 1101(a)(15)(J) of this title or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 1101(a)(15)(J) of this title was a national or resident of a country which the Director of the United States Information Agency, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 1101(a)(15)(H) or section 1101(a)(15)(L) of this title until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States: *Provided*, That upon the favorable recommendation of the Director of the United States Information Agency, pursuant to the request of an interested United States Government agency, or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest: *And provided further*, That, except in the case of an alien described in clause (iii), the Attorney General may, upon the favorable recommendation of the Director of the United States Information Agency, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director of the United States Information Agency a statement in writing that it has no objection to such waiver in the case of such alien.

[*See main edition for text of (f) to (k)*]

(l) Guam; waiver of requirements; nonimmigrant visitors

The requirement of paragraph (26)(B) of subsection (a) of this section may be waived by the Attorney General, the Secretary of State, and the Secretary of the Interior, acting jointly, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay on Guam for a period not to exceed fifteen days, if the Attorney General, the Secretary of State, and the Secretary of the Interior jointly determined that—

(1) Guam has developed an adequate arrival and departure control system, and

(2) such a waiver does not represent a threat to the welfare, safety, or security of the United States.

(As amended Oct. 5, 1984, Pub. L. 98-454, title VI, § 602(a), 98 Stat. 1737.)

AMENDMENT OF SUBSECTION (a)(9)

Pub. L. 98-473, title II, §§ 220(a), 235(a)(1), Oct. 12, 1984, 98 Stat. 2028, 2031, as amended, provided that, effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 (Nov. 1, 1987), the second sentence of subsection (a)(9) of this section is amended to read: "An alien who would be excludable because of the conviction of an offense for which the sentence actually imposed did not exceed a term of imprisonment in excess of six months, or who would be excludable as one who admits the commission of an offense for which a sentence not to exceed one year's imprisonment might have been imposed on him, may be granted a visa and admitted to the United States if otherwise admissible: Provided, That the alien has committed only one such offense, or admits the commission of acts which constitute the essential elements of only one such offense." See Effective Date note set out under section 3551 of Title 18, Crimes and Criminal Procedure.

CODIFICATION

Subsecs. (a)(4) and (e) are set out in this supplement to correct typographical error appearing in the main edition.

AMENDMENTS

1984—Subsec. (*l*). Pub. L. 98-454 added subsec. (*l*).

SHARING OF INFORMATION CONCERNING DRUG TRAFFICKERS

Pub. L. 99-93, title I, § 132, Aug. 16, 1985, 99 Stat. 420, provided that:

"(a) REPORTING SYSTEMS.—In order to ensure that foreign narcotics traffickers are denied visas to enter

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the United States, as required by section 212(a)(23) of the Immigration and Naturalization Act (22 U.S.C. 1182(a)(23))—

"(1) the Department of State shall cooperate with United States law enforcement agencies, including the Drug Enforcement Administration and the United States Customs Service, in establishing a comprehensive information system on all drug arrests of foreign nationals in the United States, so that that information may be communicated to the appropriate United States embassies; and

"(2) the National Drug Enforcement Policy Board shall agree on uniform guidelines which would permit the sharing of information on foreign drug traffickers.

"(b) REPORT.—Not later than six months after the date of the enactment of this Act [Aug. 16, 1985], the Chairman of the National Drug Enforcement Policy Board shall submit a report to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate on the steps taken to implement this section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1102, 1153, 1157, 1159, 1181, 1183, 1184, 1201, 1222, 1223, 1224, 1225, 1226, 1251, 1254, 1255, 1258, 1259, 1282, 1284, 1322, 1327 of this title; title 7 section 2015; title 26 section 3304; title 28 section 1821; title 42 sections 602, 615, 1382c, 1382j, 1436a.

§ 1184. Admission of nonimmigrants

(a) Regulations

The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States. No alien admitted to Guam without a visa pursuant to section 1182(*l*) of this title may be authorized to enter or stay in the United States other than in Guam or to remain in Guam for a period exceeding fifteen days from date of admission to Guam.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Oct. 5, 1984, Pub. L. 98-454, title VI, § 602(b), 98 Stat. 1737.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-454 added "No alien admitted to Guam without a visa pursuant to section 1182(*l*) of this title may be authorized to enter or stay in the United States other than in Guam or to remain in Guam for a period exceeding fifteen days from date of admission to Guam."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1201 of this title, title 26 section 3306; title 29 section 1802.

PART IV—PROVISIONS RELATING TO ENTRY AND EXCLUSION

§ 1224. Physical and mental examinations; appeal of findings

The physical and mental examination of arriving aliens (including alien crewmen) shall be made by medical officers of the United States Public Health Service, who shall conduct all medical examinations and shall certify, for the information of the immigration officers and the special inquiry officers, any physical and mental defect or disease observed by such medical officers in any such alien. If medical officers of the United States Public Health Service are not available, civil surgeons of not less than four years' professional experience may be employed for such service upon such terms as may be prescribed by the Attorney General. Aliens (including alien crewmen) arriving at ports of the United States shall be examined by at least one such medical officer or civil surgeon under such administrative regulations as the Attorney General may prescribe, and under medical regulations prepared by the Secretary of Health and Human Services. Medical officers of the United States Public Health Service who have had special training in the diagnosis of insanity and mental defects shall be detailed for duty or employed at such ports of entry as the Attorney General may designate, and such medical officers shall be provided with suitable facilities for the detention and examination of all arriving aliens who it is suspected may be excludable under paragraphs (1) to (4) or (5) of section 1182(a) of this title, and the services of interpreters shall be provided for such examination. Any alien certified under paragraphs (1) to (4) or (5) of section 1182(a) of this title, may appeal to a board of medical officers of the United States Public Health Service, which shall be convened by the Secretary of Health and Human Services, and any such alien may introduce before such board one expert medical witness at his own cost and expense.

(June 27, 1952, ch. 477, title II, ch. 4, § 234, 66 Stat. 198; 1966 Reorg. Plan No. 3, §§ 1, 3, 31 F.R. 8855, 80 Stat. 1610; Oct. 17, 1979, Pub. L. 96-88, title V, § 509(b), 93 Stat. 695.)

CODIFICATION

Section is set out in this supplement to correct typographical error appearing in the main edition.

PART V—DEPORTATION; ADJUSTMENT OF STATUS

§ 1252. Apprehension and deportation of aliens

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Penalty for willful failure to depart; suspension of sentence

Any alien against whom a final order of deportation is outstanding by reason of being a member of any of the classes described in paragraphs (4) to (7), (11), (12), (14) to (17), (18), or (19) of section 1251(a) of this title, who shall willfully fail or refuse to depart from the United States within a period of six months from the date of the final order of deportation

under administrative processes, or, if judicial review is had, then from the date of the final order of the court, or from September 23, 1950, whichever is the later, or shall willfully fail or refuse to make timely application in good faith for travel or other documents necessary to his departure, or who shall connive or conspire, or take any other action, designed to prevent or hamper or with the purpose of preventing or hampering his departure pursuant to such order of deportation, or who shall willfully fail or refuse to present himself for deportation at the time and place required by the Attorney General pursuant to such order of deportation, shall upon conviction be guilty of a felony, and shall be imprisoned not more than ten years: *Provided,* That this subsection shall not make it illegal for any alien to take any proper steps for the purpose of securing cancellation of or exemption from such order of deportation or for the purpose of securing his release from incarceration or custody: *Provided further,* That the court may for good cause suspend the sentence of such alien and order his release under such conditions as the court may prescribe. In determining whether good cause has been shown to justify releasing the alien, the court shall take into account such factors as (1) the age, health, and period of detention of the alien; (2) the effect of the alien's release upon the national security and public peace or safety; (3) the likelihood of the alien's resuming or following a course of conduct which made or would make him deportable; (4) the character of the efforts made by such alien himself and by representatives of the country or countries to which his deportation is directed to expedite the alien's departure from the United States; (5) the reason for the inability of the Government of the United States to secure passports, other travel documents, or deportation facilities from the country or countries to which the alien has been ordered deported; and (6) the eligibility of the alien for discretionary relief under the immigration laws.

[See main edition for text of (f) to (h); credits]

AMENDMENT OF SUBSECTION (h)

Pub. L. 98-473, title II, §§ 220(b), 235(a)(1), Oct. 12, 1984, 98 Stat. 2028, 2031, as amended, provided that, effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 (Nov. 1, 1987), subsection (h) of this section is amended by adding "supervised release," after "parole,". See Effective Date note set out under section 3551 of Title 18, Crimes and Criminal Procedure.

CODIFICATION

Subsec. (e) is set out in this supplement to correct typographical error appearing in the main edition.

§ 1253. Countries to which aliens shall be deported

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1184, 1330, 1427 of this title; title 7 section 2015; title 22 sections 618, 2508; title 42 section 1436a.

PART IX—MISCELLANEOUS

§ 1351. Nonimmigrant visa fees

AGREEMENTS ON PASSPORT VISA FEES

The United States has various bilateral agreements reciprocally waiving or reducing passport fees for nonimmigrants from foreign countries.

Country	Date signed	Entered into force	Citation
Albania	May 7, 1926	June 1, 1926	
Argentina	April 15, 1942	June 1, 1942	56 Stat. 1578.
Australia	Feb. 10, 1950	Feb. 10, 1950	1 UST 457.
	July 29, Aug. 9, 17, 20, 1955.	Aug. 20, 1955	6 UST 6225.
	Mar. 13, June 1, Aug. 19, 1959.	Aug. 19, 1959	11 UST 2049.
Austria	June 10, 28, July 12, 1949.	July 12, 1949	63 Stat. 2740.
Bahamas	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Barbados	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Belgium	May 3, 23, 1962.	May 23, 1962	13 UST 1246.
	Mar. 9, Apr. 20, 1971.		22 UST 678.
Brazil	Dec. 16, 17, 1937.	Jan. 1, 1938	186 LNTS 413.
	May 26, 1965	July 25, 1965	16 UST 1006.
Chile	Aug. 29, 1950	Sept. 1, 1950	1 UST 719.
China	Jan. 7, 1981	Jan. 7, 1981	32 UST 4533.
	Dec. 2, 1985	Jan. 2, 1986	TIAS
Colombia	June 13, 26, 1956, May 22, 1957.	June 21, 1957	10 UST 1250.
	June 5, 11, 1957.		10 UST 1250.
Congo (Brazzaville).	Aug. 19, Sept. 4, 5, 16, 1947.	Sept. 16, 1947	61 Stat. 3776.
Costa Rica	June 29, 1925	July 25, 1925	
Cyprus	July 11, 1962, Jan. 11, 1963.	Jan. 11, 1963	14 UST 6.
Czechoslovakia	Dec. 18, 21, 1962.	Dec. 21, 1962	13 UST 3842.
	June 20, 1978	June 20, 1978	30 UST 1593.
Denmark	July 2, Sept. 29, 1925.	Aug. 6, 1925	
	June 9, 21, July 7, 8, 1947.	July 8, 1947	62 Stat. 4068.
	Apr. 30, May 1, 1958.		
Dominican Republic.	Dec. 14, 16, 1955.	Feb. 1, 1956	7 UST 135.
Ecuador	Dec. 11, 1962, Jan 7, 1963.	Jan. 7, 1963	14 UST 757.
Egypt	June 3, Aug. 1, 1963.	Aug. 1, 1963	14 UST 1191.
El Salvador	Dec. 7, 15, 1953.	Jan. 14, 1954	5 UST 859.
Estonia	Apr. 8, July 28, 1925.	July 28, 1925	
Fiji	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Finland	July 7, Aug. 28, Dec. 14, 1955.	Dec. 14, 1955	9 UST 1175.
	Feb. 15, 20, 1956.		9 UST 1179.
	Aug. 15, 1958	Aug. 15, 1958	9 UST 1183.
France	Aug. 19, Sept. 4, 5, 16, 1947.	Sept. 16, 1947	61 Stat. 3776.
	Mar. 18, 31, 1949.	Mar. 31, 1949	63 Stat. 2737.
	Sept. 1, 21, 1961.	Sept. 21, 1961	12 UST 3197.
Germany (FRO).	Dec. 12, 30, 1952, Jan. 9, 1953.	Feb. 1, 1953	4 UST 126.
Greece	Jan. 7, 29, 1949.	Jan 29, 1949	63 Stat. 2905.
Grenada	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Guatemala	May 30, 1956	May 30, 1956	7 UST 1075.
Guyana	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
	May 20, July 18, 1970.	Jan. 18, 1971	22 UST 233.
Honduras	May 20, 27, 1925.	June 1, 1925	
Hungary	Mar. 29, Apr. 7, 1976.	Apr. 7, 1976	28 UST 1311.
	Feb. 10, 1978	Apr. 11, 1978	30 UST 248.

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Country	Date signed	Entered into force	Citation
Iceland	Nov. 3, Dec. 21, 1925, June 11, 19, 21, 1926.	June 21, 1926	
	June 4, 1956	June 4, 1956	7 UST 1017.
India	July 19, Aug. 11, 1948.	Aug. 11, 1948	5 UST 193.
Iran	Mar. 27, Apr. 20, 21, 1926.	Apr. 21, 1926	
	Dec. 13, 16, 1976.	Dec. 16, 1976	28 UST 8161.
Iraq	Feb. 27, 1939	Feb. 27, 1939	
	June 6, 1956	June 6, 1956	7 UST 1067.
Ireland	Aug. 1, 1949	Aug. 1, 1949	63 Stat. 2807.
Israel	Mar. 27, June 1, 1951.	June 1, 1951	3 UST 4796.
	Feb. 14, 28, Mar. 2, 1955.	Mar. 2, 1955	7 UST 2125.
Italy	Feb. 11, 21, 26, 1929.	Mar. 1, 1929	
	Sept. 28, 29, 1948.	Sept. 29, 1948	62 Stat. 3480.
Jamaica	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Japan	May 21, Aug. 12, 26, Sept. 18, 1952.	Sept. 18, 1952	5 UST 363.
	Aug. 9, 23, 1966.	Sept. 22, 1966	17 UST 1228.
Kiribati	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Korea	Mar. 28, 1968	Apr. 27, 1968	19 UST 4789.
Kuwait	Dec. 11, 27, 1960.	Dec. 27, 1960	11 UST 2650.
Latvia	Feb. 18, Mar. 27, 1935.	Mar. 27, 1935	
Lesotho	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Liberia	Aug. 31, 1925	Aug. 31, 1925	
	Oct. 27, 28, 1947.	Oct. 28, 1947	62 Stat. 3930.
Liechtenstein.	Apr. 22, June 18, 30, 1926.	June 30, 1926	
	Oct. 22, 31, Nov. 4, 13, 1947.	Nov. 13, 1947	6 UST 93.
Lithuania	Apr. 17, 1937	Apr. 17, 1937	
Luxembourg	Apr. 25, May 22, 26, 1936.	May 26, 1936	
Madagascar	Aug. 19, Sept. 4, 5, 16, 1947.	Sept. 16, 1947	61 Stat. 3776.
Malaysia	Oct. 15, 22, 1954.		
	Mar. 5, 12, 1958.		
Malta	Oct. 31, Dec. 12, 1949.	Dec. 12, 1949	64 Stat. B137.
Mexico	Oct. 28, Nov. 10, 12, 1953.	Nov. 12, 1953	5 UST 174.
	May 29, 1974		25 UST 1172.
Monaco	Mar. 31, 1952	Mar. 31, 1952	3 UST 3942.
Morocco	Mar. 16, 31, 1949.	Mar. 31, 1949	63 Stat. 2737.
Netherlands	Jan. 21, Feb. 11, Mar. 5, 13, 1946.	Apr. 15, 1946	61 Stat. 3834.
	July 30, Aug. 20, 1947.	Aug. 20, 1947	61 Stat. 3838.
New Zealand.	Mar. 14, 1949	Mar. 14, 1949	63 Stat. 2538.
	Dec. 16, 1957, May 2, 5, 1958.	May 5, 1958	9 UST 913.
	May 13, 1958		9 UST 919.
Nicaragua	July 6, Sept. 30, Oct. 22, 1955.	Oct. 22, 1955	10 UST 1696.
Norway	July 7, 29, 1947.	July 29, 1947	61 Stat. 3101.
	Apr. 25, 1958		
	Sept. 10, Oct. 19, 1948.	Oct. 19, 1948	62 Stat. 3649.
Pakistan	Oct. 10, 18, 1949.	Oct. 18, 1949	3 UST 365.
	Aug. 16, Oct. 11, Nov. 19, Dec. 16, 29, 1952, Mar. 19, Apr. 8, 1953.		4 UST 11.
	Aug. 4, Oct. 20, Nov. 25, 29, 1955.		6 UST 6107.
	Mar. 16, June 27, 1959.	June 27, 1959	12 UST 1685.
Panama	Mar. 27, May 22, 25, 1956.	June 1, 1956	7 UST 905.
	June 14, 17, 1971.	June 17, 1971	22 UST 815.
Peru	Apr. 6, Sept. 26, Oct. 9, 1956.	Sept. 26, 1956	8 UST 468.
	Jan. 4, 7, 1957		8 UST 468.
	Mar. 18, Apr. 23, 1970.	Apr. 23, 1970	21 UST 1317.
Philippines	Nov. 24, 1952	Nov. 24, 1952	3 UST 5196.
Poland	Dec. 17, 1962, Jan 21, 1963.	Jan. 21, 1963	14 UST 118.
Portugal	June 7, 1983	July 7, 1983	TIAS 10723.
Romania	Apr. 20, May 14, 26, 1962.	May 26, 1962	13 UST 1192.
	May 31, June 17, 1967.		18 UST 1266.
	Sept. 12, Oct. 10, 1977.	Oct. 10, 1977	29 USC 4705.
Saint Lucia	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Singapore	Oct. 15, 22, 1954.		
	Mar. 5, 12, 1958.		
South Africa.	Mar. 28, Apr. 3, 1956.	May 1, 1956	7 UST 631.
	Mar. 31, 1958		9 UST 1023.
Spain	Jan. 21, 1952	Jan. 21, 1952	3 UST 2927.
	May 11, July 5, 1963.		14 UST 1206.
Sri Lanka (Ceylon).	Aug. 25, Sept. 7, 1956.	Sept. 7, 1956	8 UST 83.
Surinam	Jan. 21, Feb. 11, Mar. 5, 13, 1946.	Apr. 15, 1946	61 Stat. 3834.
Sweden	Apr. 10, 30, 1947.	Apr. 30, 1947	61 Stat. 4050.
Switzerland	May 11, 1925	May 11, 1925	
	Oct. 22, 31, Nov. 4, 13, 1947.	Nov. 13, 1947	6 UST 93.
Thailand	Sept. 19, 1925	Sept. 19, 1925	
Tonga	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Trinidad and Tobago.	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
	Oct. 28, Nov. 12, 1969.	Nov. 12, 1969	21 UST 1995.
Tunisia	Mar. 16, 31, 1949.	Mar. 31, 1949	63 Stat. 2737.
Turkey	June 27, Aug. 8, Sept. 27, Oct. 11, 1955.	Oct. 11, 1955	7 UST 337.
Tuvalu	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3834.
Union of Soviet Socialist Republics.	Mar. 26, Aug. 11, 20, 1958.	Aug. 20, 1958	9 UST 1413.
	Sept. 29, 1975	Sept. 29, 1975	27 UST 4258.
	July 30, 1984	July 30, 1984	
United Kingdom.	Nov. 9, 12, 1948.	Nov. 12, 1948	62 Stat. 3824.
Uruguay	Nov. 3, 8, 1949	Nov. 10, 1949	64 Stat. B128.
Venezuela	Jan. 5, 12, 1937.	Jan. 12, 1937	
Yugoslavia	Dec. 24, 29, 1925.	Feb. 1, 1926	
	Mar. 23, 25, 1950.	Mar. 25, 1950	1 UST 471.
	Dec. 30, 1963, Mar. 27, Apr. 4, 1964.	Apr. 15, 1964	15 UST 355.
China (Taiwan [1]).	Dec. 20, 1955, Feb. 20, 1956.	Feb. 20, 1956	7 UST 585.
	July 11, Oct. 17, Dec. 7, 1956.		18 UST 3167.
	May 8, June 9, 15, 1970.		21 UST 2213.

[1] These agreements are administered on a nongovernmental basis by the American Institute in Taiwan pursuant to 22 U.S.C. 3305, as a result of the termination of relations with the governing authorities on Taiwan on Jan. 1, 1979.

SUBCHAPTER III—NATIONALITY AND NATURALIZATION

PART II—NATIONALITY THROUGH NATURALIZATION

§ 1424. Prohibition upon the naturalization of persons opposed to government or law, or who favor totalitarian forms of government

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1427, 1433, 1435, 1441, 1451 of this title.

§ 1427. Requirements of naturalization

[See main edition for text of (a) to (f)]

(g) Persons making extraordinary contributions to national security

(1) Whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that a petitioner otherwise eligible for naturalization has made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities, the petitioner may be naturalized without regard to the residence and physical presence requirements of this section, or to the prohibitions of section 1424 of this title, and no residence within the jurisdiction of the court shall be required: *Provided*, That the petitioner has continuously resided in the United States for at least one year prior to naturalization: *Provided further*, That the provisions of this subsection shall not apply to any alien described in subparagraphs (A) through (D) of section 1253(h)(2) of this title.

(2) A petition for naturalization may be filed pursuant to this subsection in any district court of the United States, without regard to the residence of the petitioner. Proceedings under this subsection shall be conducted in a manner consistent with the protection of intelligence sources, methods and activities.

(3) The number of aliens naturalized pursuant to this subsection in any fiscal year shall not exceed five. The Director of Central Intelligence shall inform the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives within a reasonable time prior to the filing of each petition under the provisions of this subsection.

(As amended Dec. 4, 1985, Pub. L. 99-169, title VI, § 601, 99 Stat. 1007.)

AMENDMENTS

1985—Subsec. (g). Pub. L. 99-169 added subsec. (g).

§ 1445. Petition for naturalization

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1423 of this title; title 20 section 955b; title 42 section 1881.

SUBCHAPTER IV—REFUGEE ASSISTANCE

§ 1522. Authorization for programs for domestic resettlement of and assistance to refugees

[See main edition for text of (a)]

(b) Program of initial resettlement

(1) *[See main edition for text of (A)]*

(B) If the President determines that the Director should not administer the program under this paragraph, the authority of the Director under the first sentence of subparagraph (A) shall be exercised by such officer as the President shall from time to time specify.

[See main edition for text of (2) to (6); (c) and (d)]

(e) Cash assistance and medical assistance for refugees

[See main edition for text of (1) to (6)]

(7)(A) The Secretary shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

(B) Refugees covered under such alternative projects shall be precluded from receiving cash or medical assistance under any other paragraph of this subsection or under title XIX or part A of title IV of the Social Security Act [42 U.S.C. 1396 et seq., 601 et seq.].

(C) The Secretary, in consultation with the United States Coordinator for Refugee Affairs, shall report to Congress not later than October 31, 1985, on the results of these projects and on any recommendations respecting changes in the refugee assistance program under this section to take into account such results.

(D) To the extent that the use of such funds is consistent with the purposes of such provisions, funds appropriated under paragraph (1) or (2) of section 1524(a) of this title, part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], or title XIX of such Act [42 U.S.C. 1396 et seq.], may be used for the purpose of implementing and evaluating alternative projects under this paragraph.

(As amended Nov. 22, 1983, Pub. L. 98-164, title X, § 1011(b), 97 Stat. 1061; Oct. 12, 1984, Pub. L. 98-473, title I, § 101(d), 98 Stat. 1877.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (d)(2)(B)(i), (e)(4), (5), (7)(B), (D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts A and B of title IV of the Social Security Act are classified generally to part A (§ 601 et seq.) and part B (§ 620 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Titles XVI and XIX of the Social Security Act are classified generally to subchapters XVI (§ 1381 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

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AMENDMENTS

1984—Subsec. (e)(7). Pub. L. 98-473 added par. (7).

1983—Subsec. (b)(1)(B). Pub. L. 98-164 struck out the first sentence directing the President to provide for a study of which agency is best able to administer the program of initial resettlement and to report to the Congress, not later than Mar. 1, 1981, on that study, and the words "after such study" after "If the President determines".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 101(d) of Pub. L. 98-473 provided in part that: "The amendment made by this paragraph [enacting subsec. (e)(7) of this section] shall take effect on October 1, 1984."

TITLE 9—ARBITRATION

This title was enacted by act July 30, 1947, ch. 392, § 1, 61 Stat. 669

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 22 section 1650a; title 25 section 416a; title 29 section 1401; title 35 sections 135, 294.

CHAPTER 1—GENERAL PROVISIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 205, 208 of this title; title 25 section 416a.

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TITLE 10—ARMED FORCES

This title was enacted by act Aug. 10, 1956, ch. 1041, § 1, 70A Stat. 1

Subtitle A—General Military Law

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AMENDMENTS

1985—Pub. L. 99-145, title VI, § 671(a)(2), title IX, § 924(a)(2), Nov. 8, 1985, 99 Stat. 663, 698, added items for chapters 85 and 109.

1984—Pub. L. 98-525, title VII, § 705(a)(2), title XII, § 1241(a)(2), Oct. 19, 1984, 98 Stat. 2567, 2606, substituted "Members of the Selected Reserve" for "Enlisted Members of the Selected Reserve of the Ready Reserve" in item for chapter 106 and added item for chapter 142.

1983—Pub. L. 98-94, title IX, § 925(a)(2), title XII, § 1268(15), Sept. 24, 1983, 97 Stat. 648, 707, added item for chapter 74, and substituted "or" for "and" in item for chapter 60.

PART I—ORGANIZATION AND GENERAL MILITARY POWERS

CHAPTER 1—DEFINITIONS

§ 101. Definitions

In addition to the definitions in sections 1-5 of title 1, the following definitions apply in this title:

[*See main edition for text of (1) to (21)*]

(22) "Active duty" means full-time duty in the active military service of the United States. It includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. It does not include full-time National Guard duty.

[*See main edition for text of (23)*]

(24) "Active service" means service on active duty or full-time National Guard duty.

[*See main edition for text of (25) to (40)*]

(41) "Flag officer" means an officer of the Navy or Coast Guard serving in or having the grade of admiral, vice admiral, rear admiral or rear admiral (lower half).

(42) "Full-time National Guard duty" means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(As amended Oct. 19, 1984, Pub. L. 98-525, title IV, § 414(a)(1), 98 Stat. 2518; Nov. 8, 1985, Pub. L. 99-145, title V, § 514(b)(1), 99 Stat. 628.)

AMENDMENTS

1985—Par. (41). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

1984—Par. (22). Pub. L. 98-525, § 414(a)(1)(A), added: "It does not include full-time National Guard duty."

Par. (24). Pub. L. 98-525, § 414(a)(1)(B), inserted "or full-time National Guard duty".

Par. (42). Pub. L. 98-525, § 414(a)(1)(C), added par. (42).

CHAPTER 3—GENERAL POWERS

§ 124. Combatant commands: establishment; composition; functions; administration and support

(a) With the advice and assistance of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall—

(1) establish unified combatant commands or specified combatant commands to perform military missions; and

(2) prescribe the force structure of those commands.

[1]Section 2321 redesignated section 2341 by Pub. L. 99-145 without corresponding amendment of Subtitle analysis.

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(b) The military departments shall assign forces to combatant commands established under this section to perform the missions of those commands. A force so assigned is under the full operational command of the commander of the command to which it is assigned. It may be transferred from the command to which it is assigned only by authority of the Secretary and under procedures prescribed by the Secretary with the approval of the President. A force not so assigned remains, for all purposes, in the military department concerned.

(c)(1) Combatant commands established under this section are responsible to the President and to the Secretary for such military missions as may be assigned to them by the Secretary with the approval of the President.

(2) Subject to the authority, direction, and control of the Secretary, the Chairman of the Joint Chiefs of Staff acts as the spokesman for the commanders of the combatant commands on operational requirements.

[*See main edition for text of (d)*]

(As amended Pub. L. 98-525, title XIII, § 1301(a), Oct. 19, 1984, 98 Stat. 2611; Pub. L. 99-145, title XIII, § 1303(a)(1), Nov. 8, 1985, 99 Stat. 738.)

CODIFICATION

Subsec. (b) is set out in this supplement to correct typographical error appearing in the main edition.

AMENDMENTS

1985—Subsec. (c)(2). Pub. L. 99-145 inserted "of the Joint Chiefs of Staff" after "Chairman".

1984—Subsec. (a)(2). Pub. L. 98-525, § 1301(a)(1), struck out "shall" before "prescribe".

Subsec. (c). Pub. L. 98-525, § 1301(a)(2), designated existing provisions as par. (1) and added par. (2).

§ 125. Functions, powers, and duties: transfer, reassignment, consolidation, or abolition

(a) Subject to section 2 of the National Security Act of 1947 (50 U.S.C. 401), the Secretary of Defense shall take appropriate action (including the transfer, reassignment, consolidation, or abolition of any function, power, or duty) to provide more effective, efficient, and economical administration and operation, and to eliminate duplication, in the Department of Defense. However, except as provided by subsections (b) and (c), a function, power, or duty vested in the Department of Defense, or an officer, official, or agency thereof, by law may not be substantially transferred, reassigned, consolidated, or abolished unless the Secretary reports the details of the proposed transfer, reassignment, consolidation, or abolition to the Committees on Armed Services of the Senate and House of Representatives. The transfer, reassignment, consolidation, or abolition concerned takes effect on the first day after the expiration of the first 30 days that Congress is in continuous session after the Secretary so reports, unless either of those Committees, within that period, reports a resolution recommending that the proposed transfer, reassignment, consolidation, or abolition be rejected by the Senate or the House of Representatives, as the case may be, because it—

[*See main edition for text of (1) and (2)*]

If either of those Committees, within that period, reports such a resolution and it is not adopted by the Senate or the House of Representatives, as the case may be, within the first 40 days that Congress is in continuous session after that resolution is so reported, the transfer, reassignment, consolidation, or abolition concerned takes effect on the first day after the expiration of that forty-day period. For the purposes of this subsection, a session may be considered as not continuous only if broken by an adjournment of Congress sine die. However, in computing the period that Congress is in continuous session, days that the Senate or the House of Representatives is not in session because of an adjournment of more than three days to a day certain are not counted.

[*See main edition for text of (b) to (d)*]

(As amended Pub. L. 98-525, title XIV, § 1405(1), Oct. 19, 1984, 98 Stat. 2621.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-525 substituted "section 2 of the National Security Act of 1947 (50 U.S.C. 401)" for "section 401 of title 50".

CHAPTER 4—DEPARTMENT OF DEFENSE

Sec.
136a. Director of Operational Test and Evaluation: appointment, powers and duties.
139c. Major defense acquisition programs: independent cost estimates.
140c. Secretary of Defense: authority to withhold from public disclosure certain technical data.

AMENDMENTS

1983—Pub. L. 98-94, title XII, §§ 1203(a)(2), 1211(a)(2), 1217(b), Sept. 24, 1983, 97 Stat. 683, 686, 690, added items 136a, 139c, and 140c.

§ 133. Secretary of Defense: appointment; powers and duties; delegation by

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, set out as a note under section 3347 of Title 5, Government Organization and Employees.

COMMISSARY AND EXCHANGE PRIVILEGES FOR SURVIVORS OF CERTAIN RESERVISTS

Pub. L. 99-145, title III, § 308, Nov. 8, 1985, 99 Stat. 618, provided that:

"(a) BENEFITS FOR CERTAIN DEPENDENTS.—The Secretary of Defense shall prescribe regulations to allow dependents of members of the uniformed services described in subsection (b) to use commissary and exchange stores on the same basis as dependents of members of the uniformed services who die while on active duty for a period of more than 30 days.

"(b) COVERED DEPENDENTS.—A dependent referred to in subsection (a) is a dependent of a member of a uniformed service who died—

"(1) while on active duty, active duty for training, or inactive duty training (regardless of the period of such duty); or

"(B)[2] while traveling to or from the place at which the member is to perform, or has performed,

active duty, active duty for training, or inactive duty training (regardless of the period of such duty).

"(c) DEFINITION.—For the purposes of this section, the term 'uniformed services' has the meaning given such term in section 101 of title 37, United States Code."

ANIMAL DISEASE PREVENTION AND CONTROL CENTERS; SURCHARGE FOR SALES

Pub. L. 99-145, title VI, § 685(a), (b), (d), Nov. 8, 1985, 99 Stat. 666, provided that:

"(a) REQUIRED SURCHARGE.—The Secretary of Defense shall require that each time a sale is recorded at a military animal disease prevention and control center the person to whom the sale is made shall be charged a surcharge of $2.

"(b) DEPOSIT OF RECEIPTS IN TREASURY.—Amounts received from surcharges under this section shall be deposited in the Treasury in accordance with section 3302 of title 31."

"(d) EFFECTIVE DATE.—This section shall take effect on October 1, 1985."

MILITARY FAMILY POLICY AND PROGRAMS

Pub. L. 99-145, title VIII, Nov. 8, 1985, 99 Stat. 678, provided that:

"SEC. 801. SHORT TITLE

"This title may be cited as the 'Military Family Act of 1985'.

"SEC. 802. OFFICE OF FAMILY POLICY

"(a) ESTABLISHMENT.—There is hereby established in the Office of the Secretary of Defense an Office of Family Policy (hereinafter in this section referred to as the 'Office'). The Office shall be under the Assistant Secretary of Defense for Force Management and Personnel.

"(b) DUTIES.—The Office—

"(1) shall coordinate programs and activities of the military departments to the extent that they relate to military families; and

"(2) shall make recommendations to the Secretaries of the military departments with respect to programs and policies regarding military families.

"(c) STAFF.—The Office shall have not less than five professional staff members.

"(d) REPORT.—The Secretary of Defense shall submit a report to Congress concerning the Office no later than September 30, 1986. The report shall include—

"(1) a description of the activities of the Office and the composition of its staff; and

"(2) the recommendations of the Office for legislative and administrative action to enhance the well-being of military families.

"SEC. 803. TRANSFER OF MILITARY FAMILY RESOURCE CENTER

"The Military Family Resource Center of the Department of Defense is hereby transferred from the Office of the Assistant Secretary of Defense for Health Affairs to the Office of the Assistant Secretary for Force Management and Personnel.

"SEC. 804. SURVEYS OF MILITARY FAMILIES

"The Secretary of Defense may conduct surveys of members of the Armed Forces serving on active duty, members of the families of such members, and retired members of the Armed Forces to determine the effectiveness of existing Federal programs relating to military families and the need for new programs. Responses to surveys conducted under this section shall be voluntary. With respect to such surveys, family members of members of the Armed Forces and retired members of the Armed Forces shall be considered to be employees of the United States for purposes of section 3502(4)(A) of title 44, United States Code.

"SEC. 805. FAMILY MEMBERS SERVING ON ADVISORY COMMITTEES

"A committee within the Department of Defense which advises or assists the Department in the performance of any function which affects members of military families and which includes members of military families in its membership shall not be considered an advisory committee under section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.) solely because of such membership.

"SEC. 806. EMPLOYMENT OPPORTUNITIES FOR MILITARY SPOUSES

"(a) AUTHORITY.—The President shall order such measures as the President considers necessary to increase employment opportunities for spouses of members of the Armed Forces. Such measures may include—

"(1) excepting, pursuant to section 3302 of title 5, United States Code, from the competitive service positions in the Department of Defense located outside of the United States to provide employment opportunities for qualified spouses of members of the Armed Forces in the same geographical area as the permanent duty station of the members; and

"(2) providing preference in hiring for positions in nonappropriated fund activities to qualified spouses of members of the Armed Forces stationed in the same geographical area as the nonappropriated fund activity for positions in wage grade UA-8 and below and equivalent positions and for positions paid at hourly rates.

"(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations—

"(1) to implement such measures as the President orders under subsection (a);

"(2) to provide preference hiring to qualified spouses of members of the Armed Forces in hiring for any position in the Department of Defense above grade GS-7 (or its equivalent) if the spouse is among persons determined to be best qualified for the position and if the position is located in the same geographical area as the permanent duty station of the member;

"(3) to ensure that notice of any vacant position in the Department of Defense is provided in a manner reasonably designed to reach spouses of members of the Armed Forces whose permanent duty stations are in the same geographic area as the area in which the position is located; and

"(4) to ensure that the spouse of a member of the Armed Forces who applies for a vacant position in the Department of Defense shall, to the extent practicable, be considered for any such position located in the same geographic area as the permanent duty station of the member.

"(c) STATUS OF PREFERENCE ELIGIBLES.—Nothing in this section shall be construed to provide a spouse of a member of the Armed Forces with preference in hiring over an individual who is a preference eligible.

"SEC. 807. YOUTH SPONSORSHIP PROGRAM

"The Secretary of Defense shall direct that there be established at each military installation a youth sponsorship program to facilitate the integration of dependent children of members of the Armed Forces into new surroundings when moving to that military installation as a result of a parent's permanent change of station. Such a program shall, to the extent feasible, provide for involvement of dependent children of members presently stationed at the military installation.

"SEC. 808. DEPENDENT STUDENT TRAVEL WITHIN THE UNITED STATES

"Funds available to the Department of Defense for the travel and transportation of dependent students of members of the Armed Forces stationed overseas may be obligated for transportation allowances for travel within or between the contiguous States.

"SEC. 809. RELOCATION AND HOUSING

"(a) RELOCATION ASSISTANCE.—The Secretary of Defense shall submit to Congress a report on the desirability and feasibility of providing relocation assist-

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ance to members of the uniformed services and their families through contracts entered into by the Department of Defense with firms which provide such assistance to individuals. Such report shall be submitted not later than March 1, 1986.

"(b) AMORTIZATION PERIOD FOR PARKING FACILITIES FOR HOUSE TRAILERS AND MOBILE HOMES.—Section 403(k) of title 37, United States Code, is amended by striking out '15-year period' and inserting in lieu thereof '25-year period'.

"(c) COST OF UNACCOMPANIED PERSONNEL HOUSING FOR MEMBERS OF UNIFORMED SERVICE.—Section 5911 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"'(h) A member of the uniformed service on a permanent change of duty station or temporary duty orders and occupying unaccompanied personnel housing—

"'(1) is exempt from the requirement of subsection (c) to pay a rental rate or charge based on the reasonable value of the quarters and facilities provided; and

"'(2) shall pay such lesser rate or charge as the Secretary of Defense establishes by regulation.'.

"SEC. 810. FOOD PROGRAMS

"(a) FOOD COSTS FOR CERTAIN ENLISTED MEMBERS.—Section 1011 of title 37, United States Code, is amended by adding at the end thereof the following new subsection:

"'(c) Spouses and dependent children of enlisted members in pay grades E-1, E-2, E-3, and E-4 may not be charged for meals sold at messes in excess of a level sufficient to cover food costs.'.

"(b) REPORT ON ISSUANCE OF FOOD STAMPS COUPONS TO OVERSEAS HOUSEHOLDS OF MEMBERS STATIONED OUTSIDE THE UNITED STATES.—(1) The Secretary of Defense shall submit to Congress a report on the feasibility of having the Department issue food stamp coupons to overseas households of members stationed outside the United States.

"(2) The report shall include—

"(A) an estimate of the cost of providing the coupons; and

"(B) legislative and administrative recommendations for providing for the issuance of the coupons.

"(3) The report shall be submitted not later than December 31, 1985.

"SEC. 811. REPORTING OF CHILD ABUSE

"(a) IN GENERAL.—The Secretary of Defense shall request each State to provide for the reporting to the Secretary of any report the State receives of known or suspected instances of child abuse and neglect in which the person having care of the child is a member of the Armed Forces (or the spouse of the member).

"(b) DEFINITION.—For purposes of this section the term 'child abuse and neglect' shall have the same meaning as provided in section 3(1) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5102).

"SEC. 812. MISCELLANEOUS REPORTING REQUIREMENTS

"(a) HOUSING AVAILABILITY.—(1) The Secretary of Defense shall submit to Congress a report on the availability and affordability of off-base housing for members of the Armed Forces and their families.

"(2) The report shall—

"(A) examine the availability of affordable housing for each pay grade and for all geographic areas within the United States and for appropriate overseas locations; and

"(B) examine the relocation assistance provided by the Department of Defense incident to a permanent change of station by a member of the Armed Forces in locating housing at the member's new duty station and in disposing of housing at the member's old duty station.

"(3) The report shall be submitted within one year after the date of the enactment of this Act [Nov. 8, 1985].

"(b) NEED FOR ASSISTANCE TO DEPENDENTS ENTERING NEW SECONDARY SCHOOLS.—The Secretary of Defense shall submit to Congress a report recommending administrative and legislative action to assist families of members of the Armed Forces making a permanent change of station so that a dependent child who transfers between secondary schools with different graduation requirements is not subjected to unnecessary disruptions in education or inequitable, unduly burdensome, or duplicative education requirements. Such report shall be submitted within one year after the date of the enactment of this Act [Nov. 8, 1985].

"SEC. 813. EFFECTIVE DATE

"This title shall take effect on October 1, 1985."

ACADEMIC INSTITUTIONS ELIGIBLE TO PROVIDE EDUCATIONAL SERVICES; PROHIBITION OF CERTAIN RESTRICTIONS

Pub. L. 99-145, title XII, § 1212, Nov. 8, 1985, 99 Stat. 726, provided that:

"(a) No solicitation, contract, or agreement for the provision of off-duty postsecondary education services for members of the Armed Forces of the United States, civilian employees of the Department of Defense, or the dependents of such members or employees may discriminate against or preclude any accredited academic institution authorized to award one or more associate degrees from offering courses within its lawful scope of authority solely on the basis of such institution's lack of authority to award a baccalaureate degree.

"(b) No solicitation, contract, or agreement for the provision of off-duty postsecondary education services for members of the Armed Forces of the United States, civilian employees of the Department of Defense, or the dependents of such members or employees, other than those for services at the graduate or postgraduate level, may limit the offering of such services or any group, category, or level of courses to a single academic institution. However, nothing in this section shall prohibit such actions taken in accordance with regulations of the Secretary of Defense which are uniform for all armed services as may be necessary to avoid unnecessary duplication of offerings, consistent with the purpose of this provision of ensuring the availability of alternative offerors of such services to the maximum extent feasible.

"(c) This section shall apply to contracts entered into after April 1, 1985.

"(d) Nothing in this section shall be construed to require more than one academic institution to be authorized to offer courses aboard a particular naval vessel.

"(e)(1) The Comptroller General of the United States shall carry out a study to determine (A) the educational needs of members of the Armed Forces of the United States and civilian employees of the Department of Defense stationed outside the United States and the educational needs of the dependents of such members and employees, (B) the most effective and feasible means of meeting such needs, and (C) the cost of providing such means.

"(2) Not later than September 1, 1986, the Comptroller General shall transmit to the Congress a report on the study required by subsection [paragraph] (1) The report shall include the Comptroller General's findings and such recommendations for legislation as the Comptroller General considers appropriate."

REPORT OF UNOBLIGATED BALANCES

Pub. L. 99-145, title XIV, § 1407, Nov. 8, 1985, 99 Stat. 745, provided that:

"(a) REQUIRED REPORTS.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives reports containing an estimate of the amount of funds in each appropriation account of the Department of Defense that at the time of the report—

"(1) is available for obligation; and

"(2) is in excess of the amount needed to carry out the programs for which the funds were appropriated.

"(b) MATTERS TO BE INCLUDED.—Each estimate under subsection (a) shall include amounts attributable to—

"(1) inflation savings;

"(2) foreign currency savings;

"(3) excess working capital fund cash; and

"(4) all other savings.

"(c) UNANTICIPATED INCREASES.—The report shall also identify unanticipated cost increases resulting from adverse economic trends.

"(d) SUBMISSION OF REPORT.—The reports shall be submitted to Congress each year with the President's budget for the next fiscal year, with the April Budget Update, and with the Mid-Session Budget Review. However, the first such report shall be submitted not later than 30 days after the date of the enactment of this Act [Nov. 8, 1985]."

HOTLINE BETWEEN UNITED STATES AND SOVIET UNION

Pub. L. 99-85, Aug. 8, 1985, 99 Stat. 286, provided: "That the Secretary of Defense may provide to the Soviet Union, as provided in the Exchange of Notes Between the United States of America and the Union of Soviet Socialist Republics Concerning the Direct Communications Link Upgrade, concluded on July 17, 1984, such equipment and services as may be necessary to upgrade or maintain the Soviet Union part of the Direct Communications Link agreed to in the Memorandum of Understanding between the United States and the Soviet Union signed June 20, 1963. The Secretary shall provide such equipment and services to the Soviet Union at the cost thereof to the United States.

"SEC. 2. (a) The Secretary of Defense may use any funds available to the Department of Defense for the procurement of the equipment and providing the services referred to in the first section.

"(b) Funds received from the Soviet Union as payment for such equipment and services shall be credited to the appropriate account of Department of Defense."

FEE FOR VETERINARY SERVICES

Pub. L. 98-94, title X, § 1033, Sept. 24, 1983, 97 Stat. 672, as amended by Pub. L. 98-525, title VI, § 656, Oct. 19, 1984, 98 Stat. 2553, which, effective Oct. 1, 1985, required payment by a member of the Armed Forces of a $10 fee for veterinary services, was repealed by Pub. L. 99-145, title VI, § 685(c), (d), Nov. 8, 1985, 99 Stat. 666, effective Oct. 1, 1985.

§ 134. Deputy Secretary of Defense: appointment; powers and duties; precedence

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 135. Under Secretaries of Defense: appointment; powers and duties; precedence

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 136. Assistant Secretaries of Defense: appointment; powers and duties; precedence

(a) There are eleven Assistant Secretaries of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of Defense may prescribe.

(2) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Health Affairs. He shall have as his principal duty the overall supervision of health affairs of the Department of Defense.

(3) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Manpower and Logistics. He shall have as his principal duty the overall supervision of manpower and logistics affairs of the Department of Defense.

(4) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Reserve Affairs. He shall have as his principal duty the overall supervision of reserve component affairs of the Department of Defense.

(5) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. He shall have as his principal duty the overall supervision of command, control, communications, and intelligence affairs of the Department of Defense.

(6) One of the Assistant Secretaries shall be the Comptroller of the Department of Defense and shall, subject to the authority, direction, and control of the Secretary—

(A) advise and assist the Secretary in performing such budgetary and fiscal functions and duties, and in exercising such budgetary and fiscal powers, as are needed to carry out the powers of the Secretary;

(B) supervise and direct the preparation of budget estimates of the Department of Defense;

(C) establish and supervise the execution of principles, policies, and procedures to be followed in connection with organizational and administrative matters relating to—

(i) the preparation and execution of budgets;

(ii) fiscal, cost, operating, and capital property accounting;

(iii) progress and statistical reporting; and

(iv) internal audit;

(D) establish and supervise the execution of policies and procedures relating to the expenditure and collection of funds administered by the Department of Defense; and

(E) establish uniform terminologies, classifications, and procedures concerning matters covered by clauses (A) through (D).

[*See main edition for text of* (c) *to* (e)]

[(f) Repealed. Pub. L. 98-94, title XII, § 1212(a)(3), Sept. 24, 1983, 97 Stat. 687.]

(As amended Pub. L. 98-94, title XII, § 1212(a), Sept. 24, 1983, 97 Stat. 686.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-94, § 1212(a)(1), substituted "eleven" for "seven".

Subsec. (b)(1). Pub. L. 98-94, § 1212(a)(2)(A), designated the existing first sentence as par. (1).

Subsec. (b)(2). Pub. L. 98-94, § 1212(a)(2)(B), designated the existing second and third sentences as par. (2).

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Subsec. (b)(3). Pub. L. 98-94, § 1212(a)(2)(C), (D), designated the existing fourth and fifth sentences as par. (3), and in par. (3), as so designated substituted "Logistics" for "Reserve Affairs" and "logistics" for "reserve component".

Subsec. (b)(4), (5). Pub. L. 98-94, § 1212(a)(2)(E), added pars. (4) and (5).

Subsec. (b)(6). Pub. L. 98-94, § 1212(a)(2)(F), designated the existing sixth sentence as par. (6), in par. (6) as so designated, substituted "One of the Assistant Secretaries" for "In addition, one of the Assistant Secretaries", redesignated pars. (1) to (5) as subpars. (A) to (E), respectively, redesignated former subpars. (A) to (D) as cls. (1) to (4), respectively, and in subpar. (E), as redesignated, substituted "clauses (A) through (D)" for "clauses (1)–(4)".

Subsec. (f). Pub. L. 98-94, § 1212(a)(3), struck out subsec. (f) which had provided for the appointment of a Deputy Assistant Secretary of Defense for Reserve Affairs within the Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs. See subsec. (b)(4) of this section.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1212(e) of Pub. L. 98-94 provided that: "The amendments made by this section [amending sections 136, 175, 3013, and 5034 of this title and section 5315 of Title 5, Government Organization and Employees] shall take effect on October 1, 1983."

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 136a. Director of Operational Test and Evaluation: appointment; powers and duties

(a)(1) There is a Director of Operational Test and Evaluation in the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Director shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties of the office of Director. The Director may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(2) In this section:

(A) "Operational test and evaluation" means—

(i) the field test, under realistic combat conditions, of any item of (or key component of) weapons, equipment, or munitions for the purpose of determining the effectiveness and suitability of the weapons, equipment, or munitions for use in combat by typical military users; and

(ii) the evaluation of the results of such test.

(B) "Major defense acquisition program" means a Department of Defense acquisition program that is a major defense acquisition program for purposes of section 139a(a)(1) of this title or that is designated as such a program by the Director for purposes of this section.

(b) The Director is the principal adviser to the Secretary of Defense on operational test and evaluation in the Department of Defense and the principal operational test and evaluation official within the senior management of the Department of Defense. The Director shall—

(1) prescribe, by authority of the Secretary of Defense, policies and procedures for the conduct of operational test and evaluation in the Department of Defense;

(2) provide guidance to and consult with the Secretary of Defense and the Secretaries of the military departments with respect to operational test and evaluation in the Department of Defense in general and with respect to specific operational test and evaluation to be conducted in connection with a major defense acquisition program;

(3) monitor and review all operational test and evaluation in the Department of Defense;

(4) coordinate operational testing conducted jointly by more than one military department or defense agency;

(5) analyze the results of the operational test and evaluation conducted for each major defense acquisition program and, at the conclusion of such operational test and evaluation, report to the Secretary of Defense and to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives as provided in subsection (c) on—

(A) whether the test and evaluation performed was adequate; and

(B) whether the test and evaluation results confirm that the items or components actually tested are effective and suitable for combat; and

(6) review and make recommendations to the Secretary of Defense on all budgetary and financial matters relating to operational test and evaluation, including operational test facilities and equipment, in the Department of Defense.

(c) Each report of the Director required under subsection (b)(5) shall be submitted to the committees specified in that subsection in precisely the same form and with precisely the same content as the report originally was submitted to the Secretary and shall be accompanied by such comments as the Secretary of Defense may wish to make on such report.

(d) The Director reports directly, without intervening review or approval, to the Secretary of Defense. The Director shall consult closely with, but the Director and the Director's staff are independent of, the Under Secretary of Defense for Research and Engineering and all other officers and entities of the Department of Defense responsible for research and development.

(e)(1) The Secretary of a military department shall report promptly to the Director the results of all operational test and evaluation conducted by the military department and of all studies conducted by the military department in connection with operational test and evaluation in the military department.

(2) The Director may require that such observers as he designates be present during the preparation for and the conduct of the test part

of any operational test and evaluation conducted in the Department of Defense.

(3) The Director shall have access to all records and data in the Department of Defense (including the records and data of each military department) that the Director considers necessary to review in order to carry out his duties under this section.

(f)(1) Operational testing of a major defense acquisition program may not be conducted until the Director has approved in writing the adequacy of the plans (including the adequacy of projected levels of funding) for operational test and evaluation to be conducted in connection with that program.

(2) A final decision within the Department of Defense to proceed with a major defense acquisition program beyond low-rate initial production may not be made until the Director has submitted to the Secretary of Defense the report with respect to that program required by subsection (b)(5) and the Committees on Armed Services and on Appropriations of the Senate and House of Representatives have received that report.

(g)(1) The Director shall prepare an annual report summarizing the operational test and evaluation activities of the Department of Defense during the preceding fiscal year. Each such report shall be submitted concurrently to the Secretary of Defense and the Congress not later than January 15 immediately following the end of the fiscal year for which the report is prepared. The report shall include such comments and recommendations as the Director considers appropriate, including comments and recommendations on resources and facilities available for operational test and evaluation and levels of funding made available for operational test and evaluation activities. The Secretary may comment on any report of the Director to Congress under this paragraph.

(2) The Director shall comply with requests from Congress (or any committee of either House of Congress) for information relating to operational test and evaluation in the Department of Defense.

(h) The President shall include in the Budget transmitted to Congress pursuant to section 1105 of title 31 for each fiscal year a separate statement of estimated expenditures and proposed appropriations for that fiscal year for the acvitities of the Director of Operational Test and Evaluation in carrying out the duties and responsibilities of the Director under this section.

(Added Pub. L. 98-94, title XII, § 1211(a)(1), Sept. 24, 1983, 97 Stat. 684.)

EFFECTIVE DATE

Section 1211(c) of Pub. L. 98-94 provided that: "The amendments made by this section [enacting this section and amending section 5315 of Title 5, Government Organization and Employees] shall take effect on November 1, 1983."

§ 137. General Counsel: powers and duties

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 138. Annual authorization of appropriations and personnel strengths for the armed forces; annual manpower requirements and operations and maintenance reports

[*See main edition for text of* (a)]

(b) [*See main edition for text of* (1) *and* (2)].

(3) The Secretary shall include in each report under paragraph (2) the following:

(A) A listing of each major item of equipment required by the Selected Reserve of the Ready Reserve of each reserve component indicating—

(i) the full war-time requirement of that component for that item, shown in accordance with deployment schedules and requirements over successive 30-day periods following mobilization;

(ii) the number of each such item in the inventory of the component;

(iii) a separate listing of each such item in the inventory that is a deployable item and is not the most desired item;

(iv) the number of each such item projected to be in the inventory at the end of the third succeeding fiscal year; and

(v) the number of nondeployable items in the inventory as a substitute for a required major item of equipment.

(B) A narrative explanation of the plan of the Secretary concerned to provide equipment needed to fill the war-time requirement for each major item of equipment to all units of the Selected Reserve, including an explanation of the plan to equip units of the Selected Reserve that are short major items of equipment at the outset of war.

(C) For each item of major equipment reported under paragraph (2)(C) in a report for one of the three previous years under this subsection as an item expected to be procured for the Selected Reserve or to be transferred to the Selected Reserve, the quantity of such equipment actually procured for or transferred to the Selected Reserve.

[*See main edition for text of* (c) *to* (f)]

(g) The size of the Special Defense Acquisition Fund established pursuant to chapter 5 of the Arms Export Control Act (22 U.S.C. 2795 et seq.) may not exceed $1,000,000,000.

[*See main edition for text of* (h) *and* (i)]

(As amended Pub. L. 98-525, title XIV, § 1405(2), Oct. 19, 1984, 98 Stat. 2621; Pub. L. 99-145, title XII, § 1208, title XIV, § 1403, Nov. 8, 1985, 99 Stat. 723, 743.)

AMENDMENTS

1985—Subsec. (b)(3). Pub. L. 99-145, § 1208, added par. (3).

Subsec. (g). Pub. L. 99-145, § 1403, substituted "$1,000,000,000" for "$300,000,000 in fiscal year 1982, may not exceed $600,000,000 in fiscal year 1983, and may not exceed $900,000,000 in fiscal year 1984 or any fiscal year thereafter".

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1984—Subsec. (g). Pub. L. 98-525 inserted "(22 U.S.C. 2795 et seq.)".

AVAILABILITY OF APPROPRIATIONS

The following general provisions, that had been repeated as fiscal year provisions in prior appropriation acts, were enacted as permanent law in the Department of Defense Appropriations Act, 1986, Pub. L. 99-190, § 101(b) [title VIII, §§ 8005, 8006, 8009, 8099], Dec. 19, 1985, 99 Stat. 1185, 1202, 1203, 1204, 1219:

"SEC. 8005. Appropriations for the Department of Defense for the current fiscal year and hereafter shall be available for: (a) expenses in connection with administration of occupied areas; (b) payment of rewards as authorized for the Navy by section 7209(a) of title 10, United States Code, for information leading to the discovery of missing naval property or the recovery thereof; (c) payment of deficiency judgments and interests thereon arising out of condemnation proceedings; (d) leasing of buildings and facilities including payment of rentals for special purpose space at the seat of government, and in the conduct of field exercises and maneuvers or, in administering the provisions of the Act of July 9, 1942 (56 Stat. 654; 43 U.S.C. 315q), rentals may be paid in advance; (e) payments under contracts for maintenance of tools and facilities for twelve months beginning at any time during the fiscal year; (f) maintenance of defense access roads certified as important to national defense in accordance with section 210 of title 23, United States Code; (g) the purchase of milk for enlisted personnel of the Department of Defense heretofore made available pursuant to section 202 of the Agricultural Act of 1949 (7 U.S.C. 1446a), and the cost of milk so purchased, as determined by the Secretary of Defense, shall be included in the value of the commuted ration; (h) payments under leases for real or personal property, including maintenance thereof when contracted for as a part of the lease agreement, for twelve months beginning at any time during the fiscal year; (i) the purchase of right-hand-drive vehicles not to exceed $12,000 per vehicle; (j) payment of unusual cost overruns incident to ship overhaul, maintenance, and repair for ships inducted into industrial fund activities or contracted for in prior fiscal years: *Provided*, That the Secretary of Defense shall notify the Congress promptly prior to obligation of any such payments; (k) payments from annual appropriations to industrial fund activities and/or under contract for changes in scope of ship overhaul, maintenance, and repair after expiration of such appropriations, for such work either inducted into the industrial fund activity or contracted for in that fiscal year; and (*l*) payments for depot maintenance contracts for twelve months beginning at any time during the fiscal year.

"SEC. 8006. Appropriations for the Department of Defense for the current fiscal year and hereafter shall be available for: (a) military courts, boards, and commissions; (b) utility services for buildings erected at private cost, as authorized by law, and buildings on military reservations authorized by regulations to be used for welfare and recreational purposes; and (c) exchange fees, and losses in the accounts of disbursing officers or agents in accordance with law.

"SEC. 8009. During the current fiscal year and hereafter:

"(a) The President may exempt appropriations, funds, and contract authorizations, available for military functions under the Department of Defense, from the provisions of section 1512 of title 31, United States Code, whenever he deems such action to be necessary in the interest of national defense.

"(b) Upon determination by the President that such action is necessary, the Secretary of Defense is authorized to provide for the cost of an airborne alert as an excepted expense in accordance with the provisions of section 3732 of the Revised Statutes (41 U.S.C. 11).

"(c) Upon determination by the President that it is necessary to increase the number of military personnel on active duty subject to existing laws beyond the number for which funds are provided in this Act, the Secretary of Defense is authorized to provide for the cost of such increased military personnel, as an excepted expense in accordance with the provisions of section 3732 of the Revised Statutes (41 U.S.C. 11).

"(d) The Secretary of Defense shall immediately advise Congress of the exercise of any authority granted in this section, and shall report monthly on the estimated obligations incurred pursuant to subsections (b) and (c).

"SEC. 8099. None of the funds appropriated by this Act shall be used for the support of any nonappropriated fund activity of the Department of Defense that procures alcoholic beverages with nonappropriated funds for resale (including alcoholic beverages sold by the drink) on a military installation located in the United States, unless such alcoholic beverages are procured in the State, or in the case of the District of Columbia, within the District of Columbia, in which the installation is located: *Provided*, That in a case in which a military installation is located in more than one State, purchases may be made in any State in which the installation is located: *Provided further*, That not later than one year after the date of enactment of this Act [Dec. 19, 1985], the Secretary shall transmit a report to the Congress concerning the implementation of this section."

The following general provisions, that had been repeated as fiscal year provisions in prior appropriation acts, were enacted as permanent law in the Department of Defense Appropriation Act, 1984, Pub. L. 98-212, title VII, §§ 705-707, 723, 728, 735, 774, Dec. 8, 1983, 97 Stat. 1437, 1438, 1443, 1444, 1452:

"SEC. 705. Appropriations contained in this Act and in subsequent appropriation Acts for the Department of Defense shall be available for insurance of official motor vehicles in foreign countries, when required by laws of such countries; payments in advance of expenses determined by the investigating officer to be necessary and in accord with local custom for conducting investigations in foreign countries incident to matters relating to the activities of the department concerned; reimbursement to General Services Administration for security guard services for protection of confidential files; and all necessary expenses, at the seat of government of the United States of America or elsewhere, in connection with communication and other services and supplies as may be necessary to carry out the purposes of this Act.

"SEC. 706. [Authorized the use of appropriated funds for expenses incident to the maintenance, pay, and allowances of prisoners of war, other persons in Army, Navy, or Air Force custody whose status was determined by the Secretary concerned to be similar to prisoners of war, and persons detained in such custody pursuant to Presidential proclamation, and was repealed by Pub. L. 98-525, title XIV, §§ 1403(a)(1), 1404, Oct. 19, 1984, 98 Stat. 2621, effective Oct. 1, 1985. See section 956(5) of this title.]

"SEC. 707. Appropriations available to the Department of Defense for the current fiscal year and hereafter for maintenance or construction shall be available for acquisition of land or interest therein as authorized by sections 2672, 2675 or 2828 of title 10, United States Code.

"SEC. 723. Appropriations contained in this Act and in subsequent appropriation Acts for the Department of Defense shall be available for the purchase of household funishings, and automobiles from military and civilian personnel on duty outside the continential United States, for the purpose of resale at cost to incoming personnel, and for providing furnishings, without charge, in other than public quarters occupied by military or civilian personnel of the Department of Defense on duty outside the continental United States or in Alaska, upon a determination, under regulations approved by the Secretary of Defense, that such action is advantageous to the Government.

"SEC. 728. No part of the funds appropriated herein or in subsequent appropriation Acts for the Department of Defense shall be available for paying the costs of advertising by any defense contractor, except advertising for which payment is made from profits, and such advertising shall not be considered a part of any defense contract cost. The prohibition contained in this section shall not apply with respect to advertising conducted by any such contractor, in compliance with regulations which shall be promulgated by the Secretary of Defense, solely for (1) the recruitment by the contractor of personnel required for the performance by the contractor of obligations under a defense contract, (2) the procurement of scarce items required by the contractor for the performance of a defense contract, or (3) the disposal of scrap or surplus materials acquired by the contractor in the performance of a defense contract.

"SEC. 735. Appropriations for the current fiscal year and hereafter for operation and maintenance of the active forces shall be available for welfare and recreation; hire of passenger motor vehicles; repair of facilities; modification of personal property; design of vessels; industrial mobilization; installation of equipment in public and private plants; military communications facilities on merchant vessels; acquisition of services, special clothing, supplies, and equipment; and expenses for the Reserve Officers' Training Corps and other units at educational institutions. [As amended Pub. L. 98-525, title XIV, §§ 1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985.]

"SEC. 774. During the current fiscal year and subsequent fiscal years, for the purposes of the appropriation 'Foreign Currency Fluctuations, Defense' the foreign currency exchange rates used in preparing budget submissions shall be the foreign currency exchange rates as adjusted or modified, as reflected in applicable Committee reports on this Act."

TRANSFER OF OPERATION AND MAINTENANCE APPROPRIATIONS UNOBLIGATED BALANCES TO FOREIGN CURRENCY FLUCTUATIONS, DEFENSE, APPROPRIATION

Pub. L. 97-377, title I, § 101(c) [title VII, § 791], Dec. 21, 1982, 96 Stat. 1865, provided that: "No later than the end of the second fiscal year following the fiscal year for which appropriations for Operation and Maintenance have been made available to the Department of Defense, unobligated balances of such appropriations provided for fiscal year 1982 and thereafter may be transferred into the appropriation 'Foreign Currency Fluctuations, Defense' to be merged with and available for the same time period and the same purposes as the appropriation to which transferred: *Provided*, That any transfer made pursuant to any use of the authority provided by this provision shall be limited so that the amount in the appropriation 'Foreign Currency Fluctuations, Defense' does not exceed $970,000,000 at the time such a transfer is made."

§ 139. Secretary of Defense: weapons development and procurement schedules for armed forces; reports; supplemental reports

[*See main edition for text of* (a)]

(b) The Secretary of Defense shall submit a supplemental report to Congress not less than 30, or more than 90, days before the award of any contract, or the exercise of any option in a contract, for the procurement of any such weapon system (other than procurement of units for operational testing and evaluation, or long lead-time items, or both), unless—

[*See main edition for text of* (1)]

(2) the Secretary of Defense determines that the submission of that report would otherwise adversely affect the vital security interests of the United States and notifies Congress in writing of that determination at least 30 days prior to the award, stating his reasons therefor.

[*See main edition for text of* (c) *and* (d)]

(As amended Pub. L. 98-525, title XIV, § 1405(3), Oct. 19, 1984, 98 Stat. 2621.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-525, § 1405(3)(B), substituted "30" for "thirty" and "90" for "ninety" in introductory text.

Subsec. (b)(2). Pub. L. 98-525, § 1405(3)(A), substituted "30" for "thirty".

SHOULD-COST ANALYSES

Pub. L. 99-145, title IX, § 915, Nov. 8, 1985, 99 Stat. 688, provided that:

"(a) REPORT ON ANNUAL PLAN.—The Secretary of Defense shall submit to Congress an annual report setting forth the Secretary's plan for the performance during the next fiscal year of cost analyses for major defense acquisition programs for the purpose of determining how much the production of covered systems under such programs should cost. The report shall describe—

"(1) which covered systems the Secretary plans to apply such an analysis to;

"(2) which covered systems the Secretary does not plan to apply such an analysis to and, in each such case, the reasons for not applying such an analysis; and

"(3) which systems were determined not to be covered systems under a major defense acquisition program and the reasons for that determination.

"(b) COVERED SYSTEMS.—For the purposes of subsection (a), a system under a major defense acquisition program shall be considered to be a covered system if—

"(1) a production contract for the system is to be awarded during the year following the next fiscal year using procedures other than full and open competition;

"(2) initial production of the system has already taken place;

"(3) the current plans for the Department of Defense include production of substantial quantities of identical or similar items in fiscal years beyond the next fiscal year;

"(4) the work to be performed under the contract is sufficiently defined to permit an effective analysis of what production of the system by the contractor should cost; and

"(5) major changes in the program are unlikely.

"(c) SUBMITTAL OF REPORT.—The report required by subsection (a) shall be submitted to the Committees on Armed Services of the Senate and the House of Representatives not later than the date on which the budget for the next fiscal year is submitted each year.

"(d) DEFINITION.—The term 'major defense acquisition program' has the meaning given such term in section 139a(a)(1) of title 10, United States Code.

"(e) EFFECTIVE DATE.—This section shall apply to covered systems for which initial production funds are first appropriated for a fiscal year after fiscal year 1986."

REQUIREMENT FOR SPECIFIC AUTHORIZATION FOR DEPLOYMENT OF STRATEGIC DEFENSE INITIATIVE SYSTEM

Pub. L. 99-145, title II, § 222, Nov. 8, 1985, 99 Stat. 613, provided that: "A strategic defense system developed as a consequence of research, development, test, and evaluation conducted on the Strategic Defense Initiative program may not be deployed in whole or in part unless—

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"(1) the President determines and certifies to Congress in writing that—

"(A) the system is survivable (that is, the system is able to maintain a sufficient degree of effectiveness to fulfill its mission, even in the face of determined attacks against it); and

"(B) the system is cost effective at the margin to the extent that the system is able to maintain its effectiveness against the offense at less cost than it would take to develop offensive countermeasures and proliferate the ballistic missiles necessary to overcome it; and

"(2) funding for the deployment of such system has been specifically authorized by legislation enacted after the date on which the President makes the certification to Congress."

ANNUAL REPORT ON STRATEGIC DEFENSE INITIATIVE PROGRAM

Section 1102 of Pub. L. 98–525 provided that: "At the time of the submission by the Secretary of Defense to the Congress of his annual budget presentation materials for each fiscal year beginning with fiscal year 1986 and ending with fiscal year 1990 (but not later than March 15 of the calendar year in which such fiscal year begins), the Secretary of Defense shall transmit to the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives and the Committee on Armed Services and the Committee on Foreign Relations of the Senate a report on the programs that constitute the Strategic Defense Initiative and other programs, if any, relating to defense against strategic ballistic missiles. Each such report shall include—

"(1) details of all programs and projects included in the Strategic Defense Initiative or relating to defense against strategic ballistic missiles;

"(2) a clear definition of the objectives of the Strategic Defense Initiative;

"(3) an explanation of the relationship between each such objective and each program and project associated with the Strategic Defense Initiative or defense against strategic ballistic missiles;

"(4) the status of consultations with other member nations of the North Atlantic Treaty Organization, Japan, and other appropriate allies concerning research being conducted in the Strategic Defense Initiative program;

"(5) a statement of any anticipated impact on the anti-ballistic missile treaty;

"(6) consideration of a process by which Congress could review Soviet countermeasures to specific Strategic Defense Initiative programs and evaluate the adequacy of such programs to respond to such countermeasures;

"(7) details on the funding of programs, projects, and tasks for the Strategic Defense Initiative, including—

"(A) prior and current year funding levels for all such programs, projects, and tasks in the Strategic Defense Initiative budgetary presentation materials;

"(B) the amount requested to be appropriated for such programs, projects, and tasks for the fiscal year for which the budget is submitted; and

"(C) the amount programmed to be requested for the following fiscal year."

PLANS FOR MANAGEMENT OF TECHNICAL DATA AND COMPUTER CAPABILITY IMPROVEMENTS

Section 1252 of Pub. L. 98–525 provided that:

"(a)(1) Not later than one year after the date of the enactment of this Act [Oct. 19, 1984], the Secretary of Defense shall develop a plan for an improved system for the management of technical data relating to any major system of the Department of Defense. At a minimum, the management plan shall address procedures for—

"(A) indexing, storing, and updating items of technical data in a system;

"(B) developing, to the maximum extent practicable, a centralized system to identify the repository within the department responsible for technical data relating to an item and the extent of the data on file in that repository with respect to that item; and

"(C) assuring that those parties otherwise entitled to receive technical data will have timely access to complete and current technical data.

"(2) Not later than 5 years after the date of the enactment of this Act [Oct. 19, 1984], the Secretary shall complete implementation of the management plan required to be developed by paragraph (1).

"(3) Not later than 18 months after the date of the enactment of this Act [Oct. 19, 1984], the Comptroller General of the United States shall transmit to Congress a report evaluating the plan developed by the Secretary of Defense under paragraph (1).

"(b) Not later than 180 days after the date of the enactment of this Act [Oct. 19, 1984], the Secretary of Defense shall transmit to the Committees on Armed Services of the Senate and House of Representatives a plan to improve substantially the computer capability of each of the military departments and of the Defense Logistics Agency to store and access rapidly data that is needed for the efficient procurement of supplies. The plan shall provide for a computer data base that includes price and procurement history, item identification, sources of supply, and other relevant information. The plan shall specify a schedule for the implementation of the improvements, the projected cost of implementation of the improvements, and such other recommendations as the Secretary of Defense considers appropriate to accomplish the improvements."

CONSULTATION WITH ALLIES ON STRATEGIC DEFENSE INITIATIVE PROGRAM

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8104], Oct. 12, 1984, 98 Stat. 1904, 1942, provided that: "It is the sense of the Congress that—(a) the President shall inform and make every effort to consult with other member nations of the North Atlantic Treaty Organization, Japan, and other appropriate allies concerning the research being conducted in the Strategic Defense Initiative program. (b) The Secretary of Defense, in coordination with the Secretary of State and the Director of the Arms Control and Disarmament Agency, shall at the time of the submission of the annual budget presentation materials for each fiscal year beginning after September 30, 1984, report to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services, and Foreign Affairs of the House of Representatives on the status of the consultations referred to under subsection (a)."

ANTISATELLITE WEAPONS TEST

Pub. L. 99–190, § 101(b) [title VIII, § 8097], Dec. 19, 1985, 99 Stat. 1185, 1219, provided that: "None of the funds appropriated by this Act or any other Act may be obligated or expended to carry out a test of the Space Defense System (anti-satellite weapon) against an object in space until the President certifies to Congress that the Soviet Union has conducted, after October 3, 1985, a test against an object in space of a dedicated anti-satellite weapon."

Pub. L. 99–145, title II, § 208(a), (b), Nov. 8, 1985, 99 Stat. 610, provided that:

"(a) REQUIREMENT REGARDING THE USE OF FUNDS.—None of the funds appropriated pursuant to an authorization in this or any other Act may be obligated or expended to test against an object in space the miniature homing vehicle (MHV) anti-satellite warhead launched from an F-15 aircraft unless the President has made a determination and a certification to the Congress as provided in section 8100 of the Department of Defense Appropriations Act, 1985 [set out as a

note below] (as contained in section 101(h) of Public Law 98-473 (98 Stat. 1941)).

"(b) LIMITATION ON NUMBER OF TESTS.—Not more than three tests described in subsection (a) may be conducted before October 1, 1986."

Pub. L. 98-473, title I, § 101(h) [title VIII, § 8100], Oct. 12, 1984, 98 Stat. 1904, 1941, provided that:

"(a) Notwithstanding any other provision of law, none of the funds appropriated or made available in this or any other Act may be obligated or expended to test against an object in space the miniature homing vehicle (MHV) anti-satellite warhead launched from an F-15 aircraft unless the President determines and certifies to Congress—

"(1) that the United States is endeavoring, in good faith, to negotiate with the Soviet Union a mutual and verifiable agreement with the strictest possible limitations on anti-satellite weapons consistent with the national security interests of the United States;

"(2) that, pending agreement on such strict limitations, testing against objects in space of the F-15 launched miniature homing vehicle anti-satellite warhead by the United States is necessary to avert clear and irrevocable harm to the national security;

"(3) that such testing would not constitute an irreversible step that would gravely impair prospects for negotiations on anti-satellite weapons; and

"(4) that such testing is fully consistent with the rights and obligations of the United States under the Anti-Ballistic Missile Treaty of 1972 as those rights and obligations exist at the time of such testing.

"(b) During fiscal year 1985, funds appropriated for the purpose of testing the F-15 launched miniature homing vehicle anti-satellite warhead may not be used to conduct more than three tests of that warhead against objects in space.

"(c) The limitation on the expenditure of funds provided by subsection (a) of this section shall cease to apply fifteen calendar days after the date of the receipt by Congress of the certification referred to in subsection (a) or March 1, 1985, whichever occurs later."

Similar provisions were contained in the following prior appropriation act:

Pub. L. 98-94, title XI, § 1235, Sept. 24, 1983, 97 Stat. 695; as amended by Pub. L. 98-525, title II, § 205, Oct. 19, 1984, 98 Stat. 2509.

EAST COAST TRIDENT BASE AND MX MISSILE SYSTEM SITES; USE OF FUNDS APPROPRIATED TO DEPARTMENT OF DEFENSE; ASSISTANCE TO NEARBY COMMUNITIES TO HELP MEET COSTS OF INCREASED MUNICIPAL SERVICES

Pub. L. 96-418, title VIII, § 802, Oct. 10, 1980, 94 Stat. 1775, as amended by Pub. L. 97-99, title IX, § 904(b), Dec. 23, 1981, 95 Stat. 1382; Pub. L. 98-115, title VIII, § 805(a)-(c), Oct. 11, 1983, 97 Stat. 785, provided that:

"(a) The Secretary of Defense (hereinafter in this section referred to as the 'Secretary') may assist communities located near MX Missile System sites and communities located near the East Coast Trident Base, and the States in which such communities are located, in meeting the costs of providing increased municipal services and facilities to the residents of such communities, if the Secretary determines that there is an immediate and substantial increase in the need for such services and facilities in such communities as a direct result of work being carried out in connection with the construction, installation, or operation of the MX Missile System or the East Coast Trident Base, as the case may be, and that an unfair and excessive financial burden will be incurred by such communities, or the States in which such communities are located, as a result of such increased need for such services and facilities.

"(b)(1) Whenever possible, the Secretary shall carry out the program of assistance authorized under this section through existing Federal programs. In carrying out such program of assistance, the Secretary may—

[*See main edition for text of (A) and (B)*]

"(C) guarantee State or municipal indebtedness, and make interest payments, in whole or in part, for State or municipal indebtedness, for improved public facilities related to the MX Missile System site or the East Coast Trident Base, as the case may be; and

[*See main edition for text of (D), (2)*]

"(3) Notwithstanding any other provision of law, the Secretary, in cooperation with the heads of other departments and agencies of the Federal Government, may provide assistance under this section in anticipation of the work to be carried out in connection with the MX Missile System sites or the East Coast Trident Base, as the case may be.

[*See main edition for text of (c)*]

"(d) Funds appropriated to the Department of Defense for carrying out the MX Missile System deployment program and the East Coast Trident Base may, to the extent specifically authorized in Military Construction Authorization Acts, be used by the Secretary to provide assistance under this section.

[*See main edition for text of (e)*]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 139a of this title; title 22 section 2795b.

§ 139a. Oversight of cost growth in major programs: Selected Acquisition Reports

(a) In this section:

[*See main edition for text of (1) and (2)*]

(3) "Procurement unit cost", with respect to a major defense acquisition program, means the amount equal to (A) the total of all funds programed to be available for obligation for procurement for the program for a fiscal year, reduced by the amount of funds programed to be available for obligation for such fiscal year for advanced procurement for such program in any subsequent year and increased by any amount appropriated in years before such fiscal year for advanced procurement for such program in such fiscal year, divided by (B) the number of fully-configured end items to be procured with such funds during such fiscal year.

(4) "Major contract", with respect to a major defense acquisition program, means (A) each prime contract under the program, and (B) each associate or Government-furnished equipment contract under the program that is one of the six largest contracts under the program in dollar amount and that is in excess of $2,000,000.

(b) [*See main edition for text of (1)*]

(2) A status report on a major defense acquisition program need not be included in the Selected Acquisition Report for the second, third, or fourth quarter of a fiscal year if such a report was included in a previous Selected Acquisition Report for that fiscal year and during the period since that report there has been—

(A) less than a 5 percent change in total program cost; and

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(B) less than a three-month delay in any program schedule milestone shown in the Selected Acquisition Report.

[*See main edition for text of (3)*]

(c)(1) Each Selected Acquisition Report for the first quarter for a fiscal year shall include—

(A) the same information, in detailed and summarized form, as is provided in reports submitted under section 139 of this title;

(B) the current program acquisition unit cost for each major defense acquisition program included in the report and the history of that cost from the date the program was first included in a Selected Acquisition Report to the end of the quarter for which the current report is submitted; and

(C) such other information as the Secretary of Defense considers appropriate.

(2) Each Selected Acquisition Report for the first quarter of a fiscal year shall be prepared and submitted with the same content as was used for the Selected Acquisition Report for the first quarter of fiscal year 1984.

(3) In addition to the material required by paragraphs (1) and (2), each Selected Acquisition Report for the first quarter of a fiscal year shall include—

(A) a full life-cycle cost analysis for each major defense acquisition program included in the report that—

(i) is in the full-scale engineering development stage or has completed that stage; and

(ii) was first included in a Selected Acquisition Report for a quarter after the first quarter of fiscal year 1985;

(B) if the system that is included in that major defense acquisition program has an antecedent system, a full life-cycle cost analysis for that system; and

(C) production information for each major defense acquisition program included in the report, including (with respect to each such program)—

(i) specification of the baseline production rate for each year of production of the program, defined as the production rate for each fiscal year through completion of procurement assumed in the decision to proceed with production (commonly referred to as the "Milestone III" decision);

(ii) specification of the production rate for each fiscal year through completion of procurement assumed in the cost-effectiveness analysis prepared in conjunction with the decision to proceed with full-scale engineering development (commonly referred to as the "Milestone II" decision);

(iii) specification of the maximum production rate for each year of production under the program, defined as the production rate for each fiscal year through completion of procurement attainable with the facilities and tooling currently programmed to be available for procurement under the program or otherwise provided by Government funds;

(iv) specification of the current production rate for each year of production, defined as the production rate for the fiscal year during which the report is submitted and the annual production rate currently programmed for each subsequent fiscal year through completion of procurement, based on the President's Budget for the following fiscal year;

(v) estimation of any cost variance—

(I) between the program acquisition unit cost at the current production rate specified under clause (iv) and the program acquisition unit cost at the baseline production rate specified under clause (i); and

(II) between the total program cost at the current production rate specified under clause (iv) and the total program cost at the baseline production rate specified under clause (i);

(vi) estimation of any cost variance—

(I) between the program acquisition unit cost at the current production rate specified under clause (iv) and the program acquisition unit cost at the maximum production rate specified under clause (iii); and

(II) between the total program cost at the current production rate specified under clause (iv) and the total program cost at the maximum production rate specified under clause (iii); and

(vii) estimation of any schedule or delivery variance—

(I) between total quantities assumed in the baseline production rate specified under clause (i) and the current production rate specified under clause (iv); and

(II) total quantities assumed in the maximum production rate specified under clause (iii) and the current production rate specified under clause (iv).

(4) Selected Acquisition Reports for the first quarter of a fiscal year shall be known as comprehensive annual Selected Acquisition Reports.

[*See main edition for text of (d) and (e)*]

(f) Each comprehensive annual Selected Acquisition Report shall be submitted within 60 days after the date on which the President transmits the Budget to Congress for the following fiscal year, and each Quarterly Selected Acquisition Report shall be submitted within 45 days after the end of the fiscal-year quarter. A preliminary report shall be submitted for each annual Selected Acquisition Report within 30 days of the date on which the President submits the Budget to Congress.

(g) The requirements of this section with respect to a major defense acquisition program shall cease to apply after 90 percent of the items to be delivered to the United States under the program (shown as the total quantity of items to be purchased under the program in the most recent Selected Acquisition Report) have been delivered or 90 percent of planned expenditures under the program have been made.

(As amended Pub. L. 98-525, title XII, § 1242(a), Oct. 19, 1984, 98 Stat. 2606; Pub. L. 99-145, title XII, § 1201, Nov. 8, 1985, 99 Stat. 715.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-145 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Each Selected Acquisition Report for the first quarter of a fiscal year shall include (1) the same information, in detailed and summarized form, as is provided in reports submitted under section 139 of this title, (2) the current program acquisition unit cost for each major defense acquisition program included in the report and the history of that cost from the date the program was first included in a Selected Acquisition Report to the end of the quarter for which the current report is submitted, and (3) such other information as the Secretary of Defense considers appropriate. Selected Acquisition Reports for the first quarter of a fiscal year shall be known as comprehensive annual Selected Acquisition Reports."

1984—Subsec. (a)(3). Pub. L. 98-525, § 1242(a)(1), substituted "funds programed to be available for obligation for procurement" for "procurement funds appropriated" and "of funds programed to be available for obligation" for "of funds appropriated".

Subsec. (a)(4). Pub. L. 98-525, § 1242(a)(2), inserted "and that is in excess of $2,000,000".

Subsec. (b)(2). Pub. L. 98-525, § 1242(a)(3), substituted "during the period since that report there has been— (A) less than a 5 percent change in total program cost; and (B) less than a three-month delay in any program schedule milestone shown in the Selected Acquisition Report" for "there has been no change in program cost, performance, or schedule since the most recent such report".

Subsec. (f). Pub. L. 98-525, § 1242(a)(4), substituted: "60" for "30", "45" for "30, and "A preliminary report shall be submitted for each annual Selected Acquisition Report within 30 days of the date on which the President submits the Budget to Congress" for "If a preliminary report is submitted for the comprehensive annual Selected Acquisition Report in any year, the final report shall be submitted within 15 days after the submission of the preliminary report".

Subsec. (g). Pub. L. 98-525, § 1242(a)(5), added subsec. (g).

DURATION OF ASSIGNMENT OF PROGRAM MANAGERS FOR MAJOR PROGRAMS

Section 1243 of Pub. L. 98-525 provided that:

"(a) The tour of duty of an officer of the Armed Forces assigned after the date of the enactment of this Act [Oct. 19, 1984] as a program manager of a major defense acquisition program (as defined in section 139a(a) of title 10, United States Code) shall be (1) not less than four years, or (2) until completion of a major program milestone (as defined in regulations prescribed by the Secretary of Defense).

"(b) The Secretary of the military department concerned may waive the length of the tour of duty prescribed in subsection (a). Such authority may not be delegated."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 136a, 139b, 139c, 1621, 2305a, 2362, 2403 of this title.

§ 139b. Oversight of cost growth of major programs: unit cost reports

(a) In this section:

[*See main edition for text of (1) to (3)*]

(4) "Baseline Report", with respect to a unit cost report that is submitted under this section to the Secretary concerned on a major defense acquisition program, means—

(A) the most recent unit cost report submitted under subsection (e)(2)(B)(ii) with respect to the program, if that report was submitted for the second, third, or fourth quarter of the preceding fiscal year;

(B) if no report was submitted under subsection (e)(2)(B)(ii) with respect to the program during that three-quarter period, the most recent unit cost report submitted under subsection (e)(1) with respect to the program, if that report was submitted during that three-quarter period; and

(C) if no report was submitted with respect to the program under subsection (e)(1) or (e)(2)(B)(ii) during that three-quarter period, the baseline Selected Acquisition Report.

(b) The program manager for a defense acquisition program that as of the end of a fiscal-year quarter is a major defense acquisition program (other than a program not required to be included in the Selected Acquisition Report for that quarter under section 139a(b)(3) of this title) shall, after the end of that quarter, submit to the Secretary concerned a written report on the unit costs of the program. Each report for the first quarter of a fiscal year shall be submitted not more than 7 days after the date on which the President transmits the Budget to Congress for the following fiscal year, and each report for other quarters shall be submitted not more than 7 days after the end of that quarter. The program manager shall include in each such unit cost report the following information with respect to the program (as of the last day of the quarter for which the report is made):

[*See main edition for text of (1) and (2)*]

(3) Any cost variance or schedule variance in a major contract under the program since the Baseline Report was submitted.

[*See main edition for text of (4)*]

(c)(1) If the program manager of a major defense acquisition program for which a unit cost report has previously been submitted under subsection (b) determines at any time during a fiscal-year quarter that there is reasonable cause to believe—

(A) that the program acquisition unit cost for the program has increased by more than 15 percent over the program acquisition unit cost for the program as shown in the Baseline Report;

(B) in the case of a major defense acquisition program that is a procurement program, that the current procurement unit cost for the program has increased by more than 15 percent over the procurement unit cost for the program as reflected in the Baseline Report; or

[*See main edition for text of (C)*]

and if a unit cost report indicating an increase of such percentage or more has not previously been submitted to the Secretary concerned during the current fiscal year (other than the unit cost report under subsection (b) for the

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last quarter of the preceding fiscal year), then the program manager shall immediately submit to the Secretary concerned a unit cost report containing the information, determined as of the date of the report, required under subsection (b).

[*See main edition for text of (2)*]

(d)(1) When a unit cost report is submitted to the Secretary concerned under this section with respect to a major defense acquisition program, the Secretary shall determine whether the current program acquisition unit cost for the program has increased by more than 15 percent, or by more than 25 percent, over the program acquisition unit cost for the program as shown in the Baseline Report.

(2) When a unit cost report is submitted to the Secretary concerned under this section with respect to a major defense acquisition program that is a procurement program, the Secretary concerned shall, in addition to the determination under paragraph (1), determine whether the current procurement unit cost for the program has increased by more than 15 percent, or by more than 25 percent, over the procurement unit cost for the program as reflected in the Baseline Report.

(3) If the Secretary concerned determines (for the first time since the beginning of the current fiscal year) that the current program acquisition unit cost has increased by more than 15 percent, or by more than 25 percent, as determined under paragraph (1) or that the current procurement unit cost has increased by more than 15 percent, or by more than 25 percent, as determined under paragraph (2)—

[*See main edition for text of (A)*]

(B) except as provided in subsection (e), funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program—

(i) after the end of the 30-day period beginning on the day on which the Secretary makes such determination, in the case of a percentage increase of more than 15 percent; or

[*See main edition for text of (ii)*]

(e)(1) The prohibition in subsection (d)(3)(B)(i) on the obligation of funds for a major defense acquisition program does not apply in the case of a program to which it would otherwise apply in the case of a determination of a more than 15 percent increase (as determined under subsection (d)) if the Secretary concerned submits to Congress, before the end of the 30-day period referred to in such subsection, a report containing the information described in subsection (g).

(2) The prohibition in subsection (d)(3)(B)(ii) on the obligation of funds for a major defense acquisition program does not apply in the case of a program to which it would otherwise apply, in the case of a determination of a more than 25 percent increase (as determined under subsection (d))—

(A) if the increase was due to termination or cancellation of the acquisition program and the Secretary concerned submits to Congress, before the end of the 30-day period referred to in subsection (d)(3)(B)(i), a report containing the information described in subsection (g); or

(B) if the Secretary of Defense submits to Congress, before the end of the 60-day period referred to in subsection (d)(3)(B)(ii)—

[*See main edition for text of (i) and (ii)*]

(3) The prohibition in subsection (d)(3)(B) on the obligation of funds for a major defense acquisition program shall cease to apply at the end of a period of 30 days of continuous session of Congress (as determined under section 7307(b)(2) of this title) beginning on the date—

(A) on which Congress receives the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) with respect to that program, in the case of a determination of a more than 15 percent increase (as determined in subsection (d)); or

(B) on which Congress has received both the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) and the certification of the Secretary of Defense under paragraph (2)(B)(i) with respect to that program, in the case of a more than 25 percent increase (as determined under subsection (d)).

[*See main edition for text of (f)*]

(g)(1) Except as provided in paragraph (2), each report under subsection (e) with respect to a major defense acquisition program shall include the following:

[*See main edition for text of (A) to (H)*]

(I) The type of the Baseline Report (under subsection (a)(4)) and the date of the Baseline Report.

[*See main edition for text of (J)*]

(K) The current change and the total change, in dollars and expressed as a percentage, in the procurement unit cost, stated both in constant base-year dollars and in current dollars and the procurement unit cost for the succeeding fiscal year expressed in constant base-year dollars and in current year dollars.

[*See main edition for text of (L) to (P)*]

(2) If a program acquisition unit cost increase or a procurement unit cost increase for a major defense acquisition program that results in a report under this subsection is due to termination or cancellation of the entire program, only the information specified in clauses (A) through (F) of paragraph (1) and the percentage change in program acquisition unit cost or procurement unit cost that resulted in the report need be included in the report.

(As amended Pub. L. 98-94, title XII, § 1268(1), Sept. 24, 1983, 97 Stat. 705; Pub. L. 98-525, title XII, § 1242(b), Oct. 19, 1984, 98 Stat. 2607; Pub. L. 99-145, title XIII, § 1303(a)(2), Nov. 8, 1985, 99 Stat. 738.)

AMENDMENTS

1985—Subsec. (d)(3)(B)(i). Pub. L. 99-145 added "percent" after "15".

1984—Subsec. (a)(4). Pub. L. 98-525, § 1242(b)(1), added par. (4).

Subsec. (b). Pub. L. 98-525, § 1242(b)(2)(A), (B), deleted "not more than 7 days" before "after the end of that quarter" and inserted "Each report for the first quarter of a fiscal year shall be submitted not more than 7 days after the date on which the President transmits the Budget to Congress for the following fiscal year, and each report for other quarters shall be submitted not more than 7 days after the end of that quarter."

Subsec. (b)(3). Pub. L. 98-525, § 1242(b)(2)(C), substituted "Baseline Report" for "baseline Selected Acquisition Report".

Subsec. (c)(1)(A), (B). Pub. L. 98-525, § 1242(b)(3), substituted "Baseline Report" for "baseline Selected Acquisition Report".

Subsec. (d)(1), (2). Pub. L. 98-525, § 1242(b)(4)(A), substituted "Baseline Report" for "baseline Selected Acquisition Report".

Subsec. (d)(3)(B). Pub. L. 98-525, § 1242(b)(4)(B)(i), substituted "funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program" for "additional funds may not be obligated in connection with such program".

Subsec. (d)(3)(B)(i). Pub. L. 98-525, § 1242(b)(4)(B)(ii), struck out "but less than 25 percent" after "more than 15".

Subsec. (e)(1). Pub. L. 98-525, § 1242(b)(5)(A), substituted "subsection (d)(3)(B)(i)" for "subsection (d)(3)(B)" and inserted "more than" before "15 percent".

Subsec. (e)(2). Pub. L. 98-525, § 1242(b)(5)(B), substituted "subsection (d)(3)(B)(ii)" for "subsection (d)(3)(B)" and inserted "more than" before "25 percent".

Subsec. (e)(2)(A). Pub. L. 98-525, § 1242(b)(5)(B)(iii), inserted "and the Secretary concerned submits to Congress, before the end of the 30-day period referred to in subsection (d)(3)(B)(i), a report containing the information described in subsection (g)".

Subsec. (e)(2)(B). Pub. L. 98-525, § 1242(b)(5)(B)(iv), substituted "subsection (d)(3)(B)(ii)" for "such subsection".

Subsec. (e)(3). Pub. L. 98-525, § 1242(b)(5)(C), substituted "at the end of a period of 30 days of continuous session of Congress (as determined under section 7307(b)(2) of this title) beginning on the date—

"(A) on which Congress receives the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) with respect to that program, in the case of a determination of a more than 15 percent increase (as determined in subsection (d)); or

"(B) on which Congress has received both the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) and the certification of the Secretary of Defense under paragraph (2)(B)(i) with respect to that program, in the case of a more than 25 percent increase (as determined under subsection (d)).",

for "in the case of a program to which it would otherwise apply if, after such prohibition has taken effect, the Committees on Armed Services of the Senate and House of Representatives waive the prohibition with respect to such program."

Subsec. (g)(1)(I). Pub. L. 98-525, § 1242(b)(6)(A), substituted "The type of the Baseline Report (under subsection (a)(4)) and the date of the Baseline Report" for "The date of the baseline Selected Acquisition Report".

Subsec. (g)(1)(K). Pub. L. 98-525, § 1242(b)(6)(B), required the report to include the procurement unit cost for the succeeding fiscal year expressed in constant base-year dollars and in current year dollars.

1983—Subsec. (g)(2). Pub. L. 98-94 substituted "procurement" for "procurment".

§ 139c. Major defense acquisition programs: independent cost estimates

(a) The Secretary of Defense may not approve the full-scale engineering development or the production and deployment of a major defense acquisition program unless an independent estimate of the cost of the program first has been submitted to (and considered by) the Secretary of Defense.

(b) In this section:

(1) "Major defense acquisition program" has the same meaning as provided in section 139a(a)(1) of this title.

(2) "Independent estimate" means, with respect to a major defense acquisition program, an estimate of the cost of such program prepared by an office or other entity that is not under the supervision, direction, or control of the military department, defense agency, or other component of the Department of Defense that is directly responsible for carrying out the development or acquisition of the program.

(3) "Cost of the program" means, with respect to a major defense acquisition program, all elements of the life-cycle costs of the program, including—

(A) the cost of all research and development efforts, without regard to the funding source or management control;

(B) the cost of the prime hardware and its major subcomponents, support costs (including training, peculiar support, and data), initial spares, military construction costs, and the cost of all related procurements (including, where applicable, modifications to existing aircraft or ship platforms), without regard to the funding source or management control of the program; and

(C) all elements of operating and support costs.

(Added Pub. L. 98-94, title XII, § 1203(a)(1), Sept. 24, 1983, 97 Stat. 682.)

EFFECTIVE DATE

Section 1203(b) of Pub. L. 98-94 provided that: "Section 139c of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983."

REPORT TO CONGRESS ON USE OF INDEPENDENT COST ESTIMATES IN PLANNING, PROGRAMING, BUDGETING, AND SELECTION FOR MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 99-145, title IX, § 952, Nov. 8, 1985, 99 Stat. 701, provided that:

"(a) REQUIREMENT FOR REPORT.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the continued use of independent cost estimates in the planning, programing, budgeting, and selection process for major defense acquisition programs of the Department of Defense.

"(b) MATTERS TO BE INCLUDED.—The report shall be a follow-on to the report required by section 1203(c) of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 10 U.S.C. 1039 note [10 U.S.C. 139c note]), and shall include—

"(1) an overall assessment of the extent to which such estimates were adopted by the Department of Defense in making decisions on the fiscal year 1987

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budget and a general explanation of why such estimates might have been modified or rejected; and

"(2) a statement as to whether adequate personnel and financial resources have been allocated at all levels of the Department of Defense to those organizations or offices charged with developing or assessing independent estimates of the costs of major defense acquisition programs.

"(c) DEADLINE.—The report shall be submitted not later than April 1, 1986."

Section 1203(c) of Pub. L. 98-94 provided that: "Not later than May 1, 1984, the Secretary of Defense shall submit a written report to the Committees on Armed Services of the Senate and House of Representatives on the use of independent cost estimates in the planning, programing, budgeting, and selection process for major defense acquisition programs in the Department of Defense. That report shall include an overall assessment of the extent to which such estimates were adopted by the Department in making decisions on the fiscal year 1985 budget and a general explanation of why such estimates might have been modified or rejected. In addition, the Secretary shall include in that report a discussion of current and future initiatives to make greater or more productive use of independent cost estimates in the Department of Defense."

ALLOCATION OF ADEQUATE PERSONNEL AND FINANCIAL RESOURCES IN DEVELOPING OR ASSESSING INDEPENDENT ESTIMATES OF COSTS

Section 1203(d) of Pub. L. 98-94 provided that: "It is the sense of the Congress that the Secretary of Defense should ensure that adequate personnel and financial resources are allocated at all levels of the Department of Defense to those organizations or offices charged with developing or assessing independent estimates of the costs of major defense acquisition programs."

§ 140. Emergencies and extraordinary expenses

(a) Subject to the limitations of subsection (c), and within the limitation of appropriations made for the purpose, the Secretary of Defense and the Secretary of a military department within his department, may provide for any emergency or extraordinary expense which cannot be anticipated or classified. When it is so provided in such an appropriation, the funds may be spent on approval or authority of the Secretary concerned for any purpose he determines to be proper, and such a determination is final and conclusive upon the accounting officers of the United States. The Secretary concerned may certify the amount of any such expenditure authorized by him that he considers advisable not to specify, and his certificate is sufficient voucher for the expenditure of that amount.

[*See main edition for text of* (b)]

(c) In any case in which funds are expended under the authority of subsections (a) and (b), the Secretary of Defense shall submit a report of such expenditures on a quarterly basis to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives.

(As amended Pub. L. 98-94, title XII, § 1268(2), Sept. 24, 1983, 97 Stat. 705.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-94 struck out "of this section" after "subsection (c)".

Subsec. (c). Pub. L. 98-94 struck out "of this section" after "subsections (a) and (b)".

§ 140c. Secretary of Defense: authority to withhold from public disclosure certain technical data

(a) Notwithstanding any other provision of law, the Secretary of Defense may withhold from public disclosure any technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported lawfully outside the United States without an approval, authorization, or license under the Export Administration Act of 1979 (50 U.S.C. App. 2401-2420) or the Arms Export Control Act (22 U.S.C. 2751 et seq.). However, technical data may not be withheld under this section if regulations promulgated under either such Act authorize the export of such data pursuant to a general, unrestricted license or exemption in such regulations.

(b)(1) Within 90 days after September 24, 1983, the Secretary of Defense shall propose regulations to implement this section. Such regulations shall be published in the Federal Register for a period of no less than 30 days for public comment before promulgation. Such regulations shall address, where appropriate, releases of technical data to allies of the United States and to qualified United States contractors, including United States contractos that are small business concerns, for use in performing United States Government contracts.

(2) In this section, "technical data with military or space application" means any blueprints, drawings, plans, instructions, computer software and documentation, or other technical information that can be used, or be adapted for use, to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning such equipment.

(Added Pub. L. 98-94, title XII, § 1217(a), Sept. 24, 1983, 97 Stat. 690, and amended Pub. L. 99-145, title XIII, § 1303(a)(3), Nov. 8, 1985, 99 Stat. 738.)

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsec. (a), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables.

The Arms Export Control Act, referred to in subsec. (a), is Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

1985—Subsec. (b)(1). Pub. L. 99-145 substituted "September 24, 1983" for "enactment of this section".

CHAPTER 5—JOINT CHIEFS OF STAFF

§ 142. Chairman

[*See main edition for text of* (a)]

(b) In addition to his other duties as a member of the Joint Chiefs of Staff, the Chair-

man shall, subject to the authority and direction of the President and the Secretary of Defense—

(1) preside over the Joint Chiefs of Staff;

(2) provide agenda for the meetings of the Joint Chiefs of Staff (including any subject for the agenda recommended by the Joint Chiefs of Staff), assist them in carrying on their business as promptly as practicable, and determine when issues under consideration shall be decided; and

[*See main edition for text of (3); (c)*]

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIII, § 1301(b), 98 Stat. 2611.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-525 substituted "(including any subject for the agenda recommended by the Joint Chiefs of Staff), assist" for "and assist" and "practicable, and determine when issues under consideration shall be decided" for "practicable".

§ 143. Joint Staff

(a)(1) There is under the Joint Chiefs of Staff a Joint Staff consisting of not more than 400 officers selected by the Chairman of the Joint Chiefs of Staff. The Joint Staff shall be selected in approximately equal numbers from—

(A) the Army;

(B) the Navy and the Marine Corps; and

(C) the Air Force.

(2) Selection of officers of an armed force to serve on the Joint Staff shall be made by the Chairman from a list of officers submitted by that armed force. Each officer whose name is submitted shall be among those officers considered to be the most outstanding officers of that armed force. The Chairman may specify the number of officers to be included on any such list.

(3) The tenure of the members of the Joint Staff is subject to the approval of the Chairman of the Joint Chiefs of Staff.

(b) The Chairman of the Joint Chiefs of Staff in consultation with the Joint Chiefs of Staff, and with the approval of the Secretary of Defense, shall select the Director of the Joint Staff. The Director must be an officer junior in grade to each member of the Joint Chiefs of Staff.

[*See main edition for text of (c) and (d)*]

(e) An officer who is assigned or detailed to duty on the Joint Staff may not serve for a tour of duty of more than four years. An officer completing a tour of duty with the Joint Staff may not be assigned or detailed to duty on the Joint Staff within two years after relief from that duty except with the approval of the Secretary. This subsection does not apply in time of war declared by Congress or in time of national emergency declared by the President.

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIII, § 1301(c), 98 Stat. 2611.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-525, § 1301(c)(1), in amending subsec. (a) generally, designated existing provisions as par. (1), redesignated as cls. (A) to (C) former cls. (1) to (3), provided for selection of officers of Joint Staff by the Chairman instead of by the Joint Chiefs of Staff with approval of the Chairman, deleted provision respecting tenure (covered in par. (3)), deleted provisions respecting limitation of tour of duty to three years except in time of war and prohibition against reassignment to Joint Staff within three years of previous tour of duty, except in war time and except for recall of selected officers (covered in subsec. (e)), deleted limitation of officers recalled to Joint Staff duty in less than three years to 30 serving at any one time, and added pars. (2) and (3).

Subsec. (b). Pub. L. 98-525, § 1301(c)(2), deleted provisions limiting tour of duty of the Director to three years except in war time and prohibiting reassignment of the Director to Joint Staff except in war time. See subsec. (e).

Subsec. (e). Pub. L. 98-525, § 1301(c)(3), added subsec. (e).

CHAPTER 7—BOARDS, COUNCILS, AND COMMITTEES

Sec.
178. The Henry M. Jackson Foundation for the Advancement of Military Medicine.

AMENDMENTS

1983—Pub. L. 98-132, § 2(a)(2), Oct. 17, 1983, 97 Stat. 849, amended item 178 by inserting "The Henry M. Jackson" before "Foundation".

Pub. L. 98-36, § 2(b), May 27, 1983, 97 Stat. 201, added item 178.

§ 171. Armed Forces Policy Council

(a) There is in the Department of Defense an Armed Forces Policy Council consisting of—

[*See main edition for text of (1) to (8)*]

(9) the Chief of Naval Operations;

(10) the Chief of Staff of the Air Force; and

(11) the Commandant of the Marine Corps.

[*See main edition for text of (b)*]

(As amended Sept. 24, 1983, Pub. L. 98-94, title XII, § 1213, 97 Stat. 687.)

AMENDMENTS

1983—Subsec. (a)(11). Pub. L. 98-94 added par. (11).

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98-36, § 1, May 27, 1983, 97 Stat. 200, provided: "That this Act [enacting section 178 of this title and amending section 2113 of this title] may be cited as the 'Foundation for the Advancement of Military Medicine Act of 1983'."

§ 175. Reserve Forces Policy Board

[*See main edition for text of (a)*]

(b) Whenever the Coast Guard is not operating as a service in the Navy, the Secretary of Transportation may designate two officers of the Coast Guard, Regular or Reserve, to serve as voting members of the Board.

(c) The Board, acting through the Assistant Secretary of Defense for Reserve Affairs, is the principal policy adviser to the Secretary of Defense on matters relating to the reserve components.

[*See main edition for text of (d) to (f)*]

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(As amended Sept. 24, 1983, Pub. L. 98-94, title XII, § 1212(b), 97 Stat. 687; Oct. 19, 1984, Pub. L. 98-525, title XIII, § 1306, title XIV, § 1405(4), 98 Stat. 2613, 2622; Oct. 30, 1984, Pub. L. 98-557, § 21, 98 Stat. 2870.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-557 substituted "Regular or Reserve, to serve as voting members" for "regular or reserve, to serve as a voting member".

Pub. L. 98-525, § 1306, substituted "two officers of the Coast Guard, regular or reserve" for "an officer of the Regular Coast Guard or the Coast Guard Reserve".

Subsec. (c). Pub. L. 98-525, § 1405(4), inserted a comma following "Reserve Affairs".

1983—Subsec. (c). Pub. L. 98-94 substituted "Assistant Secretary of Defense for Reserve Affairs" for "Assistant Secretary of Defense for Manpower and Reserve Affairs".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective Oct. 1, 1983, see section 1212(e) of Pub. L. 98-94 set out as a note under section 136 of this title.

§ 177. American Registry of Pathology

(a)(1) There is authorized to be established a nonprofit corporation to be known as the American Registry of Pathology which shall not for any purpose be an agency or establishment of the United States Government. The American Registry of Pathology shall be subject to the provisions of this section and, to the extent not inconsistent with this section, to the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29-501 et seq.).

[*See main edition for text of (2) to (6); (b) to (d)*]

(As amended Pub. L. 98-525, title XIV, § 1405(5), Oct. 19, 1984, 98 Stat. 2622.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-525 substituted "sec. 29-501" for "sec. 29-1001".

§ 178. The Henry M. Jackson Foundation for the Advancement of Military Medicine

(a) There is authorized to be established a nonprofit corporation to be known as the Henry M. Jackson Foundation for the Advancement of Military Medicine (hereinafter in this section referred to as the "Foundation") which shall not for any purpose be an agency or instrumentality of the United States Government. The Foundation shall be subject to the provisions of this section and, to the extent not inconsistent with this section, the Corporations and Associations Articles of the State of Maryland.

(b) It shall be the purpose of the Foundation (1) to carry out medical research and education projects under cooperative arrangements with the Uniformed Services University of the Health Sciences, (2) to serve as a focus for the interchange between military and civilian medical personnel, and (3) to encourage the participation of the medical, dental, nursing, veterinary, and other biomedical sciences in the work of the Foundation for the mutual benefit of military and civilian medicine.

(c)(1) The Foundation shall have a Council of Directors (hereinafter in this section referred to as the "Council") composed of—

(A) the Chairmen and ranking minority members of the Committees on Armed Services of the Senate and the House of Representatives (or their designees from the membership of such committees), who shall be ex officio members,

(B) the Dean of the Uniformed Services University of the Health Sciences, who shall be an ex officio member, and

(C) four members appointed by the ex officio members of the Council designated in clauses (A) and (B).

(2) The term of office of each member of the Council appointed under clause (C) of paragraph (1) shall be four years, except that—

(A) any person appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(B) the terms of office of members first taking office shall expire, as designated by the ex officio members of the Council at the time of the appointment, two at the end of two years and two at the end of four years.

(3) The Council shall elect a chairman from among its members.

(d)(1) The Foundation shall have an Executive Director who shall be appointed by the Council and shall serve at the pleasure of the Council. The Executive Director shall be responsible for the day-to-day operations of the Foundation and shall have such specific duties and responsibilities as the Council shall prescribe.

(2) The rate of compensation of the Executive Director shall be fixed by the Council.

(e) The initial members of the Council shall serve as incorporators and take whatever actions as are necessary to establish under the Corporations and Associations Articles of the State of Maryland the corporation authorized by subsection (a).

(f) Any vacancy in the Council shall not affect its powers, but shall be filled in the same manner in which the original designation or appointment was made.

(g) In order to carry out the purposes of this section, the Foundation is authorized to—

(1) enter into contracts with the Uniformed Services University of the Health Sciences for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education, including contracts for provision of such personnel and services as may be necessary to carry out such cooperative enterprises;

(2) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of books and other material;

(3) take such action as may be necessary to obtain patents and licenses for devices and procedures developed by the Foundation and its employees;

(4) accept, hold, administer, invest, and spend any gift, devise, or bequest of real or personal property made to the Foundation;

(5) enter into contracts with individuals, public or private organizations, professional societies, and government agencies for the purpose of carrying out the functions of the Foundation;

(6) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation; and

(7) charge such fees for professional services furnished by the Foundation as the Executive Director determines reasonable and appropriate.

(h) A person who is a full-time or part-time employee of the Foundation may not be an employee (full-time or part-time) of the Federal Government.

(i) The Council shall transmit to the President annually, and at such other times as the Council considers desirable, a report on the operations, activities, and accomplishments of the Foundation.

(Added Pub. L. 98-36, § 2(a), May 27, 1983, 97 Stat. 200, and amended Pub. L. 98-132, § 2(a)(1), Oct. 17, 1983, 97 Stat. 849.)

AMENDMENTS

1983—Pub. L. 98-132, § 2(a)(1)(A), inserted "The Henry M. Jackson" before "Foundation" in section catchline.

Subsec. (a). Pub. L. 98-132, § 2(a)(1)(B), inserted "Henry M. Jackson".

CHANGE OF NAME TO "HENRY M. JACKSON FOUNDATION FOR THE ADVANCEMENT OF MILITARY MEDICINE"

Section 1 of Pub. L. 98-132 provided: "That (a) the Foundation for the Advancement of Military Medicine established pursuant to section 178 of title 10, United States Code, shall be designated and hereafter known as the 'Henry M. Jackson Foundation for the Advancement of Military Medicine', in honor of the late Henry M. Jackson, United States Senator from the State of Washington. Any reference to the Foundation for the Advancement of Military Medicine in any law, regulation, document, record, or other paper of the United States shall be held and considered to be a reference to the 'Henry M. Jackson Foundation for the Advancement of Military Medicine'.

"(b) The Council of Directors referred to in subsection (c) of section 178 of such title shall take such action as is necessary under the Corporations and Associations Articles of the State of Maryland to amend the corporate name of the Foundation for the Advancement of Military Medicine established under such section to reflect the designation made by the first sentence of subsection (a)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2113 of this title.

CHAPTER 8—DEFENSE AGENCIES

Sec.
[192. Transferred.]

AMENDMENTS

1985—Pub. L. 99-145, title XIII, § 1302(a)(2), Nov. 8, 1985, 99 Stat. 737, redesignated item 192 "Benefits for certain employees of the Defense Intelligence Agency", as item 1605 and transferred it to chapter 83 of this title.

1983—Pub. L. 98-215, title V, § 501(b), Dec. 9, 1983, 97 Stat. 1479, added item 192.

§ 191. Unauthorized use of Defense Intelligence Agency name, initials, or seal

(a) No person may, except with the written permission of the Secretary of Defense, knowingly use the words "Defense Intelligence Agency", the initials "DIA", the seal of the Defense Intelligence Agency, or any colorable imitation of such words, initials or seal in connection with any merchandise, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Secretary of Defense.

[*See main edition for text of* (b)]

(As amended Pub. L. 98-525, title XIV, § 1405(6), Oct. 19, 1984, 98 Stat. 2622.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-525 substituted "such use is" for "such use in".

[§ 192. Transferred]

CODIFICATION

Section, Pub. L. 98-215, title V, § 501(a), Dec. 9, 1983, 97 Stat. 1478, which related to benefits for certain employees of the Defense Intelligence Agency, was redesignated as section 1605 of this title by Pub. L. 99-145, title XIII, § 1302(a)(1), Nov. 8, 1985, 99 Stat. 737.

CHAPTER 11—RESERVE COMPONENTS

Sec.
264. Reserve affairs: designation of general or flag officer of each armed force; personnel and logistic support for Reserves.

AMENDMENTS

1984—Pub. L. 98-525, title XIV, § 1405(7)(C), Oct. 19, 1984, 98 Stat. 2622, in item 264 substituted "armed force" for "military department" and "Reserves" for "reserves" and struck out "; reports to Congress" at the end.

§ 261. Reserve components named

AVERAGE STRENGTH OF SELECTED RESERVE OF EACH RESERVE COMPONENT

Provisions prescribing specific average strengths which were to be programmed to be attained by the Selected Reserve of each of the reserve components of the Armed Forces for specific fiscal years and providing criteria for proportionate reductions or increases in the prescribed average strengths were contained in the following authorization acts:

Pub. L. 99-145, title IV, § 411, Nov. 8, 1985, 99 Stat. 618.

Pub. L. 98-525, title IV, § 411, Oct. 19, 1984, 98 Stat. 2516.

Pub. L. 98-94, title V, § 501, Sept. 24, 1983, 97 Stat. 630.

RESERVE FORCES READINESS

Pub. L. 98-525, title V, § 552(a)-(e), (g), Oct. 19, 1984, 98 Stat. 2530, provided that:

"(a)(1) The Secretary of Defense shall conduct a review of the various systems used to measure the readiness of reserve units of the Armed Forces and shall implement a measurement system for the active

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and reserve components of the Armed Forces to provide an objective and uniform evaluation of the readiness of all units of the Armed Forces. The measurement system should be designed to produce information adequate to provide comparisons concerning the readiness of all units. The system for evaluation of the readiness of a unit of an active component should incorporate the performance of any unit of a reserve component affiliated with the active component unit, including the effect of the reserve component unit on the mobilization capability of the active component unit.

"(2) Not later than March 31, 1985, the Secretary shall submit a report to the Committees on Armed Services of the Senate and House of Representatives describing the results of the review under paragraph (1) and the measurement system implemented in accordance with that paragraph.

"(b)(1) The Secretary of Defense, acting through the Assistant Secretary of Defense for Reserve Affairs, shall conduct a study to evaluate the feasibility of allocating equipment to units of reserve components based on a measure of effectiveness of such units. The study should consider the effects of allocating equipment by comparing units with similar deployment times and similar capabilities in terms of training and equipment rather than by comparing all reserve component units with each other. The study should be integrated with an evaluation of the system for measuring unit effectiveness to be implemented in accordance with subsection (a).

"(2) As part of the report under subsection (a)(2), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the study carried out under paragraph (1).

"(c) It is the sense of Congress that the number of members of the Army Reserve and of the Army National Guard assigned to full-time manning duty should be increased to 14 percent of the total membership of the Army Reserve and of the Army National Guard, respectively, by fiscal year 1989.

"(d)(1)(A) The Secretary of Defense, acting through the Assistant Secretary of Defense for Reserve Affairs, shall conduct a study of the benefits of a longer training program for certain units of the reserve components and shall conduct a test of such a program. The test program should begin at the earliest realistic date.

"(B) In developing training programs for the reserve components, the Secretary shall give increased attention to innovative training technologies, techniques, and schedules that recognize the limitations on time and the geographic dispersion of the reserve components.

"(2) Not later than March 31, 1985, the Secretary shall submit a report to the Committees on Armed Services of the Senate and House of Representatives describing the study under paragraph (1).

"(e) The Secretary of Defense shall conduct at least one major mobilization exercise each year. The exercise should be as comprehensive and as realistic as possible and should include the participation of associated active component and reserve component units. The Secretary shall develop a plan by June 30, 1985, to test periodically each active component and reserve component unit based in the United States and all interactions of such units, as well as the sustainment of the forces mobilized as part of the exercise, with the objective of permitting an evaluation of the adequacy of resource allocation and planning.

"(g) This section does not apply to the Coast Guard."

SELECTED RESERVE OF RESERVE COMPONENTS: ANNUAL AUTHORIZATION OF PERSONNEL STRENGTH

Authorization of personnel strength of Selected Reserve of each Reserve component of the Armed Forces, prerequisite to appropriation of funds for pay and allowances of members of any Reserve component, see section 138(b) of this title.

§ 264. Reserve affairs: designation of general or flag officer of each armed force; personnel and logistic support for Reserves

[See main edition for text of (a)]

(b) The Secretary concerned is responsible for providing the personnel, equipment, facilities, and other general logistic support necessary to enable units and Reserves in the Ready Reserve of the reserve components under his jurisdiction to satisfy the training requirements and mobilization readiness requirements for those units and Reserves as recommended by the Secretary concerned and by the Joint Chiefs of Staff and approved by the Secretary of Defense, and as recommended by the Commandant of the Coast Guard and approved by the Secretary of Transportation when the Coast Guard is not operated as a service of the Navy.

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(7)(A), (B), 98 Stat. 2622.)

AMENDMENTS

1984—Pub. L. 98-525, § 1405(7)(B), in section catchline substituted "armed force" for "military department" and "Reserves" for "reserves" and struck out "; reports to Congress" at the end.

Subsec. (b). Pub. L. 98-525, § 1405(7)(A), substituted "reserve components" for "Reserve components".

§ 265. Policies and regulations: participation of reserve officers in preparation and administration

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 641, 3019, 8019 of this title.

§ 268. Ready Reserve

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 1402.

§ 269. Ready Reserve: placement in; transfer from

[See main edition for text of (a) to (c)]

(d) Under such regulations as the Secretary concerned may prescribe, any qualified member of a reserve component or any qualified retired enlisted member of a regular component may, upon his request, be placed in the Ready Reserve. However, a member of the Retired Reserve entitled to retired pay or a retired enlisted member of a regular component may not be placed in the Ready Reserve unless the Secretary concerned makes a special finding that the member's services in the Ready Reserve are indispensable. The Secretary concerned may not delegate his authority under the preceding sentence.

[See main edition for text of (e) to (g)]

(As amended Sept. 24, 1983, Pub. L. 98-94, title X, § 1018, 97 Stat. 669.)

AMENDMENTS

1983—Subsec. (d). Pub. L. 98-94 amended subsec. (d) generally substituting "any qualified member of a reserve component or any qualified retired enlisted member of a regular component may" for "any qualified Reserve may" and "Retired Reserve entitled to retired pay or a retired enlisted member of a regular

component may not be placed in the Ready Reserve" for "Retired Reserve who is entitled to retired pay may not be placed in the Ready Reserve".

§ 280. Regulations

Subject to standards, policies, and procedures prescribed by the Secretary of Defense, the Secretary of each military department shall prescribe such regulations as he considers necessary to carry out chapters 11, 34, 39, and 59, and sections 715, 1003, 1004, 1376, 2001, 2511, 3077, 3079, 3221, 3224, 3259, 3260, 3261, 3351, 3352, 3354, 3495, 3498, 3686, 5251, 5252, 5456, 6327, 6483, 7225, 7226, 7854, 8077, 8079, 8221, 8224, 8259, 8260, 8261, 8351, 8352, 8354, 8495, 8498, and 8686 of this title. The Secretary of Transportation, with the concurrence of the Secretary of the Navy, shall prescribe such regulations as he considers necessary to carry out chapters 11, 34, 39, and 59, and sections 715, 1003, 1004, 1376, 2001, and 2511 of this title, so far as they relate to the Coast Guard, except when the Coast Guard is operating as a service in the Navy. So far as practicable, regulations for all reserve components shall be uniform.

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(8), 98 Stat. 2622.)

AMENDMENTS

1984—Pub. L. 98-525 struck out reference to section 5597 of this title.

CHAPTER 18—MILITARY COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS

§ 371. Use of information collected during military operations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 373 of this title.

§ 373. Training and advising civilian law enforcement officials

(a) The Secretary of Defense may assign members of the Army, Navy, Air Force, and Marine Corps to train Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment made available under section 372 of this title and to provide expert advice relevant to the purposes of this chapter.

(b)(1) At least once each year, the Attorney General of the United States, in consultation with the Secretary of Defense, shall conduct a briefing of law enforcement personnel of each State, including law enforcement personnel of the political subdivisions of each State, regarding information, training, technical assistance, and equipment and facilities available to civilian law enforcement personnel from the Department of Defense.

(2) Each briefing conducted under paragraph (1) shall include—

(A) an explanation of the procedures for civilian law enforcement officials—

(i) to obtain information under section 371 of this title, use of equipment and facilities under section 372 of this title, and training and advice under subsection (a); and

(ii) to obtain surplus military equipment;

(B) the types of information, equipment and facilities, and training and advice available to civilian law enforcement officials from the Department of Defense; and

(C) a current, comprehensive list of military equipment which is suitable for law enforcement purposes and is available to civilian law enforcement officials from the Department of Defense or is available as surplus property from the Administrator of General Services.

(c) The Attorney General of the United States and the Administrator of General Services shall—

(1) establish or designate an appropriate office or offices to maintain the list described in subsection (b)(2)(C) and to furnish information to civilian law enforcement officials on the availability of surplus military equipment; and

(2) make available to civilian law enforcement personnel nationwide, tollfree telephone communication with such office or offices.

(As amended Pub. L. 99-145, title XIV, § 1423(a), Nov. 8, 1985, 99 Stat. 752.)

AMENDMENTS

1985—Pub. L. 99-145 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1423(b) of Pub. L. 99-145 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on January 1, 1986."

§ 374. Assistance by Department of Defense personnel

(a) Subject to subsection (b), the Secretary of Defense, upon request from the head of an agency with jurisdiction to enforce—

[*See main edition for text of (1) and (2)*]

(3) a law relating to the arrival or departure of merchandise (as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401)) into or out of the customs territory of the United States (as defined in general headnote 2 of the Tariff Schedules of the United States) or any other territory or possession of the United States,

may assign personnel of the Department of Defense to operate and maintain or assist in operating and maintaining equipment made available under section 372 of this title with respect to any criminal violation of any such provision of law.

[*See main edition for text of (b) and (c)*]

(As amended Pub. L. 98-525, title XIV, § 1405(9), Oct. 19, 1984, 98 Stat. 2622.)

REFERENCES IN TEXT

General headnote 2 of the Tariff Schedules of the United States, referred to in subsec. (a)(3), is set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98-525 struck out "(19 U.S.C. 1202)" after "Tariff Schedules of the United States".

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§ 378. Nonpreemption of other law

Nothing in this chapter shall be construed to limit the authority of the executive branch in the use of military personnel or equipment for civilian law enforcement purposes beyond that provided by law before December 1, 1981.

(As amended Pub. L. 98-525, title XIV, § 1405(10), Oct. 19, 1984, 98 Stat. 2622.)

AMENDMENTS

1984—Pub. L. 98-525 substituted "before December 1, 1981" for "prior to the enactment of this chapter".

PART II—PERSONNEL

Chap.		Sec.
60.	Separation of Regular Officers for Substandard Performance of Duty or for Certain Other Reasons	1181
74.	Department of Defense Military Retirement Fund	1461
85.	Procurement Management Personnel	1621

AMENDMENTS

1985—Pub. L. 99-145, title IX, § 924(a)(2), Nov. 8, 1985, 99 Stat. 698, added item for chapter 85.

1983—Pub. L. 98-94, tile IX, § 925(a)(2), title XII, § 1268(15), Sept. 24, 1983, 97 Stat. 648, 707, added item for chapter 74, and substituted "or" for "and" in item for chapter 60.

CHAPTER 31—ENLISTMENTS

Sec.	
520b.	Applicants for enlistment: authority to use funds for the issue of authorized articles.

AMENDMENTS

1985—Pub. L. 99-145, title XIII, § 1303(a)(4)(B), Nov. 8, 1985, 99 Stat. 738, substituted "enlistment" for "enlistments" in item 520b.

1984—Pub. L. 98-525, title XIV, § 1401(a)(2), Oct. 19, 1984, 98 Stat. 2614, added item 520b.

§ 505. Regular components: qualifications, term, grade

[See main edition for text of (a) and (b)]

(c) The Secretary concerned may accept original enlistments of persons for the duration of their minority or for a period of at least two but not more than six years, in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be.

(d) The Secretary concerned may accept reenlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, for period of at least two but not more than six years. No enlisted member is entitled to be reenlisted for a period that would expire before the end of his current enlistment.

(As amended Pub. L. 98-94, title X, § 1023, Sept. 24, 1983, 97 Stat. 671.)

AMENDMENTS

1983—Subsecs. (c), (d). Pub. L. 98-94 substituted "at least two but not more than six years" for "two, three, four, five, or six years".

§ 511. Reserve components: terms

[See main edition for text of (a)]

(b) Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a person who is qualified for enlistment for active duty in an armed force, and who is not under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), may be enlisted as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of not less than six years nor more than eight years. Each person enlisted under this subsection shall serve—

[See main edition for text of (1) and (2); (c)]

(d) Under regulations to be prescribed by the Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a non-prior-service person who is qualified for induction for active duty in an armed force and who is not under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), except as provided in section 6(c)(2)(A)(ii) and (iii) of such Act, may be enlisted in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of not less than six years nor more than eight years. Each person enlisted under this subsection shall perform an initial period of active duty for training of not less than twelve weeks to commence insofar as practicable within 270 days after the date of that enlistment.

(As amended Sept. 24, 1983, Pub. L. 98-94, title X, § 1022(a)(1), 97 Stat. 670.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-94, § 1022(a)(1)(A), substituted "not less than six years nor more than eight years" for "six years".

Subsec. (d). Pub. L. 98-94, § 1022(a)(1)(B), substituted "not less than six years nor more than eight years" for "six years".

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1022(a)(2) of Pub. L. 98-94 provided that: "The amendments made by paragraph (1) [amending this section] shall apply only with respect to persons who enlist under the authority of subsection (b) or (d) of section 511 of title 10, United States Code, 60 or more days after the date of the enactment of this Act [Sept. 24, 1983]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 2108; title 14 section 713; title 37 section 205; title 38 sections 1402, 1602, 1652, 1701; title 50 App. section 456.

§ 517. Authorized daily average: members in pay grades E-8 and E-9

[See main edition for text of (a)]

(b) The number of enlisted members in pay grades E-8 and E-9 who may be on active duty (other than for training) or on full-time Nation-

al Guard duty under the authority of section 502(f) of title 32 (other than for training) as of the end of any fiscal year in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard may not exceed the number for that grade and armed force in the following table:

Grade	Army	Navy	Air Force	Marine Corps
E-9	517	165	80	9
E-8	2,295	381	358	74

[*See main edition for text of (c)*]

(As amended Pub. L. 98-94, title V, § 503(a), Sept. 24, 1983, 97 Stat. 631; Pub. L. 98-525, title IV, §§ 413(a), 414(a)(2), Oct. 19, 1984, 98 Stat. 2517, 2518; Pub. L. 99-145, title IV, § 413(a), Nov. 8, 1985, 99 Stat. 619.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 in the table, changed fiscal year limitation on number of enlisted men in pay grades E-8 and E-9 on active duty affecting reserve components of the armed forces: Navy, to 165 and 381 from 156 and 381, respectively; Air Force, to 80 and 358 from 87 and 455, respectively. Army and Marine Corps figures remained unchanged.

1984—Subsec. (b). Pub. L. 98-525, § 414(a)(2), inserted "(other than for training) or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training)" and substituted "or the National Guard" for "of the armed forces" and "for that grade and armed force" for "prescribed for the grade and the armed force".

Pub. L. 98-525, § 413(a), in the table, increased fiscal year limitation on number of enlisted men in pay grades E-8 and E-9 on active duty affecting reserve components of the armed forces: Army, to 2,295 and 517 from 1,494 and 314; Air Force, to 455 and 87 from 617 and 143; Marine Corps, to 74 and 9 from 56 and 6. Navy figures remained unchanged.

1983—Subsec. (b). Pub. L. 98-94 increased fiscal year limitation on number of enlisted men in pay grades E-8 and E-9 on active duty affecting reserve components of the armed forces: Army, to 1,494 and 314 from 1,244 and 265; Navy, to 381 and 156 from 329 and 156; Air Force, to 617 and 143 from 441 and 132; Marine Corps figures remained unchanged.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 413(c) of Pub. L. 99-145 provided that: "The amendments made by subsections (a) and (b) [amending sections 517 and 524 of this title] shall take effect on October 1, 1985."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 413(c) of Pub. L. 98-525 provided that: "The amendments made by subsections (a) and (b) [amending sections 517 and 524 of this title] shall take effect on October 1, 1984."

EFFECTIVE DATE OF 1983 AMENDMENT

Section 503(c) of Pub. L. 98-94 provided that: "The amendments made by subsections (a) and (b) [amending sections 517 and 524 of this title] shall take effect on October 1, 1983."

§ 520. Limitation on enlistment and induction of persons whose score on the Armed Forces Qualification Test is below a prescribed level

(a) The number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in any armed force during any fiscal year whose score on the Armed Forces Qualification Test is at or above the tenth percentile and below the thirty-first percentile may not exceed 20 percent of the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in such armed force during such fiscal year.

[*See main edition for text of (b)*]

(As amended Pub. L. 98-94, title XII, § 1268(3), Sept. 24, 1983, 97 Stat. 705.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-94 struck out provisions under which, for the fiscal years beginning on October 1, 1980, and October 1, 1981, the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in the armed forces during such fiscal years whose score on the Armed Forces Qualification Test was at or above the tenth percentile and below the thirty-first percentile could not exceed 25 percent of the number of such persons enlisted or inducted into the armed forces during such fiscal years, and, in the provisions remaining applicable to fiscal years beginning after Sept. 30, 1982, substituted "20 percent of the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in such armed force" for "20 percent of the number of such persons enlisted or inducted into such armed force".

MAXIMUM NUMBER OF ARMY ENLISTEES AND INDUCTEES WHO ARE NOT HIGH SCHOOL GRADUATES

Section 302(a) of Pub. L. 96-342, as amended by Pub. L. 97-86, title IV, § 402(a), Dec. 1, 1981, 95 Stat. 1104; Pub. L. 97-252, title IV, § 403, Sept. 8, 1982, 96 Stat. 725; Pub. L. 98-94, title IV, § 402, Sept. 24, 1983, 97 Stat. 629; Pub. L. 98-525, title IV, § 402, Oct. 19, 1984, 98 Stat. 2516; Pub. L. 99-145, title IV, § 402, Nov. 8, 1985, 99 Stat. 618, provided that: "The number of male individuals (with no prior military service) enlisted or inducted into the Army during the fiscal year beginning on October 1, 1985, who are not high school graduates may not exceed, as of September 30, 1986, 35 percent of all male individuals (with no prior military service) enlisted or inducted into the Army during such fiscal year."

[Section 402 of Pub. L. 99-145 provided in part that amendment of this note by Pub. L. 99-145 is effective Oct. 1, 1985.]

[Section 402 of Pub. L. 98-525 provided in part that amendment of this note by Pub. L. 98-525 is effective Oct. 1, 1984.]

[Section 402 of Pub. L. 98-94 provided in part that amendment of this note by Pub. L. 98-94 is effective Oct. 1, 1983.]

[Section 403 of Pub. L. 97-252 provided in part that amendment of this note by Pub. L. 97-252 is effective Oct. 1, 1982.]

DENIAL OF ENLISTMENT FOR LACK OF HIGH SCHOOL DIPLOMA PROHIBITED

Pub. L. 93-307, title IV, § 401, June 8, 1974, 88 Stat. 234, as amended by Pub. L. 93-365, title VII, § 705, Aug. 5, 1974, 88 Stat. 406, provided that: "No volunteer for enlistment into the Armed Forces shall be denied enlistment solely because of his not having a high

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school diploma when his enlistment is needed to meet established strength requirements.

§ 520a. Criminal history information for military recruiting purposes

[*See main edition for text of (a) to (c)*]

(d) The Secretaries concerned shall prescribe regulations, which shall be as uniform as practicable, to carry out this section. Regulations prescribed under this section shall be submitted to the Committees on Armed Services of the Senate and House of Representatives.

[*See main edition for credits*]

CODIFICATION

Subsec. (d) is set out in this supplement to correct a typographical error appearing in the main edition.

§ 520b. Applicants for enlistment: authority to use funds for the issue of authorized articles

Funds appropriated to the Department of Defense may be used for the issue of authorized articles to applicants for enlistment.

(Added Pub. L. 98-525, title XIV, § 1401(a)(1), Oct. 19, 1984, 98 Stat. 2614, and amended Pub. L. 99-145, title XIII, § 1303(a)(4)(A), Nov. 8, 1985, 99 Stat. 738.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8006], 98 Stat. 1904, 1923.
Dec. 8, 1983, Pub. L. 98-212, title VII, § 709, 97 Stat. 1439.
Dec. 21, 1982, Pub. L. 97-377, title I, § 101(c) [title VII, § 709], 96 Stat. 1833, 1851.
Dec. 29, 1981, Pub. L. 97-114, title VII, § 709, 95 Stat. 1579.
Dec. 15, 1980, Pub. L. 96-527, title VII, § 709, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96-154, title VII, § 709, 93 Stat. 1153.
Oct. 13, 1978, Pub. L. 95-457, title VIII, § 809, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95-111, title VIII, § 808, 91 Stat. 900.
Sept. 22, 1976, Pub. L. 94-419, title VII, § 708, 90 Stat. 1292.
Feb. 9, 1976, Pub. L. 94-212, title VII, § 708, 90 Stat. 169.
Oct. 8, 1974, Pub. L. 93-437, title VIII, § 808, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93-238, title VII, § 708, 87 Stat. 1039.
Oct. 26, 1972, Pub. L. 92-570, title VII, § 708, 86 Stat. 1197.
Dec. 18, 1971, Pub. L. 92-204, title VII, § 708, 85 Stat. 728.
Jan. 11, 1971, Pub. L. 91-668, title VIII, § 808, 84 Stat. 2031.
Dec. 29, 1969, Pub. L. 91-171, title VI, § 608, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90-580, title V, § 507, 82 Stat. 1130.
Sept. 29, 1967, Pub. L. 90-96, title VI, § 607, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89-687, title VI, § 607, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89-213, title VI, § 607, 79 Stat. 874.
Aug. 19, 1964, Pub. L. 88-446, title V, § 507, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88-149, title V, § 507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87-577, title V, § 507, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87-144, title II, § 201, 75 Stat. 367, 369.
July 7, 1960, Pub. L. 86-601, title II, § 201, 74 Stat. 340, 342.
Aug. 18, 1959, Pub. L. 86-166, title II, § 201, 73 Stat. 368, 370.
Aug. 22, 1958, Pub. L. 85-724, title III, § 301, title V, § 501, 72 Stat. 714, 721.
Aug. 2, 1957, Pub. L. 85-117, title III, § 301, title V, § 501, 71 Stat. 314, 321.
July 2, 1956, ch. 488, title III, § 301, title V, § 501, 70 Stat. 457, 464.
July 13, 1955, ch. 358, title III, § 301, title V, § 501, 69 Stat. 304, 312.
June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, 68 Stat. 339, 347.
Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 339, 348.
July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 520, 530.
Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 429, 443.
Sept. 6, 1950, ch. 896, ch. X, title III, § 301, title V, § 501, 64 Stat. 735, 750.
Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, 63 Stat. 992, 1015.
June 24, 1948, ch. 632, 62 Stat. 655.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 557.
July 16, 1946, ch. 583, § 1, 60 Stat. 547, 548.
July 3, 1945, ch. 265, § 1, 59 Stat. 390.
June 28, 1944, ch. 303, § 1, 58 Stat. 580.
July 1, 1943, ch. 185, § 1, 57 Stat. 354.
July 2, 1942, ch. 477, § 1, 56 Stat. 617.
June 30, 1941, ch. 262, § 1, 55 Stat. 373.
June 13, 1940, ch. 343, § 1, 54 Stat. 358, 359.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 600.
June 11, 1938, ch. 34, § 1, 52 Stat. 649.
July 1, 1937, ch. 423, § 1, 50 Stat. 450.
May 15, 1936, ch. 404, § 1, title I, 49 Stat. 1286.
Apr. 9, 1935, ch. 54, § 1, title I, 49 Stat. 128.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 621.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1577.
July 14, 1932, ch. 482, title I, 47 Stat. 670, 671.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1283, 1284.
May 28, 1930, ch. 348, title I, 46 Stat. 438.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1356.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 332.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1113.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 262.
Feb. 12, 1925, ch. 225, title I, 43 Stat. 900.

AMENDMENTS

1985—Pub. L. 99-145 substituted "enlistment" for "enlistments".

EFFECTIVE DATE

Section 1404 of Pub. L. 98-525 provided that: "The amendments made by sections 1401 [enacting sections 520b, 956, 979 to 981, 1047 to 1050, 1074b, 1093, 1589, 2007 to 2009, 2484, 2638, and 2639 of this title, amending sections 1074, 1077, 1079, 2104, and 7204 of this title, and repealing section 7208 of this title], 1402 [enacting section 306a of Title 37, Pay and Allowances of the Uniformed Services, and amending sections 206 and 404 of Title 37], and 1403 [amending provisions set out as a note under section 138 of this title and repealing provisions set out as notes under sections 138 and 2102 of this title] take effect on October 1, 1985."

CHAPTER 32—OFFICER STRENGTH AND DISTRIBUTION IN GRADE

Sec.
524. Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain.

AMENDMENTS

1984—Pub. L. 98-525, title IV, § 414(a)(4)(B)(ii), inserted references to the National Guard and to full-time National Guard duty in item 524.

§ 522. Authorized total strengths: regular commissioned officers on active duty

The authorized strengths of the Army, Navy, Air Force, and Marine Corps in regular officers (other than retired officers) in grades above chief warrant officer (W-4) are as follows:

Army.....63,000
Navy.....55,000
Air Force.....80,000
Marine Corps.....17,000

(As amended Pub. L. 98-525, title V, § 522, Oct. 19, 1984, 98 Stat. 2523.)

AMENDMENTS

1984—Pub. L. 98-525 increased the number limit for regular officers in the Navy, Air Force, and Marine Corps to 55,000, 80,000, and 17,000 from 48,000, 69,425, and 13,000, respectively. The number limit for the Army remained unchanged.

§ 523. Authorized strengths: commissioned officers on active duty in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain

(a)(1) Except as provided in subsection (c), of the total number of commissioned officers serving on active duty in the Army, Air Force, or Marine Corps at the end of any fiscal year (excluding officers in categories specified in subsection (b)), the number of officers who may be serving on active duty in each of the grades of major, lieutenant colonel, and colonel may not, as of the end of such fiscal year, exceed a number determined in accordance with the following table:

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty:	Number of officers who may be serving on active duty in the grade of:		
	Major	Lieutenant colonel	Colonel
Army:			
60,000	11,580	7,941	3,080
65,000	12,271	8,330	3,264
70,000	12,963	8,718	3,447
75,000	13,654	9,107	3,631
80,000	14,346	9,495	3,814
85,000	15,037	9,884	3,997
90,000	15,729	10,272	4,181
95,000	16,420	10,661	4,364
100,000	17,112	11,049	4,548
110,000	18,495	11,826	4,915
120,000	19,878	12,603	5,281
130,000	21,261	13,380	5,648
170,000	26,793	16,488	7,116
Air Force:			
70,000	13,530	9,428	3,642
75,000	14,266	9,801	3,823
80,000	15,002	10,175	4,004
85,000	15,738	10,549	4,185
90,000	16,474	10,923	4,365
95,000	17,210	11,297	4,546
100,000	17,946	11,671	4,727
105,000	18,682	12,045	4,908
110,000	19,418	12,418	5,088
115,000	20,154	12,792	5,269
120,000	20,890	13,165	5,450
125,000	21,626	13,539	5,631
Marine Corps:			
12,500	2,499	1,388	592
15,000	2,766	1,483	613
17,500	3,085	1,579	633
20,000	3,404	1,674	654
22,500	3,723	1,770	675
25,000	4,042	1,865	695

[*See main edition for text of (2) and (3)*]

(b) Officers in the following categories shall be excluded in computing and determining authorized strengths under this section:

(1) Reserve officers—

[*See main edition for text of (A) and (B)*]

(C) on active duty under section 672(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

(D) on active duty to pursue special work;

(E) ordered to active duty under section 673b of this title; or

(F) on full-time National Guard duty.

[*See main edition for text of (2) to (7); (c) and (d)*]

(As amended Pub. L. 98-525, title IV, § 414(a)(3), Oct. 19, 1984, 98 Stat. 2518; Pub. L. 99-145, title V, § 511(a), Nov. 8, 1985, 99 Stat. 623.)

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-145 increased fiscal year limitation on authorized number of Marine Corps majors to 2,766, 3,085, 3,404, 3,723, and 4,042 from 2,717, 2,936, 3,154, 3,373, and 3,591, respectively.

1984—Subsec. (b)(1)(C). Pub. L. 98-525, § 414(a)(3)(A), struck out "or section 502 or 503 of title 32" after "section 672(d) of this title".

Subsec. (b)(1)(F). Pub. L. 98-525, § 414(a)(3)(B)-(D), added subpar. (F).

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EFFECTIVE DATE OF 1985 AMENDMENT

Section 511(b) of Pub. L. 99-145 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1985."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 138, 524, 526, 623, 3202, 3380, 5442, 5443, 5444, 5721, 8202, 8380 of this title.

§ 524. Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain

(a) The number of reserve officers of the Army, Air Force, and Marine Corps who may be on active duty in each of the grades of major, lieutenant colonel, and colonel, and of the Navy who may be on active duty in each of the grades of lieutenant commander, commander, and captain, as of the end of any fiscal year for duty described in subclauses (B) and (C) of section 523(b)(1) of this title or full-time National Guard duty (other than for training) under section 502(f) of title 32 may not exceed the number for that grade and armed force in the following table:

Grade	Army	Navy	Air Force	Marine Corps
Major or Lieutenant Commander	2,317	850	476	100
Lieutenant Colonel or Commander	1,152	520	318	60
Colonel or Navy Captain	348	177	189	25

[*See main edition for text of (b)*]

(As amended Pub. L. 98-94, title V, § 503(b), Sept. 24, 1983, 97 Stat. 631; Pub. L. 98-525, title IV, §§ 413(b), 414(a)(4)(A), (B)(i), Oct. 19, 1984, 98 Stat. 2518, 2519; Pub. L. 99-145, title IV, § 413(b), Nov. 8, 1985, 99 Stat. 619.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 increased fiscal year limitation on number of reserve officers in grade of Major or Lieutenant Commander, Lieutenant Colonel or Commander, and Colonel or Navy Captain who may be on active duty to, respectively: Army, to 2,317, 1,152, and 348 from 2,261, 1,121, and 345; Navy, to 850, 520, and 177 from 823, 520, and 177; Air Force, to 476, 318, and 189, from 471, 293, and 172; and Marine Corps, to 100, 60, and 25 from 100, 50, and 25.

1984—Pub. L. 98-525, § 414(a)(4)(B)(i), inserted references to the National Guard and to full-time National Guard duty in section catchline.

Subsec. (a). Pub. L. 98-525, § 414(a)(4)(A), inserted "or full-time National Guard duty" after "Marine Corps who may be on active duty" and "or full-time National Guard duty (other than for training) under section 502(f) of title 32".

Pub. L. 98-525, § 413(b), increased fiscal year limitation on number of reserve officers in grade of major or lieutenant commander, lieutenant colonel or commander, and colonel or Navy captain who may be on active duty to, respectively: Army, to 2,261, 1,121, and 345 from 1,948, 967, and 338; Air Force, to 471, 293, and 172 from 408, 303, and 171; Marine Corps, to 100, 50, and 25 from 95, 48, and 23. Figures for the Navy remained unchanged.

1983—Subsec. (a). Pub. L. 98-94 increased fiscal year limitation on number of reserve officers in grade major or lieutenant commander; lieutenant colonel or commander; and colonel or Navy captain who may be on active duty to, respectively: Army, to 1,948, 967, and 338 from 1,351, 671, and 234; Navy, to 823, 520, and 177 from 823, 425, and 177; Air Force, to 408, 303, and 171 from 281, 267, and 170; Marine Corps, to 95, 48, and 23 from 95, 40, and 21.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-145 effective Oct. 1, 1985, see section 413(c) of Pub. L. 99-145, set out as a note under section 517 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective Oct. 1, 1984, see section 413(c) of Pub. L. 98-525, set out as a note under section 517 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective Oct. 1, 1983, see section 503(c) of Pub. L. 98-94, set out as a note under section 517 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 526, 3380, 8380 of this title.

§ 525. Distribution of commissioned officers on active duty in general officer and flag officer grades

(a) No appointment may be made in a grade above brigadier general in the Army, Air Force, or Marine Corps if that appointment would result in more than 50 percent of the general officers of that armed force on active duty being in grades above brigadier general. No appointment may be made in a grade above rear admiral (lower half) in the Navy if that appointment would result in more than 50 percent of the flag officers of the Navy on active duty being in grades above rear admiral (lower half).

[*See main edition for text of (b)*]

(As amended Pub. L. 99-145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore" in two places.

TEMPORARY INCREASE IN NUMBER OF GENERAL AND FLAG OFFICERS AUTHORIZED TO BE ON ACTIVE DUTY

Temporary increases in the number of officers authorized in particular grades under this section were contained in the following authorization acts:

Pub. L. 99-145, title V, § 515, Nov. 8, 1985, 99 Stat. 630.

Pub. L. 98-525, title V, § 511, Oct. 19, 1984, 98 Stat. 2521.

Pub. L. 98-94, title X, § 1001, Sept. 24, 1983, 97 Stat. 654.

§ 526. Authority to suspend sections 523, 524, and 525

REFERENCES IN TEXT

The National Emergencies Act, referred to in text, is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, as amended. Title II of the National Emergencies Act is classified generally to subchapter II (§ 1621 et seq.) of chap-

ter 34 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

CHAPTER 33—APPOINTMENTS IN REGULAR COMPONENTS

SUBCHAPTER I—ORIGINAL APPOINTMENTS OF REGULAR OFFICERS IN GRADES ABOVE WARRANT OFFICER GRADES

§ 532. Qualifications for original appointment as a commissioned officer

NORTHERN MARIANA ISLANDS; APPOINTMENT OF CITIZENS AS COMMISSIONED OFFICERS

Pub. L. 98-94, title X, § 1006, Sept. 24, 1983, 97 Stat. 661, provided that:

"(a) Notwithstanding any provision of law respecting citizenship and in accordance with the covenant entitled " A Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" (approved on March 24, 1976, by Public Law 94-24 [48 U.S.C. 1681 note]), a citizen of the Northern Mariana Islands who indicates in writing to a commissioned officer of the Armed Forces of the United States an intent to become a citizen, and not a national, of the United States upon full implementation of such covenant, and who is otherwise qualified for military service under applicable laws and regulations, may be appointed as an officer in the Armed Forces of the United States, may be appointed or enrolled in the Senior Reserve Officers' Training Corps program of any of the Armed Forces under chapter 103 of title 10, United States Code, and may be selected to be a participant in the Armed Forces Health Professions Scholarship program under chapter 105 of such title.

"(b) This section shall expire upon the establishment of the Commonwealth of the Northern Mariana Islands."

§ 533. Service credit upon original appointment as a commissioned officer

(a)(1) For the purpose of determining the grade and rank within grade of a person receiving an original appointment in a commissioned grade (other than a warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, such person shall be credited at the time of such appointment with any active commissioned service (other than service as a commissioned warrant officer) that he performed in any armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service before such appointment.

[*See main edition for text of (2); (b) to (f)*]

(As amended Pub. L. 98-94, title X, § 1007(c)(1), Sept. 24, 1983, 97 Stat. 662.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-94 inserted ", the National Oceanic and Atmospheric Administration, or the Public Health Service".

SUBCHAPTER II—APPOINTMENTS OF REGULAR WARRANT OFFICERS

§ 555. Warrant officers: grades

(a) The regular warrant officer grades in each armed force corresponding to the pay grades prescribed for warrant officers by section 201(b) of title 37 are as follows:

Warrant officer grade:
Chief warrant officer, W-4
Chief warrant officer, W-3
Chief warrant officer, W-2
Warrant officer, W-1

(b) Permanent appointments of regular warrant officers, W-1, shall be made by warrant by the Secretary concerned. Permanent appointments of regular chief warrant officers shall be made by commission by the President.

(As amended Nov. 8, 1985, Pub. L. 99-145, title V, § 531(a), title XIII, § 1303(a)(5), 99 Stat. 633, 739.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145, § 1303(a)(5), substituted "201(b)" for "201(c)".

Subsec. (b). Pub. L. 99-145, § 531(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Appointments of regular chief warrant officers of the Army and the Air Force shall be made by warrant by the Secretary concerned. Permanent appointments of regular chief warrant officers of the Navy, Marine Corps, and Coast Guard shall be made by commission by the President, by and with the advice and consent of the Senate. Permanent appointments of regular warrant officers, W-1, shall be made by warrant by the Secretary concerned."

EFFECTIVE DATE OF 1985 AMENDMENT

Section 531(d) of Pub. L. 99-145 provided that: "This section [amending sections 555 and 597 of this title and enacting provisions set out as a note below] takes effect six months after the date of the enactment of this Act [Nov. 8, 1985]."

TRANSITION PROVISIONS FOR 1985 AMENDMENT

Section 531(c) of Pub. L. 99-145 provided that:

"(1) The amendments made by subsections (a) and (b) [amending sections 555 and 597 of this title] apply to any appointment of a warrant officer or chief warrant officer on or after the effective date of this section [see Effective Date of 1985 Amendment note above].

"(2) An officer who on the effective date of this section is serving in a chief warrant officer grade under an appointment by warrant may be appointed in that grade by commission under section 555(b) or 597(b) of title 10, United States Code, as appropriate. The date of rank of an officer who receives an appointment under this paragraph is the date of rank for the officer's appointment by warrant to that grade."

§ 558. Warrant officers: promotion; selection boards

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 628 of this title.

CHAPTER 34—APPOINTMENTS AS RESERVE OFFICERS

§ 597. Warrant officers: grades; appointment, how made; term

[*See main edition for text of (a)*]

(b) Appointments made in the permanent reserve grade of warrant officer, W-1, shall be made by warrant by the Secretary concerned. Appointments made in a permanent reserve grade of chief warrant officer shall be made by commission by the Secretary concerned.

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[*See main edition for text of* (c)]

(As amended Nov. 8, 1985, Pub. L. 99-145, title V, § 531(b), 99 Stat. 633.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Reserve chief warrant officers of the Army and the Air Force shall be appointed in those grades, by warrant, by the Secretary concerned. Permanent reserve chief warrant officers of the Navy, Marine Corps, and Coast Guard shall be appointed in those grades, by commission, by the Secretary concerned. Permanent reserve warrant officers, W-1, shall be appointed in those grades, by warrant, by the Secretary concerned."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-145 effective six months after Nov. 8, 1985, see section 531(d) of Pub. L. 99-145, set out as a note under section 555 of this title.

TRANSITION PROVISIONS FOR 1985 AMENDMENT

Amendment by section 531(b) of Pub. L. 99-145 applicable to any appointment of a warrant officer or chief warrant officer on or after 6 months after Nov. 8, 1985, and officers who on such date are serving in a chief warrant officer grade under an appointment by warrant to be allowed to be appointed in that grade by commission under subsec. (b) of this section with the date of rank of the officer who receives such appointment as the date of rank for the officer's appointment by warrant to that grade, see section 531(c) of Pub. L. 99-145, set out as a note under section 555 of this title.

CHAPTER 35—TEMPORARY APPOINTMENTS IN OFFICER GRADES

§ 601. Positions of importance and responsibility: generals and lieutenant generals; admirals and vice admirals

[*See main edition for text of* (a)]

(b) An officer who is appointed to the grade of general, admiral, lieutenant general, or vice admiral for service in a position of importance and responsibility designated to carry that grade shall continue to hold that grade—

(1) while serving in that position of importance and responsibility;

(2) while under orders transferring him to another position designating to carry one of those grades, beginning on the day his assignment to the first position is terminated and ending on the day before the day on which he assumes the second position;

(3) while hospitalized, beginning on the day of the hospitalization and ending on the day he is discharged from the hospital, but not for more than 180 days; and

(4) while awaiting retirement, beginning on the day he is relieved from the position designated to carry one of those grades and ending on the day before his retirement, but not for more than 90 days.

(c)(1) An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.

(2) An officer serving in a grade above major general or rear admiral who holds the permanent grade of brigadier general or rear admiral (lower half) shall be considered for promotion to the permanent grade of major general or rear admiral, as appropriate, as if he were serving in his permanent grade.

(As amended Pub. L. 98-525, title V, § 523, Oct. 19, 1984, 98 Stat. 2523; Pub. L. 99-145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Subsec. (c)(2). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

1984—Subsec. (b). Pub. L. 98-525 amended subsec. (b) generally, which prior to amendment had provided that if the assignment of an officer who was serving in a position designated to carry the grade of general, admiral, lieutenant general, or vice admiral was terminated (1) by the assignment of such officer to another position designated to carry one of those grades, such officers would hold, during the period beginning on the day of that termination and ending on the day before the day on which he assumed the other position, the grade that he had held on the day before the termination; (2) by the hospitalization of such officer, such officer would hold, during the period beginning on the day of that termination and ending on the day he was discharged from the hospital, but not for more than 180 days, the grade that he had held on the day before the termination; or (3) by the retirement of such officer, such officer would hold, during the period beginning on the day of that termination and ending on the day before his retirement, but not for more than 90 days, the grade that he had held on the day before the termination.

CHAPTER 36—PROMOTION, SEPARATION, AND INVOLUNTARY RETIREMENT OF OFFICERS ON THE ACTIVE-DUTY LIST

SUBCHAPTER I—SELECTION BOARDS

§ 611. Convening of selection boards

(a) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned, whenever the needs of the service require, shall convene selection boards to recommend for promotion to the next higher permanent grade, under subchapter II of this chapter, officers on the active-duty list in each permanent grade from first lieutenant through brigadier general in the Army, Air Force, or Marine Corps and from lieutenant (junior grade) through rear admiral (lower half) in the Navy.

[*See main edition for text of* (b)]

(As amended Pub. L. 99-145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

TRANSITION FROM GRADE OF COMMODORE TO GRADE OF REAR ADMIRAL (LOWER HALF)

Section 514(e) of Pub. L. 99-145 provided that:

"(1) An officer who on the day before the date of the enactment of this Act [Nov. 8, 1985] is serving in or has the grade of commodore shall as of the date of the enactment of this Act be serving in or have the grade of rear admiral (lower half).

"(2) An officer who on the day before the date of the enactment of this Act is on a list of officers selected for promotion to the grade of commodore shall as of the date of the enactment of this Act be considered to be on a list of officers selected for promotion to the grade of rear admiral (lower half)."

TRANSITION PROVISIONS COVERING 1980 AMENDMENTS BY DEFENSE OFFICER PERSONNEL MANAGEMENT ACT [PUB. L. 96-513]

Parts A to C of title VI of Pub. L. 96-513, as amended by Pub. L. 97-22, § 8(a)-(n), July 10, 1981, 95 Stat. 132-135; Pub. L. 97-86, title IV, § 405(d)(1), (2)(A), (e), (f), Dec. 1, 1981, 95 Stat. 1106, eff. Sept. 15, 1981; Pub. L. 98-525, title V, §§ 530-532, Oct. 19, 1984, 98 Stat. 2527, provided that:

"TITLE VI—TRANSITION PROVISIONS

[*See main edition for text of Part A*]

"PART B—TRANSITION PROVISIONS RELATING ONLY TO THE NAVY AND MARINE CORPS

[*See main edition for text of Secs. 611 to 615*]

"LIMITED-DUTY OFFICERS

"SEC. 616. [*See main edition for text of (a) and (b)*]

"(c) An officer of the Navy or Marine Corps who on September 15, 1981, was an officer designated for limited duty under section 5589 of title 10, United States Code, and who on the date of the enactment of this subsection [Oct. 19, 1984] is serving in a temporary grade above the grade of lieutenant, in the case of an officer of the Navy, or captain, in the case of an officer of the Marine Corps, may be reappointed under section 5589 of title 10, United States Code (as in effect on or after September 15, 1981), in the same permanent grade and with the same date of rank held by that officer on the active-duty list immediately before such reappointment if he is otherwise eligible for appointment under that section.

[*See main edition for text of Secs. 617 to 620*]

"PART C—GENERAL TRANSITION PROVISIONS

[*See main edition for text of Secs. 621 to 630*]

"SAVINGS PROVISION FOR ENTITLEMENT TO READJUSTMENT PAY OR SEVERANCE PAY UNDER PRIOR PROVISIONS OF LAW

"SEC. 631. (a) A member of the Army, Navy, Air Force, or Marine Corps who—

"(1) was on active duty (other than for training) on Sept. 14, 1981; and

"(2) after such date is involuntarily discharged or released from active duty under any provision of title 10, United States Code, as in effect after such date,

is entitled to receive any readjustment payment or severance pay to which he would have been entitled under laws in effect on Sept. 14, 1981, unless (in the case of a member discharged or released on or after the date of the enactment of the Department of Defense Authorization Act, 1985 [Oct. 19, 1984]) the Secretary concerned determines that the conditions under which the member is discharged or separated do not warrant such pay.

"(b) If a member who is entitled to receive a readjustment payment or severance pay under subsection (a) is also eligible to receive separation pay under section 1174 of title 10, United States Code, as added by this Act, the member may not receive both the readjustment payment and severance pay under laws in effect on Sept. 14, 1981, and separation pay under such section, but shall elect which he will receive. If the number fails to make an election in a timely manner, he shall be paid the amount which is more favorable to him.

[*See main edition for text of Secs. 632 to 638*]

"SAVINGS PROVISION FOR PROMOTION CONSIDERATION OF CERTAIN RETIRED OFFICERS

"SEC. 639. Notwithstanding sections 619, 620, and 641(4) of title 10, United States Code, a retired officer serving on active duty on the date of the enactment of this section [Oct. 19, 1984] who on September 14, 1981, was on active duty as a retired officer recalled to active duty and who—

"(1) was eligible for consideration for promotion on that date; and

"(2) has served continuously on active duty since that date,

may be considered for promotion (under regulations prescribed by the Secretary of the military department concerned) by a selection board that convenes after the date of the enactment of this section as if he had been placed on the active-duty list pursuant to section 621 of this Act."

§ 612. Composition of selection boards

(a) [*See main edition for text of (1) and (2)*]

(3) When reserve officers of an armed force are to be considered by a selection board, the membership of the board shall include at least one reserve officer of that armed force, with the exact number of reserve officers to be determined by the Secretary of the military department concerned, in his discretion, except that in the case of a board which is considering officers in the grade of colonel or brigadier general or, in the case of officers of the Navy, captain or rear admiral (lower half), no reserve officer need be included if there are no reserve officers of that armed force on active duty in the next higher grade who are eligible to serve on the board.

[*See main edition for text of (4) and (5); (b)*]

(As amended Pub. L. 99-145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Subsec. (a)(3). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

§ 618. Action on reports of selection boards

[*See main edition for text of (a)*]

(b) [*See main edition for text of (1)*]

(2) If the report of a selection board names an officer as having a record which indicates that the officer should be required to show cause for his retention on active duty, the Secretary concerned may provide for the review of the record of that officer as provided for under regulations prescribed under section 1181 of this title.

[*See main edition for text of (c) to (e)*]

(As amended Pub. L. 98-525, title V, § 524(a), Oct. 19, 1984, 98 Stat. 2524.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-525 substituted "If the report of a selection board names an officer as having a record which indicates that the officer should be required to show cause for his retention on active duty, the Secretary concerned may provide for the review of the record of that officer as provided for under regulations prescribed under section 1181 of this title" for "The Secretary concerned may submit to a board of officers convened under section 1181 of this title the name of any officer who is named in the report of a selection board as having a record which indicates that the officer should be required to show cause for his retention on active duty".

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SUBCHAPTER II—PROMOTIONS

Sec.
625. Authority to vacate promotions to grades of brigadier general and rear admiral (lower half).

AMENDMENTS

1985—Pub. L. 99-145, title V, § 514(b)(4)(B), Nov. 8, 1985, 99 Stat. 628, substituted "rear admiral (lower half)" for "commodore" in item 625.

§ 619. Eligibility for consideration for promotion

(a) [*See main edition for text of (1)*]

(2) Subject to paragraph (4), an officer who is on the active-duty list of the Army, Air Force, or Marine Corps and holds a permanent appointment in a grade above first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in a grade above lieutenant (junior grade) may not be considered for selection for promotion to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

[*See main edition for text of (A)*]

(B) One year, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of colonel or brigadier general or of an officer of the Navy holding a permanent appointment in the grade of captain or rear admiral (lower half).

[*See main edition for text of (3) to (5)*]

(b)(1) Except as provided in paragraph (2), an officer who has failed of selection for promotion to the next higher grade remains eligible for consideration for promotion to that grade as long as he continues on active duty in other than a retired status and is not promoted.

(2) Paragraph (1) does not apply to a regular officer who is ineligible for consideration for promotion under section 631(c) of this title or to a reserve officer who has failed of selection for promotion to the grade of captain or, in the case of an officer of the Navy, lieutenant for the second time.

(c) [*See main edition for text of (1)*]

(2) The Secretary of the military department concerned—

(A) may, by regulation, prescribe procedures to limit the officers to be considered by a selection board—

(i) from below the promotion zone; or

(ii) in the case of a selection board to recommend officers for promotion to the grade of brigadier general or rear admiral (lower half),

to those officers who are determined to be exceptionally well qualified for promotion;

(B) may, by regulation, prescribe criteria for determining which officers below the promotion zone or in the grades of colonel and, in the case of officers of the Navy, captain are exceptionally well qualified for promotion for the purposes of clause (A);

(C) may, by regulation, prescribe a period of time, not to exceed one year, from the time an officer is placed on the active-duty list during which the officer shall be ineligible for consideration for promotion; and

(D) may, by regulation, preclude from consideration by a selection board by which he would otherwise be eligible to be considered, an officer who has an established separation date that is within 90 days after the date the board is convened.

(d) A selection board convened under section 611(a) of this title may not consider for promotion to the next higher grade—

[*See main edition for text of (1)*]

(2) an officer of the Marine Corps who is an officer designated for limited duty and who holds a grade above major.

(As amended Pub. L. 98-525, title V, §§ 525(a), (b), 529(a), Oct. 19, 1984, 98 Stat. 2524, 2525, 2526; Pub. L. 99-145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Subsecs. (a)(2)(B), (c)(2)(A)(ii). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

1984—Subsec. (b). Pub. L. 98-525, § 525(a), designated existing provisions as par. (1) and in par. (1) as so designated substituted "Except as provided in paragraph (2), an officer" for "An officer" and added par. (2).

Subsec. (c)(2)(D). Pub. L. 98-525, § 525(b), added subpar. (D).

Subsec. (d)(2). Pub. L. 98-525, § 529(a), struck out "Navy or" before "Marine Corps" and struck out "lieutenant commander or" before "major".

§ 624. Promotions: how made

[*See main edition for text of (a) to (c)*]

(d)(1) Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may be delayed if—

[*See main edition for text of (A) to (D)*]

If no disciplinary action is taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not ordered removed from active duty by the Secretary concerned under chapter 60 of this title, or if the officer is acquitted of the charges brought against him, as the case may be, then unless action to delay an appointment has also been taken under subsection (d)(2) the officer shall be retained on the promotion list and shall, upon promotion to the next higher grade, have the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(2) Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may also be delayed in any

case in which there is cause to believe that the officer is mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which he was selected for promotion. If the Secretary concerned later determines that the officer is qualified for promotion to such grade, the officer shall, upon such promotion, have the same date of rank, the same effective date for pay and allowances in the higher grade to which appointed, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

[*See main edition for text of (3) and (4)*]

(As amended Pub. L. 98-525, title V, § 526, Oct. 19, 1984, 98 Stat. 2525.)

AMENDMENTS

1984—Subsec. (d)(1), (2). Pub. L. 98-525 added provision for a determination by the Secretary concerned that the officer was unqualified for promotion for any part of the delay in the officer's promotion, with the added provision that if the Secretary made such a determination, the Secretary could adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considered appropriate under the circumstances.

§ 625. Authority to vacate promotions to grades of brigadier general and rear admiral (lower half)

(a) The President may vacate the promotion to the grade of brigadier general or rear admiral (lower half) of an officer who has served less than 18 months in that grade after promotion to that grade under this chapter.

[*See main edition for text of (b)*]

(c) The position on the active-duty list of an officer whose promotion is vacated under this section is the position he would have held had he not been promoted to the grade of brigadier general or rear admiral (lower half).

(As amended Pub. L. 99-145, title V, § 514(b)(1), (4)(A), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore" in section catchline and subsecs. (a) and (c).

SUBCHAPTER III—FAILURE OF SELECTION FOR PROMOTION AND RETIREMENT FOR YEARS OF SERVICE

Sec.
635. Retirement for years of service: regular brigadier generals and rear admirals (lower half).

AMENDMENTS

1985—Pub. L. 99-145, title V, § 514(b)(5)(B), Nov. 8, 1985, 99 Stat. 628, substituted "rear admirals (lower half)" for "commodores" in item 635.

§ 628. Special selection boards

(a)(1) In the case of an officer who is eligible for promotion who the Secretary of the military department concerned determines was not considered for selection for promotion by a selection board because of administrative error, the Secretary concerned, under regulations prescribed by the Secretary of Defense, shall convene a special selection board under this subsection (composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 558 of this title and regulations prescribed by the Secretary of the military department concerned) to determine whether such officer should be recommended for promotion.

[*See main edition for text of (2) and (3)*]

(b)(1) In the case of an officer who is eligible for promotion who was considered for selection for promotion by a selection board but was not selected, the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, may convene a special selection board under this subsection (composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 558 of this title and regulations prescribed by the Secretary of the military department concerned) to determine whether such officer should be recommended for promotion if the Secretary concerned determines that—

[*See main edition for text of (A) and (B), (2) and (3); (c) to (e)*]

(As amended Pub. L. 98-525, title V, § 527(a), Oct. 19, 1984, 98 Stat. 2525.)

AMENDMENTS

1984—Subsecs. (a)(1), (b)(1). Pub. L. 98-525 substituted "(composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 558 of this title and regulations prescribed by the Secretary of the military department concerned)" for "(composed in accordance with section 612 of this title)".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 641 of this title.

§ 630. Discharge of regular commissioned officers with less then five years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade)

The Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense—

[*See main edition for text of (1)*]

(2) shall, unless the officer has been promoted, discharge any officer described in clause (1)(B) at the end of the 18-month period beginning on the date on which the officer is first found not qualified for promotion.

(As amended Pub. L. 98-525, title XIV, § 1405(11), Oct. 19, 1984, 98 Stat. 2622.)

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AMENDMENTS

1984—Par. (2). Pub. L. 98-525 substituted "18-month" for "eighteen-month".

§ 631. Effect of failure of selection for promotion: regular first lieutenants and lieutenants (junior grade)

[*See main edition for text of (a) and (b)*]

(c) An officer who is subject to discharge under subsection (a)(1) is not eligible for further consideration for promotion.

(As amended Pub. L. 98-525, title V, § 525(c), Oct. 19, 1984, 98 Stat. 2525.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-525 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 619 of this title.

§ 633. Retirement for years of service: regular lieutenant colonels and commanders

Except an officer of the Navy designated for limited duty to whom section 5596(e) of this title applies and an officer of the Marine Corps designated for limited duty to whom section 5596(e) or section 6383 of this title applies and except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of lieutenant colonel, and each officer of the Regular Navy who holds the regular grade of commander, who is not on a list of officers recommended for promotion to the regular grade of colonel or captain, respectively, shall, if not earlier retired, be retired on the first day of the month after the month in which he completes 28 years of active commissioned service.

(As amended Pub. L. 98-525, title V, § 529(b), title XIV, § 1405(12), Oct. 19, 1984, 98 Stat. 2526, 2622.)

AMENDMENTS

1984—Pub. L. 98-525, § 1405(12), substituted "28" for "twenty-eight".

Pub. L. 98-525, § 529(b), substituted "Except an officer of the Navy designated for limited duty to whom section 5596(e) of this title applies and an officer of the Marine Corps designated for limited duty to whom section 5596(e) or section 6383 of this title applies" for "Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies)".

§ 634. Retirement for years of service: regular colonels and Navy captains

Except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of colonel, and each officer of the Regular Navy who holds the regular grade of captain, who is not on a list of officers recommended for promotion to the regular grade of brigadier general or rear admiral (lower half), respectively, shall, if not earlier retired, be retired on the first day of the month after the month in which he completes 30 years of active commissioned service.

(As amended Pub. L. 98-525, title XIV, § 1405(13), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99-145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

1984—Pub. L. 98-525 substituted "30" for "thirty".

§ 635. Retirement for years of service: regular brigadier generals and rear admirals (lower half)

Except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of brigadier general, and each officer of the Regular Navy who holds the regular grade of rear admiral (lower half), who is not on a list of officers recommended for promotion to the regular grade of major general or rear admiral, respectively, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month after the month in which he completes 30 years of active commissioned service, whichever is later.

(As amended Pub. L. 98-525, title XIV, § 1405(13), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99-145, title V, § 514(b)(1), (5)(A), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Pub. L. 99-145 substituted "rear admirals (lower half)" for "commodores" in section catchline and "rear admiral (lower half)" for "commodore" in text.

1984—Pub. L. 98-525 substituted "30" for "thirty".

§ 636. Retirement for years of service: regular major generals and rear admirals

Except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of major general, and each officer of the Regular Navy who holds the regular grade of rear admiral, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month after the month in which he completes 35 years of active commissioned service, whichever is later.

(As amended Pub. L. 98-525, title XIV, § 1405(14), Oct. 19, 1984, 98 Stat. 2622.)

AMENDMENTS

1984—Pub. L. 98-525 substituted "35" for "thirty-five".

SUBCHAPTER IV—CONTINUATION ON ACTIVE DUTY AND SELECTIVE EARLY RETIREMENT

§ 637. Selection of regular officers for continuation on active duty

(a) [*See main edition for text of (1)*]

(2) An officer who holds the regular grade of captain in the Army, Air Force, or Marine

Corps, or the regular grade of lieutenant in the Navy, and who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes 20 years of active commissioned service unless he is promoted to the regular grade of major or lieutenant commander, respectively.

(3) An officer who holds the regular grade of major or lieutenant commander who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes 24 years of active commissioned service unless he is promoted to the regular grade of lieutenant colonel or commander, respectively.

[*See main edition for text of (4) to (6)*]

(b) [*See main edition for text of (1)*]

(2) An officer subject to retirement under section 635 or 636 of this title who is serving in the grade of brigadier general, rear admiral (lower half), major general, or rear admiral may, subject to the needs of the service, have his retirement deferred and be continued on active duty by the Secretary concerned. An officer subject to retirement under section 635 or 636 of this title who is serving in a grade above major general or rear admiral may have his retirement deferred and be continued on active duty by the President.

[*See main edition for text of (3); (c) and (d)*]

(As amended Pub. L. 98-525, title XIV, § 1405(15), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99-145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Subsec. (b)(2). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

1984—Subsec. (a)(2). Pub. L. 98-525, § 1405(15)(A), substituted "20" for "twenty".

Subsec. (a)(3). Pub. L. 98-525, § 1405(15)(B), substituted "24" for "twenty-four".

§ 638. Selective early retirement

(a) A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps—

[*See main edition for text of (1) and (2)*]

(3) who holds the regular grade of brigadier general or rear admiral (lower half) and has served at least three and one-half years of active duty in that grade and whose name is not on a list of officers recommended for promotion; or

[*See main edition for text of (4)*]

may be considered for early retirement by a selection board convened under section 611(b) of this title. The Secretary of the military department concerned shall specify the number of officers described in clauses (1) and (2) which such a board may recommend for early retirement, but such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(b)(1) An officer in a grade below brigadier general or rear admiral (lower half) who is recommended for early retirement under this section and whose early retirement is approved by the Secretary concerned shall—

[*See main edition for text of (A) and (B)*]

(2) An officer who holds the regular grade of brigadier general, major general, rear admiral (lower half), or rear admiral who is recommended for early retirement under this section and whose early retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the tenth calendar month beginning after the month in which the Secretary concerned approved the report of the board which recommended the officer for early retirement.

(c) So long as an officer in a grade below brigadier general or rear admiral (lower half) holds the same grade, he may not be considered for early retirement under this section more than once in any five-year period.

[*See main edition for text of (d) and (e)*]

(As amended Pub. L. 99-145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628.)

CODIFICATION

Subsec. (a)(3) is set out in this supplement to correct a typographical error appearing in the main edition.

AMENDMENTS

1985—Subsecs. (a)(3), (b), (c). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore" wherever appearing.

SUBCHAPTER V—ADDITIONAL PROVISIONS RELATING TO PROMOTION, SEPARATION, AND RETIREMENT

Sec.
646. Consideration of performance as a member of the Joint Staff.

AMENDMENTS

1984—Pub. L. 98-525, title XIII, § 1301(d)(2), Oct. 19, 1984, 98 Stat. 2612, added item 646.

§ 641. Applicability of chapter

Officers in the following categories are not subject to this chapter (other than section 640 and, in the case of warrant officers, section 628):

(1) Reserve officers—

[*See main edition for text of (A) and (B)*]

(C) on active duty under section 672(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

(D) on active duty to pursue special work;

(E) ordered to active duty under section 673b of this title;

(F) on active duty under section 10(b)(2) of the Military Selective Service Act (50

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U.S.C. App. 460(b)(2)) for the administration of the Selective Service System; or

(G) on full-time National Guard duty.

[*See main edition for text of (2) to (5)*]

(As amended Pub. L. 98-525, title IV, § 414(a)(5), title V, § 527(b), Oct. 19, 1984, 98 Stat. 2519, 2525.)

AMENDMENTS

1984—Pub. L. 98-525, § 527(b), substituted "(other than section 640 and, in the case of warrant officers, section 628)" for "(other than section 640)" in provisions preceding par. (1).

Par. (1)(C). Pub. L. 98-525, § 414(a)(5)(A), struck out "or under section 502 or 503 of title 32" after "section 672(d) of this title".

Par. (1)(G). Pub. L. 98-525, § 414(a)(5)(B)-(D), added subpar. (G).

§ 645. Definitions

In this chapter:

(1) "Promotion zone" means a promotion eligibility category consisting of the officers on an active-duty list in the same grade and competitive category—

(A) who—

(i) in the case of officers in grades below colonel, for officers of the Army, Air Force, and Marine Corps, or captain, for officers of the Navy, have neither (I) failed of selection for promotion to the next higher grade, nor (II) been removed from a list of officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); or

(ii) in the case of officers in the grade of colonel or brigadier general, for officers of the Army, Air Force, and Marine Corps, or captain or rear admiral (lower half), for officers of the Navy, have neither (I) not been recommended for promotion to the next higher grade when considered in the promotion zone, nor (II) been removed from a list of officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); and

(B) are senior to the officer designated by the Secretary of the military department concerned to be the junior officer in the promotion zone eligible for consideration for promotion to the next higher grade.

[*See main edition for text of (2) and (3)*]

(As amended Pub. L. 98-525, title V, § 533(a), Oct. 19, 1984, 98 Stat. 2528; Pub. L. 99-145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Par. (1)(A)(ii). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

1984—Par. (1)(A)(i)(II), (ii)(II). Pub. L. 98-525, § 533(a)(1), inserted "(other than after having been placed on that list after a selection from below the promotion zone)".

Par. (1)(B). Pub. L. 98-525, § 533(a)(2), inserted "in the promotion zone" after "the junior officer" and struck out "in the promotion zone" after "higher grade".

§ 646. Consideration of performance as a member of the Joint Staff

The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall ensure that officer personnel policies of the Army, Navy, Air Force, and Marine Corps concerning promotion, retention, and assignment give appropriate consideration to the performance of an officer as a member of the Joint Staff.

(Added Pub. L. 98-525, title XIII, § 1301(d)(1), Oct. 19, 1984, 98 Stat. 2612.)

CHAPTER 37—GENERAL SERVICE REQUIREMENTS

§ 651. Members: required service

(a) Each person who becomes a member of an armed force, other than a person deferred under the next to the last sentence of section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1)) shall serve in the armed forces for a total initial period of not less than six years nor more than eight years, as provided in regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary of Transportation for the Coast Guard when it is not operating as service in the Navy, unless such person is sooner discharged under such regulations because of personal hardship. Any part of such service that is not active duty or that is active duty for training shall be performed in a reserve component.

[*See main edition for text of (b)*]

(As amended Sept. 24, 1983, Pub. L. 98-94, title X, § 1022(b)(1), 97 Stat. 670.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-94 amended subsec. (a) generally, substituting a reference to service in the armed forces for a total initial period of not less than six years nor more than eight years under prescribed regulations for the prior reference to service in the armed forces for a total of six years.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1022(b)(2) of Pub. L. 98-94 provided that: "The amendment made by paragraph (1) [amending this section] shall apply only with respect to persons who enter the Armed Forces 60 or more days after the date of the enactment of this Act [Sept. 24, 1983]."

CHAPTER 39—ACTIVE DUTY

Sec.
673c. Authority of President to suspend certain laws relating to promotion, retirement, and separation.
688. Retired members.

AMENDMENTS

1983—Pub. L. 98-94, title X, §§ 1017(b)(4), 1021(b), Sept. 24, 1983, 97 Stat. 669, 670, substituted "Retired members" for "Regular components: retired members" in item 688, and added item 673c.

§ 672. Reserve components generally

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 268, 273, 523, 641, 673c, 674, 678, 3080, 8080 of this title.

§ 673. Ready Reserve

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 138, 268, 673c of this title.

§ 673b. Selected Reserve; order to active duty other than during war or national emergency

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 138, 523, 641, 673c of this title.

§ 673c. Authority of President to suspend certain laws relating to promotion, retirement, and separation

(a) Notwithstanding any other provision of law, during any period members of a reserve component are serving on active duty pursuant to an order to active duty under authority of section 672, 673, or 673b of this title, the President may suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces who the President determines is essential to the national security of the United States.

(b) A suspension made under the authority of subsection (a) shall terminate (1) upon release from active duty of members of the reserve component ordered to active duty under the authority of section 672, 673, or 673b of this title, as the case may be, or (2) at such time as the President determines the circumstances which required the action of ordering members of the reserve component to active duty no longer exist, whichever is earlier.

(Added Pub. L. 98-94, title X, § 1021(a), Sept. 24, 1983, 97 Stat. 670, and amended Pub. L. 98-525, title XIV, § 1405(16), Oct. 19, 1984, 98 Stat. 2622.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-525 inserted "of this title" after "673b".

§ 675. Retired Reserve

A member in the Retired Reserve may, if qualified, be ordered to active duty without his consent, but only as provided in section 672(a) or 688 of this title.

(As amended Sept. 24, 1983, Pub. L. 98-94, title X, § 1017(a), 97 Stat. 669.)

AMENDMENTS

1983—Pub. L. 98-94 inserted reference to section 688.

§ 680. Active duty agreements: release from duty

(a) Each agreement made under section 679 (a) of this title shall provide that the member may not be released from active duty without his consent during the period of the agreement—

[*See main edition for text of (1)*]

(2) for any other reason, without an opportunity to be heard by a board of officers before the release, unless he is (A) dismissed or discharged under the sentence of a court-martial, (B) released because of an unexplained absence without leave for at least three months, (C) released because he is convicted and sentenced to confinement in a Federal or State penitentiary or correctional institution and the sentence has become final, or (D) released because he has been considered at least twice and has not been recommended for promotion to the next higher grade or because he is considered as having failed of selection for promotion to the next higher grade and has not been recommended for promotion to that grade, under conditions that would require the release or separation of a reserve officer who is not serving under such an agreement.

(b) A member who is released from active duty without his consent before the end of his agreement made under section 679(a) of this title is entitled to an amount computed by multiplying the number of years and fractions of a year of his unexpired period of service under the agreement by the sum of one month's basic pay, special pay, and allowances to which he is entitled on the day of his release. The amount to which a member is entitled under this subsection is in addition to any pay and allowances to which he is otherwise entitled. For the purposes of this subsection, a fraction of a month of 15 days or more is counted as a whole month, and a fraction of a month of less than 15 days is disregarded. This subsection does not apply to a member if he is—

[*See main edition for text of (1) and (2)*]

(3) eligible for retired pay, separation pay, or severance pay under another provision of law;

[*See main edition for text of (4) and (5)*]

(As amended Oct. 19, 1984, Pub. L. 98-525, title V, § 533(b), title XIV, § 1405(17), 98 Stat. 2528, 2622.)

AMENDMENTS

1984—Subsec. (a)(2)(D). Pub. L. 98-525, § 1405(17), substituted "reserve officer" for "Reserve Officer".

Subsec. (b)(3). Pub. L. 98-525, § 533(b), inserted ", separation pay," after "retired pay".

§ 688. Retired members

(a) Under regulations prescribed by the Secretary of Defense, a retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, a member of the Retired Reserve who has completed at least 20 years of active service, or a member of the Fleet Reserve or Fleet Marine Corps Reserve may be ordered to active duty by the Secretary of the military department concerned at any time. The Secretary concerned may, to the extent consistent with other provisions of law, assign a member ordered to active duty under this section to such duties as the Secretary considers necessary in the interests of national defense.

(b) A member ordered to active duty under this section who, while on active duty, is pro-

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moted to a grade that is higher than his retired grade is entitled, upon his release from that tour of active duty, to placement on the retired list in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

[*See main edition for text of* (c)]

(d)(1) Except as provided in paragraph (2), a retired member ordered to active duty under this section shall be ordered to active duty in his retired grade.

(2) A retired member ordered to active duty under this section whose retired grade is above the grade of major general or rear admiral shall be ordered to active duty in the highest permanent grade held by such member while serving on active duty.

(As amended Pub. L. 98-94, title X, § 1017(b)(1)-(3), Sept. 24, 1983, 97 Stat. 669; Pub. L. 99-145, title V, § 516, Nov. 8, 1985, 99 Stat. 630.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-145 added subsec. (d).

1983—Pub. L. 98-94, § 1017(a)(3), substituted "Retired members" for "Regular components: retired members" in section catchline.

Subsec. (a). Pub. L. 98-94, § 1017(b)(1), inserted ", a member of the Retired Reserve who has completed at least 20 years of active service, or a member of the Fleet Reserve or Fleet Marine Corps Reserve".

Subsec. (b). Pub. L. 98-94, § 1017(b)(2), substituted "A member ordered to active duty under this section" for "A retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 675, 6151 of this title.

CHAPTER 40—LEAVE

Sec.
708. Educational leave of absence.

AMENDMENTS

1984—Pub. L. 98-525, title VII, § 707(a)(2), Oct. 19, 1984, 98 Stat. 2572, added item 708.

§ 701. Entitlement and accumulation

[*See main edition for text of* (a) *to* (e)]

(f) Under uniform regulations to be prescribed by the Secretary concerned, and approved by the Secretary of Defense, a member who serves on active duty for a continuous period of at least 120 days in an area in which he is entitled to special pay under section 310(a) of title 37 or a member assigned to a deployable ship, mobile unit, or to other duty designated for the purpose of this section, may accumulate 90 days' leave. Leave in excess of 60 days accumulated under this subsection is lost unless it is used by the member before the end of the third fiscal year after the fiscal year in which the service terminated.

(g) A member who is in a missing status, as defined in section 551(2) of title 37, accumulates leave without regard to the 60-day limitation in subsection (b) and the 90-day limitation in subsection (f). Notwithstanding the death of a member while in a missing status, he continues to earn leave through the date—

[*See main edition for text of* (1) *and* (2)]

Leave accumulated while in missing status shall be accounted for separately. It may not be taken, but shall be paid for under section 501(h) of title 37. However, a member whose death is prescribed or determined under section 555 or 556 of title 37 may, in addition to leave accrued before entering a missing status, accrue not more than 150 days' leave during the period he is in a missing status, unless his actual death occurs on a date when, had he lived, he would have accrued leave in excess of 150 days, in which event settlement will be made for the number of days accrued to the actual date of death. Leave so accrued in a missing status shall be accounted for separately and paid for under the provisions of section 501 of title 37.

(As amended Pub. L. 98-94, title X, § 1031(a), Sept. 24, 1983, 97 Stat. 671; Pub. L. 98-525, title XIV, § 1405(18), Oct. 19, 1984, 98 Stat. 2622.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98-525 substituted "60-day" for "sixty-day", "90-day" for "ninety-day", and "150" for "one hundred and fifty" in two places.

1983—Subsec. (f). Pub. L. 98-94 substituted "the end of the third fiscal year" for "the end of the fiscal year".

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1031(b)(1), (2) of Pub. L. 98-94, provided that:

"(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 24, 1983] and shall apply to leave accumulated under section 701(f) of such title [this title] after September 30, 1980.

"(2) A member of the Armed Forces who was authorized under section 701(f) of such title to accumulate 90 days' leave during fiscal year 1980, 1981, or 1982 and lost any leave at the end of fiscal year 1981, 1982, or 1983, respectively, because of the provisions of the last sentence of such section, as in effect on the day before the date of the enactment of this Act, shall be credited with the amount of the leave lost and may retain leave in excess of 60 days until (A) September 30, 1984, or (B) the end of the third fiscal year after the year in which such leave was accumulated, whichever is later, but in no case may such a member accumulate leave in excess of 90 days."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-81 to take effect at the end of the 60-day period beginning on Nov. 20, 1981, and to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98-209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a) and (b)(1) of Pub. L. 97-81, set out as an Effective Date note under section 706 of this title.

§ 706. Administration of leave required to be taken pending review of certain court-martial convictions

EFFECTIVE DATE

Section 7 of Pub. L. 97-81, as amended by Pub. L. 98-209, § 12(b), Dec. 6, 1983, 97 Stat. 1407, provided that:

[*See main edition for text of* (a)]

"(b)(1) The amendments made by section 2 [enacting sections 706, 707, and 876a of this title and amending section 701 of this title] shall apply to each member whose sentence by court-martial is approved on or after January 20, 1982—

"(A) under section 864 or 865 (article 64 or 65) of title 10, United States Code, by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 [see Effective Date of 1983 Amendment note set out under section 801 of this title]; or

"(B) under section 860 (article 60) of title 10, United States Code, by the officer empowered to act on the sentence on or after the effective date of the Military Justice Act of 1983.

[*See main edition for text of* (2) *to* (5)]

§ 707. Payment upon disapproval of certain court-martial sentences for excess leave required to be taken

EFFECTIVE DATE

Section to take effect at the end of the 60-day period beginning on Nov. 20, 1981, to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982 under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98-209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a) and (b)(1) of Pub. L. 97-81 set out as a note under section 706 of this title.

§ 708. Educational leave of absence

(a) Under such regulations as the Secretary of Defense may prescribe after consultation with the Secretary of Transportation and subject to subsection (b), the Secretary concerned may grant to any eligible member (as defined in subsection (e)) a leave of absence for a period of not to exceed two years for the purpose of permitting the member to pursue a program of education.

(b)(1) A member may not be granted a leave of absence under this section unless—

(A) in the case of an enlisted member, the member agrees in writing to extend his current enlistment after completion (or other termination) of the program of education for which the leave of absence was granted for a period of two months for each month of the period of the leave of absence; and

(B) in the case of an officer, the member agrees to serve on active duty after completion (or other termination) of the program of education for which the leave of absence was granted for a period (in addition to any other period of obligated service on active duty) of two months for each month of the period of the leave of absence.

(2) A member may not be granted a leave of absence under this section until he has completed any extension of enlistment or reenlistment, or any period of obligated service, incurred by reason of any previous leave of absence granted under this section.

(c)(1) While on a leave of absence under this section, a member shall be paid basic pay but may not receive basic allowance for quarters or basic allowance for subsistence or any other pay and allowances to which he would otherwise be entitled for such period.

(2) A period during which a member is on a leave of absence under this section shall be counted for the purposes of computing the amount of the member's basic pay, for the purpose of determining the member's eligibility for retired pay, and for the purpose of determining the member's time in grade for promotion purposes, but may not be counted for the purposes of completion of the term of enlistment of the member (in the case of an enlisted member) or for purposes of section 1421 of title 38, relating to entitlement to supplemental educational assistance.

(d)(1) In time of war, or of national emergency declared by the President or the Congress after the date of the enactment of this section, the Secretary concerned may cancel any leave of absence granted under this section.

(2) The Secretary concerned may cancel a leave of absence granted to a member under this section if the Secretary determines that the member is not satisfactorily pursuing the program of education for which the leave was granted.

(e) In this section, "eligible member" means a member of the armed forces on active duty who is eligible for basic educational assistance under chapter 30 of title 38 and who—

(1) in the case of an enlisted member, has completed at least one term of enlistment and has reenlisted; and

(2) in the case of an officer, has completed the officer's initial period of obligated service on active duty.

(Added Pub. L. 98-525, title VII, § 707(a)(1), Oct. 19, 1984, 98 Stat. 2571.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(1), is the date of enactment of Pub. L. 98-525, which was approved Oct. 19, 1984.

EFFECTIVE DATE

Section 707(b) of Pub. L. 98-525 provided that: "Section 708 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1985."

CHAPTER 41—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.
716. Commissioned officers: transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service.

AMENDMENTS

1983—Pub. L. 98-94, title X, § 1007(a)(2), Sept. 24, 1983, 97 Stat. 662, included reference to the Public Health Service in item 716.

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§ 716. Commissioned officers: transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service

(a) Notwithstanding any other provision of law, the President, within authorized strengths and with the consent of the officer involved, may transfer any commissioned officer of a uniformed service from his uniformed service to, and appoint him in, another uniformed service. The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, and the Secretary of Health and Human Services shall jointly establish, by regulations approved by the President, policies and procedures for such transfers and appointments.

(b) An officer transferred under this section may not be assigned precedence or relative rank higher than that which he held on the day before the transfer.

(c) In this section, "uniformed service" means any of the armed forces, the Commissioned Corps of the National Oceanic and Atmospheric Administration, or the Commissioned Corps of the Public Health Service.

(As amended Pub. L. 98-94, title X, § 1007(a)(1), Sept. 24, 1983, 97 Stat. 661.)

AMENDMENTS

1983—Pub. L. 98-94 amended section generally, substituting "transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service" for "transfers between armed forces and to and from National Oceanic and Atmospheric Administration" in section catchline and adding subsec. (c). Prior to amendment subsecs. (a) and (b) read:

"(a) Notwithstanding any other provision of law, the President may, within authorized strengths, transfer any commissioned officer with his consent from his armed force or from the National Oceanic and Atmospheric Administration to, and appoint him in, another armed force or the National Oceanic and Atmospheric Administration. The Secretary of Defense, the Secretary of the department in which the Coast Guard is operating, and the Secretary of Commerce shall jointly establish, by regulations approved by the President, policies and procedures for such transfers and appointments.

"(b) An officer transferred under this section—

"(1) may not be assigned precedence or relative rank higher than that which he held on the day before his transfer; and

"(2) shall be credited for retirement and pay purposes with the same years of service with which he has been credited on the day before his transfer."

§ 717. Members of the armed forces: participation in international sports

(a) The Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, may permit members of the armed forces under his jurisdiction to train for, attend, and participate in—

(1) Pan-American Games and Olympic Games and qualifying events and preparatory competition for those games; and

(2) any other international competition in amateur sports, if the Secretary of State determines that the interests of the United States will be served by participation in that competition, and qualifying events and preparatory competition for that competition.

(b) Subject to subsections (c) and (d), the Secretary of Defense or the Secretary of Transportation, as the case may be, may spend such funds, and acquire and use such supplies, as he determines to be necessary to provide for—

[*See main edition for text of* (1) *to* (3)]

(c)(1) Not more than $3,000,000, to be apportioned among the military departments as the Secretary of Defense prescribes, may be spent during each successive four-year period beginning on October 1, 1980, for the participation of members of the Army, Navy, Air Force, and Marine Corps in the competitions covered by subsection (a).

(2) Not more than $100,000 may be spent during each successive four-year period beginning on October 1, 1980, for the participation of members of the Coast Guard in the competitions covered by subsection (a).

(d) Appropriations available to the Department of Defense or to the Department of Transportation, as the case may be, may be used to carry out this section.

(As amended Pub. L. 98-525, title XV, § 1534, Oct. 19, 1984, 98 Stat. 2632.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-525, § 1534(i), included qualifying events and preparatory competition.

Subsec. (a)(2). Pub. L. 98-525, § 1534(2), included qualifying events and preparatory competition.

Subsec. (b). Pub. L. 98-525, § 1534(3), deleted reference to subsec. (e).

Subsec. (c). Pub. L. 98-525, § 1534(4), (6), designated existing provisions as par. (1), substituted "$3,000,000" for "$800,000" and "October 1, 1980" for "March 14, 1955", redesignated subsec. (d) as par. (2), and substituted "October 1, 1980" for "March 14, 1955".

Subsecs. (d), (e). Pub. L. 98-525, § 1534(7), redesignated subsec. (e) as (d). Former subsec. (d) redesignated par. (2) of subsec. (c).

CHAPTER 43—RANK AND COMMAND

§ 741. Rank: commissioned officers of the armed forces

(a) Among the grades listed below, the grades of general and admiral are equivalent and are senior to other grades and the grades of second lieutenant and ensign are equivalent and are junior to other grades. Intermediate grades rank in the order listed as follows:

Army, Air Force, and Marine Corps	*Navy and Coast Guard*
General	Admiral.
Lieutenant general	Vice admiral.
Major general	Rear admiral.
Brigadier general	Rear admiral (lower half).
Colonel	Captain.
Lieutenant colonel	Commander.
Major	Lieutenant commander.
Captain	Lieutenant.
First lieutenant	Lieutenant (junior grade).
Second lieutenant	Ensign.

[*See main edition for text of* (b) *to* (d)]

(As amended Oct. 30, 1984, Pub. L. 98-557, § 25(c), 98 Stat. 2873; Nov. 8, 1985, Pub. L. 99-145, title V, § 514(b)(8), 99 Stat. 629.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 in table substituted "Rear admiral (lower half)" for "Commodore".

1984—Subsec. (a). Pub. L. 98-557 in table struck out "(Navy) and Rear admiral (upper half) (Coast Guard)" after "Rear admiral" and "(Navy) and Rear admiral (lower half) (Coast Guard)" after "Commodore".

CHAPTER 45—THE UNIFORM

§ 772. When wearing by persons not on active duty authorized

[*See main edition for text of (a) and (b)*]

(c) A retired officer of the Army, Navy, Air Force, or Marine Corps may bear the title and wear the uniform of his retired grade.

[*See main edition for text of (d) to (j)*]

(As amended Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1301(a)(1), 99 Stat. 735.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-145 struck out provisions relating to a retired officer of the Navy Nurse Corps.

CHAPTER 47—UNIFORM CODE OF MILITARY JUSTICE

Subchap.		Sec.	Art.
IX.	Post-Trial Procedure and Review of Courts-Martial	859	59

AMENDMENTS

1983—Pub. L. 98-209, § 5(h)(1), Dec. 6, 1983, 97 Stat. 1400, substituted "IX. Post-Trial Procedure and Review of Courts-Martial" for "IX. Review of Courts-Martial".

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 951, 955, 1037, 1094, 1552, 1553, 5148 of this title; title 5 sections 8312, 8313, 8331; title 18 sections 3551, 4217; title 28 section 535; title 42 sections 217, 10601; title 49 App. sections 1471, 1655; title 50 App. section 473.

SUBCHAPTER I—GENERAL PROVISIONS

§ 801. Article 1. Definitions

In this chapter:

[*See main edition for text of (1) to (12)*]

(13) "Judge advocate" means—

(A) an officer of the Judge Advocate General's Corps of the Army or the Navy;

(B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or

(C) an officer of the Coast Guard who is designated as a law specialist.

(14) "Record", when used in connection with the proceedings of a court-martial, means—

(A) an official written transcript, written summary, or other writing relating to the proceedings; or

(B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(As amended Dec. 6, 1983, Pub. L. 98-209, §§ 2(a), 6(a), 97 Stat. 1393, 1400.)

AMENDMENTS

1983—Cl. (13). Pub. L. 98-209, § 2(a), added officers of the Coast Guard who are designated as law specialists to the definition of "Judge Advocate".

Cl. (14). Pub. L. 98-209, § 6(a), added cl. (14).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 12(a) of Pub. L. 98-209 provided that:

"(1) The amendments made by this Act [see Short Title of 1983 Amendment note below] shall take effect on the first day of the eighth calendar month that begins after the date of enactment of this Act [Dec. 6, 1983], except that the amendments made by sections 9, 11 and 13 [amending sections 802, 815, 825, 867, 1552, and 1553 of this title and enacting provisions set out as a note under section 867 of this title] shall be effective on the date of the enactment of this Act. The amendments made by section 11 [amending sections 1552 and 1553 of this title] shall only apply with respect to cases filed after the date of enactment of this Act with the boards established under sections 1552 and 1553 of title 10, United States Code.

"(2) The amendments made by section 3(c) and 3(e) [amending sections 826, 827, and 838 of this title] do not affect the designation or detail of a military judge or military counsel to a court-martial before the effective date of such amendments.

"(3) The amendments made by section 4 [amending section 834 of this title] shall not apply to any case in which charges were referred to trial before the effective date of such amendments, and proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

"(4) The amendments made by sections 5, 6, and 7 [amending sections 801, 849, 854, 857, 860 to 867, 869, 871, and 876a of this title and enacting provisions set out as a note under section 869 of this title] shall not apply to any case in which the findings and sentence were adjudged by a court-martial before the effective date of such amendments. The proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

"(5) The amendments made by section 8 [enacting section 912a of this title] shall not apply to any offense committed before the effective date of such amendments. Nothing in this provision shall be construed to invalidate the prosecution of any offense committed before the effective date of such amendments."

SHORT TITLE OF 1983 AMENDMENT

Section 1(a) of Pub. L. 98-209 provided that: "This Act [enacting sections 912a of this title and section 1259 of Title 28, Judiciary and Judicial Procedure, amending sections 801, 802, 806, 815, 816, 825, 826, 827, 829, 834, 838, 842, 849, 854, 857, 860 to 867, 869, 870, 871, 876a, 936, 1552, and 1553 of this title and section 2101 of Title 28, and enacting provisions set out as notes under sections 801, 867, and 869 of this title and amending provisions set out as a note under section 706 of this title] may be cited as the 'Military Justice Act of 1983'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1044 of this title; title 42 section 665.

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§ 802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

[*See main edition for text of (1) to (10)*]

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Canal Zone, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Canal Zone, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

[*See main edition for text of (c)*]

(As amended Dec. 6, 1983, Pub. L. 98-209, § 13(a), 97 Stat. 1408.)

AMENDMENTS

1983—Subsec. (a)(11), (12). Pub. L. 98-209, § 13(a)(1), substituted "outside the Canal Zone" for "outside the following: the Canal Zone" and inserted "the Commonwealth of" before "Puerto Rico".

Subsec. (b). Pub. L. 98-209, § 13(a)(2), struck out "of this section" after "subsection (a)".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 806. Art. 6. Judge advocates and legal officers

(a) The assignment for duty of judge advocates of the Army, Navy, Air Force, and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The assignment for duty of judge advocates of the Marine Corps shall be made by direction of the Commandant of the Marine Corps. The Judge Advocate General or senior members of his staff shall make frequent inspections in the field in supervision of the administration of military justice.

[*See main edition for text of (b) and (c)*]

(As amended Dec. 6, 1983, Pub. L. 98-209, § 2(b), 97 Stat. 1393.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-209 substituted "Air Force, and" for "and Air Force and law specialists of the".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of this title.

SUBCHAPTER II—APPREHENSION AND RESTRAINT

§ 807. Art. 7. Apprehension

CROSS REFERENCES

Expenses and rewards for apprehension and delivery of deserters, prisoners, and members absent without leave, see section 956 of this title.

SUBCHAPTER III—NON-JUDICIAL PUNISHMENT

§ 815. Art. 15. Commanding officer's non-judicial punishment

[*See main edition for text of (a)*]

(b) Subject to subsection (a), any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

[*See main edition for text of (1)*]

(2) upon other personnel of his command—

[*See main edition for text of (A) to (G)*]

(H) if imposed by an officer of the grade of major or lieutenant commander, or above—

(i) the punishment authorized under clause (A);

[*See main edition for text of (ii) to (vii)*]

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, "correctional custody" is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

[*See main edition for text of (c) and (d)*]

(e) A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and

decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment. Before acting on an appeal from a punishment of—

[*See main edition for text of (1) to (7)*]

the authority who is to act on the appeal shall refer the case to a judge advocate or a lawyer of the Department of Transportation for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

[*See main edition for text of (f) and (g)*]

(As amended Dec. 6, 1983, Pub. L. 98-209, §§ 2(c), 13(b), 97 Stat. 1393, 1408.)

AMENDMENTS

1983—Pub. L. 98-209, § 13(b)(1), substituted "non-judicial" for "nonjudicial" in section catchline.

Subsec. (b). Pub. L. 98-209, § 13(b)(2)(A), struck out "of this section" after "subsection (a)" in provisions preceding par. (1).

Subsec. (b)(2)(H)(i). Pub. L. 98-209, § 13(b)(2)(B), substituted "clause (A)" for "subsection (b)(2)(A)".

Subsec. (e). Pub. L. 98-209, § 2(c), substituted "or a lawyer of the" for "of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(b) of Pub. L. 98-209 effective Dec. 6, 1983, and amendment by section 2(c) of Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of this title.

SUBCHAPTER IV—COURT-MARTIAL JURISDICTION

§ 816. Art. 16. Courts-martial classified

The three kinds of courts-martial in each of the armed forces are—

(1) general courts-martial, consisting of—

(A) a military judge and not less than five members; or

(B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

[*See main edition for text of (2) and (3)*]

(As amended Dec. 6, 1983, Pub. L. 98-209, § 3(a), 97 Stat. 1394.)

AMENDMENTS

1983—Par. (1)(B). Pub. L. 98-209 substituted "orally on the record or in writing" for "in writing".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of this title.

SUBCHAPTER V—COMPOSITION OF COURTS-MARTIAL

§ 825. Art. 25. Who may serve on courts-martial

[*See main edition for text of (a) and (b)*]

(c) [*See main edition for text of (1)*]

(2) In this article, "unit" means any regularly organized body as defined by the Secretary concerned, but in no case may it be a body larger than a company, squadron, ship's crew, or body corresponding to one of them.

[*See main edition for text of (d)*]

(e) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant.

(As amended Dec. 6, 1983, Pub. L. 98-209, §§ 3(b), 13(c), 97 Stat. 1394, 1408.)

AMENDMENTS

1983—Subsec. (c)(2). Pub. L. 98-209, § 13(c), struck out "the word" before " 'unit' ".

Subsec. (e). Pub. L. 98-209, § 3(b), added subsec. (e).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(c) of Pub. L. 98-209 effective Dec. 6, 1983, and amendment by section 3(b) of Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 826. Art. 26. Military judge of a general or special court-martial

(a) A military judge shall be detailed to each general court-martial. Subject to regulations of the Secretary concerned, a military judge may be detailed to any special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he has been detailed.

[*See main edition for text of (b)*]

(c) The military judge of a general court-martial shall be designated by the Judge Advocate General, or his designee, of the armed force of which the military judge is a member for detail in accordance with regulations prescribed under subsection (a). Unless the court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only when he is assigned and direct-

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ly responsible to the Judge Advocate General, or his designee, of the armed force of which the military judge is a member and may perform duties of a judicial or nonjudicial nature other than those relating to his primary duty as a military judge of a general court-martial when such duties are assigned to him by or with the approval of that Judge Advocate General or his designee.

[*See main edition for text of (d) and (e)*]

(As amended Dec. 6, 1983, Pub. L. 98-209, § 3(c)(1), 97 Stat. 1394.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-209, § 3(c)(1)(A), amended subsec. (a) generally, adding provision requiring the Secretary concerned to prescribe regulations providing for the manner in which military judges are detailed for courts-martial and for the persons who are authorized to detail military judges for such courts-martial.

Subsec. (c). Pub. L. 98-209, § 3(c)(1)(B), substituted "in accordance with regulations prescribed under subsection (a). Unless" for "by the convening authority, and, unless".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 827. Art. 27. Detail of trial counsel and defense counsel

(a)(1) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(2) No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial—

(1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

[*See main edition for text of (2)*]

(c) In the case of a special court-martial—

[*See main edition for text of (1) and (2)*]

(3) if the trial counsel is a judge advocate or a member of the bar of a Federal court or the highest court of a State, the defense counsel detailed by the convening authority must be one of the foregoing.

(As amended Dec. 6, 1983, Pub. L. 98-209, §§ 2(d), 3(c)(2), 97 Stat. 1393, 1394.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-209, § 3(c)(2)(A), designated first sentence of existing provisions as par. (1) and, in par. (1) as so designated, substituted provisions requiring that trial counsel and defense counsel be detailed for each general and special court-martial, and permitting the detailing of assistant trial counsel and assistant and associate defense counsel for each general and special court-martial for provisions requiring that for each general and special court-martial the authority convening the court had to detail trial counsel and defense counsel and such assistants as he considered appropriate, and added provision requiring the Secretary concerned to prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

Subsec. (a)(2). Pub. L. 98-209, § 3(c)(2)(B), designated existing provision, less the first sentence as par. (2), and, in par. (2) as so designated, substituted "assistant or associate defense counsel" for "assistant defense counsel".

Subsec. (b)(1). Pub. L. 98-209, § 2(d)(1), substituted "judge advocate" for "judge advocate of the Army, Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard,".

Subsec. (c)(3). Pub. L. 98-209, § 2(d)(2), struck out ", or a law specialist," after "is a judge advocate".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but amendment by section 3(c)(2) of Pub. L. 98-209 not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 829. Art. 29. Absent and additional members

(a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

[*See main edition for text of (b) to (d)*]

(As amended Dec. 6, 1983, Pub. L. 98-209, § 3(d), 97 Stat. 1394.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-209 substituted "unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause" for "except for physical disability or as a result of a challenge or by order of the convening authority for good cause".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective on the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of this title.

SUBCHAPTER VI—PRE-TRIAL PROCEDURE

§ 832. Art. 32. Investigation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 834, 838 of this title.

§ 834. Art. 34. Advice of staff judge advocate and reference for trial

(a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate for consideration and advice. The convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that—

(1) the specification alleges an offense under this chapter;

(2) the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report); and

(3) a court-martial would have jurisdiction over the accused and the offense.

(b) The advice of the staff judge advocate under subsection (a) with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate—

(1) expressing his conclusions with respect to each matter set forth in subsection (a); and

(2) recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the staff judge advocate shall accompany the specification.

(c) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

(As amended Dec. 6, 1983, Pub. L. 98-209, § 4, 97 Stat. 1395.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-209, § 4(a), substituted "judge advocate" for "judge advocate or legal officer", and provisions that the convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that the specification alleges an offense under this chapter, the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report), and a court-martial would have jurisdiction over the accused and the offense, for provision that the convening authority could not refer a charge to a general court-martial for trial unless he found that the charge alleged an offense under this chapter and was warranted by evidence indicated in the report of investigation.

Subsecs. (b), (c). Pub. L. 98-209, § 4(b), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which charges were referred to trial before that date, and proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (3) of Pub. L. 98-209, set out as a note under section 801 of this title.

SUBCHAPTER VII—TRIAL PROCEDURE

§ 836. Art. 36. President may prescribe rules

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 839, 906a of this title.

§ 838. Art. 38. Duties of trial counsel and defense counsel

[*See main edition for text of* (a)]

(b) [*See main edition for text of* (1) *to* (5)]

(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel, in his sole discretion—

[*See main edition for text of* (A) *and* (B)]

(7) The Secretary concerned shall, by regulation, define "reasonably available" for the purpose of paragraph (3)(B) and establish procedures for determining whether the military counsel selected by an accused under that paragraph is reasonably available. Such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member. To the maximum extent practicable, such regulations shall establish uniform policies among the armed forces while recognizing the differences in the circumstances and needs of the various armed forces. The Secretary concerned shall submit copies of regulations prescribed under this paragraph to the Committees on Armed Services of the Senate and House of Representatives.

(c) In any court-martial proceeding resulting in a conviction, the defense counsel—

(1) may forward the attachment to the record of proceedings a brief of such matters as he determines should be considered in behalf of the accused on review (including any objection to the contents of the record which he considers appropriate);

(2) may assist the accused in the submission of any matter under section 860 of this title (article 60); and

(3) may take other action authorized by this chapter.

[*See main edition for text of* (d) *and* (e)]

(As amended Dec. 6, 1983, Pub. L. 98-209, § 3(e), 97 Stat. 1394.)

AMENDMENTS

1983—Subsec. (b)(6). Pub. L. 98-209, § 3(e)(1), substituted "the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel" for "a convening authority".

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Subsec. (b)(7). Pub. L. 98-209, § 3(e)(2), added provision that such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member.

Subsec. (c). Pub. L. 98-209, § 3(e)(3), designated existing provisions as par. (1), in par. (1) made minor changes in phraseology and punctuation, and added pars. (2) and (3).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month after Dec. 6, 1983, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 842. Art. 42. Oaths

(a) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary concerned. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate or other person is detailed to that duty.

[*See main edition for text of* (b)]

(As amended Dec. 6, 1983, Pub. L. 98-209, §§ 2(e), 3(f), 97 Stat. 1393, 1395.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-209 struck out ", law specialist," after "judge advocate" in two places, substituted "assistant or associate defense counsel" for "assistant defense counsel".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 849. Art. 49. Depositions

[*See main edition for text of* (a) *to* (c)]

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or military board, if it appears—

[*See main edition for text of* (1) *to* (3); (e)]

(f) Subject to subsection (d), a deposition may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence in any case in which the death penalty is authorized but is not mandatory, whenever the convening authority directs that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court-martial.

(As amended Dec. 6, 1983, Pub. L. 98-209, § 6(b), 97 Stat. 1400.)

AMENDMENTS

1983—Subsecs. (d), (f). Pub. L. 98-209 inserted "or, in the case of audiotape, videotape, or similar material, may be played in evidence" after "read in evidence".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective on the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 854. Art. 54. Record of trial

(a) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner required by such regulations as the President may prescribe.

(c)(1) A complete record of the proceedings and testimony shall be prepared—

(A) in each general court-martial case in which the sentence adjudged includes death, a dismissal, a discharge, or (if the sentence adjudged does not include a discharge) any other punishment which exceeds that which may otherwise be adjudged by a special court-martial; and

(B) in each special court-martial case in which the sentence adjudged includes a bad-conduct discharge.

(2) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations of the President.

(d) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

(As amended Dec. 6, 1983, Pub. L. 98-209, § 6(c), 97 Stat. 1400.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-209, § 6(c)(1), struck out provision that if the proceedings had resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which could otherwise be adjudged by a special court-martial, the record had to contain such matters as might be prescribed by regulations of the President.

Subsec. (b). Pub. L. 98-209, § 6(c)(2), substituted "the record" for "the record shall contain the matter and".

Subsecs. (c), (d). Pub. L. 98-209, § 6(c)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

SUBCHAPTER VIII—SENTENCES

§ 857. Art. 57. Effective date of sentences

(a) No forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title (article 60(c)).

[*See main edition for text of (b) to (d)*]

(As amended Dec. 6, 1983, Pub. L. 98-209, § 5(f), 97 Stat. 1400.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-209 substituted provision that no forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title, for provision that whenever a sentence of a court-martial as lawfully adjudged and approved included a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture could apply to pay or allowances becoming due on or after the date the sentence was approved by the convening authority, and that no forfeiture could extend to any pay or allowances accrued before that date.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 858. Art. 58. Execution of confinement

CROSS REFERENCES

Gratuity payment to persons released from confinement or discharged for fraudulent enlistment, see sections 956 and 1048 of this title.

SUBCHAPTER IX—POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

Sec. Art.

860. 60. Action by the convening authority.
861. 61. Waiver or withdrawal of appeal.
862. 62. Appeal by the United States.
864. 64. Review by a judge advocate.
865. 65. Disposition of records.

AMENDMENTS

1983—Pub. L. 98-209, §§ 5(a)(2), (b)(2), (c)(2), (h)(2), 6(d)(2), 7(a)(2), Dec. 6, 1983, 97 Stat. 1397, 1398, 1400-1402, substituted "Post-trial Procedure and Review of Courts-Martial" for "Review of Courts-Martial" in subchapter heading, "Action by the convening authority" for "Initial action on the record" in item 860, "Waiver or withdrawal of appeal" for "Same—General court-martial records" in item 861, "Appeal by the United States" for "Reconsideration and revision" in item 862, "Review by a judge advocate" for "Approval by the convening authority" in item 864, and "Disposition of records" for "Disposition of records after review by the convening authority" in item 865.

§ 860. Art. 60. Action by the convening authority

(a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(b)(1) Within 30 days after the sentence of a general court-martial or of a special court-martial which has adjudged a bad-conduct discharge has been announced, the accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. In the case of all other special courts-martial, the accused may make such a submission to the convening authority within 20 days after the sentence is announced. In the case of all summary courts-martial the accused may make such a submission to the convening authority within seven days after the sentence is announced. If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the period—

(A) in the case of a general court-martial or a special court-martial which has adjudged a bad-conduct discharge, for not more than an additional 20 days; and

(B) in the case of all other courts-martial, for not more than an additional 10 days.

(2) In a summary court-martial case the accused shall be promptly provided a copy of the record of trial for use in preparing a submission authorized by paragraph (1).

(3) In no event shall the accused in any general or special court-martial case have less than a seven-day period after the day on which a copy of the authenticated record of trial has been given to him within which to make a submission under paragraph (1). The convening authority or other person taking action on the case, for good cause, may extend this period for up to an additional 10 days.

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(4) The accused may waive his right to make a submission to the convening authority under paragraph (1). Such a waiver must be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

(c)(1) The authority under this section to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. Under regulations of the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(2) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this section. Subject to regulations of the Secretary concerned, such action may be taken only after consideration of any matters submitted by the accused under subsection (b) and, if applicable, under subsection (d), or after the time for submitting such matters expires, whichever is earlier. The convening authority or other person taking such action, in his sole discretion, may approve, disapprove, commute, or suspend the sentence in whole or in part.

(3) Action on the findings of a court-martial by the convening authority or other person acting on the sentence is not required. However, such person, in his sole discretion, may—

(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

(B) change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

(d) Before acting under this section on any general court-martial case or any special court-martial case that includes a bad-conduct discharge, the convening authority or other person taking action under this section shall obtain and consider the written recommendation of his staff judge advocate or legal officer. The convening authority or other person taking action under this section shall refer the record of trial to his staff judge advocate or legal officer, and the staff judge advocate or legal officer shall use such record in the preparation of his recommendation. The recommendation of the staff judge advocate or legal officer shall include such matters as the President may prescribe by regulation and shall be served on the accused, who shall have five days from the date of receipt in which to submit any matter in response. The convening authority or other person taking action under this section, for good cause, may extend that period for up to an additional 20 days. Failure to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object thereto.

(e)(1) The convening authority or other person taking action under this section, in his sole discretion, may order a proceeding in revision or a rehearing.

(2) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision—

(A) reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(B) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter; or

(C) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority or other person taking action under this section if he disapproves the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence.

(As amended Dec. 6, 1983, Pub. L. 98-209, § 5(a)(1), 97 Stat. 1395.)

AMENDMENTS

1983—Pub. L. 98-209 amended section generally, substituting "Action by the convening authority" for "Initial action on the record" as section catchline, and, in text, substituting new provision for provision that after a trial by court-martial the record had to be forwarded to the convening authority, and action thereon could be taken by the person who convened the court, a commissioned officer commanding for the time being, a succussor in command, or any officer exercising general court-martial jurisdiction.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 838, 857, 861, 864, 869, 871, 876a of this title.

§ 861. Art. 61. Waiver or withdrawal of appeal

(a) In each case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a)), except a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may file with the convening authority a statement expressly waiving the right of the accused

to such review. Such a waiver shall be signed by both the accused and by defense counsel and must be filed within 10 days after the action under section 860(c) of this title (article 60(c)) is served on the accused or on defense counsel. The convening authority or other person taking such action, for good cause, may extend the period for such filing by not more than 30 days.

(b) Except in a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may withdraw an appeal at any time.

(c) A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 866 or 869(a) of this title (article 66 or 69(a)).

(As amended Dec. 6, 1983, Pub. L. 98-209, § 5(b)(1), 97 Stat. 1397.)

AMENDMENTS

1983—Pub. L. 98-209 amended section generally, substituting "Waiver or withdrawal of appeal" for "Same—General court-martial records" as section catchline, and, in text, substituting provisions relating to waiver or withdrawal of appeal for provisions relating to initial action by the convening authority on general court-martial records.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 865, 866, 869, 871 of this title.

§ 862. Art. 62. Appeal by the United States

(a)(1) In a trial by court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal an order or ruling of the military judge which terminates the proceedings with respect to a charge or specification or which excludes evidence that is substantial proof of a fact material in the proceeding. However, the United States may not appeal an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and (if the order or ruling appealed is one which excludes evidence) that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) An appeal under this section shall be diligently prosecuted by appellate Government counsel.

(b) An appeal under this section shall be forwarded by a means prescribed under regulations of the President directly to the Court of Military Review and shall, whenever practicable, have priority over all other proceedings before that court. In ruling on an appeal under this section, the Court of Military Review may act only with respect to matters of law, notwithstanding section 866(c) of this title (article 66(c)).

(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

(As amended Dec. 6, 1983, Pub. L. 98-209, § 5(c)(1), 97 Stat. 1398.)

AMENDMENTS

1983—Pub. L. 98-209 amended section generally, substituting "Appeal by the United States" for "Reconsideration and revision" in the section catchline, and, in text, substituting provisions relating to appeals by the United States for provisions relating to the convening authority returning the record to the court for reconsideration and appropriate action.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 863. Art. 63. Rehearings

Each rehearing under this chapter shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-matial.

(As amended Dec. 6, 1983, Pub. L. 98-209, § 5(d), 97 Stat. 1398.)

AMENDMENTS

1983—Pub. L. 98-209 struck out subsec. (a), which provided that if the convening authority disapproved the findings and sentence of a court-martial he could, except where there was lack of sufficient evidence in the record to support the findings, order a rehearing, stating the reasons for disapproval, and that if he dis-

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approved the findings without reordering a rehearing, he had to dismiss the charges, and redesignated former subsec. (b) as entire section, and, as so redesignated, inserted "under this chapter" after "Each rehearing", and added provision that if the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 864. Art. 64. Review by a judge advocate

(a) Each case in which there has been a finding of guilty that is not reviewed under section 866 or 869(a) of this title (article 66 or 69(a)) shall be reviewed by a judge advocate under regulations of the Secretary concerned. A judge advocate may not review a case under this subsection if he has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The judge advocate's review shall be in writing and shall contain the following:

(1) Conclusions as to whether—

(A) the court had jurisdiction over the accused and the offense;

(B) the charge and specification stated an offense; and

(C) the sentence was within the limits prescribed as a matter of law.

(2) A response to each allegation of error made in writing by the accused.

(3) If the case is sent for action under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) The record of trial and related documents in each case reviewed under subsection (a) shall be sent for action to the person exercising general court-martial jurisdiction over the accused at the time the court was convened (or to that person's successor in command) if—

(1) the judge advocate who reviewed the case recommends corrective action;

(2) the sentence approved under section 860(c) of this title (article 60(c)) extends to dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six months; or

(3) such action is otherwise required by regulations of the Secretary concerned.

(c)(1) The person to whom the record of trial and related documents are sent under subsection (b) may—

(A) disapprove or approve the findings or sentence, in whole or in part;

(B) remit, commute, or suspend the sentence in whole or in part;

(C) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or

(D) dismiss the charges.

(2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, he shall dismiss the charges.

(3) If the opinion of the judge advocate in the judge advocate's review under subsection (a) is that corrective action is required as a matter of law and if the person required to take action under subsection (b) does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the Judge Advocate General for review under section 869(b) of this title (article 69(b)).

(As amended Dec. 6, 1983, Pub. L. 98-209, § 7(a)(1), 97 Stat. 1401.)

AMENDMENTS

1983—Pub. L. 98-209 amended section generally, substituting "Review by a judge advocate" for "Approval by the convening authority" in section catchline, and, in text, substituting provisions relating to review by a judge advocate for provision that in acting on the findings and sentence of a court-martial, the convening authority could approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he found correct in law and fact and as he in his discretion determined should be approved, and that unless he indicated otherwise, approval of the sentence was approval of the findings and sentence.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 871 of this title.

§ 865. Art. 65. Disposition of records

(a) In a case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a)) in which the right to such review is not waived, or an appeal is not withdrawn, under section 861 of this title (article 61), the record of trial and action thereon shall be transmitted to the Judge Advocate General for appropriate action.

(b) Except as otherwise required by this chapter, all other records of trial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

(As amended Dec. 6, 1983, Pub. L. 98-209, § 6(d)(1), 97 Stat. 1401.)

AMENDMENTS

1983—Pub. L. 98-209 amended section generally, substituting "Disposition of records" for "Disposition of

records after review by the convening authority" in section catchline, and, in text, substituting provisions relating to disposition of records for prior provisions relating to disposition of records that required when the convening authority had taken final action in a general court-martial case, he had to send the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General, required that where sentences of special courts-martial included a bad-conduct discharge, the record had to be sent for review either to the officer exercising general court-martial jurisdiction over the command to be reviewed or directly to the appropriate Judge Advocate General to be reviewed by a Court of Military Review, and required that all other special and summary court-martial records had to be reviewed by a judge advocate of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or Department of Transportation, and had to be transmitted and disposed of as the Secretary concerned might prescribe by regulation.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 866. Art. 66. Review by Court of Military Review

(a) Each Judge Advocate General shall establish a Court of Military Review which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole in accordance with rules prescribed under subsection (f). Any decision of a panel may be reconsidered by the court sitting as a whole in accordance with such rules. Appellate military judges who are assigned to a Court of Military Review may be commissioned officers or civilians, each of whom must be a member of a bar of a Federal court or of the highest court of a State. The Judge Advocate General shall designate as chief judge one of the appellate military judges of the Court of Military Review established by him. The chief judge shall determine on which panels of the court the appellate judges assigned to the court will serve and which military judge assigned to the court will act as the senior judge on each panel.

(b) The Judge Advocate General shall refer to a Court of Military Review the record in each case of trial by court-martial—

(1) in which the sentence, as approved, extends to death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable or bad-conduct discharge, or confinement for one year or more; and

(2) except in the case of a sentence extending to death, the right to appellate review has not been waived or an appeal has not been withdrawn under section 861 of this title (article 61).

[*See main edition for text of (c) and (d)*]

(e) The Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, the Court of Military Appeals, or the Supreme Court, instruct the convening authority to take action in accordance with the decision of the Court of Military Review. If the Court of Military Review has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

[*See main edition for text of (f) to (h)*]

(As amended Dec. 6, 1983, Pub. L. 98-209, §§ 7(b), (c), 10(c)(1), 97 Stat. 1402, 1406.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-209, § 7(b), added provision that any decision of a panel may be reconsidered by the court sitting as a whole in accordance with the rules.

Subsec. (b). Pub. L. 98-209, § 7(c), amended subsec. (b) generally, designating existing provisions as par. (1), in par. (1) as so designated, struck out provision extending applicability of provisions to sentences affecting a general or flag officer, and added par. (2).

Subsec. (e). Pub. L. 98-209, § 10(c)(1), substituted "the Court of Military Appeals, or the Supreme Court" for "or the Court of Military Appeals".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but amendments by section 7(b), (c) of Pub. L. 98-209 not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 707, 861, 862, 864, 865, 869 of this title.

§ 867. Art. 67. Review by the Court of Military Appeals

(a) [*See main edition for text of (1) and (2)*]

(3) If a judge of the United States Court of Military Appeals is temporarily unable to perform his duties because of illness or other disability, the President may designate a judge of the United States Court of Appeals for the District of Columbia Circuit to fill the office for the period of disability.

[*See main edition for text of (4)*]

(b) The Court of Military Appeals shall review the record in—

(1) all cases in which the sentence, as affirmed by a Court of Military Review, extends to death;

[*See main edition for text of (2) and (3); (c) to (f)*]

(g)(1) A committee consisting of the judges of the Court of Military Appeals, the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, the Director, Judge Advocate Division, Headquarters, United States Marine Corps, and two members of the public appointed by the Secretary of Defense shall meet at least annually.

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The committee shall make an annual comprehensive survey of the operation of this chapter. After each such survey, the committee shall report to the Committees on Armed Services of the Senate and of the House of Representatives and to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Transportation, the number and status of pending cases and any recommendations relating to uniformity of policies as to sentences, amendments to this chapter, and any other matters considered appropriate.

(2) Each member of the committee appointed by the Secretary of Defense shall be a recognized authority in military justice or criminal law. Each such member shall be appointed for a term of three years.

(3) The Federal Advisory Committee Act (5 U.S.C. App. I) shall not apply to the committee.

(h)(1) Decisions of the Court of Military Appeals are subject to review by the Supreme Court by writ of certiorari as provided in section 1259 of title 28. The Supreme Court may not review by a writ of certiorari under such section any action of the Court of Military Appeals in refusing to grant a petition for review.

(2) The accused may petition the Supreme Court for a writ of certiorari without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

(As amended Dec. 6, 1983, Pub. L. 98-209, §§ 7(d), 9(a), 10(c)(2), 13(d), 97 Stat. 1402, 1404, 1406, 1408.)

REFERENCES IN TEXT

The Federal Advisory Committee Act (5 U.S.C. App. I), referred to in subsec. (g)(3), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1983—Subsec. (a)(3). Pub. L. 98-209, § 13(d), inserted "Circuit" after "District of Columbia".

Subsec. (b)(1). Pub. L. 98-209, § 7(d), struck out "affects a general or flag officer or" before "extends to death".

Subsec. (g). Pub. L. 98-209, § 9(a), designated existing provisions as par. (1), and, in par. (1) as so redesignated, substituted "A committee consisting of the judges of the Court of Military Appeals, the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, the Director, Judge Advocate Division, Headquarters, United States Marine Corps, and two members of the public appointed by the Secretary of Defense shall meet at least annually. The committee shall make an annual comprehensive survey of the operation of this chapter. After each such survey, the committee shall report" for "The Court of Military Appeals and the Judge Advocates General shall meet annually to make a comprehensive survey of the operation of this chapter and report", and added pars. (2) and (3).

Subsec. (h). Pub. L. 98-209, § 10(c)(2), added subsec. (h).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 9(a) and 13(d) Pub. L. 98-209 effective Dec. 6, 1983, and amended by sections 7(d) and 10(c)(2) of Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but amendment by section 7(d) of Pub. L. 98-209 not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

COMMISSION TO STUDY AND MAKE RECOMMENDATIONS CONCERNING SENTENCING AUTHORITY, JURISDICTION, TENURE, AND RETIREMENT OF MILITARY JUDGES; ESTABLISHMENT; COMPOSITION; REPORT TO CONGRESSIONAL COMMITTEES

Section 9(b) of Pub. L. 98-209, as amended by Pub. L. 98-525, title XV, § 1521, Oct. 19, 1984, 98 Stat. 2628, provided that:

"(1) The Secretary of Defense shall establish a commission to study and make recommendations concerning the following matters:

"(A) Whether the sentencing authority in court-martial cases should be exercised by a military judge in all noncapital cases to which a military judge has been detailed.

"(B) Whether military judges and the Courts of Military Review should have the power to suspend sentences.

"(C) Whether the jurisdiction of the special court-martial should be expanded to permit adjudgment of sentences including confinement of up to one year, and what, if any, changes should be made to current appellate jurisdiction.

"(D) Whether military judges, including those presiding at special and general courts-martial and those sitting on the Courts of Military Review, should have tenure.

"(E) What should be the elements of a fair and equitable retirement system for the judges of the United States Court of Military Appeals.

"(2) The commission shall consist of nine members, at least three of whom shall be persons from private life who are recognized authorities in military justice or criminal law.

"(3) The commission shall prepare a comprehensive report in support of its recommendations on the matters set forth in paragraph (1). The commission shall include in such report its findings and comments on the following matters:

"(A) The experience in the civilian sector with jury sentencing and judge-alone sentencing, with particular reference to consistency, uniformity, sentence appropriateness, efficiency in the sentencing process, and impact on the rights of the accused.

"(B) The potential impact of mandatory judge-alone sentencing on the Armed Forces, with particular reference to consistency, uniformity, sentence appropriateness, efficiency in the sentencing process, impact on the rights of the accused, effect on the participation of members of the Armed Forces in the military justice system, impact on relationships between judge advocates and other members of the Armed Forces, and impact on the perception of the military justice system by members of the Armed Forces, the legal profession, and the general public.

"(C) The likelihood of a reduction in the number of general court-martial cases in the event the confinement jurisdiction of the special court-martial is expanded; the additional protections that should be afforded the accused if such jurisdiction is expanded; whether the minimum number of members prescribed by law for a special court-martial should be increased; and whether the appellate review process should be modified so that a greater number of cases receive review by the military appellate courts, in lieu of legal reviews presently conducted in the offices of the Judge Advocates General and elsewhere, especially if the commission determines that the special court-martial jurisdiction should be expanded.

"(D) The effectiveness of the present systems for maintaining the independence of military judges

and what, if any, changes are needed in these systems to ensure maintenance of an independent military judiciary, including a term of tenure for such judges consistent with efficient management of military judicial resources.

"(4) The commission shall transmit its report to the Committees on Armed Services of the Senate and the House of Representatives and to the committee established under section 867(g) (article 67(g)) of title 10, United States Code, not later than December 15, 1984. Not later than the first day of the third calendary month that begins after receipt of such report, the committee established under section 867(g) (article 67(g)) of such title shall submit such comments on the report as it considers appropriate to the Committees on Armed Services of the Senate and the House of Representatives and to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Transportation.

"(5) The Secretary of Defense shall ensure that the commission is provided with appropriate and adequate office space, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

"(6) The Secretary shall ensure that the commission has reasonable access to information relevant to the study."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 707, 869 of this title; title 5 section 8337; title 28 section 1259.

§ 869. Art. 69. Review in the office of the Judge Advocate General

(a) The record of trial in each general court-martial that is not otherwise reviewed under section 866 of this title (article 66) shall be examined in the office of the Judge Advocate General if there is a finding of guilty and the accused does not waive or withdraw his right to appellate review under section 861 of this title (article 61). If any part of the findings or sentence is found to be unsupported in law or if reassessment of the sentence is appropiate, the Judge Advocate General may modify or set aside the findings or sentence or both. If the Judge Advocate General so directs, the record shall be reviewed by a Court of Military Review under section 866 of this title (article 66), but in that event there may be no further review by the Court of Military Appeals except under section 867(b)(2) of this title (article 67(b)(2)).

(b) The findings or sentence, or both, in a court-martial case not reviewed under subsection (a) or under section 866 of this title (article 66) may be modified or set aside, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such a case is considered upon application of the accused, the application must be filed in the office of the Judge Advocate General by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under section 860(c) of this title (article 60(c)), unless the accused establishes good cause for failure to file within that time.

(c) If the Judge Advocate General sets aside the findings or sentence, he may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismisseed. If the Judge Advocate General orders a rehearing but the convening authority finds a rehearing impractical, the convening authority shall dismiss the charges.

(As amended Dec. 6, 1983, Pub. L. 98-209, § 7(e)(1), 97 Stat. 1402.)

AMENDMENTS

1983—Pub. L. 98-209 amended section generally. Prior to amendment section provided that every record of trial by general court-martial, in which there had been a finding of guilty and a sentence, the appellate review of which was not otherwise provided for by section 866 of this title, was to be examined in the office of the Judge Advocate General; that if any part of the findings or sentence was found unsupported in law, or if the Judge Advocate General so directed, the record was to be reviewed by a board of review in accordance with section 866 of this title, but in that event there could be no further review by the Court of Military Appeals except under section 867(b)(2) of this title, that notwithstanding section 876 of this title, the findings or sentence, or both, in a court-martial case which had been finally reviewed, but had not been reviewed by a Court of Military Review could be vacated or modified, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused; and that when such a case was considered upon application of the accused, the application had to be filed in the Office of the Judge Advocate General by the accused before: (1) October 1, 1983, or (2) the last day of the two-year period beginning on the date the sentence was approved by the convening authority or, in a special court-martial case which required action under section 865(b) of this title, the officer exercising general court-martial jurisdiction, whichever was later, unless the accused established good cause for failure to file within that time.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

TWO-YEAR PERIOD FOR APPLICATIONS FOR MODIFICATION OR SET-ASIDE INAPPLICABLE TO APPLICATIONS FILED ON OR BEFORE OCTOBER 1, 1983

Section 7(e)(2) of Pub. L. 98-209 provided that: "The two-year period specified under the second sentence of section 869(b) (article 69(b)) of title 10, United States Code, as amended by paragraph (1), does not apply to any application filed in the office of the appropriate Judge Advocate General (as defined in section 801(1) of such title) on or before October 1, 1983. The application in such a case shall be considered in the same manner and with the same effect as if such two-year period had not been enacted."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 861, 864, 865 of this title.

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§ 870. Art. 70. Appellate counsel

[See main edition for text of (a)]

(b) Appellate Government counsel shall represent the United States before the Court of Military Review or the Court of Military Appeals when directed to do so by the Judge Advocate General. Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

(c) Appellate defense counsel shall represent the accused before the Court of Military Review, the Court of Military Appeals, or the Supreme Court—

(1) when requested by the accused;

(2) when the United States is represented by counsel; or

(3) when the Judge Advocate General has sent the case to the Court of Military Appeals.

(d) The accused has the right to be represented before the Court of Military Review, the Court of Military Appeals, or the Supreme Court by civilian counsel if provided by him.

[See main edition for text of (e)]

(As amended Dec. 6, 1983, Pub. L. 98-209, § 10(c)(3), 97 Stat. 1406.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-209, § 10(c)(3)(A), added provision that Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

Subsecs. (c), (d). Pub. L. 98-209, § 10(c)(3)(B), amended subsecs. (c) and (d) generally, adding references to the Supreme Court.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 871. Art. 71. Execution of sentence; suspension of sentence

(a) If the sentence of the court-martial extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit. That part of the sentence providing for death may not be suspended.

(b) If in the case of a commissioned officer, cadet, or midshipman, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned. In such a case, the Secretary, Under Secretary, or Assistant Secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as he sees fit. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(c)(1) If a sentence extends to death, dismissal, or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn, under section 861 of this title (article 61), that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death or dismissal, approval under subsection (a) or (b), as appropriate). A judgment as to legality of the proceedings is final in such cases when review is completed by a Court of Military Review and—

(A) the time for the accused to file a petition for review by the Court of Military Appeals has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court;

(B) such a petition is rejected by the Court of Military Appeals; or

(C) review is completed in accordance with the judgment of the Court of Military Appeals and—

(i) a petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

(ii) such a petition is rejected by the Supreme Court; or

(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

(2) If a sentence extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is waived, or an appeal is withdrawn, under section 861 of this title (article 61), that part of the sentence extending to dismissal or a bad-conduct or dishonorable discharge may not be executed until review of the case by a judge advocate (and any action on that review) under section 864 of this title (article 64) is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under section 860 of this title (article 60) when approved by him under that section.

(d) The convening authority or other person acting on the case under section 860 of this title (article 60) may suspend the execution of any sentence or part therof, except a death sentence.

(As amended Dec. 6, 1983, Pub. L. 98-209, § 5(e), 97 Stat. 1399.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-209, § 5(e)(1), amended subsec. (a) generally, substituting provision that part of the court-martial sentence extending to death may not be executed without Presidential approval, and granting the President authority to commute, remit, or suspend the sentence, except that a death sentence may not be suspended, for provision that no sentence extending to death or involving a general or flag officer could be executed without Presidential approval, and authorizing the President to approve the sentence

or any part, amount, or commuted form thereof, and suspend the execution of the sentence or any part thereof, except a death sentence.

Subsec. (b). Pub. L. 98-209, § 5(e)(2), substituted provision that where a court-martial sentence extends to dismissal of a commissioned officer, cadet, or midshipman, the dismissal may not be executed without approval by the Secretary concerned, or Under Secretary or Assistant Secretary designated by him, and authorizing such official to commute, remit, or suspend the sentence, or any part thereof, for provision that no dismissal of a commissioned officer (other than a general or flag officer), cadet or midshipman may be executed without such approval, and that such official could approve the sentence or such part, amount, or commuted form the sentence as he saw fit, and could suspend the execution of any part of the sentence.

Subsec. (c). Pub. L. 98-209, § 5(e)(3), amended subsec. (c) generally. Prior to amendment subsec. (c) read: "No sentence which includes, unsuspended, a dishonorable or bad-conduct discharge, or confinement for one year or more, may be executed until affirmed by a Court of Military Review and, in cases reviewed by it, the Court of Military Appeals."

Subsec. (d). Pub. L. 98-209, § 5(e)(3), amended subsec. (d) generally. Prior to amendment subsec. (d) read: "All other court-martial sentences, unless suspended or deferred, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

§ 876a. Art. 76a. Leave required to be taken pending review of certain court-martial convictions

Under regulations prescribed by the Secretary concerned, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this subchapter if the sentence, as approved under section 860 of this title (article 60), includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date on which the sentence is approved under section 860 of this title (article 60) or at any time after such date, and such leave may be continued until the date on which action under this subchapter is completed or may be terminated at any earlier time.

(As amended Pub. L. 98-209, § 5(g), Dec. 6, 1983, 97 Stat. 1400.)

AMENDMENTS

1983—Pub. L. 98-209 substituted "under section 860 of this title (article 60)" for "under section 864 or 865 of this title (article 64 or 65) by the officer exercising general court-martial jurisdiction" and "by the officer exercising general court-martial jurisdiction", respectively.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98-209, set out as a note under section 801 of this title.

EFFECTIVE DATE

Section to take effect at the end of the 60-day period beginning on Nov. 20, 1981, to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98-209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a) and (b)(1) of Pub. L. 97-81, set out as a note under section 706 of this title.

SUBCHAPTER X—PUNITIVE ARTICLES

Sec. Art.
906a. 106a. Espionage.
912a. 112a. Wrongful use, possession, etc., of controlled substances.

AMENDMENTS

1985—Pub. L. 99-145, title V, § 534(b), Nov. 8, 1985, 99 Stat. 635, added item 906a.

1983—Pub. L. 98-209, § 8(b), Dec. 6, 1983, 97 Stat. 1404, added item 912a.

§ 906a. Art. 106a. Espionage

(a)(1) Any person subject to this chapter who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any entity described in paragraph (2), either directly or indirectly, anything described in paragraph (3) shall be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns (A) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (B) war plans, (C) communications intelligence or cryptographic information, or (D) any other major weapons system or major element of defense strategy, the accused shall be punished by death or such other punishment as a court-martial may direct.

(2) An entity referred to in paragraph (1) is—

(A) a foreign government;

(B) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or

(C) a representative, officer, agent, employee, subject, or citizen of such a government, faction, party, or force.

(3) A thing referred to in paragraph (1) is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense.

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(b)(1) No person may be sentenced by court-martial to suffer death for an offense under this section (article) unless—

(A) the members of the court-martial unanimously find at least one of the aggravating factors set out in subsection (c); and

(B) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out in subsection (c).

(2) Findings under this subsection may be based on—

(A) evidence introduced on the issue of guilt or innocence;

(B) evidence introduced during the sentencing proceeding; or

(C) all such evidence.

(3) The accused shall be given broad latitude to present matters in extenuation and mitigation.

(c) A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

(1) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute.

(2) In the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security.

(3) In the commission of the offense, the accused knowingly created a grave risk of death to another person.

(4) Any other factor that may be prescribed by the President by regulations under section 836 of this title (article 36).

(Added Pub. L. 99-145, title V, § 534(a), Nov. 8, 1985, 99 Stat. 634.)

§ 912a. Art. 112a. Wrongful use, possession, etc., of controlled substances

(a) Any person subject to this chapter who wrongfully uses, possesses, manufacturers, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces a substance described in subsection (b) shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

(2) Any substance not specified in clause (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of this article.

(3) Any other substance not specified in clause (1) or contained on a list prescribed by the President under clause (2) that is listed in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(Added Pub. L. 98-209, § 8(a), Dec. 6, 1983, 97 Stat. 1403.)

Effective Date

Section effective the first day of the eighth calendar month beginning after Dec. 6, 1983, but not applicable to any offense committed before that date and not to be construed to invalidate the prosecution of any offense committed before that date, see section 12(a)(1), (5) of Pub. L. 98-209, set out as an Effective Date of 1983 Amendment note under section 801 of this title.

SUBCHAPTER XI—MISCELLANEOUS PROVISIONS

§ 936. Art. 136. Authority to administer oaths and to act as notary

(a) The following persons on active duty may administer oaths for the purposes of military administration, including military justice, and have the general powers of a notary public and of a consul of the United States, in the performance of all notarial acts to be executed by members of any of the armed forces, wherever they may be, by persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands, and by other persons subject to this chapter outside of the United States:

(1) All judge advocates.

(2) All summary courts-martial.

(3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(4) All commanding officers of the Navy, Marine Corps, and Coast Guard.

(5) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.

(6) All other persons designated by regulations of the armed forces or by statute.

[(7) Redesignated (6)]

[See main edition for text of (b) to (d)]

(As amended Dec. 6, 1983, Pub. L. 98-209, § 2(f), 97 Stat. 1393.)

Amendments

1983—Subsec. (a)(1). Pub. L. 98-209, § 2(f)(1), struck out "of the Army, Navy, Air Force, and Marine Corps" after "All judge advocates".

Subsec. (a)(2) to (7). Pub. L. 98-209, § 2(f)(2), struck out par. (2), which had included law specialists among those persons authorized to administer oaths and to act as notaries under this section, and redesignated pars. (3) to (7) as (2) to (6), respectively.

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-209 effective the first day of the eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98-209, set out as a note under section 801 of this title.

CHAPTER 48—MILITARY CORRECTIONAL FACILITIES

Sec.
956. Deserters, prisoners, members absent without leave: expenses and rewards.

Amendments

1984—Pub. L. 98-525, title XIV, § 1401(b)(2), Oct. 19, 1984, 98 Stat. 2615, added item 956.

§ 956. Deserters, prisoners, members absent without leave: expenses and rewards

Funds appropriated to the Department of Defense may be used for the following purposes:

(1) Expenses for the apprehension and delivery of deserters, prisoners, and members absent without leave, including the payment of rewards, in an amount not to exceed $75, for the apprehension of any such person.

(2) Expenses of prisoners confined in nonmilitary facilities.

(3) Payment of a gratuity of not to exceed $25 to each prisoner upon release from confinement in a military or contract prison facility.

(4) The issue of authorized articles to prisoners and other persons in military custody.

(5) Under such regulations as the Secretary concerned may prescribe, expenses incident to the maintenance, pay, and allowances of prisoners of war, other persons in the custody of the Army, Navy, or Air Force whose status is determined by the Secretary concerned to be similar to prisoners of war, and persons detained in the custody of the Army, Navy, or Air Force pursuant to Presidential proclamation.

(Added Pub. L. 98-525, title XIV, § 1401(b)(1), Oct. 19, 1984, 98 Stat. 2614.)

PRIOR PROVISIONS

Provisions similar to those comprising pars. (1) to (5) of this section were contained in the following prior appropriation acts, with the exception of the provisions similar to par. (2) which last appeared in the act of July 2, 1942:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8006], 98 Stat. 1904, 1923.
Dec. 8, 1983, Pub. L. 98-212, title VII, §§ 706, 709, 97 Stat. 1437, 1439.
Dec. 21, 1982, Pub. L. 97-377, title I, § 101(c) [title VII, §§ 706, 709], 96 Stat. 1833, 1850, 1851.
Dec. 29, 1981, Pub. L. 97-114, title VII, §§ 706, 709, 95 Stat. 1578, 1579.
Dec. 15, 1980, Pub. L. 96-527, title VII, §§ 706, 709, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96-154, title VII, §§ 706, 709, 93 Stat. 1152, 1153.
Oct. 13, 1978, Pub. L. 95-457, title VIII, §§ 806, 809, 92 Stat. 1243, 1244.
Sept. 21, 1977, Pub. L. 95-111, title VIII, §§ 805, 808, 91 Stat. 899, 900.
Sept. 22, 1976, Pub. L. 94-419, title VII, §§ 705, 708, 90 Stat. 1291, 1292.
Feb. 9, 1976, Pub. L. 94-212, title VII, §§ 705, 708, 90 Stat. 168, 169.
Oct. 8, 1974, Pub. L. 93-437, title VIII, §§ 805, 808, 88 Stat. 1224, 1225.
Jan. 2, 1974, Pub. L. 93-238, title VII, §§ 705, 708, 87 Stat. 1038, 1039.
Oct. 26, 1972, Pub. L. 92-570, title VII, §§ 705, 708, 86 Stat. 1196, 1197.
Dec. 18, 1971, Pub. L. 92-204, title VII, §§ 705, 708, 85 Stat. 727, 728.
Jan. 11, 1971, Pub. L. 91-668, title VIII, §§ 805, 808, 84 Stat. 2030, 2031.
Dec. 29, 1969, Pub. L. 91-171, title VI, §§ 605, 608, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90-580, title V, §§ 504, 507, 82 Stat. 1129, 1130.
Sept. 29, 1967, Pub. L. 90-96, title VI, §§ 604, 607, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89-687, title VI, §§ 604, 607, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89-213, title VI, §§ 604, 607, 79 Stat. 873, 874.
Aug. 19, 1964, Pub. L. 88-446, title V, §§ 504, 507, 78 Stat. 474, 475.
Oct. 17, 1963, Pub. L. 88-149, title V, §§ 504, 507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87-577, title I, § 101, title V, §§ 504, 507, 76 Stat. 318, 328.
Aug. 17, 1961, Pub. L. 87-144, title I, § 101, title II, § 201, title VI, §§ 604, 607, 75 Stat. 365-369, 375, 376.
July 7, 1960, Pub. L. 86-601, title I, § 101, title II, § 201, title V, §§ 504, 507, 74 Stat. 338-340, 342, 350.
Aug. 18, 1959, Pub. L. 86-166, title I, § 101, title II, § 201, title V, §§ 604, 607, 73 Stat. 366-368, 370, 378, 379.
Aug. 22, 1958, Pub. L. 85-724, title III, § 301, title V, § 501, title VI, § 604, 72 Stat. 713, 714, 721, 722, 723.
Aug. 2, 1957, Pub. L. 85-117, title III, § 301, title V, § 501, title VI, § 604, 71 Stat. 313, 314, 321, 323.
July 2, 1956, ch. 488, title III, § 301, title V, § 501, title VI, § 604, 70 Stat. 456, 457, 464, 465, 467.
July 13, 1955, ch. 358, title III, § 301, title V, § 501, title VI, § 606, 69 Stat. 303, 304, 312, 313, 315.
June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, title VII, § 706, 68 Stat. 338, 339, 347, 348, 350.
Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, title VI, § 610, 67 Stat. 338, 339, 348, 350.
July 10, 1952, ch. 630, title III, § 301, title V, § 501, title VI, § 612, 66 Stat. 519, 520, 530, 532.
Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, title VI, § 612, 65 Stat. 426, 429, 443, 446.
Sept. 6, 1950, ch. 896, ch. X, title III, § 301, title V, § 501, title VI, § 614, 64 Stat. 732, 735, 750, 753.
Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, title VI, § 616, 63 Stat. 990-992, 1015, 1020.
June 24, 1948, ch. 632, §§ 1, 11, 62 Stat. 653, 655, 669.
July 30, 1947, ch. 357, title I, §§ 1, 12, 61 Stat. 555, 557, 572.
July 16, 1946, ch. 583, §§ 1, 13, 60 Stat. 546-548, 565.
July 3, 1945, ch. 265, §§ 1, 15, 59 Stat. 388-390, 406.
June 28, 1944, ch. 303, §§ 1, 15, 58 Stat. 578, 580, 595.
July 1, 1943, ch. 185, §§ 1, 15, 57 Stat. 352, 354, 369.
July 2, 1942, ch. 477, §§ 1, 14, 56 Stat. 615, 617, 633.
Dec. 17, 1941, ch. 591, title I, § 103, 55 Stat. 813.
June 30, 1941, ch. 262, § 1, 55 Stat. 371, 373.
June 13, 1940, ch. 343, § 1, 54 Stat. 357-359.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 598, 600.
June 11, 1938, ch. 34, § 1, 52 Stat. 648, 649.
July 1, 1937, ch. 423, § 1, 50 Stat. 448, 450.
May 15, 1936, ch. 404, § 1, title I, 49 Stat. 1284, 1286.
Apr. 9, 1935, ch. 54, § 1, title I, 49 Stat. 127, 128.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 619, 621.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1575, 1577.
July 14, 1932, ch. 482, title I, 47 Stat. 668, 670, 671.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1281-1284.
May 28, 1930, ch. 348, title I, 46 Stat. 436, 438.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1354, 1356.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 330, 332.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1110, 1113.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 259, 262.
Feb. 12, 1925, ch. 225, title I, 43 Stat. 900.

Provisions similar to those comprising par. (5) of this section were contained in Pub. L. 98-212, title VII, § 706, Dec. 8, 1983, 97 Stat. 1437, which was set out as a note under section 138 of this title, and was repealed by Pub. L. 98-525, title XIV, §§ 1403(a)(1), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

CROSS REFERENCES

Expenses for apprehension and delivery of deserters, stragglers, and prisoners of the Navy, see section 7214 of this title.

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CHAPTER 49—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
979. Prohibition on loan and grant assistance to persons convicted of certain crimes.
980. Limitation on use of humans as experimental subjects.
981. Limitation on number of enlisted aides.

AMENDMENTS

1984—Pub. L. 98-525, title XIV, § 1401(c)(2), Oct. 19, 1984, 98 Stat. 2615, added items 979 to 981.

§ 971. Service credit: officers may not count enlisted service performed while serving as cadet or midshipman

[*See main edition for text of* (a)]

(b) In computing length of service for any purpose—

(1) no officer of the Navy or Marine Corps may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy, if he was appointed as a midshipman or cadet after March 4, 1913;

(2) no commissioned officer of the Army or Air Force may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy, if he was appointed as a midshipman or cadet after August 24, 1912; and

(3) no officer of the Coast Guard may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy.

(As amended Pub. L. 98-557, § 17(a), Oct. 30, 1984, 98 Stat. 2867.)

AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98-557 added par. (3).

§ 973. Duties: officers on active duty; performance of civil functions restricted

[*See main edition for text of* (a)]

(b)(1) This subsection applies—

(A) to a regular officer of an armed force on the active-duty list (and a regular officer of the Coast Guard on the active duty promotion list);

(B) to a retired regular officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 180 days; and

(C) to a reserve officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 180 days.

(2)(A) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold, or exercise the functions of, a civil office in the Government of the United States—

(i) that is an elective office;

(ii) that requires an appointment by the President by and with the advice and consent of the Senate; or

(iii) that is a position in the Executive Schedule under sections 5312 through 5317 of title 5.

(B) An officer to whom this subsection applies may hold or exercise the functions of a civil office in the Government of the United States that is not described in subparagraph (A) when assigned or detailed to that office or to perform those functions.

(3) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold or exercise, by election or appointment, the functions of a civil office in the government of a State, the District of Columbia, or a territory, possession, or commonwealth of the United States (or of any political subdivision of any such government).

(4) Nothing in this subsection shall be construed to invalidate any action undertaken by an officer in furtherance of assigned official duties.

(c) The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating in the Navy, shall prescribe regulations to implement this section.

(As amended Pub. L. 98-94, title X, § 1002(a), Sept. 24, 1983, 97 Stat. 655.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-94 amended subsec. (b) generally. Prior to amendment subsec. (b) provided that, except as otherwise provided by law, no regular officer of an armed force on active duty could hold a civil office by election or appointment, whether under the United States, a Territory or possession, or a State, and that acceptance of such a civil office or the exercise of its functions by such an officer terminated his military appointment.

Subsec. (c). Pub. L. 98-94 added subsec. (c).

CONSTRUCTION AND APPLICABILITY OF SECTION 973(b)

Section 1002(b), (c) of Pub. L. 98-94 provided that:

"(b) Nothing in section 973(b) of title 10, United States Code, as in effect before the date of the enactment of this Act [Sept. 24, 1983], shall be construed—

"(1) to invalidate any action undertaken by an officer of an Armed Force in furtherance of assigned official duties; or

"(2) to have terminated the military appointment of an officer of an Armed Force by reason of the acceptance of a civil office, or the exercise of its functions, by that officer in furtherance of assigned official duties.

"(c) Nothing in section 973(b)(3) of title 10, United States Code, as added by subsection (a), shall preclude a Reserve office to whom such section applies from holding or exercising the functions of an office described in such section for the term to which the Reserve officer was elected or appointed if, before the date of the enactment of this Act [Sept. 24, 1983], the Reserve officer accepted appointment or election to that office in accordance with the laws and regulations in effect at the time of such appointment or election."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3017, 5036, 8917 of this title; title 40 section 758; title 44 section 2105.

§ 976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited

(a) In this section:

(1) "Member of the armed forces" means (A) a member of the armed forces who is serving on active duty,,[1] (B) a member of the National Guard who is serving on full-time National Guard duty, or (C) a member of a Reserve component while performing inactive-duty training.

[See main edition for text of (2) and (3); (b) to (g)]

(As amended Pub. L. 98-525, title IV, § 414(a)(6), Oct. 19, 1984, 98 Stat. 2519.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-525 added cl. (B) and redesignated existing cl. (B) as (C).

§ 979. Prohibition on loan and grant assistance to persons convicted of certain crimes

Funds appropriated to the Department of Defense may not be used to provide a loan, a guarantee of a loan, or a grant to any person who has been convicted by a court of general jurisdiction of any crime which involves the use of (or assisting others in the use of) force, trespass, or the seizure of property under the control of an institution of higher education to prevent officials or students of the institution from engaging in their duties or pursuing their studies.

(Added Pub. L. 98-525, title XIV, § 1401(c)(1), Oct. 19, 1984, 98 Stat. 2615.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Pub. L. 98-473, title I, § 101(h) [title VIII, § 8027], Oct. 12, 1984, 98 Stat. 1904, 1928.

Pub. L. 98-212, title VII, § 732, Dec. 8, 1983, 97 Stat. 1444.

Pub. L. 97-377, title I, § 101(c) [title VII, § 735], Dec. 21, 1982, 96 Stat. 1833, 1856.

Pub. L. 97-114, title VII, § 736, Dec. 29, 1981, 95 Stat. 1585.

Pub. L. 96-527, title VII, § 737, Dec. 15, 1980, 94 Stat. 3087.

Pub. L. 96-154, title VII, § 739, Dec. 21, 1979, 93 Stat. 1159.

Pub. L. 95-457, title VIII, § 839, Oct. 13, 1978, 92 Stat. 1250.

Pub. L. 95-111, title VIII, § 838, Sept. 21, 1977, 91 Stat. 906.

Pub. L. 94-419, title VII, § 737, Sept. 22, 1976, 90 Stat. 1297.

Pub. L. 94-212, title VII, § 737, Feb. 9, 1976, 90 Stat. 175.

Pub. L. 93-437, title VIII, § 838, Oct. 8, 1974, 88 Stat. 1231.

Pub. L. 93-238, title VII, § 740, Jan. 2, 1974, 87 Stat. 1045.

Pub. L. 92-570, title VII, § 740, Oct. 26, 1972, 86 Stat. 1203.

Pub. L. 92-204, title VII, § 741, Dec. 18, 1971, 85 Stat. 734.

Pub. L. 91-668, title VIII, § 841, Jan. 11, 1971, 84 Stat. 2037.

Pub. L. 91-171, title VI, § 641, Dec. 29, 1969, 83 Stat. 486.

Pub. L. 90-580, title V, § 540, Oct. 17, 1968, 82 Stat. 1136.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

§ 980. Limitation on use of humans as experimental subjects

Funds appropriated to the Department of Defense may not be used for research involving a human being as an experimental subject unless—

(1) the informed consent of the subject is obtained in advance; or

(2) in the case of research intended to be beneficial to the subject, the informed consent of the subject or a legal representative of the subject is obtained in advance.

(Added Pub. L. 98-525, title XIV, § 1401(c)(1), Oct. 19, 1984, 98 Stat. 2615.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Pub. L. 98-473, title I, § 101(h) [title VIII, § 8029], Oct. 12, 1984, 98 Stat. 1904, 1929.

Pub. L. 98-212, title VII, § 734, Dec. 8, 1983, 97 Stat. 1444.

Pub. L. 97-377, title I, § 101(c) [title VII, § 737], Dec. 21, 1982, 96 Stat. 1833, 1857.

Pub. L. 97-114, title VII, § 738, Dec. 29, 1981, 95 Stat. 1585.

Pub. L. 96-527, title VII, § 739, Dec. 15, 1980, 94 Stat. 3088.

Pub. L. 96-154, title VII, § 741, Dec. 21, 1979, 93 Stat. 1159.

Pub. L. 95-457, title VIII, § 841, Oct. 13, 1978, 92 Stat. 1251.

Pub. L. 95-111, title VIII, § 840, Sept. 21, 1977, 91 Stat. 906.

Pub. L. 94-419, title VII, § 739, Sept. 22, 1976, 90 Stat. 1297.

Pub. L. 94-212, title VII, § 740, Feb. 9, 1976, 90 Stat. 175.

Pub. L. 93-437, title VIII, § 841, Oct. 8, 1974, 88 Stat. 1231.

Pub. L. 93-238, title VII, § 743, Jan. 2, 1974, 87 Stat. 1045.

Pub. L. 92-570, title VII, § 745, Oct. 26, 1972, 86 Stat. 1203.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

§ 981. Limitation on number of enlisted aides

(a) Subject to subsection (b), the total number of enlisted members that may be assigned or otherwise detailed to duty as enlisted aides on the personal staffs of officers of the Army, Navy, Marine Corps, Air Force, and Coast Guard (when operating as a service of the Navy) during a fiscal year is the number equal to the sum of (1) four times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of general or admiral, and (2) two times the number of of-

[1] So in original.

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ficers serving on active duty at the end of the preceding fiscal year in the grade of lieutenant general or vice admiral.

(b) Not more than 300 enlisted members may be assigned to duty at any time as enlisted aides for officers of the Army, Navy, Air Force, and Marine Corps.

(Added Pub. L. 98-525, title XIV, § 1401(c)(1), Oct. 19, 1984, 98 Stat. 2615.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (a) of this section were contained in Pub. L. 94-106, title VIII, § 820(a), Oct. 7, 1975, 89 Stat. 544, which was repealed by Pub. L. 98-525, title XIV, §§ 1403(c), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985.

Provisions similar to those comprising subsec. (b) of this section were contained in the following prior appropriation acts:

Pub. L. 98-473, title I, § 101(h) [title VIII, § 8034], Oct. 12, 1984, 98 Stat. 1904, 1930.

Pub. L. 98-212, title VII, § 742, Dec. 8, 1983, 97 Stat. 1446.

Pub. L. 97-377, title I, § 101(c) [title VII, § 745], Dec. 21, 1982, 96 Stat. 1833, 1858.

Pub. L. 97-114, title VII, § 746, Dec. 29, 1981, 95 Stat. 1586.

Pub. L. 96-527, title VII, § 747, Dec. 15, 1980, 94 Stat. 3089.

Pub. L. 96-154, title VII, § 748, Dec. 21, 1979, 93 Stat. 1160.

Pub. L. 95-457, title VIII, § 848, Oct. 13, 1978, 92 Stat. 1252.

Pub. L. 95-111, title VIII, § 849, Sept. 21, 1977, 91 Stat. 908.

Pub. L. 94-419, title VII, § 748, Sept. 22, 1976, 90 Stat. 1299.

Pub. L. 94-212, title VII, § 745, Feb. 9, 1976, 90 Stat. 175.

Pub. L. 93-437, title VIII, § 848, Oct. 8, 1974, 88 Stat. 1232.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

CHAPTER 51—RESERVE COMPONENTS: STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION

§ 1005. Commissioned officers: retention until completion of required service

(a) Except as provided in subsection (b), a reserve commissioned officer who has not completed the period of service required of him by section 651 of this title or any other provision of law may not be discharged or transferred from an active status under chapter 337, 361, 363, 573, 837, 861, or 863 of this title or chapter 21 of title 14. Unless, under regulations prescribed by the Secretary concerned, he is promoted to a higher reserve grade, he shall be retained in an active status in his reserve grade for the rest of his period of required service and shall be an additional number to the authorized strength of his grade.

(b) Subsection (a) does not prevent the discharge or transfer from an active status of—

(1) a commissioned warrant officer; or

(2) an officer on the active-duty list who is found not qualified for promotion to the grade of first lieutenant, in the case of an officer of the Army, Air Force, or Marine Corps, or lieutenant (junior grade), in the case of an officer of the Navy.

(As amended Pub. L. 98-525, title V, § 528(a), Oct. 19, 1984, 98 Stat. 2525.)

AMENDMENTS

1984—Pub. L. 98-525 substituted "(a) Except as provided in subsection (b), a reserve commissioned officer" for "A reserve commissioned officer, other than a commissioned warrant officer,", struck out the comma before "may", and added subsec. (b).

CHAPTER 53—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
1034. Communicating with a Member of Congress.
1043. Service credit: service in the National Oceanic and Atmospheric Administration or the Public Health Service.
1044. Legal assistance.
1045. Voluntary withholding of State income tax from retired or retainer pay.
1046. Preseparation counseling requirement.
1047. Allowance for civilian clothing.
1048. Gratuity payment to persons discharged for fraudulent enlistment.
1049. Subsistence: miscellaneous persons.
1050. Latin American cooperation: payment of personnel expenses.

AMENDMENTS

1985—Pub. L. 99-145, title XIII, § 1303(a)(6), Nov. 8, 1985, 99 Stat. 739, substituted "Atmospheric" for "Atomospheric" in item 1043.

1984—Pub. L. 98-525, title VI, §§ 651(b), 654(b), title VII, § 708(a)(2), title XIV, §§ 1401(d)(2), 1405(19)(B)(ii), Oct. 19, 1984, 98 Stat. 2549, 2552, 2572, 2616, 2623, added items 1044 to 1050 and substituted "Member" for "member" in item 1034.

1983—Pub. L. 98-94, title X, § 1007(b)(2), Sept. 24, 1983, 97 Stat. 662, added item 1043.

§ 1034. Communicating with a Member of Congress

No person may restrict any member of an armed force in communicating with a Member of Congress, unless the communication is unlawful or violates a regulation necessary to the security of the United States.

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(19)(A), (B)(i), 98 Stat. 2622.)

AMENDMENTS

1984—Pub. L. 98-525 substituted "Member" for "member" in section catchline and text.

§ 1035. Deposits of savings

[*See main edition for text of* (a)]

(b) Interest at a rate prescribed by the President, not to exceed 10 percent a year, will accrue on amounts deposited under this section. However, the maximum amount upon which interest may be paid under this subsection to any member is $10,000, except that such limitation shall not apply to deposits made on or after September 1, 1966, in the case of those members in a missing status, as defined in section 551(2) of title 37, during the Vietnam conflict. Interest under this subsection shall terminate 90 days after the member's return to the United States or its possessions. For purposes of this subsection, the Vietnam conflict begins

on February 28, 1961, and ends on the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam.

[*See main edition for text of (c) to (e)*]

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(20), 98 Stat. 2623.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-525 substituted "percent" for "per centum", "subsection" for "Act" after "paid under this", and "90" for "ninety".

§ 1036. Escorts for dependents of members: transportation and travel allowances

Under regulations to be prescribed by the Secretary concerned, round trip transportation and travel allowances may be paid to any person for travel performed or to be performed under competent orders as an escort for dependents of a member of the armed forces, if the travel is performed not later than one year after the member—

(1) dies;

(2) is missing; or

(3) is otherwise unable to accompany his dependents;

and it has been determined that travel by the dependents is necessary and that they are incapable of traveling alone because of age, mental or physical incapacity, or other extraordinary circumstances. Such allowances may be paid in advance.

(As amended Pub. L. 98-94, title IX, § 913(a), Sept. 24, 1983, 97 Stat. 640.)

AMENDMENTS

1983—Pub. L. 98-94 added sentence allowing the payment of allowances in advance.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 913(c) of Pub. L. 98-94 provided that: "The amendments made by subsections (a) and (b) [amending sections 1036 and 1040 of this title] shall apply to travel performed by escorts or attendants of dependents on or after the date of the enactment of this Act [Sept. 24, 1983]."

§ 1037. Counsel before foreign judicial tribunals and administrative agencies; court costs and bail

(a) Under regulations to be prescribed by him, the Secretary concerned may employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation, before the judicial tribunals and administrative agencies of any foreign nation, of persons subject to the Uniform Code of Military Justice and of persons not subject to the Uniform Code of Military Justice who are employed by or accompanying the armed forces in an area outside the United States and the territories and possessions of the United States, the Northern Mariana Islands, and the Commonwealth of Puerto Rico. So far as practicable, these regulations shall be uniform for all armed forces.

[*See main edition for text of (b) and (c)*]

(As amended Pub. L. 99-145, title VI, § 681(a), Nov. 8, 1985, 99 Stat. 667.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 provided for payment of expenses for legal representation of civilians overseas.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 681(b) of Pub. L. 99-145 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to costs incurred after September 30, 1985."

§ 1040. Transportation of dependent patients

(a) Except as provided in subsection (b), if a dependent accompanying a member of the uniformed services who is stationed outside the United States or in Alaska or Hawaii and who is on active duty for a period of more than 30 days requires medical attention which is not available in the locality, transportation of the dependents at the expense of the United States is authorized to the nearest appropriate medical facility in which adequate medical care is available. On his recovery or when it is administratively determined that the patient should be removed from the medical facility involved, the dependent may be transported at the expense of the United States to the duty station of the member or to such other place determined to be appropriate under the circumstances. If a dependent is unable to travel unattended, round-trip transportation and travel expenses may be furnished necessary attendants, and such expenses may be paid in advance.

[*See main edition for text of (b) to (d)*]

(As amended Pub. L. 98-94, title IX, § 913(b), Sept. 24, 1983, 97 Stat. 640; Pub. L. 98-525, title VI, § 611, title XIV, § 1405(21), Oct. 19, 1984, 98 Stat. 2538, 2623.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-525, § 1405(21), substituted "30" for "thirty".

Pub. L. 98-525, § 611, made provisions of section applicable to a dependent accompanying a member of the uniformed services stationed in Alaska or Hawaii.

1983—Subsec. (a). Pub. L. 98-94 added ", and such expenses may be paid in advance" after "attendants".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 611 of Pub. L. 98-525 provided in part that the amendment of this section by section 611 of Pub. L. 98-525 is effective Oct. 1, 1984.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 applicable to travel performed by escorts or attendants of dependents on or after Sept. 24, 1983, see section 913(c) of Pub. L. 98-94, set out as a note under section 1036 of this title.

§ 1042. Copy of certificate of service

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1042	31:483b.	June 19, 1956, ch. 409, 70 Stat. 297.

The words "armed forces" are substituted for "Army, Navy, Air Force, Marine Corps, or Coast

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Guard" because of 10:101(4). The words "honorably or" are added for consistency with 10:1040.

§ 1043. Service credit: service in the National Oceanic and Atmospheric Administration or the Public Health Service

Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active commissioned service in the armed forces for purposes of determining the retirement eligibility and computing the retired pay of a member of the armed forces.

(Added Pub. L. 98-94, title X, § 1007(b)(1), Sept. 24, 1983, 97 Stat. 662.)

§ 1044. Legal assistance

(a) Subject to the availability of legal staff resources, the Secretary concerned may provide legal assistance in connection with their personal civil legal affairs to—

(1) members of the armed forces under his jurisdiction who are on active duty;

(2) members and former members under his jurisdiction entitled to retired or retainer pay or equivalent pay; and

(3) dependents of members and former members described in clauses (1) and (2).

(b) Under such regulations as may be prescribed by the Secretary concerned, the Judge Advocate General (as defined in section 801(1) of this title) under the jurisdiction of the Secretary is responsible for the establishment and supervision of legal assistance programs under this section.

(c) This section does not authorize legal counsel to be provided to represent a member or former member of the armed forces, or the dependent of a member or former member, in a legal proceeding if the member or former member can afford legal fees for such representation without undue hardship.

(d) The Secretary concerned shall define "dependent" for the purposes of this section.

(Added Pub. L. 98-525, title VI, § 651(a), Oct. 19, 1984, 98 Stat. 2549.)

§ 1045. Voluntary withholding of State income tax from retired or retainer pay

(a) The Secretary concerned shall enter into an agreement under this section with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Secretary concerned shall withhold State income tax from the monthly retired or retainer pay of any member or former member entitled to such pay who voluntarily requests such withholding in writing. The amounts withheld during any calendar quarter shall be retained by the Secretary concerned and disbursed to the States during the month following that calendar quarter.

(b) A member or former member may request that the State designated for withholding be changed and that the withholdings be remitted in accordance with such change. A member or former member also may revoke any request of such member or former member for withholding. Any request for a change in the State designated and any revocation is effective on the first day of the month after the month in which the request or revocation is processed by the Secretary concerned, but in no event later than on the first day of the second month beginning after the day on which the request or revocation is received by the Secretary concerned.

(c) A member or former member may have in effect at any time only one request for withholding under this section and may not have more than two such requests in effect during any one calendar year.

(d)(1) This section does not give the consent of the United States to the application of a statute that imposes more burdensome requirements on the United States than on employers generally or that subjects the United States or any member or former member entitled to retired or retainer pay to a penalty or liability because of this section.

(2) The Secretary concerned may not accept pay from a State for services performed in withholding State income taxes from retired or retainer pay.

(3) Any amount erroneously withheld from retired or retainer pay and paid to a State by the Secretary concerned shall be repaid by the State in accordance with regulations prescribed by the Secretary concerned.

(e) In this section:

(1) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(2) "Secretary concerned" includes the Secretary of Health and Human Services with respect to the commissioned corps of the Public Health Service and the Secretary of Commerce with respect to the commissioned corps of the National Oceanic and Atmospheric Administration.

(Added Pub. L. 98-525, title VI, § 654(a), Oct. 19, 1984, 98 Stat. 2551.)

§ 1046. Preseparation counseling requirement

Upon the discharge or release from active duty of a member of the armed forces, the Secretary concerned shall provide for individual counseling of that member. That counseling shall include a discussion of the educational assistance benefits to which the member is entitled because of the member's service in the armed forces and an explanation of the procedures for and advantages of affiliating with the Selected Reserve. A notation of the provision of such counseling, signed by the member, shall be placed in the service record of each member receiving such counseling.

(Added Pub. L. 98-525, title VII, § 708(a)(1), Oct. 19, 1984, 98 Stat. 2572.)

EFFECTIVE DATE

Section 708(b) of Pub. L. 98-525 provided that: "Section 1046 of title 10, United States Code, as added by subsection (a), shall take effect on July 1, 1985."

§ 1047. Allowance for civilian clothing

The Secretary of the military department concerned may furnish civilian clothing, at a cost of not more than $40, to an enlisted member who is—

(1) discharged for misconduct or unsuitability or under conditions other than honorable;

(2) sentenced by a civil court to confinement in a prison;

(3) interned or discharged as an alien enemy; or

(4) discharged before completion of recruit training under honorable conditions for dependency, hardship, minority, or disability or for the convenience of the Government.

(Added Pub. L. 98-525, title XIV, § 1401(d)(1), Oct. 19, 1984, 98 Stat. 2615.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8024], 98 Stat. 1904, 1928.
Dec. 8, 1983, Pub. L. 98-212, title VII, § 727, 97 Stat. 1443.
Dec. 21, 1982, Pub. L. 97-377, title I, § 101(c) [title VII, § 730], 96 Stat. 1833, 1855.
Dec. 29, 1981, Pub. L. 97-114, title VII, § 730, 95 Stat. 1584.
Dec. 15, 1980, Pub. L. 96-527, title VII, § 731, 94 Stat. 3086.
Dec. 21, 1979, Pub. L. 96-154, title VII, § 731, 93 Stat. 1157.
Oct. 13, 1978, Pub. L. 95-457, title VIII, § 831, 92 Stat. 1249.
Sept. 21, 1977, Pub. L. 95-111, title VIII, § 830, 91 Stat. 905.
Sept. 22, 1976, Pub. L. 94-419, title VII, § 730, 90 Stat. 1296.
Feb. 9, 1976, Pub. L. 94-212, title VII, § 730, 90 Stat. 173.
Oct. 8, 1974, Pub. L. 93-437, title VIII, § 831, 88 Stat. 1230.
Jan. 2, 1974, Pub. L. 93-238, title VII, § 732, 87 Stat. 1044.
Oct. 26, 1972, Pub. L. 92-570, title VII, § 732, 86 Stat. 1201.
Dec. 18, 1971, Pub. L. 92-204, title VII, § 733, 85 Stat. 733.
Jan. 11, 1971, Pub. L. 91-668, title VIII, § 833, 84 Stat. 2036.
Dec. 29, 1969, Pub. L. 91-171, title VI, § 633, 83 Stat. 485.
Oct. 17, 1968, Pub. L. 90-580, title V, § 532, 82 Stat. 1135.
Sept. 29, 1967, Pub. L. 90-96, title VI, § 632, 81 Stat. 247.
Oct. 15, 1966, Pub. L. 89-687, title VI, § 633, 80 Stat. 998.
Sept. 29, 1965, Pub. L. 89-213, title VI, § 633, 79 Stat. 879.
Aug. 19, 1964, Pub. L. 88-446, title V, § 533, 78 Stat. 480.
Oct. 17, 1963, Pub. L. 88-149, title V, § 533, 77 Stat. 269.
Aug. 9, 1962, Pub. L. 87-577, title V, § 534, 76 Stat. 333.
Aug. 17, 1961, Pub. L. 87-144, title VI, § 634, 75 Stat. 381.
July 7, 1960, Pub. L. 86-601, title II, § 201, 74 Stat. 340-342.
Aug. 18, 1959, Pub. L. 86-166, title II, § 201, 73 Stat. 368-370.
Aug. 22, 1958, Pub. L. 85-724, title III, § 301, title IV, § 401, title V, § 501, 72 Stat. 714, 717, 721.
Aug. 2, 1957, Pub. L. 85-117, title III, § 301, title IV, § 401, title V, § 501, 71 Stat. 314, 316, 321.
July 2, 1956, ch. 488, title III, § 301, title IV, § 401, title V, § 501, 70 Stat. 457, 459, 464.
July 13, 1955, ch. 358, title III, § 301, title IV, § 401, title V, § 501, 69 Stat. 304, 306, 312.
June 30, 1954, ch. 432, title IV, § 401, title V, § 501, title VI, § 601, 68 Stat. 339, 342, 347.
Aug. 1, 1953, ch. 305, title III, § 301, title IV, § 401, title V, § 501, 67 Stat. 339, 342, 348.
July 10, 1952, ch. 630, title III, § 301, title IV, § 401, title V, § 501, 66 Stat. 520, 524, 529.
Oct. 18, 1951, ch. 512, title III, § 301, title IV, § 401, title V, § 501, 65 Stat. 429, 437, 443.
Sept. 6, 1950, ch. 896, ch. X, title III, § 301, title IV, § 401, title V, § 501, 64 Stat. 735, 743, 749.
Oct. 29, 1949, ch. 787, title III, § 301, title IV, § 401, title V, § 501, 63 Stat. 993, 1006, 1014.
June 24, 1948, ch. 632, 62 Stat. 655.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 557.
July 16, 1946, ch. 583, § 1, 60 Stat. 548.
July 3, 1945, ch. 265, § 1, 59 Stat. 391.
June 28, 1944, ch. 303, § 1, 58 Stat. 580.
July 1, 1943, ch. 187, § 1, 57 Stat. 354.
July 2, 1942, ch. 477, § 1, 56 Stat. 617.
June 30, 1941, ch. 262, § 1, 55 Stat. 373.
June 13, 1940, ch. 343, § 1, 54 Stat. 359.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 600.
June 11, 1938, ch. 34, § 1, 52 Stat. 650.
July 1, 1937, ch. 423, § 1, 50 Stat. 450.
May 15, 1936, ch. 404, § 1, title I, 49 Stat. 1286.
Apr. 9, 1935, ch. 54, § 1, title I, 49 Stat. 129.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 622.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1577.
July 14, 1932, ch. 482, title I, 47 Stat. 671.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1284.
May 28, 1930, ch. 348, title I, 46 Stat. 438.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1356.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 332.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1113.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 262.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

§ 1048. Gratuity payment to persons discharged for fraudulent enlistment

The Secretary concerned may pay a gratuity of not to exceed $25 to a person discharged for fraudulent enlistment.

(Added Pub. L. 98-525, title XIV, § 1401(d)(1), Oct. 19, 1984, 98 Stat. 2616.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8006], 98 Stat. 1904, 1923.
Dec. 8, 1983, Pub. L. 98-212, title VII, § 709, 97 Stat. 1439.
Dec. 21, 1982, Pub. L. 97-377, title I, § 101(c) [title VII, § 709], 96 Stat. 1833, 1851.
Dec. 29, 1981, Pub. L. 97-114, title VII, § 709, 95 Stat. 1579.
Dec. 15, 1980, Pub. L. 96-527, title VII, § 709, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96-154, title VII, § 709, 93 Stat. 1153.
Oct. 13, 1978, Pub. L. 95-457, title VIII, § 809, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95-111, title VIII, § 808, 91 Stat. 900.
Sept. 22, 1976, Pub. L. 94-419, title VII, § 708, 90 Stat. 1292.

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Feb. 9, 1976, Pub. L. 94-212, title VII, § 708, 90 Stat. 169.
Oct. 8, 1974, Pub. L. 93-437, title VIII, § 808, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93-238, title VII, § 708, 87 Stat. 1039.
Oct. 26, 1972, Pub. L. 92-570, title VII, § 708, 86 Stat. 1197.
Dec. 18, 1971, Pub. L. 92-204, title VII, § 708, 85 Stat. 728.
Jan. 11, 1971, Pub. L. 91-668, title VIII, § 808, 84 Stat. 2031.
Dec. 29, 1969, Pub. L. 91-171, title VI, § 608, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90-580, title V, § 507, 82 Stat. 1130.
Sept. 29, 1967, Pub. L. 90-96, title VI, § 607, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89-687, title VI, § 607, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89-213, title VI, § 607, 79 Stat. 874.
Aug. 19, 1964, Pub. L. 88-446, title V, § 507, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88-149, title V, § 507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87-577, title V, § 507, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87-144, title VI, § 607, 75 Stat. 376.
July 7, 1960, Pub. L. 86-601, title V, § 507, 74 Stat. 350.
Aug. 18, 1959, Pub. L. 86-166, title V, § 607, 73 Stat. 379.
Aug. 22, 1958, Pub. L. 85-724, title III, § 301, title V, § 501, 72 Stat. 713, 722.
Aug. 2, 1957, Pub. L. 85-117, title III, § 301, title V, § 501, 71 Stat. 313, 321.
July 2, 1956, ch. 488, title III, § 301, title V, § 501, 70 Stat. 456, 465.
July 13, 1955, ch. 358, title III, § 301, title V, § 501, 69 Stat. 303, 313.
June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, 68 Stat. 339, 348.
Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 338, 348.
July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 519, 530.
Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 426, 443.
Sept. 6, 1950, ch. 896, ch. X, title III, § 301, title V, § 501, 64 Stat. 732, 750.
Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, 63 Stat. 991, 1015.
June 24, 1948, ch. 632, 62 Stat. 653.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 555.
July 16, 1946, ch. 583, § 1, 60 Stat. 546.
July 3, 1945, ch. 265, § 1, 59 Stat. 389.
June 28, 1944, ch. 303, § 1, 58 Stat. 578.
July 1, 1943, ch. 185, § 1, 57 Stat. 352.
July 2, 1942, ch. 477, § 1, 56 Stat. 615.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

§ 1049. Subsistence: miscellaneous persons

The following persons may be provided subsistence at the expense of the United States:

(1) Enlisted members while sick in hospitals.

(2) Applicants for enlistment and selective service registrants called for induction.

(3) Prisoners.

(4) Civilian employees, as authorized by law.

(5) Supernumeraries, when necessitated by emergent military circumstances.

(Added Pub. L. 98-525, title XIV, § 1401(d)(1), Oct. 19, 1984, 98 Stat. 2616.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8006], 98 Stat. 1904, 1923.
Dec. 8, 1983, Pub. L. 98-212, title VII, § 709, 97 Stat. 1439.
Dec. 21, 1982, Pub. L. 97-377, title I, § 101(c) [title VII, § 709], 96 Stat. 1833, 1851.
Dec. 29, 1981, Pub. L. 97-114, title VII, § 709, 95 Stat. 1579.
Dec. 15, 1980, Pub. L. 96-527, title VII, § 709, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96-154, title VII, § 709, 93 Stat. 1153.
Oct. 13, 1978, Pub. L. 95-457, title VIII, § 809, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95-111, title VIII, § 808, 91 Stat. 900.
Sept. 22, 1976, Pub. L. 94-419, title VII, § 708, 90 Stat. 1292.
Feb. 9, 1976, Pub. L. 94-212, title VII, § 708, 90 Stat. 169.
Oct. 8, 1974, Pub. L. 93-437, title VIII, § 808, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93-238, title VII, § 708, 87 Stat. 1039.
Oct. 26, 1972, Pub. L. 92-570, title VII, § 708, 86 Stat. 1197.
Dec. 18, 1971, Pub. L. 92-204, title VII, § 708, 85 Stat. 728.
Jan. 11, 1971, Pub. L. 91-668, title VIII, § 808, 84 Stat. 2031.
Dec. 29, 1969, Pub. L. 91-171, title VI, § 608, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90-580, title V, § 507, 82 Stat. 1130.
Sept. 29, 1967, Pub. L. 90-96, title VI, § 607, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89-687, title VI, § 607, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89-213, title VI, § 607, 79 Stat. 874.
Aug. 19, 1964, Pub. L. 88-446, title V, § 507, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88-149, title V, § 507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87-577, title V, § 507, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87-144, title II, § 201, title VI, § 607, 75 Stat. 367, 376.
July 7, 1960, Pub. L. 86-601, title II, § 201, title V, § 507, 74 Stat. 340, 350.
Aug. 18, 1959, Pub. L. 86-166, title II, § 201, title V, § 607, 73 Stat. 368, 379.
Aug. 22, 1958, Pub. L. 85-724, title III, § 301, title V, § 501, 72 Stat. 713, 714, 721, 722.
Aug. 2, 1957, Pub. L. 85-117, title III, § 301, title V, § 501, 71 Stat. 313, 314, 321.
July 2, 1956, ch. 488, title III, § 301, title V, § 501, 70 Stat. 456, 457, 465.
July 13, 1955, ch. 358, title III, § 301, title V, § 501, 69 Stat. 303, 312.
June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, 68 Stat. 339, 348.
Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 338, 339, 348.
July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 519, 520, 529.
Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 428, 443.
Sept. 6, 1950, ch. 896, ch. X, title III, § 301, title V, § 501, 64 Stat. 734, 749, 750.

Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, 63 Stat. 991, 992, 1015.
June 24, 1948, ch. 632, 62 Stat. 654.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 556.
July 16, 1946, ch. 583, § 1, 60 Stat. 546, 547.
July 3, 1945, ch. 265, § 1, 59 Stat. 389, 390.
June 28, 1944, ch. 303, § 1, 58 Stat. 579.
July 1, 1943, ch. 185, § 1, 57 Stat. 353.
July 2, 1942, ch. 477, § 1, 56 Stat. 616.
June 30, 1941, ch. 262, § 1, 55 Stat. 372.
June 13, 1940, ch. 343, § 1, 54 Stat. 357.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 599.
June 11, 1938, ch. 34, § 1, 52 Stat. 648.
July 1, 1937, ch. 423, § 1, 50 Stat. 448.
May 15, 1936, ch. 404, § 1, title I, 49 Stat. 1285.
Apr. 9, 1935, ch. 54, § 1, title I, 49 Stat. 127.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 620.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1576.
July 14, 1932, ch. 482, title I, 47 Stat. 669.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1282.
May 28, 1930, ch. 348, title I, 46 Stat. 437.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1354.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 331.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1111.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 260.
Feb. 12, 1925, ch. 225, title I, 43 Stat. 898.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

§ 1050. Latin American cooperation: payment of personnel expenses

The Secretary of a military department may pay the travel, subsistence, and special compensation of officers and students of Latin American countries and other expenses that the Secretary considers necessary for Latin American cooperation.

(Added Pub. L. 98-525, title XIV, § 1401(d)(1), Oct. 19, 1984, 98 Stat. 2616.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8006], 98 Stat. 1904, 1923.
Dec. 8, 1983, Pub. L. 98-212, title VII, § 709, 97 Stat. 1439.
Dec. 21, 1982, Pub. L. 97-377, title I, § 101(c) [title VII, § 709], 96 Stat. 1833, 1851.
Dec. 29, 1981, Pub. L. 97-114, title VII, § 709, 95 Stat. 1579.
Dec. 15, 1980, Pub. L. 96-527, title VII, § 709, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96-154, title VII, § 709, 93 Stat. 1153.
Oct. 13, 1978, Pub. L. 95-457, title VIII, § 809, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95-111, title VIII, § 808, 91 Stat. 900.
Sept. 22, 1976, Pub. L. 94-419, title VII, § 708, 90 Stat. 1292.
Feb. 9, 1976, Pub. L. 94-212, title VII, § 708, 90 Stat. 169.
Oct. 8, 1974, Pub. L. 93-437, title VIII, § 808, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93-238, title VII, § 708, 87 Stat. 1039.
Oct. 26, 1972, Pub. L. 92-570, title VII, § 708, 86 Stat. 1197.
Dec. 18, 1971, Pub. L. 92-204, title VII, § 708, 85 Stat. 728.
Jan. 11, 1971, Pub. L. 91-668, title VIII, § 808, 84 Stat. 2031.
Dec. 29, 1969, Pub. L. 91-171, title VI, § 608, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90-580, title V, § 507, 82 Stat. 1130.
Sept. 29, 1967, Pub. L. 90-96, title VI, § 607, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89-687, title VI, § 607, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89-213, title VI, § 607, 79 Stat. 874.
Aug. 19, 1964, Pub. L. 88-446, title V, § 507, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88-149, title V, § 507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87-577, title V, § 507, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87-144, title II, § 201, 75 Stat. 367, 369.
July 7, 1960, Pub. L. 86-601, title II, § 201, 74 Stat. 341, 343.
Aug. 18, 1959, Pub. L. 86-166, title II, § 201, 73 Stat. 369, 371.
Aug. 22, 1958, Pub. L. 85-724, title III, § 301, title V, § 501, 72 Stat. 714, 721.
Aug. 2, 1957, Pub. L. 85-117, title III, § 301, title V, § 501, 71 Stat. 314, 321.
July 2, 1956, ch. 488, title III, § 301, title V, § 501, 70 Stat. 457, 465.
July 13, 1955, ch. 358, title III, § 301, title V, § 501, 69 Stat. 304, 312.
June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, 68 Stat. 340, 347.
Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 339, 347.
July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 521, 529.
Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 426, 442.
Sept. 6, 1950, ch. 896, ch. X, title III, § 301, title V, § 501, 64 Stat. 732, 749.
Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, 63 Stat. 989, 1014.
June 24, 1948, ch. 632, 62 Stat. 650.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 568.
July 16, 1946, ch. 583, § 1, 60 Stat. 560.
July 3, 1945, ch. 265, § 1, 59 Stat. 401.
June 28, 1944, ch. 303, § 1, 58 Stat. 591.
July 1, 1943, ch. 185, § 1, 57 Stat. 365.
July 2, 1942, ch. 477, § 1, 56 Stat. 628.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

CHAPTER 55—MEDICAL AND DENTAL CARE

Sec.
1074a. Medical and dental care: members on duty other than active duty; injuries, diseases, and illnesses incident to duty.
1074b. Medical care: authority to provide a wig.
1076a. Dependents' dental program.
1081. Contracts for medical care for spouses and children: review and adjustment of payments.
1091. Contracts for direct health care providers.
1092. Studies and demonstration projects relating to delivery of health and medical care.
1093. Restriction on use of funds for abortions.
1094. Licensure requirement for health-care professionals.

AMENDMENTS

1985—Pub. L. 99-145, title VI, §§ 651(a)(2), 653(a)(2), Nov. 8, 1985, 99 Stat. 656, 658, added items 1076a and 1094.

1984—Pub. L. 98-525, title VI, § 631(a)(2), title XIV, § 1401(e)(2)(B), (5)(B), Oct. 19, 1984, 98 Stat. 2543,

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2616, 2618, substituted in item 1074a "Medical and dental care: members on duty other than active duty; injuries, diseases, and illnesses incident to duty" for "Medical and dental care for members of the uniformed services for injuries incurred or aggravated while traveling to and from inactive duty training" and added items 1074b and 1093.

1983—Pub. L. 98-94, title IX, §§ 932(a)(2), 933(a)(2), title X, § 1012(a)(2), title XII, § 1268(5)(B), Sept. 24, 1983, 97 Stat. 650, 651, 665, 706, added items 1074a, 1091, and 1092, and struck out "; reports" at end of item 1081.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1490 of this title; title 14 section 705; title 38 sections 613, 4108, 5011; title 42 sections 248c, 248d.

§ 1072. Definitions

In this chapter:

[*See main edition for text of (1)*]

(2) "Dependent", with respect to a member or former member of a uniformed service, means—

[*See main edition for text of (A) to (C)*]

(D) an unmarried legitimate child, including an adopted child or a stepchild, who either—

[*See main edition for text of (i) and (ii)*]

(iii) has not passed his twenty-third birthday, is enrolled in a full-time course of study in an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support;

(E) a parent or parent-in-law who is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support and residing in his household;

(F) the unremarried former spouse of a member or former member who (i) on the date of the final decree of divorce, dissolution, or annulment, had been married to the member or former member for a period of at least 20 years during which period the member or former member performed at least 20 years of service which is creditable in determining that member's or former member's eligibility for retired or retainer pay, or equivalent pay, and (ii) does not have medical coverage under an employer-sponsored health plan; and

(G) a person who (i) is the unremarried former spouse of a member or former member who performed at least 20 years of service which is creditable in determining the member or former member's eligibility for retired or retainer pay, or equivalent pay, and on the date of the final decree of divorce, dissolution, or annulment before April 1, 1985, had been married to the member or former member for a period of at least 20 years, at least 15 of which, but less than 20 of which, were during the period the member or former member performed service creditable in determining the member or former member's eligibility for retired or retainer pay, and (ii) does not have medical coverage under an employer-sponsored health plan.

(3) "Administering Secretaries" means the Secretaries of executive departments specified in section 1073 of this title as having responsibility for administering this chapter.

(As amended Pub. L. 98-525, title VI, § 645(a), Oct. 19, 1984, 98 Stat. 2548; Pub. L. 98-557, § 19(1), Oct. 30, 1984, 98 Stat. 2869.)

AMENDMENTS

1984—Par. (2)(D)(iii). Pub. L. 98-557, § 19(1)(A), substituted reference to the administering Secretary for reference to the Secretary of Defense or the Secretary of Health and Human Services.

Par. (2)(G). Pub. L. 98-525 added subpar. (G).

Par. (3). Pub. L. 98-557, § 19(1)(B), added par. (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 645(d) of Pub. L. 98-525 provided that: "The amendments made by subsections (a), (b), and (c) [amending par. (2) of this section and provisions set out as a note under section 1408 of this title and enacting provisions set out as a note under this section] shall be effective on January 1, 1985, and shall apply with respect to health care furnished on or after that date."

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97-252 effective Feb. 1, 1983, and applicable in the case of any former spouse of a member or former member of the uniformed services whether final decree of divorce, dissolution, or annulment of marriage of former spouse and such member or former member is dated before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97-252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

DEPENDENT; QUALIFICATION AS; EFFECTIVE DATE

Section 645(c) of Pub. L. 98-525 provided that: "A person who would qualify as a dependent under section 1072(2)(G) of title 10 (as added by subsection (a)) but for the fact that the person's final decree of divorce, dissolution, or annulment is dated on or after April 1, 1985, shall be considered to be a dependent under such section during the two-year period beginning on the date of such final decree."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1040, 1076, 1076a, 1079, 1086, 2114, 2147 of this title.

§ 1073. Administration of this chapter

Except as otherwise provided in this chapter, the Secretary of Defense shall administer this chapter, for the armed forces under his jurisdiction, the Secretary of Transportation shall administer this chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services shall administer this chapter and for the National Oceanic and Atmospheric Administration and the Public Health Service.

(As amended Pub. L. 98-557, § 19(2), Oct. 30, 1984, 98 Stat. 2869.)

AMENDMENTS

1984—Pub. L. 98-557 added provisions which transferred authority to administer chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy from the Secretary of Health and Human Services to the Secretary of Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1072 of this title.

§ 1074. Medical and dental care for members and certain former members

(a) Under joint regulations to be prescribed by the administering Secretaries, a member of a uniformed service who is on active duty is entitled to medical and dental care in any facility of any uniformed service.

(b) Under joint regulations to be prescribed by the administering Secretaries, a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may, upon request, be given medical and dental care in any facility of any uniformed service, subject to the availability of space and facilities and the capabilities of the medical and dental staff. The administering Secretaries may, with the agreement of the Administrator of Veterans' Affairs, provide care to persons covered by this subsection in facilities operated by the Administrator and determined by him to be available for this purpose on a reimbursable basis at rates approved by the President.

(c) Funds appropriated to a military department may be used to provide medical and dental care to persons entitled to such care by law or regulations, including the provision of such care (other than elective private treatment) in private facilities for members of the armed forces.

(As amended Pub. L. 98-525, title XIV, § 1401(e)(1), Oct. 19, 1984, 98 Stat. 2616; Pub. L. 98-557, § 19(3), Oct. 30, 1984, 98 Stat. 2869.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (c) of this section were contained in Pub. L. 98-212, title VII, § 735, Dec. 8, 1983, 97 Stat. 1444, which is set out as a note under section 138 of this title, and which was amended by Pub. L. 98-525, title XIV, §§ 1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985, to strike out these provisions.

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98-557 substituted reference to administering Secretaries for reference to Secretary of Defense and Secretary of Health and Human Services wherever appearing.

Subsec. (c). Pub. L. 98-525 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as an Effective Date note under section 520b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1075, 1086, 1087 of this title; title 38 section 5011.

§ 1074a. Medical and dental care: members on duty other than active duty; injuries, diseases [1] and illnesses incident to duty

(a) Under joint regulations prescribed by the administering Secretaries, the following persons are entitled to the benefits described in subsection (b):

(1) Each member of a uniformed service who contracts a disease or becomes ill in line of duty while on active duty for a period of 30 days or less, or while traveling to or from that duty.

(2) Each member of the National Guard who contracts a disease or becomes ill in line of duty while on full-time National Guard duty, or while traveling to or from that duty.

(3) Each member of a uniformed service who contracts a disease or becomes ill in line of duty while on inactive duty training under circumstances in which it is determined that the disease or illness was contracted or aggravated as an incident of that inactive duty training.

(4) Each member of a uniformed service who incurs or aggravates an injury while traveling directly to or from the place at which he is to perform, or has performed, inactive duty training, unless the injury is incurred or aggravated as a result of the member's own gross negligence or misconduct.

(b) A person described in subsection (a) is entitled to—

(1) the medical and dental care appropriate for the treatment of his injury, disease, or illness until the resulting disability cannot be materially improved by further hospitalization or treatment; and

(2) subsistence during hospitalization.

(Added Pub. L. 98-94, title X, § 1012(a)(1), Sept. 24, 1983, 97 Stat. 665, and amended Pub. L. 98-525, title VI, § 631(a)(1), Oct. 19, 1984, 98 Stat. 2542; Pub. L. 98-557, § 19(4), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99-145, title XIII, § 1303(a)(7), Nov. 8, 1985, 99 Stat. 739.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 substituted reference to the administering Secretaries, for references to Secretaries of Defense, Transportation, and Health and Human Services.

1984—Pub. L. 98-525 substituted "Medical and dental care: members on duty other than active duty; injuries, diseases and illnesses incident to duty" for "Medical and dental care for members of the uniformed services for injuries incurred or aggravated while traveling to and from inactive duty training" in section catchline.

Subsec. (a). Pub. L. 98-557, which directed the amendment of subsec. (a) by substituting "administering Secretaries" for "Secretary of Defense and the Secretary of Health and Human Services", could not be executed in view of the prior amendment by Pub. L. 98-525.

Pub. L. 98-525 amended subsec. (a) generally, thereby authorizing the Secretary of Transportation to participate in issuance of joint regulations, adding pars. (1) to (3), and incorporating existing provisions in par. (4).

[1] So in original. Probably should be followed by a comma.

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Subsec. (b). Pub. L. 98-525 amended subsec. (b) generally, thereby including treatment of diseases or illnesses.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 631(c) of Pub. L. 98-525 provided that: "The amendments made by this section [amending sections 1074a and 6148 of this title] shall apply only with respect to injuries incurred or aggravated and diseases or illnesses contracted or aggravated after September 30, 1984."

EFFECTIVE DATE

Section 1012(c) of Pub. L. 98-94 provided that: "The amendments made by subsections (a) and (b) [enacting this section and amending section 204 of Title 37, Pay and Allowances of the Uniformed Services] shall apply only in cases of injuries incurred or aggravated on or after the date of the enactment of this Act [Sept. 24, 1983]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 204.

§ 1074b. Medical care: authority to provide a wig

A person entitled to medical care under this chapter who has alopecia resulting from the treatment of a malignant disease may be furnished a wig if the person has not previously been furnished one at the expense of the United States.

(Added Pub. L. 98-525, title XIV, § 1401(e)(2)(A), Oct. 19, 1984, 98 Stat. 2616.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Pub. L. 98-473, title I, § 101(h) [title VIII, § 8033], Oct. 12, 1984, 98 Stat. 1904, 1929.

Pub. L. 98-212, title VII, § 739, Dec. 8, 1983, 97 Stat. 1445.

Pub. L. 97-377, title I, § 101(c) [title VII, § 742], Dec. 21, 1982, 96 Stat. 1833, 1858.

Pub. L. 97-114, title VII, § 743, Dec. 29, 1981, 95 Stat. 1586.

Pub. L. 96-527, title VII, § 744, Dec. 15, 1980, 94 Stat. 3089.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

§ 1076. Medical and dental care for dependents: general rule

(a)(1) A dependent described in paragraph (2) is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(2) A dependent referred to in paragraph (1) is a dependent of a member of a uniformed service—

(A) who is on active duty for a period of more than 30 days or who died while on that duty; or

(B) who died from an injury or illness incurred or aggravated—

(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

(ii) while traveling to or from the place at which the member is to perform, or has performed, such active duty, active duty for training, or inactive duty training.

(b) Under regulations to be prescribed jointly by the administering Secretaries, a dependent of a member or former member—

[See main edition for text of (1) and (2)]

may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff, except that a dependent of a member or former member described in clause (2) may not be given such medical or dental care until the date on which such member or former member would have attained age 60. A dependent described in section 1072(2)(F) of this title may be provided medical and dental care pursuant to clause (2) without regard to subclause (B) of such clause.

[See main edition for text of (c)]

(d) To utilize more effectively the medical and dental facilities of the uniformed services, the administering Secretaries shall prescribe joint regulations to assure that dependents entitled to medical or dental care under this section will not be denied equal opportunity for that care because the facility concerned is that of a uniformed service other than that of the member.

(As amended Pub. L. 98-557, § 19(5), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99-145, title VI, § 652(a), Nov. 8, 1985, 99 Stat. 656.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "A dependent of a member of a uniformed service who is on active duty for a period of more than 30 days, or of such a member who died while on that duty, is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff."

1984—Subsecs. (b), (d). Pub. L. 98-557 substituted reference to administering Secretaries for reference to Secretary of Defense and Secretary of Health and Human Services.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 652(c) of Pub. L. 99-145 provided that: "The amendments made by this section [amending sections 1076 and 1086 of this title] shall apply only with respect to dependents of members of the uniformed services whose deaths occur after September 30, 1985."

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97-252 effective Feb. 1, 1983, and applicable in the case of any former spouse of a member or former member of the uniformed services whether final decree of divorce, dissolution, or annulment of marriage of former spouse and such member or former member is dated before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97-252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

§ 1076a. Dependents' dental program

(a)(1) The Secretary of Defense may establish dental benefit plans for spouses and children (as described in section 1072(2)(D) of this title) of members of the uniformed services who are on active duty for a period of more than 30 days. Any plan under this section shall provide for voluntary enrollment of participants and shall include provisions for premium-sharing between the Department of Defense and members enrolling in the program.

(2) A plan under this section shall be administered under regulations prescribed by the Secretary of Defense in consultation with the other administering Secretaries.

(b)(1) Members enrolling in a dental benefit plan established under subsection (a) shall be required to pay a share of the member's premium.

(2) The Secretary of Defense shall establish the amount of the premium to be paid by a member enrolled in a plan under this section.

(c) A member's share of the premium for a plan established under subsection (a) shall be paid by deductions from the basic pay of the member.

(d) The dental benefits provided under such a plan may not include a benefit other than—

(1) diagnostic, oral examination, and preventive services and palliative emergency care; and

(2) basic restorative services of amalgam and composite restorations and stainless steel crowns for primary teeth, and dental appliance repairs.

(e) Any such plan shall provide that a member whose spouse or child receives care under a plan established under this section—

(1) may not be required to pay for any charge for care described in subsection (d)(1); and

(2) shall be required to pay 20 percent of the charges for care described in subsection (d)(2).

(f) If a member who is enrolled in a plan established under this section is transferred to a duty station where dental care is provided to the member's spouse or children under a program other than a plan established under this section, the member may discontinue participation under the plan established under this section. If the member is later transferred to a station where dental care is not provided to such member's spouse or children except under a plan established under this section, the member may re-enroll in such a plan.

(g) The authority of the Secretary of Defense to enter into a contract under this section for any fiscal year is subject to the availability of appropriations for that purpose.

(Added Pub. L. 99-145, title VI, § 651(a)(1), Nov. 8, 1985, 99 Stat. 655.)

EFFECTIVE DATE

Section 651(c) of Pub. L. 99-145 provided that: "The Secretary of Defense may not enter into a contract under section 1076a of title 10, United States Code, as added by subsection (a), or otherwise obligate funds under that section before September 30, 1986."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1077 of this title.

§ 1077. Medical care for dependents: authorized care in facilities of uniformed services

(a) Only the following types of health care may be provided under section 1076 of this title:

[*See main edition for text of (1) to (9)*]

(10) Dental care.

(11) Ambulance service and home calls when medically necessary.

(12) Durable equipment, such as wheelchairs, iron lungs, and hospital beds may be provided on a loan basis.

(b) The following types of health care may not be provided under section 1076 of this title:

[*See main edition for text of (1) and (2)*]

(3) The elective correction of minor dermatological blemishes and marks or minor anatomical anomalies.

(c) A dependent participating under a dental plan established under section 1076a of this title may not be provided dental care under section 1076(a) of this title except for emergency dental care and care that is not covered by such plan.

(As amended Pub. L. 98-525, title VI, § 633(a), title XIV, §§ 1401(e)(3), 1405(22), Oct. 19, 1984, 98 Stat. 2544, 2617, 2623; Pub. L. 99-145, title VI, § 651(b), Nov. 8, 1985, 99 Stat. 656.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (b)(3) of this section were contained in the following prior appropriation acts:

Pub. L. 98-473, title I, § 101(h) [title VIII, § 8045], Oct. 12, 1984, 98 Stat. 1904, 1931.

Pub. L. 98-212, title VII, § 752, Dec. 8, 1983, 97 Stat. 1447.

Pub. L. 97-377, title I, § 101(c) [title VII, § 756], Dec. 21, 1982, 96 Stat. 1833, 1860.

Pub. L. 97-114, title VII, § 759, Dec. 29, 1981, 95 Stat. 1588.

Pub. L. 96-527, title VII, § 763, Dec. 15, 1980, 94 Stat. 3092.

Pub. L. 96-154, title VII, § 769, Dec. 21, 1979, 93 Stat. 1163.

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-145 added subsec. (c).

1984—Pub. L. 98-525, § 1405(22), substituted a colon for the semicolon in section catchline.

Subsec. (a)(10). Pub. L. 98-525, § 633(a)(1), added cl. (10). Former cl. (10) "Emergency dental care worldwide." was struck out.

Subsec. (a)(11). Pub. L. 98-525, § 633(a)(1), redesignated cl. (13) as (11). Former cl. (11) "Rountine dental care outside the United States and at stations in the United States where adequate civilian facilities are unavailable." was struck out.

Subsec. (a)(12). Pub. L. 98-525, § 633(a)(1), redesignated cl. (14) as (12). Former cl. (12) "Dental care worldwide as a necessary adjunct of medical, surgical, or preventive treatment." was struck out.

Subsec. (a)(13), (14). Pub. L. 98-525, § 633(a)(2), redesignated cls. (13) and (14) as cls. (11) and (12), respectively.

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Subsec. (b)(3). Pub. L. 98-525, § 1401(e)(3), added par. (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 633(b) of Pub. L. 98-525 provided that: "The amendments made by subsection (a) [amending subsec. (a) of this section] shall take effect on July 1, 1985."

Amendment by section 1401(e)(3) of Pub. L. 98-525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as an Effective Date note under section 520b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1075, 1076, 1079, 1080, 1086 of this title.

§ 1078. Medical and dental care for dependents: charges

(a) The Secretary of Defense, after consulting the other administering Secretaries, shall prescribe fair charges for inpatient medical and dental care given to dependents under section 1076 of this title. The charge or charges prescribed shall be applied equally to all classes of dependents.

(b) As a restraint on excessive demands for medical and dental care under section 1076 of this title, uniform minimal charges may be imposed for outpatient care. Charges may not be more than such amounts, if any, as the Secretary of Defense may prescribe after consulting the other administering Secretaries, and after a finding that such charges are necessary.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-557, § 19(6), Oct. 30, 1984, 98 Stat. 2869.)

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98-557 substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

§ 1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for spouses and children of members of the uniformed services who are on active duty for a period of more than 30 days, the Secretary of Defense, after consulting with the other administering Secretaries, shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The types of health care authorized under this section shall be the same as those provided under section 1076 of this title, except that—

[*See main edition for text of* (1) *and* (2)]

(3) not more than one eye examination may be provided to a patient in any calendar year;

(4) under joint regulations to be prescribed by the administering Secretaries, the services of Christian Science practitioners and nurses and services obtained in Christian Science sanatoriums may be provided;

(5) durable equipment, such as wheelchairs, iron lungs and hospital beds may be provided on a rental basis;

(6) inpatient mental health services may not (except as provided in subsection (i)) be provided to a patient in excess of 60 days in any year;

(7) services in connection with nonemergency inpatient hospital care may not be provided if such services are available at a facility of the uniformed services located within a 40-mile radius of the residence of the patient, except that such services may be provided in any case in which another insurance plan or program pays for at least 75 percent of the services;

(8) services of pastoral counselors, family and child counselors, or marital counselors may not be provided unless the patient has been referred to the counselor by a medical doctor for treatment of a specific problem with the results of that treatment to be communicated back to the medical doctor who made the referral;

(9) special education may not be provided, except when provided as secondary to the active psychiatric treatment on an institutional inpatient basis;

(10) therapy or counseling for sexual dysfunctions or sexual inadequacies may not be provided;

(11) treatment of obesity may not be provided if obesity is the sole or major condition treated;

(12) surgery which improves physical appearance but is not expected to significantly restore functions (including mammary augmentation, face lifts, and sex gender changes) may not be provided, except that—

(A) breast reconstructive surgery following a mastectomy may be provided;

(B) reconstructive surgery to correct serious deformities caused by congenital anomalies or accidental injuries may be provided; and

(C) neoplastic surgery may be provided;

(13) any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, or certified clinical social worker, as appropriate, may not be provided, except as authorized in clause (4); and

(14) the prohibition contained in section 1077(b)(3) of this title shall not apply in the case of a member or former member of the uniformed services.

(b) Plans covered by subsection (a) shall include provisions for payment by the patient of the following amounts:

[*See main edition for text of* (1) *to* (3)]

(4) $25 for surgical care that is authorized by subsection (a) and received while in an outpatient status and that has been designated (under joint regulations to be prescribed by the administering Secretaries) as care to be treated as inpatient care for purposes of this subsection. Any care for which payment

is made under this clause shall not be considered to be care received while in an outpatient status for purposes of clauses (2) and (3).

(c) The methods for making payment under subsection (b) shall be prescribed under joint regulations issued by the administering Secretaries.

(d) Under joint regulations to be prescribed by the administering Secretaries, in the case of a dependent, as defined in section 1072(2)(A) or (D) of this title, of a member of the uniformed services on active duty for a period of more than 30 days, who is moderately or severely mentally retarded or who has a serious physical handicap, the plans covered by subsection (a) shall, with respect to the retardation or handicap of such dependent, include the following:

[*See main edition for text of (1) to (4)*]

(e) Members shall be required to share in the cost of any benefits provided their dependents under subsection (d) as follows:

(1) Except as provided in clause (3), members in the lowest enlisted pay grade shall be required to pay the first $25 incurred each month and members in the highest commissioned pay grade shall similarly be required to pay $250 per month. The amounts to be similarly paid by members in all other pay grades shall be determined under joint regulations to be prescribed by the administering Secretaries.

[*See main edition for text of (2) to (4)*]

(f) To qualify for the benefits provided by subsection (d), members shall be required to use public facilities to the extent they are available and adequate as determined under joint regulations of the administering Secretaries.

(g) When a member dies while he is eligible for receipt of hostile fire pay under section 310 of title 37 or from a disease or injury incurred while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) shall continue to be eligible for such benefits until they pass their twenty-first birthday.

(h) [*See main edition for text of (1)*]

(2) For the purposes of paragraph (1), the 90th percentile of charges shall be determined by the Secretary of Defense, in consultation with the other administering Secretaries, and the base period shall be a period of twelve calendar months. The Secretary of Defense shall adjust the base period as frequently as he considers appropriate.

(i) The limitation in subsection (a)(6) does not apply in the case of inpatient mental health services—

(1) provided under the program for the handicapped under subsection (d);

(2) provided as residential treatment care;

(3) provided as partial hospital care; or

(4) provided pursuant to a waiver authorized by the Secretary of Defense because of extraordinary medical or psychological circumstances that are confirmed by review by a non-Federal health professional pursuant to regulations prescribed by the Secretary of Defense.

(j)(1) A benefit may not be paid under a plan covered by this section in the case of a person enrolled in any other insurance, medical service, or health plan to the extent that the benefit is also a benefit under the other plan, except in the case of a plan administered under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(2)(A) The amount to be paid to a provider of services for services provided under a plan covered by this section may be determined under joint regulations to be prescribed by the administering Secretaries which provide that the amount of such payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(B) In subparagraph (A), "provider of services" means a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, or other institutional facility providing services for which payment may be made under a plan covered by this section.

(k) A plan covered by this section may include provision of liver transplants (including the cost of acquisition and transportation of the donated liver) in accordance with this subsection. Such a liver transplant may be provided if—

(1) the transplant is for a dependent considered appropriate for that procedure by the Secretary of Defense in consultation with the other administering Secretaries and such other entities as the Secretary considers appropriate; and

(2) the transplant is to be carried out at a health-care facility that has been approved for that purpose by the Secretary of Defense after consultation with the other administering Secretaries and such other entities as the Secretary considers appropriate.

(As amended Pub. L. 98-94, title IX, § 931(a), title XII, § 1268(4), Sept. 24, 1983, 97 Stat. 648, 705; Pub. L. 98-525, title VI, § 632(a)(1), title XIV, §§ 1401(e)(4), 1405(23), Oct. 19, 1984, 98 Stat. 2543, 2617, 2623; Pub. L. 98-557, § 19(7), Oct. 30, 1984, 98 Stat. 2869.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (j)(1), (2)(A), is act Aug. 13, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (a)(7) to (14) of this section were contained in the following prior appropriation acts, with the exception of the provisions similar to par. (14) which last appeared in Pub. L. 96-154:

Pub. L. 98-473, title I, § 101(h) [title VIII, §§ 8031, 8032, 8045], Oct. 12, 1984, 98 Stat. 1904, 1929, 1931.

Pub. L. 98-212, title VII, §§ 737, 738, 752, Dec. 8, 1983, 97 Stat. 1445, 1447.

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Pub. L. 97-377, title I, § 101(c) [title VII, §§ 740, 741, 756], Dec. 21, 1982, 96 Stat. 1833, 1857, 1860.

Pub. L. 97-114, title VII, §§ 741, 742, 759, Dec. 29, 1981, 95 Stat. 1585, 1588.

Pub. L. 96-527, title VII, §§ 742, 743, 763, Dec. 15, 1980, 94 Stat. 3088, 3092.

Pub. L. 96-154, title VII, §§ 744, 745, 769, Dec. 21, 1979, 93 Stat. 1159, 1163.

Pub. L. 95-457, title VIII, §§ 844, 845, Oct. 13, 1978, 92 Stat. 1251.

Pub. L. 95-111, title VIII, §§ 843, 844, Sept. 21, 1977, 91 Stat. 907.

Pub. L. 94-419, title VII, §§ 742, 743, Sept. 22, 1976, 90 Stat. 1298.

Pub. L. 94-212, title VII, §§ 750, 751, Feb. 9, 1976, 90 Stat. 176.

Provisions similar to those added to subsec. (h)(2) of this section by section 1401(e)(4)(B) of Pub. L. 98-525 were contained in the following prior appropriation acts:

Pub. L. 98-473, title I, § 101(h) [title VIII, § 8077], Oct. 12, 1984, 98 Stat. 1904, 1938.

Pub. L. 98-212, title VII, § 785, Dec. 8, 1983, 97 Stat. 1453.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-557, § 19(7)(B), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services in provisions preceding cl. (1).

Subsec. (a)(3). Pub. L. 98-525, § 632(a)(1), substituted "not more than one eye examination may be provided to a patient in any calendar year" for "eye examinations may not be provided".

Subsec. (a)(4). Pub. L. 98-557, § 19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (a)(7) to (14). Pub. L. 98-525, § 1401(e)(4)(A), added cls. (7) to (14).

Subsecs. (b)(4), (c), (d). Pub. L. 98-557, § 19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (e). Pub. L. 98-525, § 1405(23), substituted "under subsection (d) as follows:" for "under subsection (d)." in provisions preceding cl. (1).

Subsecs. (e)(1), (f). Pub. L. 98-557, § 19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (h)(2). Pub. L. 98-557, § 19(7)(B), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

Pub. L. 98-525, § 1401(e)(4)(B), substituted "The Secretary of Defense shall adjust the base period as frequently as he considers appropriate" for "The base period shall be adjusted at least once a year".

Subsec. (j)(2)(A). Pub. L. 98-557, § 19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (k)(1), (2). Pub. L. 98-557, § 19(7)(B), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

1983—Subsec. (a). Pub. L. 98-94, § 1268(4)(A), substituted "30" for "thirty" in provisions preceding par. (1).

Subsec. (a)(6). Pub. L. 98-94, § 931(a)(1), added par. (6).

Subsec. (d). Pub. L. 98-94, § 1268(4)(A), substituted "30" for "thirty".

Subsec. (g). Pub. L. 98-94, § 1268(4)(B), struck out "of this section" after "subsection (d)".

Subsecs. (i) to (k). Pub. L. 98-94, § 931(a)(2), added subsecs. (i) to (k).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 632(a)(3) of Pub. L. 98-525 provided that: "The amendments made by this subsection [amending sections 1079 and 1086 of this title] shall apply only to health care furnished after September 30, 1984."

Amendment by section 1401(e)(4) of Pub. L. 98-525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as an Effective Date note under section 520b of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 931(c) of Pub. L. 98-94 provided that: "The amendments made by this section [amending sections 1079 and 1086 of this title] shall take effect on October 1, 1983, except that—

"(1) clause (6) of section 1079(a) of title 10, United States Code, as added by subsection (a)(1), shall not apply in the case of inpatient mental health services provided to a patient admitted before January 1, 1983, for so long as that patient remains continuously in inpatient status for medically or psychologically necessary reasons; and

"(2) subsection (k) of section 1079 of such title, as added by subsection (a)(1), shall apply with respect to liver transplant operations performed on or after July 1, 1983."

§ 1080. Contracts for medical care for spouses and children: election of facilities

A dependent covered by section 1079 of this title may elect to receive medical care either in (1) the facilities of the uniformed services, under the conditions prescribed by sections 1076-1078 of this title, or (2) the facilities provided under a plan contracted for under section 1079 of this title. However, under such regulations as the Secretary of Defense, after consulting the other administering Secretaries, may prescribe, the right to make this election may be limited for dependents residing in the area where the member concerned is assigned, if adequate medical facilities of the uniformed services are available in that area for those dependents.

(As amended Pub. L. 98-557, § 19(8), Oct. 30, 1984, 98 Stat. 2870.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to administering Secretaries for reference to Secretary of Health and Human Services.

§ 1081. Contracts for medical care for spouses and children: review and adjustment of payments

Each plan under section 1079 of this title shall provide for a review, and if necessary an adjustment of payments, by the appropriate administering Secretary, not later than 120 days after the close of each year the plan is in effect.

(As amended Pub. L. 98-94, title XII, § 1268(5)(A), Sept. 24, 1983, 97 Stat. 706; Pub. L. 98-557, § 19(9), Oct. 30, 1984, 98 Stat. 2870.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to appropriate administering Secretary for reference to Secretary of Defense and Secretary of Health and Human Services.

1983—Pub. L. 98-94 struck out "; reports" after "adjustment of payments" in section catchline.

§ 1083. Contracts for medical care for spouses and children: additional hospitalization

If a dependent covered by a plan under section 1079 of this title needs hospitalization

beyond the time limits in that plan, and if the hospitalization is authorized in medical facilities of the uniformed services, he may be transferred to such a facility for additional hospitalization. If transfer is not feasible, the expenses of additional hospitalization in the civilian facility may be paid under such regulations as the Secretary of Defense may prescribe after consulting the other administering Secretaries.

(As amended Pub. L. 98-557, § 19(10), Oct. 30, 1984, 98 Stat. 2870.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

§ 1084. Determinations of dependency

A determination of dependency by an administering Secretary under this chapter is conclusive. However, the administering Secretary may change a determination because of new evidence or for other good cause. The Secretary's determination may not be reviewed in any court or by the General Accounting Office, unless there has been fraud or gross negligence.

(As amended Pub. L. 98-557, § 19(11), Oct. 30, 1984, 98 Stat. 2870.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to administering Secretary for reference to Secretary of Defense and Secretary of Health and Human Services and reference to administering Secretary for reference to he.

§ 1085. Medical and dental care from another executive department: reimbursement

If a member or former member of a uniformed service under the jurisdiction of one executive department (or a dependent of such a member or former member) receives inpatient medical or dental care in a facility under the jurisdiction of another executive department, the appropriation for maintaining and operating the facility furnishing the care shall be reimbursed at rates established by the President to reflect the average cost of providing the care.

(As amended Pub. L. 98-94, title XII, § 1268(6), Sept. 24, 1983, 97 Stat. 706; Pub. L. 98-557, § 19(12), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 99-145, title XIII, § 1303(a)(8), Nov. 8, 1985, 99 Stat. 739.)

AMENDMENTS

1985—Pub. L. 99-145 indented first line of text.

1984—Pub. L. 98-557 substituted "If a member or former member of a uniformed service under the jurisdiction of one executive department (or a dependent of such a member or former member) receives inpatient medical or dental care in a facility under the jurisdiction of another executive department, the appropriation for maintaining and operating the facility furnishing the care shall be reimbursed at rates established by the President to reflect the average cost of providing the care" for "If a member or former member of an armed force under the jurisdiction of a military department, or his dependent, receives inpatient medical or dental care in a facility under the jurisdiction of the Secretary of Health and Human Services, or if a member or former member of a uniformed service not under the jurisdiction of a military department, or his dependent, receives inpatient medical or dental care in a facility of an armed force under the jurisdiction of a military department, the appropriation for maintaining and operating the facility furnishing that care shall be reimbursed at rates established by the President to reflect the average cost of providing such care".

1983—Pub. L. 98-94 inserted a comma after "If a member or former member of an armed force under the jurisdiction of a military department, or his dependent".

§ 1086. Contracts for health benefits for certain members, former members, and their dependents

(a) To assure that health benefits are available for the persons covered by subsection (c), the Secretary of Defense, after consulting with the other administering Secretaries, shall contract under the authority of this section for health benefits for those persons under the same insurance, medical service, or health plans he contracts for under section 1079(a) of this title. However, eye examinations may not be provided under such plans for persons covered by subsection (c).

[*See main edition for text of* (b)]

(c) The following persons are eligible for health benefits under this section:

(1) Those covered by sections 1074(b) and 1076(b) of this title, except those covered by section 1072(2)(E) of this title.

(2) A dependent (other than a dependent covered by section 1072(2)(E) of this title) of a member of a uniformed service—

(A) who died while on active duty for a period of more than 30 days; or

(B) who died from an injury or illness incurred or aggravated—

(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

(ii) while traveling to or from the place at which the member is to perform, or has performed, such active duty, active duty for training, or inactive duty training.

(3) A dependent covered by section 1072(2)(F) of this title.

However, a person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is not eligible for health benefits under this section.

(d) The provisions of section 1079(j) of this title shall apply to a plan covered by this section.

(e) A person covered by this section may elect to receive benefits either in (1) Government facilities, under the conditions prescribed in sections 1074 and 1076-1078 of this title, or (2) the facilities provided under a plan contracted for under this section. However, under joint regulations issued by the administering Secretaries, the right to make this election may be limited for those persons residing in an area where adequate facilities of the uniformed service are available.

[*See main edition for text of* (f) *and* (g)]

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(As amended Pub. L. 98-94, title IX, § 931(b), Sept. 24, 1983, 97 Stat. 649; Pub. L. 98-525, title VI, § 632(a)(2), Oct. 19, 1984, 98 Stat. 2543; Pub. L. 98-557, § 19(13), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 99-145, title VI, § 652(b), Nov. 8, 1985, 99 Stat. 657.)

AMENDMENTS

1985—Subsec. (c)(2). Pub. L. 99-145 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "A dependent of a member of a uniformed service who died while on active duty for a period of more than thirty days, except a dependent covered by section 1072(2)(E) of this title."

1984—Subsec. (a). Pub. L. 98-557, § 19(13)(A), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

Pub. L. 98-525 added "However, eye examinations may not be provided under such plans for persons covered by subsection (c)."

Subsec. (e). Pub. L. 98-557, § 19(13)(B), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

1983—Subsec. (d). Pub. L. 98-94 substituted "The provisions of section 1079(j) of this title shall apply to a plan covered by this section" for "No benefits shall be payable under any plan covered by this section in the case of a person enrolled in any other insurance, medical service, or health plan provided by law or through employment unless that person certifies that the particular benefit he is claiming is not payable under the other plan".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-145 applicable only with respect to dependents of members of the uniformed services whose deaths occur after Sept. 30, 1985, see section 652(c) of Pub. L. 99-145, set out as a note under section 1076 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 applicable only to health care furnished after Sept. 30, 1984, see section 632(a)(3) of Pub. L. 98-525, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective Oct. 1, 1983, see section 931(c) of Pub. L. 98-94, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97-252 effective Feb. 1, 1983, and applicable in the case of any former spouse of a member or former member of the uniformed services whether final decree of divorce, dissolution, or annulment of marriage of former spouse and such member or former member is dated before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97-252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1082, 1087 of this title; title 38 section 613; title 42 sections 248d, 300e-1.

§ 1087. Programing facilities for certain members, former members, and their dependents in construction projects of the uniformed services

[See main edition for text of (a)]

(b) *[See main edition for text of (1)]*

(2) In addition, a determination made for the purpose of clause (2) of subsection (a) shall be made in accordance with an economic analysis (including a life-cycle cost analysis) of the facility and consideration of all reasonable and available medical care treatment alternatives (including treatment provided under a contract under section 1086 of this title or under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.)).[2]

(As amended Pub. L. 98-525, title XIV, § 1405(24), Oct. 19, 1984, 98 Stat. 2623.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-525 which directed that "(42 U.S.C. 1395c et seq.)" be inserted after "the Social Security Act.", was executed by inserting the parenthetical after "the Social Security Act" to reflect the probable intent of Congress.

§ 1089. Defense of certain suits arising out of medical malpractice

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the armed forces, the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, the Department of Defense, the United States Soldiers' and Airmen's Home, or the Central Intelligence Agency in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of his duties or employment therein or therefor shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) whose act or omission gave rise to such action or proceeding.

[See main edition for text of (b) to (e)]

(f) The head of the agency concerned may, to the extent that the head of the agency concerned considers appropriate, hold harmless or provide liability insurance for any person described in subsection (a) for damages for personal injury, including death, caused by such person's negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(g) In this section, "head of the agency concerned" means—

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[2] See 1984 Amendment note below.

(1) the Director of Central Intelligence, in the case of an employee of the Central Intelligence Agency;

(2) the Secretary of Transportation, in the case of a member or employee of the Coast Guard when it is not operating as a service in the Navy;

(3) the Board of Commissioners of the United States Soldiers' and Airmen's home, in the case of an employee of the United States Soldiers' and Airmen's Home; and

(4) the Secretary of Defense, in all other cases.

(As amended Pub. L. 98-94, title IX, § 934(a)-(c), Sept. 24, 1983, 97 Stat. 651, 652.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-94, § 934(a), inserted "the United States Soldiers' and Airmen's Home,".

Subsec. (f). Pub. L. 98-94, § 934(b), substituted: "may, to the extent that the head of the agency concerned considers" for "or his designee may, to the extent that he or his designee deems".

Subsec. (g)(3), (4). Pub. L. 98-94, § 934(c)(3), added par. (3) and redesignated former par. (3) as (4).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 934(d) of Pub. L. 98-94 provided that: "The amendments made by this section [amending this section] shall apply only to claims accruing on or after the date of the enactment of this Act [Sept. 24, 1983]."

§ 1090. Identifying and treating drug and alcohol dependence

The Secretary of Defense shall prescribe regulations, implement procedures using each practical and available method, and provide necessary facilities to identify, treat, and rehabilitate members of the armed forces who are dependent on drugs or alcohol.

(As amended Pub. L. 98-94, title XII, § 1268(7), Sept. 24, 1983, 97 Stat. 706.)

AMENDMENTS

1983—Pub. L. 98-94 struck out "(a)" before "The Secretary of Defense".

§ 1091. Contracts for direct health care providers

(a) The Secretary concerned may contract with persons for services (including personal services) for the provision of direct health care services determined by the Secretary concerned to be required for the purposes of this chapter.

(b) A person with whom the Secretary contracts under this section for the provision of direct health care services under this chapter may be compensated at a rate prescribed by the Secretary concerned, but at a rate not greater than the rate of basic pay and allowances authorized by chapters 3 and 7 of title 37 for a commissioned officer in pay grade O-6 with 26 or more years of service computed under section 205 of such title.

(Added Pub. L. 98-94, title IX, § 932(a)(1), Sept. 24, 1983, 97 Stat. 650.)

EFFECTIVE DATE

Section 932(f) of Pub. L. 98-94 provided that: "The amendments made by this section [enacting this section, amending section 201 of Title 37, Pay and Allowances of the Uniformed Services, and repealing sections 4022 and 9022 of this title and section 421 of Title 37] shall take effect on October 1, 1983. Any contract of employment entered into under the authority of section 4022 or 9022 of title 10, United States Code, before the effective date of this section and which is in effect on such date shall remain in effect in accordance with the terms of such contract."

§ 1092. Studies and demonstration projects relating to delivery of health and medical care

(a)(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall conduct studies and demonstration projects on the health care delivery system of the uniformed services with a view to improving the quality, efficiency, convenience, and cost effectiveness of providing health care services (including dental care services) under this title to members and former members and their dependents. Such studies and demonstration projects may include the following:

(A) Alternative methods of payment for health and medical care services.

(B) Cost-sharing by eligible beneficiaries.

(C) Methods of encouraging efficient and economical delivery of health and medical care services.

(D) Innovative approaches to delivery and financing of health and medical care services.

(E) Alternative approaches to reimbursement for the administrative charges of health care plans.

(F) Prepayment for medical care services provided to maintain the health of a defined population.

(2) The Secretary of Defense shall include in the studies conducted under paragraph (1) alternative programs for the provision of dental care to the spouses and dependents of members of the uniformed services who are on active duty, including a program under which dental care would be provided the spouses and dependents of such members under insurance or dental plan contracts. A demonstration project may not be conducted under this section that provides for the furnishing of dental care under an insurance or dental plan contract.

(3) The Secretary of Defense shall submit to Congress from time to time written reports on the results of the studies and demonstration projects conducted under this subsection and shall include in such reports such recommendations for improving the health-care delivery systems of the uniformed services as the Secretary considers appropriate.

(b) Subject to the availability of appropriations for that purpose, the Secretary of Defense may enter into contracts with public or private agencies, institutions, and organizations to conduct studies and demonstration projects under subsection (a).

(c) The Secretary of Defense may obtain the advice and recommendations of such advisory committees as the Secretary considers appropriate. Each such committee consulted by the Secretary under this subsection shall evaluate the proposed study or demonstration project as to the soundness of the objectives of such study or demonstration project, the likelihood of ob-

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taining productive results based on such study or demonstration project, the resources which were required to conduct such study or demonstration project, and the relationship of such study or demonstration project to other ongoing or completed studies and demonstration projects.

(Added Pub. L. 98-94, title IX, § 933(a)(1), Sept. 24, 1983, 97 Stat. 650, and amended Pub. L. 98-557, § 19(14), Oct. 30, 1984, 98 Stat. 2870.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-557 substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

EFFECTIVE DATE

Section 933(b) of Pub. L. 98-94 provided that: "Section 1092 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983."

CHIROPRACTIC CARE DEMONSTRATION PROJECTS

Pub. L. 98-525, title VI, § 632(b), Oct. 19, 1984, 98 Stat. 2543, provided that: "The Secretary of Defense, in consultation with the Secretary of Health and Human Services, shall conduct demonstration projects under section 1092 of title 10, United States Code, for the purpose of evaluating the cost-effectiveness of chiropractic care. In the conduct of such demonstration projects, chiropractic care (including manual manipulation of the spine and other routine chiropractic procedures authorized under joint regulations prescribed by the Secretary of Defense and the Secretary of Health and Human Services and not otherwise prohibited by law) may be provided as appropriate under chapter 55 of title 10, United States Code."

§ 1093. Restriction on use of funds for abortions

Funds available to the Department of Defense may not be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

(Added Pub. L. 98-525, title XIV, § 1401(e)(5)(A), Oct. 19, 1984, 98 Stat. 2617.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8044], 98 Stat. 1904, 1931.

Dec. 8, 1983, Pub. L. 98-212, title VII, § 751, 97 Stat. 1447.

Dec. 21, 1982, Pub. L. 97-377, title I, § 101(c) [title VII, § 755], 96 Stat. 1833, 1860.

Pub. L. 97-114, title VII, § 757, Dec. 29, 1981, 95 Stat. 1588.

Pub. L. 96-527, title VII, § 760, Dec. 15, 1980, 94 Stat. 3091.

Pub. L. 96-154, title VII, § 762, Dec. 21, 1979, 93 Stat. 1162.

Pub. L. 95-457, title VIII, § 863, Oct. 13, 1978, 92 Stat. 1254.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

§ 1094. Licensure requirement for health-care professionals

(a)(1) A person under the jurisdiction of the Secretary of a military department may not provide health care independently as a health-care professional under this chapter unless the person has a current license to provide such care.

(2) The Secretary of Defense may waive paragraph (1) with respect to any person in unusual circumstances. The Secretary shall prescribe by regulation the circumstances under which such a waiver may be granted.

(b) The commanding officer of each health care facility of the Department of Defense shall ensure that each person who provides health care independently as a health-care professional at the facility meets the requirement of subsection (a).

(c)(1) A person (other than a person subject to chapter 47 of this title) who provides health care in violation of subsection (a) is subject to a civil money penalty of not more than $5,000.

(2) The provisions of subsections (b) and (d) through (g) of section 1128A of the Social Security Act (42 U.S.C. 1320a-7a) shall apply to the imposition of a civil money penalty under paragraph (1) in the same manner as they apply to the imposition of a civil money penalty under that section, except that for purposes of this subsection—

(A) a reference to the Secretary in that section is deemed a reference to the Secretary of Defense; and

(B) a reference to a claimant in subsection (e) of that section is deemed a reference to the person described in paragraph (1).

(d) In this section:

(1) "License"—

(A) means a grant of permission by an official agency of a State, the District of Columbia, or a Commonwealth, territory, or possession of the United States to provide health care independently as a health-care professional; and

(B) includes, in the case of such care furnished in a foreign country by any person who is not a national of the United States, a grant of permission by an official agency of that foreign country for that person to provide health care independently as a health-care professional.

(2) "Health-care professional" means a physician, dentist, clinical psychologist, or nurse and any other person providing direct patient care as may be designated by the Secretary of Defense in regulations.

(Added Pub. L. 99-145, title VI, § 653(a)(1), Nov. 8, 1985, 99 Stat. 657.)

EFFECTIVE DATE

Section 653(b) of Pub. L. 99-145 provided that: "Section 1094 of title 10, United States Code, as added by subsection (a), does not apply during the three-year period beginning on the date of the enactment of this Act [Nov. 8, 1985] with respect to the provision of health care by any person who on the date of the enactment of this Act is a member of the Armed Forces."

CHAPTER 57—DECORATIONS AND AWARDS

Sec.
1124. Cash awards for disclosures, suggestions, inventions, and scientific achievements.
1127. Precedence of the award of the Purple Heart.
1128. Prisoner-of-war medal: issue.

AMENDMENTS

1985—Pub. L. 99-145, title V, § 532(a)(2), title XII, § 1225(a)(2)(B), Nov. 8, 1985, 99 Stat. 634, 730, inserted "disclosures," and substituted "and" for "or" in item 1124, and added item 1128.

1984—Pub. L. 98-525, title V, § 553(b), Oct. 19, 1984, 98 Stat. 2532, added item 1127.

§ 1124. Cash awards for disclosures, suggestions, inventions, and scientific achievements

(a) The Secretary of Defense, or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, may authorize the payment of a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces under his jurisdiction who by his disclosure, suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations or programs relating to the armed forces.

(b) Whenever the President considers it desirable, the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, are authorized to pay a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces who by his disclosure, suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations of the Government of the United States. Such award is in addition to any other award made to that member under subsection (a).

(c) An award under this section may be paid notwithstanding the member's death, separation, or retirement from the armed force concerned. However, the disclosure, suggestion, invention, or scientific achievement forming the basis for the award must have been made while the member was on active duty or in an active reserve status and not otherwise eligible for an award under chapter 45 of title 5.

[*See main edition for text of* (d) *and* (e)]

(f) The total amount of the award, or awards, made under this section for a disclosure, suggestion, invention, or scientific achievement may not exceed $25,000, regardless of the number of persons who may be entitled to share therein.

[*See main edition for text of* (g) *and* (h)]

(As amended Pub. L. 99-145, title XII, § 1225(a)(1), (2)(A), Nov. 8, 1985, 99 Stat. 730.)

AMENDMENTS

1985—Pub. L. 99-145 inserted "disclosures," and substituted "and" for "or" in section catchline, and inserted "disclosure," before "suggestion" in subsecs. (a), (b), (c), and (f).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1225(a)(3) of Pub. L. 99-145 provided that: "The amendments made by this subsection [amending this section] shall take effect on October 1, 1985."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 213a.

§ 1126. Gold star lapel button: eligibility and distribution

(a) A lapel button, to be known as the gold star lapel button, shall be designed, as approved by the Secretary of Defense, to identify widows, parents, and next of kin of members of the armed forces of the United States—

(1) who lost their lives during World War I, World War II, or during any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958; or

[*See main edition for text of* (2); (b) *to* (d)]

(As amended Pub. L. 98-94, title XII, § 1268(8), Sept. 24, 1983, 97 Stat. 706.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-94 substituted "who" for "Who".

§ 1127. Precedence of the award of the Purple Heart

In prescribing regulations establishing the order of precedence of awards and decorations authorized to be displayed on the uniforms of members of the armed forces, the Secretary of the military department concerned shall accord the Purple Heart a position of precedence, in relation to other awards and decorations authorized to be displayed, not lower than that immediately following the bronze star.

(Added Pub. L. 98-525, title V, § 553(a), Oct. 19, 1984, 98 Stat. 2532, and amended Pub. L. 99-145, title V, § 533, Nov. 8, 1985, 99 Stat. 634.)

AMENDMENTS

1985—Pub. L. 99-145 substituted "the bronze star" for "the lowest position accorded any award or decoration for valor".

§ 1128. Prisoner-of-war medal: issue

(a) The Secretary concerned shall issue a prisoner-of-war medal to any person who, while serving in any capacity with the armed forces, was taken prisoner and held captive—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(b) The prisoner-of-war medal shall be of appropriate design, with ribbons and appurtenances.

(c) In prescribing regulations establishing the order of precedence of awards and decorations authorized to be displayed on the uniforms of members of the armed forces, the Secretary concerned shall accord the prisoner-of-war medal a position of precedence, in relation to other awards and decorations authorized to be displayed—

(1) immediately following decorations awarded for individual heroism, meritorious achievement, or meritorious service, and

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(2) before any other service medal, campaign medal, or service ribbon authorized to be displayed.

(d) Not more than one prisoner-of-war medal may be issued to a person. However, for each succeeding service that would otherwise justify the issuance of such a medal, the Secretary concerned may issue a suitable device to be worn as the Secretary determines.

(e) For a person to be eligible for issuance of a prisoner-of-war medal, the person's conduct must have been honorable for the period of captivity which serves as the basis for the issuance.

(f) If a person dies before the issuance of a prisoner-of-war medal to which he is entitled, the medal may be issued to the person's representative, as designated by the Secretary concerned.

(g) Under regulations to be prescribed by the Secretary concerned, a prisoner-of-war medal that is lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued may be replaced without charge.

(h) The Secretary of Defense shall ensure that regulations prescribed by the Secretaries of the military departments under this section are uniform so far as practicable.

(Added Pub. L. 99-145, title V, § 532(a)(1), Nov. 8, 1985, 99 Stat. 633.)

EFFECTIVE DATE

Section 532(b) of Pub. L. 99-145 provided that: "Section 1128 of title 10, United States Code, as added by subsection (a), applies with respect to any person taken prisoner and held captive after April 5, 1917."

CHAPTER 59—SEPARATION

§ 1174. Separation pay upon involuntary discharge or release from active duty

[*See main edition for text of (a) and (b)*]

(c)(1) Except as provided in paragraphs (2) and (3), a member of an armed force other than a regular member who after September 14, 1981, is discharged or released from active duty and who has completed five or more, but fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary concerned, if—

(A) the member's discharge or release from active duty is involuntary; or

(B) the member was not accepted for an additional tour of active duty for which he volunteered.

(2) If the Secretary concerned determines that the conditions under which a member described in paragraph (1) is discharged or separated do not warrant separation pay under this section, that member is not entitled to that pay.

(3) A member described in paragraph (1) who was not on the active-duty list when discharged or separated is not entitled to separation pay under this section unless such member had completed at least five years of continuous active duty immediately before such discharge or release. For purposes of this paragraph, a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days.

[*See main edition for text of (d) and (e)*]

(f) In determining a member's years of active service for the purpose of computing separation pay under this section, each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(g) [*See main edition for text of (1)*]

(2) The total amount that a member may receive in separation pay under this section and severance pay and readjustment pay under any other provision of law, other than section 1212 of this title, based on service in the armed forces may not exceed $30,000.

(h)(1) a member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay so much of such pay as is based on the service for which he received separation pay under this section or separation pay, severance pay, or readjustment pay under any other provision of law until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received.

[*See main edition for text of (2)*]

(i)(1) The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, and Marine Corps, for the administration of this section.

(2) Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active service in the armed forces for the purposes of this section.

(As amended Pub. L. 98-94, title IX, §§ 911(a), (b), 923(b), title X, § 1007(c)(2), Sept. 24, 1983, 97 Stat. 639, 640, 643, 662; Pub. L. 98-498, title III, § 320(a)(2), Oct. 19, 1984, 98 Stat. 2308.)

AMENDMENTS

1984—Subsec. (h)(1). Pub. L. 98-498 substituted "separation pay, severance pay," for "severance pay" before "or readjustment pay" in two places.

1983—Subsec. (c). Pub. L. 98-94, § 911(a), amended subsec. (c) generally, designating existing provisions as par. (1) and existing pars. (1) and (2) as subpars. (A) and (B), respectively, and in the provisions preceding subpar. (A) substituted "Except as provided in paragraphs (2) and (3), a member" for "A member" and "fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay" for "less than twenty, years of active service immediately before that discharge or release is entitled, unless the Secretary concerned determines that the conditions under which the member is discharged or separated do not warrant such pay, to separation pay", and added pars. (2) and (3).

Subsec. (f). Pub. L. 98-94, § 923(b), amended subsec. (f) generally, substituting "each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded" for "a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded".

Subsec. (g)(2). Pub. L. 98-94, § 911(b), added ", other than section 1212 of this title," after "any other provision of law".

Subsec. (i). Pub. L. 98-94, § 1007(c)(2), designated existing provisions as par. (1), and added par. (2).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 911(c) of Pub. L. 98-94 provided that: "The amendments made by this section [amending subsecs. (c) and (g)(2) of this section] shall take effect on October 1, 1983."

Section 923(g) of Pub. L. 98-94 provided that: "The amendments made by this section [amending sections 1174, 1401, 1402, 1402a, 3991, 3992, 6151 6328, 6330, 6404, 8991, and 8992 of this title, section 423 of Title 14, Coast Guard, section 853o of Title 33, Navigation and Navigable Waters, and section 212 of Title 42, The Public Health and Welfare] shall apply with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after September 30, 1983, and (2) the recomputation of retired pay under section 1402, 1402a, 3992, or 8992 of title 10, United States Code, of any individual who after September 30, 1983, becomes entitled to recompute retired pay under any such section."

CHAPTER 60—SEPARATION OF REGULAR OFFICERS FOR SUBSTANDARD PERFORMANCE OF DUTY OR FOR CERTAIN OTHER REASONS

Sec.
1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons.

AMENDMENTS

1984—Pub. L. 98-525, title V, § 524(b)(2), Oct. 19, 1984, 98 Stat. 2524, substituted "Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons" for "Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons" in item 1181.

§ 1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons

(a) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer shall be required, because his performance of duty has fallen below standards prescribed by the Secretary of Defense, to show cause for his retention on active duty.

(b) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer should be required, because of misconduct, because of moral or professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on active duty.

(As amended Pub. L. 98-525, title V, § 524(b)(1), Oct. 19, 1984, 98 Stat. 2524.)

AMENDMENTS

1984—Pub. L. 98-525 substituted "Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons" for "Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons" in section catchline.

Subsecs. (a), (b). Pub. L. 98-525 amended subsecs. (a) and (b) generally, substituting "Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record" for "Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may at any time convene a board of officers to review the record".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 524(b)(3) of Pub. L. 98-525 provided that: "The amendments made by paragraphs (1) and (2) [amending this section and the analysis to this chapter] shall take effect on the first day of the first month that begins more than 60 days after the date of the enactment of this Act [Oct. 19, 1984], but shall not apply to any case in which, before that date, a board of officers has been ordered to convene under the provisions of section 1181 of title 10, United States Code, as in effect before that date."

CHAPTER 61—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

§ 1201. Regulars and members on active duty for more than 30 days: retirement

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

[*See main edition for text of (2) and (3)*]

(As amended Nov. 8, 1985, Pub. L. 99-145, title V, § 513(a)(1)(A), 99 Stat. 627.)

AMENDMENTS

1985—Par. (1). Pub. L. 99-145 inserted "and stable" after "permanent nature".

§ 1202. Regulars and members on active duty for more than 30 days: temporary disability retired list

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, would be qualified for retirement under section 1201 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

(As amended Nov. 8, 1985, Pub. L. 99-145, title V, § 513(a)(1)(B), 99 Stat. 627.)

AMENDMENTS

1985—Pub. L. 99-145 inserted "and stable" after "determined to be of a permanent nature".

§ 1203. Regulars and members on active duty for more than 30 days: separation

Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 270(b) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

[See main edition for text of (1) to (3)]

(4) either—

(A) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and the disability was (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, or (iii) incurred in line of duty after September 14, 1978;

[See main edition for text of (B) and (C); concluding sentence; credits]

CODIFICATION

Par. (4)(A) is set out in this supplement to correct typographical error appearing in the main edition.

§ 1204. Members on active duty for 30 days or less; disability from injury: retirement

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability resulting from an injury, the Secretary may retire the member with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

[See main edition for text of (2) to (4)]

(As amended Nov. 8, 1985, Pub. L. 99-145, title V, § 513(a)(1)(A), 99 Stat. 627.)

AMENDMENTS

1985—Par. (1). Pub. L. 99-145 inserted "and stable" after "permanent nature".

§ 1205. Members on active duty for 30 days or less; disability from injury: temporary disability retired list

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title would be qualified for retirement under section 1204 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

(As amended Nov. 8, 1985, Pub. L. 99-145, title V, § 513(a)(1)(B), 99 Stat. 627.)

AMENDMENTS

1985—Pub. L. 99-145 inserted "and stable" after "determined to be of a permanent nature".

§ 1210. Members on temporary disability retired list: periodic physical examination; final determination of status

[See main edition for text of (a)]

(b) The Secretary concerned shall make a final determination of the case of each member whose name is on the temporary disability retired list upon the expiration of five years after the date when the member's name was placed on that list. If, at the time of that determination, the physical disability for which the member's name was carried on the temporary disability retired list still exists, it shall be considered to be of a permanent nature and stable.

(c) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and stable and is at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies.

(d) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a perma-

nent nature and stable and is less than 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of the determination, and if he has at least 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies, with retired pay computed under section 1401 of this title.

[*See main edition for text of* (e)]

(f)(1) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member is physically fit to perform the duties of his office, grade, rank, or rating, the Secretary shall—

(A) treat the member as provided in section 1211 of this title; or

(B) discharge the member, retire the member, or transfer the member to the Fleet Reserve, Fleet Marine Corps Reserve, or inactive Reserve under any other law if, under that law, the member—

(i) applies for and qualifies for that retirement or transfer; or

(ii) is required to be discharged, retired, or eliminated from an active status.

(2)(A) For the purpose of paragraph (1)(B), a member shall be considered qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve or is required to be discharged, retired, or eliminated from an active status if, were the member reappointed or reenlisted under section 1211 of this title, the member would in all other respects be qualified for or would be required to be retired, transferred to the Fleet Reserve or Fleet Marine Corps Reserve, discharged, or eliminated from an active status under any other provision of law.

(B) The grade of a member retired, transferred, discharged, or eliminated from an active status pursuant to paragraph (1)(B) shall be determined under the provisions of law under which the member is retired, transferred, discharged, or eliminated. The member's retired, retainer, severance, readjustment, or separation pay shall be computed as if the member had been reappointed or reenlisted upon removal from the temporary disability retired list and before the retirement, transfer, discharge, or elimination. Notwithstanding section 8301 of title 5, a member who is retired shall be entitled to retired pay effective on the day after the last day on which the member is entitled to disability retired pay.

[*See main edition for text of* (g) *and* (h)]

(As amended Nov. 8, 1985, Pub. L. 99-145, title V, § 513(a)(2), 99 Stat. 627.)

AMENDMENTS

1985—Subsecs. (b) to (d). Pub. L. 99-145, § 513(a)(2)(A), inserted "and stable" after "permanent nature".

Subsec. (f). Pub. L. 99-145, § 513(a)(2)(B), designated existing provisions as par. (1), substituted therein "or rating, the Secretary shall—" for "and rating, the Secretary shall treat him as provided in section 1211 of this title", added subpars. (A) and (B), and added par. (2).

§ 1211. Members on temporary disability retired list: return to active duty; promotion

[*See main edition for text of* (a) *and* (b)]

(c) If a member is appointed, reappointed, enlisted, or reenlisted, or resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve, under subsection (a) or (b), his status on the temporary disability retired list terminates on the date of his appointment, reappointment, enlistment, reenlistment, or resumption, as the case may be. However, if such a member does not consent to the action proposed under subsection (a) or (b), and if the member is not discharged, retired, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve or inactive Reserve under section 1210 of this title, his status on the temporary disability retired list and his disability retired pay shall be terminated as soon as practicable and the member shall be discharged.

[*See main edition for text of* (d) *to* (f)]

(As amended Nov. 8, 1985, Pub. L. 99-145, title V, § 513(a)(3), 99 Stat. 627.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-145 inserted "and if the member is not discharged, retired, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve or inactive Reserve under section 1210 of this title," after "proposed under subsection (a) or (b)," and inserted "and the member shall be discharged" after "as soon as practicable".

§ 1212. Disability severance pay

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1174, 1203, 1206 of this title; title 38 section 361.

§ 1216. Secretaries: powers, functions, and duties

(a) The Secretary concerned shall prescribe regulations to carry out this chapter within his department.

(b) Except as provided in subsection (d), the Secretary concerned has all powers, functions, and duties incident to the determination under this chapter of—

[*See main edition for text of* (1) *to* (4); (c) *and* (d)]

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(25), 98 Stat. 2623.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-525 struck out "of this section" after "subsection (d)" in provisions preceding par. (1).

CHAPTER 67—RETIRED PAY FOR NON-REGULAR SERVICE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 676, 1076, 1370, 1406, 1447, 1448, 1450, 1451, 3961, 6034, 8961 of this title; title 5 section 8332; title 38 sections 765, 768.

§ 1331. Age and service requirements

[See main edition for text of (a) and (b)]

(c) No person who, before August 16, 1945, was a Reserve of an armed force, or a member of the Army without component or other category covered by section 1332(a)(1) of this title except a regular component, is eligible for retired pay under this chapter, unless—

(1) he performed active duty after April 5, 1917, and before November 12, 1918, or after September 8, 1940, and before January 1, 1947; or

(2) he performed active duty (other than for training) after June 26, 1950, and before July 28, 1953, after August 13, 1961, and before May 31, 1963, or after August 4, 1964, and before March 28, 1973.

[See main edition for text of (d) and (e)]

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, § 924(a), 97 Stat. 644.)

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-94 substituted "unless—

"(1) he performed active duty after April 5, 1917, and before November 12, 1918, or after September 8, 1940, and before January 1, 1947; or

"(2) he performed active duty (other than for training) after June 26, 1950, and before July 28, 1953, after August 13, 1961, and before May 31, 1963, or after August 4, 1964, and before March 28, 1973.", for "unless he performed active duty after April 5, 1917, and before November 12, 1918, or after September 8, 1940, and before January 1, 1947, or unless he performed active duty (other than for training) after June 26, 1950, and before July 28, 1953".

EFFECTIVE DATE OF 1983 AMENDMENT

Section 924(b) of Pub. L. 98-94 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to retired pay payable for months beginning after September 30, 1983, or the date of the enactment of this Act [Sept. 24, 1983], whichever is later."

CHAPTER 71—COMPUTATION OF RETIRED PAY

§ 1401. Computation of retired pay

The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed "For sections", retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or of any other provision of law, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title.

Formula No.	For sections	Column 1 For a person who first became a member of a uniformed service (as defined in section 1407(a)(2)) after September 7, 1980, take the monthly retired pay base as computed under section 1407(b). For all others, take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
1	1201 1204	Monthly basic pay [1] of grade to which member is entitled under section 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher.[4]	As member elects— (1) 2½% of years of service credited to him under section 1208; [2] or (2) the percentage of disability on date when retired.		Excess over 75% of pay upon which computation is based.
2	1202 1205	Monthly basic pay [1] of grade to which member is entitled under section 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher.[4]	As member elects— (1) 2½% of years of service credited to him under section 1208; [2] or (2) the percentage of disability on date when his name was placed on temporary disability retired list.	Amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based.	Excess over 75% of pay upon which computation is based.
3	1331	Monthly basic pay [3] of highest grade held satisfactory by person at any time in the armed forces.	2½% of years of service credited to him under section 1333.		Excess over 75% of pay upon which computation is based.
4	564 1263 1293 1305	Monthly basic pay to which member would have been entitled if he had served on active duty in his retired grade on day before retirement, or if the pay of that grade is less than the pay of any warrant grade satisfactorily held by him on active duty, the monthly basic pay of that warrant officer grade.	2½% of years of service that may be credited to him under section 1405 of this title.[3]		Excess over 75% of pay upon which computation is based.
5	633 634 635 636 1251	Monthly basic pay [1] of member's retired grade.[5]	2½% of years of service credited under section 1405.[3]		Excess over 75% of pay upon which computation is based.

[1] Compute at rates applicable on date of retirement or date when member's name was placed on temporary disability retired list, as the case may be.

[1]Compute at rates applicable on date when retired pay is granted.
[2]Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.
[3]For an officer who served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, compute at the highest rates of basic pay applicable to him while he served in that office. For an enlisted person who has served as sergeant major of the Army, master chief petty officer of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, compute at the highest rate of basic pay applicable to him while he so served, if that rate is higher than the rate authorized by the table.
[4]For the purposes of this section, determine an officer's retired grade as if sections 3962(b) and 8962(b) did not apply.

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, §§ 922(a)(1), 923(a)(1), (2)(A), 97 Stat. 641, 642; Oct. 30, 1984, Pub. L. 98-557, § 35(b), 98 Stat. 2877.)

AMENDMENTS

1984—Pub. L. 98-557 added reference to Commandant of the Coast Guard in footnote 4 of the table.

1983—Pub. L. 98-94, § 922(a)(1), inserted "The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1."

Pub. L. 98-94, § 923(a)(1), (2)(A), in footnote 3 to the table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 35(c) of Pub. L. 98-557 provided that: "The amendments made by this section [amending this section and provisions set out as a note under section 1009 of Title 37, Pay and Allowances of the Uniformed Services] shall become effective on October 1, 1984".

EFFECTIVE DATE OF 1983 AMENDMENT

Section 922(e) of Pub. L. 98-94 provided that: "The amendments made by this section [enacting section 6333 of this title and amending sections 1401, 1401a, 1402, 1402a, 1437, 1451, 3991, 3992, 6151, 6383, 8991, and 8992 of this title, section 423 of Title 14, Coast Guard, section 853o of Title 33, Navigation and Navigable Waters, section 212 of Title 42, The Public Health and Welfare] shall take effect on October 1, 1983."

Amendment by section 923 of Pub. L. 98-94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

LIMITATION ON PAYMENT OF RETIRED OR RETAINER PAY TO REFLECT FRACTIONAL YEAR ADJUSTMENTS

Pub. L. 98-473, title I, § 101(h) [title VIII, § 8054], Oct. 12, 1984, 98 Stat. 1904, 1933, provided that: "During the current fiscal year and hereafter, none of the assets of the Department of Defense Military Retirement Fund shall be available to pay the retired pay or retainer pay of a member of the Armed Forces for any month who, on or after January 1, 1982, becomes entitled to retired or retainer pay, in an amount that is greater than the amount otherwise determined to be payable after such reductions as may be necessary to reflect adjusting the computation of retired pay or retainer pay that includes credit for a part of a year of service to permit credit for a part of a year of service only for such month or months actually served: *Provided*, That the foregoing limitation shall not apply to any member who before January 1, 1982: (a) applied for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve; (b) is being processed for retirement under the provisions of chapter 61 of title 10 or who is on the temporary disability retired list and thereafter retired under the provisions of sections 1210(c) or (d) of title 10; or (c) is retired or in an inactive status and would be eligible for retired pay under the provisions of chapter 67 of title 10, but for the fact that the person is under sixty years of age."

§ 1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index

[See main edition for text of (a) to (d)]

[(e) Repealed. Pub. L. 98-94, title IX, § 921(a)(1), Sept. 24, 1983, 97 Stat. 640.]

(f) Notwithstanding any other provision of law, the monthly retired or retainer pay of a member or a former member of an armed force who initially became entitled to that pay on or after January 1, 1971, may not be less than the monthly retired or retainer pay to which he would be entitled if he had become entitled to retired or retainer pay at an earlier date, adjusted to reflect any applicable increases in such pay under this section. In computing the amount of retired or retainer pay to which such a member would have been entitled on that earlier date, the computation shall be based on his grade, length of service, and the rate of basic pay applicable to him at that time. This subsection does not authorize any increase in the monthly retired or retainer pay to which a member was entitled for any period before October 7, 1975.

(g) Retired or retainer pay of a member or former member of an armed force as adjusted under this section, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(As amended Pub. L. 98-94, title IX, §§ 921(a)(1), (b), 922(a)(2), Sept. 24, 1983, 97 Stat. 640, 641; Pub. L. 98-525, title XIV, § 1405(26), Oct. 19, 1984, 98 Stat. 2623.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-525 substituted "before October 7, 1975" for "prior to the effective date of this subsection".

1983—Subsec. (e). Pub. L. 98-94, § 921(a)(1), struck out subsec. (e) which had provided that: "Notwithstanding subsections (c) and (d), the adjusted retired pay or retainer pay of a member or former member of an armed force retired on or after October 1, 1967, may not be less than it would have been had he become entitled to retired pay or retainer pay based on the same pay grade, years of service for pay, years of service for retired or retainer pay purposes, and percent of disability, if any, on the day before the effective date of the rates of monthly basic pay on which his retired pay or retainer pay is based."

Subsec. (f). Pub. L. 98-94, § 921(b), struck out ", subject to subsection (e) of this section," after "the computation shall".

Subsec. (g). Pub. L. 98-94, § 922(a)(2), added subsec. (g).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 921(a)(2) of Pub. L. 98-94, provided that:

"(A) Notwithstanding the repeal of such subsection [subsec. (e) of this section], the provisions of such subsection shall apply in the case of any member or

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former member of the Armed Forces eligible to retire on the date of the enactment of this Act [Sept. 24, 1983] for a period of three years after such date in the same manner such provisions would have applied had they not been repealed.

"(B) The amount of retired or retainer pay of any member or former member of the Armed Forces who was eligible to retire on the date of the enactment of this Act [Sept. 24, 1983] and who becomes entitled to such pay at any time after the end of the three-year period beginning on the date of the enactment of this Act may not be less than it would have been had he become entitled to retired or retainer pay on the day before the end of such three-year period."

Amendment by section 922 of Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

§ 1402. Recomputation of retired or retainer pay to reflect later active duty

(a) A member of an armed force who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) before September 8, 1980, and who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

Column 1 Take	Column 2 Multiply by	Column 3 Subtract
Monthly basic pay [1] of the grade in which he would be eligible— (1) to retire if he were retiring upon that release from active duty; or (2) to transfer to the Fleet Reserve or Fleet Marine Corps Reserve if he were transferring to either upon that release from active duty	2½ percent of the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay. [2]	Excess over 75 percent of pay upon which computation is based.

[1] For a member who has been entitled, for continuous period of at least two years, to basic pay under the rates of basic pay in effect upon that release from active duty, compute under those rates. For a member who has been entitled to basic pay for a continuous period of at least two years upon that release from active duty, but who is not covered by the preceding sentence, compute under the rates of basic pay replaced by those in effect upon that release from active duty. For any other member, compute under the rates of basic pay under which the member's retired pay or retainer pay was computed when he entered on that active duty.

[2] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

However, an officer who was ordered to active duty (other than for training) in the grade that he holds on the retired list under former section 6150 of this title, or under any other law that authorized advancement on the retired list based upon a special commendation for the performance of duty in actual combat, may have his retired pay recomputed under this subsection on the basis of the rate of basic pay applicable to that grade upon his release from that active duty only if he has been entitled, for a continuous period of at least three years, to basic pay at that rate. If, upon his release from that active duty, he has been entitled to the basic pay of that grade for a continuous period of at least three years, but he does not qualify under the preceding sentence, he may have his retired pay recomputed under this subsection on the basis of the rate of basic pay prescribed for that grade by the rates of basic pay replaced by those in effect upon his release from that duty.

[*See main edition for text of* (b) *and* (c)]

(d) A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
Highest monthly basic pay that member received while on active duty after retirement or after date when his name was placed on temporary disability retired list, as the case may be.	As member elects— (1) 2½% of years of service credited under section 1208 of this title; [1] or (2) the highest percentage of disability attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be. [1]	Add amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based, if member is on temporary disability retired list.	Excess over 75% of pay upon which computation is based.

[1] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

If, while on active duty after retirement or after his name was placed on the temporary disability retired list, a member covered by this subsection was promoted to a higher grade in which he served satisfactorily, as determined by the Secretary concerned, he is entitled to retired pay based on the monthly basic pay to which he would be entitled if he were on active duty in that higher grade.

[*See main edition for text of* (e)]

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, §§ 922(a)(3), (4), 923(a)(1), (2)(B), (C), 97 Stat. 641, 642.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-94, § 922(a)(3), substituted "according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1." for "as follows:".

Pub. L. 98-94, § 923(a)(1), (2)(B), in footnote 2 to the table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

Subsec. (d). Pub. L. 98-94, § 922(a)(4), substituted "according to the following table. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1." for "as follows:".

Pub. L. 98-94, § 923(a)(1), (2)(C), in footnote 1 to the table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98-94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

RECOMPUTATION OF RETIRED PAY OF CERTAIN RECALLED RETIREES

Pub. L. 98-525, title VI, § 655, Oct. 19, 1984, 98 Stat. 2552, provided that:

"(a) Notwithstanding the second sentence of footnote 1 of the table contained in section 1402(a) of title 10, United States Code (relating to recomputation of retired pay to reflect later active duty), in the case of a member of the Armed Forces who—

"(1) was voluntarily called or ordered to active duty during the period beginning on October 1, 1963, and ending on September 30, 1971;

"(2) was at the time of such call or order entitled to retired pay or retainer pay;

"(3) served on such active duty under such call or order for a continuous period of at least two years; and

"(4) was released from such active duty before October 1, 1973,

the retired or retainer pay of such member shall be recomputed, as provided in subsection (b), under the rates of basic pay in effect at the time of that release from active duty.

"(b) The retired or retainer pay of a member of the Armed Forces described in subsection (a) shall be the amount determined under section 1402(a) of title 10, United States Code (as modified with respect to such member by subsection (a)), and increased by the amount by which the member's retired or retainer pay would have been increased during the period beginning on the date of the member's release from active duty referred to in subsection (a)(4) and ending on the day before the day on which this section becomes effective had subsection (a) applied in the case of the member at the time of that release from active duty.

"(c) This section shall apply only with respect to retired pay and retainer pay payable for months beginning after September 30, 1984, or on or after the date of the enactment of this Act [Oct. 19, 1984], whichever is later."

§ 1402a. Recomputation of retired or retainer pay to reflect later active duty of members who first became members after September 7, 1980

(a) A member of an armed force who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) after September 7, 1980, who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

Column 1 Take	Column 2 Multiply by	Column 3 Subtract
Monthly retired or retainer pay base under section 1407 of this title which he would be entitled to use if— (1) he were retiring upon release from that active duty; or (2) he were transferring to the Fleet Reserve or Fleet Marine Corps Reserve upon that release from active duty.	2½ percent of the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay.[1]	Excess over 75 percent of monthly retired or retainer pay base upon which computation is based.

[1]Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

[*See main edition for text of (b) and (c)*]

(d) A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
The monthly retired pay base computed under section 1407(b) of this title.	As member elects— (1) 2½ percent of years of service credited under section 1208 of this title; [1] or (2) the highest percentage of disability attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be.	Amount necessary to increase product of columns 1 and 2 to 50 percent of pay upon which computation is based, if member is on temporary disability retired list.	Excess over 75 percent of monthly retired or retainer pay base upon which computation is based.

[1] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

[*See main edition for text of (e)*]

(As amended Pub. L. 98-94, title IX, §§ 922(a)(5), (6), 923(a)(1), (2)(D), (E), Sept. 24, 1983, 97 Stat. 641, 642.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-94, § 922(a)(5), substituted "according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1." for "as follows:".

Pub. L. 98-94, § 923(a)(1), (2)(D), in footnote 1 to the table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

Subsec. (d). Pub. L. 98-94, § 922(a)(6), substituted "according to the following table. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1." for "as follows:".

Pub. L. 98-94, § 923(a)(1), (2)(E), in footnote 1 to the table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98-94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

§ 1408. Payment of retired or retainer pay in compliance with court orders

(a) In this section:

[*See main edition for text of (1)*]

(2) "Court order" means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree), which—

[*See main edition for text of (A) and (B)*]

(C) in the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable retired or retainer pay of a member to the spouse or former spouse of that member.

[*See main edition for text of (3) to (6)*]

(b) For the purposes of this section—

(1) service of a court order is effective if—

[*See main edition for text of (A) and (B)*]

(C) the court order or other documents served with the court order identify the member concerned and include, if possible, the social security number of such member; and

[*See main edition for text of (D), (2), (c)*]

(d)(1) After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired or retainer pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired or retainer pay specifically provided for in the court order. In the case of a member entitled to receive retired or retainer pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date of effective service. In the case of a member not entitled to receive retired or retainer pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date on which the member first becomes entitled to receive retired or retainer pay.

[*See main edition for text of (2) to (4)*]

(5) If a court order described in paragraph (1) provides for a division of property (including a division of community property) in addition to an amount of child support or alimony or the payment of an amount of disposable retired or

retainer pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse of the member, any part of the amount payable to the spouse or former spouse under the division of property upon effective service of a final court order of garnishment of such amount from such retired or retainer pay.

(e)(1) The total amount of the disposable retired or retainer pay of a member payable under subsection (d) may not exceed 50 percent of such disposable retired or retainer pay.

(2) In the event of effective service of more than one court order which provide for payment to a spouse and one or more former spouses or to more than one former spouse, the disposable retired or retainer pay of the member shall be used to satisfy (subject to the limitations of paragraph (1)) such court orders on a first-come, first-served basis. Such court orders shall be satisfied (subject to the limitations of paragraph (1)) out of that amount of disposable retired or retainer pay which remains after the satisfaction of all court orders which have been previously served.

(3)(A) In the event of effective service of conflicting court orders under this section which assert to direct that different amounts be paid during a month to the same spouse or former spouse of the same member, the Secretary concerned shall—

(i) pay to that spouse from the member's disposable retired or retainer pay the least amount directed to be paid during that month by any such conflicting court order, but not more than the amount of disposable retired or retainer pay which remains available for payment of such court orders based on when such court orders were effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4);

(ii) retain an amount of disposable retired or retainer pay that is equal to the lesser of—

(I) the difference between the largest amount required by any conflicting court order to be paid to the spouse or former spouse and the amount payable to the spouse or former spouse under clause (i); and

[*See main edition for text of (II), (iii), (B)*]

(4)(A) In the event of effective service of a court order under this section and the service of legal process pursuant to section 459 of the Social Security Act (42 U.S.C. 659), both of which provide for payments during a month from the same member, satisfaction of such court orders and legal process from the retired or retainer pay of the member shall be on a first-come, first-served basis. Such court orders and legal process shall be satisfied out of moneys which are subject to such orders and legal process and which remain available in accordance with the limitations of paragraph (1) and subparagraph (B) of this paragraph during such month after the satisfaction of all court orders or legal process which have been previously served.

[*See main edition for text of (B)*]

(5) A court order which itself or because of previously served court orders provides for the payment of an amount which exceeds the amount of disposable retired or retainer pay available for payment because of the limit set forth in paragraph (1), or which, because of previously served court orders or legal process previously served under section 459 of the Social Security Act (42 U.S.C. 659), provides for payment of an amount that exceeds the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4), shall not be considered to be irregular on its face solely for that reason. However, such order shall be considered to be fully satisfied for purposes of this section by the payment to the spouse or former spouse of the maximum amount of disposable retired or retainer pay permitted under paragraph (1) and subparagraph (B) of paragraph (4).

[*See main edition for text of (6); (f) to (h)*]

(As amended Pub. L. 98-525, title VI, § 643(a)-(d), Oct. 19, 1984, 98 Stat. 2547.)

AMENDMENTS

1984—Subsec. (a)(2)(C). Pub. L. 98-525, § 643(a), added "in the case of a division of property,".

Subsec. (b)(1)(C). Pub. L. 98-525, § 643(b), added ", if possible,".

Subsec. (d)(1). Pub. L. 98-525, § 643(c)(1), substituted "After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired or retainer pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired or retainer pay specifically provided for in the court order" for "After effective service on the Secretary concerned of a court order with respect to the payment of a portion of the retired or retainer pay of a member to the spouse or a former spouse of the member, the Secretary shall, subject to the limitations of this section, make payments to the spouse or former spouse in the amount of the disposable retired or retainer pay of the member specifically provided for in the court order".

Subsec. (d)(5). Pub. L. 98-525, § 643(c)(2), substituted "child support or alimony or the payment of an amount of disposable retired or retainer pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse of the member, any part" for "disposable retired or retainer pay, the Secretary concerned shall, subject to the limitations of this section, pay to the spouse or former spouse of the member, from the disposable retired or retainer pay of the member, any part".

Subsec. (e)(2). Pub. L. 98-525, § 643(d)(1), substituted ", the disposable retired or retainer pay of the member" for "from the disposable retired or retainer pay of a member, such pay" before "shall be used to satisfy".

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Subsec. (e)(3)(A). Pub. L. 98-525, § 643(d)(2)(A), struck out "from the disposable retired or retainer pay" before "of the same member".

Subsec. (e)(3)(A)(i). Pub. L. 98-525, § 643(d)(2)(B), substituted "from the member's disposable retired or retainer pay the least amount" for "the least amount of disposable retired or retainer pay" before "directed to be paid".

Subsec. (e)(2)(A)(ii)(I). Pub. L. 98-525, § 643(d)(2)(C), struck out "of retired or retainer pay" before "required by any conflicting".

Subsec. (e)(4)(A). Pub. L. 98-525, § 643(d)(3), struck out "the retired or retainer pay of" before "the same member" and substituted "satisfaction of such court orders and legal process from the retired or retainer pay of the members shall be" for "such court orders and legal process shall be satisfied".

Subsec. (e)(5). Pub. L. 98-525, § 643(d)(4), struck out "of disposable retired or retainer pay" in two places after "payment of an amount" and substituted "disposable retired or retainer pay" for "such pay" before "available for payment".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 643(e) of Pub. L. 98-525 provided that: "The amendments made by this section [amending this section] shall apply with respect to court orders for which effective service (as described in section 1408(b)(1) of title 10, United States Code, as amended by subsection (b) of this section) is made on or after the date of the enactment of this Act [Oct. 19, 1984]."

EFFECTIVE DATE; TRANSITION PROVISIONS

Section 1006 of title X of Pub. L. 97-252, as amended by Pub. L. 98-94, title IX, § 941(c)(4), Sept. 24, 1983, 97 Stat. 654; Pub. L. 98-525, title VI, § 645(b), Oct. 19, 1984, 98 Stat. 2549, provided that:

[*See main edition for text of* (a) *to* (c)]

"(d) The amendments made by section 1004 of this title [enacting sections 1072(2)(F) and 1086(c)(3) and amending section 1076(b) of this title] and the provisions of section 1005 of this title [set out as a note under this section] shall apply in the case of any former spouse of a member or former member of the uniformed services whether the final decree of divorce, dissolution, or annulment of the marriage of the former spouse and such member or former member is dated before, on, or after February 1, 1983.

"(e) For the purposes of this section—

[*See main edition for text of* (1) *and* (2)]

"(3) the term 'uniformed services' has the same meaning as provided in section 1072 of title 10, United States Code."

CHAPTER 73—ANNUITIES BASED ON RETIRED OR RETAINER PAY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1408, 1461, 1463 of this title; title 5 sections 5531, 8311, 8317; title 25 sections 72, 101, 122, 2517, 6334; title 33 section 857a; title 42 section 213a.

SUBCHAPTER I—RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

§ 1431. Election of annuity: members of armed forces

[*See main edition for text of* (a)]

(b) To provide an annuity under section 1434 of this title, a person covered by subsection (a) may elect to receive a reduced amount of the retired pay or retainer pay to which he may become entitled as a result of service in his armed force. Except as otherwise provided in this section, unless it is made before he completes nineteen years of service for which he is entitled to credit in the computation of his basic pay, the election must be made at least two years before the first day for which retired pay or retainer pay is granted. However, if, because of military operations, a member is assigned to an isolated station or is missing, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and for that reason is unable to make an election before completing nineteen years of that service, he may make the election, to become effective immediately, within one year after he ceases to be assigned to that station or returns to the jurisdiction of his armed force, as the case may be. A member to whom retired pay or retainer pay is granted retroactively, and who is otherwise eligible to make an election, may make the election within ninety days after receiving notice that such pay has been granted to him. An election made after August 13, 1968, is not effective if—

[*See main edition for text of* (1) *and* (2)]

(3) his surviving spouse or children are entitled to dependency and indemnity compensation under chapter 13 of title 38 based upon his death.

[*See main edition for text of* (c) *and* (d)]

(As amended Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1301(a)(2), 99 Stat. 735.)

AMENDMENTS

1985—Subsec. (b)(3). Pub. L. 99-145 substituted "surviving spouse" for "widow".

§ 1437. Payment of annuity

(a) Except as provided in subsections (b) and (c), each annuity payable under this subchapter accrues as of the first day of the month in which the person upon whose pay the annuity is based dies. Payments shall be made in equal installments and not later than the fifteenth day of each month following that month. However, no annuity accrues for the month in which entitlement thereto ends. The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

[*See main edition for text of* (b)]

(c)(1) Upon application of the beneficiary of a member entitled to retired or retainer pay whose retired or retainer pay has been suspended because the member has been determined to be missing, the Secretary concerned may determine for purposes of this subchapter that the member is presumed dead. Any such determination shall be made in accordance with regulations prescribed under section 1444(a) of this title. The Secretary concerned may not make a determination for purposes of this subchapter that a member is presumed dead unless he finds—

(A) that the member has been missing for at least 30 days; and

(B) that the circumstances under which the member is missing would lead a reasonably prudent person to conclude that the member is dead.

(2) Upon a determination under paragraph (1) with respect to a member, an annuity otherwise payable under this subchapter shall be paid as if the member died on the date as of which the retired or retainer pay of the member was suspended.

(3)(A) If, after a determination under paragraph (1), the Secretary concerned determines that the member is alive, any annuity being paid under this subchapter by reason of this subsection shall be promptly terminated and the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States which may be collected or offset—

(i) from any retired or retainer pay otherwise payable to the member;

(ii) if the member is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the member is entitled to any other payment from the United States, from that payment.

(B) If the member dies before the full recovery of the amount of annuity payments described in subparagraph (A) has been made by the United States, the remaining amount of such annuity payments may be collected from the member's beneficiary under this subchapter if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, § 922(a)(14)(A), 97 Stat. 642; Oct. 19, 1984, Pub. L. 98-525, title VI, § 642(a)(1), 98 Stat. 2545; Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1303(a)(9), 99 Stat. 739.)

AMENDMENTS

1985—Subsec. (c)(3)(A). Pub. L. 99-145 struck out "(notwithstanding section 144 of this title)" after "which".

1984—Subsec. (a). Pub. L. 98-525, § 642(a)(1)(A), substituted "subsections (b) and (c)," for "subsection (b)".

Subsec. (c). Pub. L. 98-525, § 642(a)(1)(B), added subsec. (c).

1983—Subsec. (a). Pub. L. 98-94 added "The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1440 of this title.

§ 1438. Deposits for amounts not deducted

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 sections 8311, 8316; title 26 section 122.

§ 1440. Annuities not subject to legal process

Except as provided in section 1437(c)(3)(B) of this title, no annuity payable under this subchapter is assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(As amended Oct. 19, 1984, Pub. L. 98-525, title VI, § 642(a)(2), 98 Stat. 2546; Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1303(a)(10), 99 Stat. 739.)

AMENDMENTS

1985—Pub. L. 99-145 substituted "1437(c)(3)(B)" for "1437(c)(3)".

1984—Pub. L. 98-525 substituted "Except as provided in section 1437(c)(3) of this title, no" for "No".

§ 1444. Regulations; determinations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1436, 1437, 1445 of this title.

SUBCHAPTER II—SURVIVOR BENEFIT PLAN

Sec.
1452. Reduction in retired pay.

AMENDMENTS

1985—Pub. L. 99-145, title VII, § 719(8)(B), Nov. 8, 1985, 99 Stat. 676, struck out "or retainer" after "retired" in item 1452.

§ 1447. Definitions

In this subchapter:

[*See main edition for text of (1)*]

(2) "Base amount" means—

[*See main edition for text of (A) and (B)*]

(C) any amount which is less than the amount otherwise applicable under clause (A) or (B) with respect to an annuity provided under the Plan but which is not less than $300 and which is designated by the person (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) providing the annuity on or before (i) the first day for which he becomes eligible for retired or retainer pay, in the case of a person providing a standard annuity, or (ii) the end of the 90-day period beginning on the date on which he receives the notification required by section 1331(d) of this title that he has completed the years of service required for eligibility for retired pay under chapter 67 of this title, in the case of a person providing a reserve-component annuity.

[*See main edition for text of (3) to (7)*]

(8) "Court order" means a court's final decree of divorce, dissolution, or annulment or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, or annulment or of a court ordered, ratified, or approved property settlement agreement incident to such previously issued decree).

[*See main edition for text of (9) and (10)*]

(11) "Retired pay" includes retainer pay.

(12) "Standard annuity" means an annuity provided by virtue of eligibility under section 1448(a)(1)(A) of this title.

(13) "Reserve-component annuity" means an annuity provided by virtue of eligibility under section 1448(a)(1)(B) of this title.

(As amended Pub. L. 98-94, title IX, § 941(c)(1), Sept. 24, 1983, 97 Stat. 653; Pub. L. 99-145, title VII, §§ 719(1), (2), 721(b), Nov. 8, 1985, 99 Stat. 675, 676.)

AMENDMENTS

1985—Par. (2)(C). Pub. L. 99-145, § 721(b), inserted "(with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title)" after "designated by the person".

Par. (2)(C)(i). Pub. L. 99-145, § 719(2)(A), substituted "a standard annuity" for "an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title".

Par. (2)(C)(ii). Pub. L. 99-145, § 719(2)(B), substituted "a reserve-component annuity" for "an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title".

Pars. (11) to (13). Pub. L. 99-145, § 719(1), added pars. (11) to (13).

1983—Par. (8). Pub. L. 98-94 substituted "or annulment" for "annulment, or legal separation," in two places.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 731 of title VII of Pub. L. 99-145 provided that:

"(a) EFFECTIVE DATE.—Except as otherwise provided in this title, the amendments made by this title [see Short Title of 1985 Amendment note below] shall take effect on the first day of the first month beginning more than 90 days after the date of the enactment of this Act [Nov. 8, 1985].

"(b) PROSPECTIVE BENEFITS ONLY.—No benefit shall accrue to any person by reason of the enactment of this title for any period before the effective date under subsection (a)."

SHORT TITLE OF 1985 AMENDMENT

Section 701 of title VII of Pub. L. 99-145 provided that: "This title [amending sections 1447, 1448, 1450 to 1452, and 1455 of this title, enacting provisions set out as notes under sections 1447, 1448, and 1452 of this title, and repealing a provision set out as a note under section 1451 of this title] may be cited as the 'Survivor Benefit Plan Amendments of 1985'."

§ 1448. Application of Plan

(a)(1) The program established by this subchapter shall be known as the Survivor Benefit Plan. The following persons are eligible to participate in the Plan:

(A) Persons entitled to retired pay.

(B) Persons who would be eligible for retired pay under chapter 67 of this title but for the fact that they are under 60 years of age.

(2) The Plan applies—

(A) to a person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired pay, unless he elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the first day for which he is eligible for that pay; and

[*See main edition for text of* (B)]

A person described in subclauses (i) and (ii) of clause (B) who does not elect to participate in the Plan before the end of the 90-day period referred to in such clause shall remain eligible, upon reaching 60 years of age and otherwise becoming entitled to retired pay, to participate in the Plan in accordance with eligibility under paragraph (1)(A).

(3)(A) A married person who is eligible to provide a standard annuity may not without the concurrence of the person's spouse elect—

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse.

(B) A married person who elects to provide a reserve-component annuity may not without the concurrence of the person's spouse elect—

(i) to provide an annuity for the person's spouse at less than the maximum level; or

(ii) to provide an annuity for a dependent child but not for the person's spouse.

(C) A person may make an election described in subparagraph (A) or (B) without the concurrence of the person's spouse if the person establishes to the satisfaction of the Secretary concerned—

(i) that the spouse's whereabouts cannot be determined; or

(ii) that, due to exceptional circumstances, requiring the person to seek the spouse's consent would otherwise be inappropriate.

(D) This paragraph does not affect any right or obligation to elect to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2).

(E) If a married person who is eligible to provide a standard annuity elects to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2), that person's spouse shall be notified of that election.

[*See main edition for text of* (4)]

(5) A person who is not married when he becomes eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan, but his election must be written, signed by him, and received by the Secretary concerned within one year after he marries or acquires that dependent child. Such an election may not be revoked except in accordance with subsection (b)(3). His election is effective as of the first day of the first calendar month following the month in which his election is received by the Secretary concerned. In the case of a person providing an annuity by virtue of eligibility under paragraph (1)(B), such an election shall include a designation under subsection (e).

(6)(A) A person—

(i) who is a participant in the Plan and is providing coverage for a spouse or a spouse and child;

(ii) who does not have an eligible spouse beneficiary under the Plan; and

(iii) who remarries,

may elect not to provide coverage under the Plan for the person's spouse.

(B) If such an election is made, no reduction in the retired pay of such person under section 1452 of this title may be made. An election under this paragraph—

(i) is irrevocable;

(ii) shall be made within one year after the person's remarriage; and

(iii) shall be made in such form and manner as may be prescribed in regulations under section 1455 of this title.

(C) If a person makes an election under this paragraph—

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse,

the person's spouse shall be notified of that election.

(D) This paragraph does not affect any right or obligation to elect to provide an annuity to a former spouse under subsection (b).

(b)(1) A person who is not married and does not have a dependent child when he becomes eligible to participate in the Plan may elect to provide an annuity to a natural person with an insurable interest in that person. In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(2) A person who has a former spouse when he becomes eligible to participate in the Plan may elect to provide an annuity to that former spouse. In the case of a person with a spouse or a dependent child, such an election prevents payment of an annuity to that spouse or child (other than a child who is a beneficiary under an election under paragraph (4)), including payment under subsection (d). If there is more than one former spouse, the person shall designate which former spouse is to be provided the annuity. In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(3)(A) A person—

(i) who is a participant in the Plan and is providing coverage for a spouse or a spouse and child (even though there is no beneficiary currently eligible for such coverage), and

(ii) who has a former spouse who was not that person's former spouse when he became eligible to participate in the Plan,

may (subject to subparagraph (B)) elect to provide an annuity to that former spouse. Any such election terminates any previous coverage under the Plan and must be written, signed by the person, and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment.

(B) A person may not make an election under subparagraph (A) to provide an annuity to a former spouse who that person married after becoming eligible for retired pay unless—

(i) the person was married to that former spouse for at least one year, or

(ii) that former spouse is the parent of issue by that marriage.

(C) An election under this paragraph may not be revoked except in accordance with section 1450(f) of this title and is effective as of the first day of the first calendar month following the month in which it is received by the Secretary concerned. This paragraph does not provide the authority to change a designation previously made under subsection (e).

(D) If a person who is married makes an election to provide an annuity to a former spouse under this paragraph, that person's spouse shall be notified of that election.

(4) A person who elects to provide an annuity for a former spouse under paragraph (2) or (3) may, at the time of the election, elect to provide coverage under that annuity for both the former spouse and a dependent child, if the child resulted from the person's marriage to that former spouse.

(5) A person who elects to provide an annuity to a former spouse under paragraph (2) or (3) shall, at the time of making the election, provide the Secretary concerned with a written statement (in a form to be prescribed by that Secretary and signed by such person and the former spouse) setting forth whether the election is being made pursuant to a written agreement previously entered into voluntarily by such person as a part of or incident to a proceeding of divorce, dissolution, or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

(c) The application of the Plan to a person whose name is on the temporary disability retired list terminates when his name is removed from that list and he is no longer entitled to disability retired pay.

(d)(1) The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a member who dies on active duty after—

(A) becoming eligible to receive retired pay;

(B) qualifying for retired pay except that he has not applied for or been granted that pay; or

(C) completing 20 years of active service but before he is eligible to retire as a commissioned officer because he has not completed 10 years of active commissioned service.

(2) The Secretary concerned shall pay an annuity under this subchapter to the dependent child of a member described in paragraph (1) if the member and the member's spouse die as a result of a common accident.

(3) If a member described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the member had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed

to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) An annuity that may be provided under this subsection shall be provided in preference to an annuity that may be provided under any other provision of this subchapter on account of service of the same member.

(5) The amount of an annuity under this subsection is computed under section 1451(c) of this title.

[*See main edition for text of (e)*]

(f)(1) The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a person who is eligible to provide a reserve-component annuity and who dies—

(A) before being notified under section 1331(d) of this title that he has completed the years of service required for eligibility for retired pay under chapter 67 of this title; or

(B) during the 90-day period beginning on the date he receives notification under section 1331(d) of this title that he has completed the years of service required for eligibility for retired pay under chapter 67 of this title if he had not made an election under subsection (a)(2)(B) to participate in the Plan.

(2) The Secretary concerned shall pay an annuity under this subchapter to the dependent child of a person described in paragraph (1) if the person and the person's spouse die as a result of a common accident.

(3) If a person described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the person had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) The amount of an annuity under this subsection is computed under section 1451(c) of this title.".

(g)(1) A person—

(A) who is a participant in the Plan and is providing coverage under subsection (a) for a spouse or a spouse and child, but at less than the maximum level; and

(B) who remarries,

may elect, within one year of such remarriage, to increase the level of coverage provided under the Plan to a level not in excess of the current retired pay of that person.

(2) Such an election shall be contingent on the person paying to the United States the amount determined under paragraph (3) plus interest on such amount at a rate determined under regulations prescribed by the Secretary of Defense.

(3) The amount referred to in paragraph (2) is the amount equal to the difference between—

(A) the amount that would have been withheld from such person's retired pay under section 1452 of this title if the higher level of coverage had been in effect from the time the person became a participant in the Plan; and

(B) the amount of such person's retired pay actually withheld.

(4) An election under paragraph (1) shall be made in such manner as the Secretary shall prescribe and shall become effective upon receipt of the payment required by paragraph (2).

(5) A payment received under this subsection by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other payment received under this subsection shall be deposited in the Treasury as miscellaneous receipts.

(As amended Pub. L. 98-94, title IX, § 941(a)(1), (2), (c)(2), Sept. 24, 1983, 97 Stat. 652, 653; Pub. L. 99-145, title V, § 513(b), title VII, §§ 712(a), 713(a), 715, 716(a), 719(3), (8)(A), 721(a), Nov. 8, 1985, 99 Stat. 628, 670, 671, 673-676.)

AMENDMENTS

1985—Subsec. (a)(1)(A). Pub. L. 99-145, § 719(8)(A), substituted "retired pay" for "retired or retainer pay".

Subsec. (a)(2)(A). Pub. L. 99-145, § 721(a)(1), inserted "(with his spouse's concurrence, if required under paragraph (3))" after "unless he elects".

Pub. L. 99-145, § 719(8)(A), substituted "retired pay" for "retired or retainer pay".

Subsec. (a)(3). Pub. L. 99-145, § 721(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

"(A) If a person who is eligible under paragraph (1)(A) to participate in the Plan and who is married elects not to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, or elects to provide an annuity for a former spouse under subsection (b)(2), that person's spouse shall be notified of that election.

"(B) If a person who is eligible under paragraph (1)(B) to participate in the Plan and who is married does not elect to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, or elects to provide an annuity for a former spouse under subsection (b)(2), that person's spouse shall be notified of that action."

Subsec. (a)(6). Pub. L. 99-149, § 715(a), added par. (6).

Subsec. (b)(1). Pub. L. 99-145, § 719(3), substituted "a reserve-component annuity" for "an annuity under this paragraph by virtue of eligibility under subsection (a)(1)(B)".

Subsec. (b)(2). Pub. L. 99-145, § 719(3), substituted "a reserve-component annuity" for "an annuity under this paragraph by virtue of eligibility under subsection (a)(1)(B)".

Pub. L. 99-145, § 716(a)(1), inserted "(other than a child who is a beneficiary under an election under paragraph (4))" after "that spouse or child" in second sentence.

Subsec. (b)(3)(B). Pub. L. 99-145, § 719(8)(A), substituted "retired pay" for "retired or retainer pay".

Subsec. (b)(4), (5). Pub. L. 99-145, § 716(a)(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 99-145, § 513(b), inserted "disability" before "retired pay".

Subsec. (d). Pub. L. 99-145, § 712(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "If a member of an armed force dies on active duty after he has become entitled to retired or retain-

er pay, or after he has qualified for that pay except that he has not applied for or been granted that pay, and his spouse is eligible for dependency and indemnity compensation under section 411(a) of title 38 in an amount that is less than the annuity the spouse would have received under this subchapter if it had applied to the member when he died, the Secretary concerned shall pay to the spouse an annuity equal to the difference between that amount of compensation and 55 percent of the retired or retainer pay to which the otherwise eligible spouse described in section 1450(a)(1) of this title would have been entitled if the member had been entitled to that pay based upon his years of active service when he died."

Subsec. (f). Pub. L. 99-145, § 713(a), added subsec. (f).

Subsec. (g). Pub. L. 99-145, § 715(b), added subsec. (g).

1983—Subsec. (a)(3). Pub. L. 98-94, § 941(c)(2), substituted "provide an annuity for a former spouse under subsection (b)(2)," for "provide an annuity under subsection (b)(2) of this section," in subpars. (A) and (B).

Subsec. (a)(5). Pub. L. 98-94, § 941(a)(1), added "except in accordance with subsection (b)(3)".

Subsec. (b). Pub. L. 98-94, § 941(a)(2), amended subsec. (b) generally. Prior to amendment subsec. (b) read:

"(1) A person who is not married and does not have a dependent child when he becomes eligible to participate in the Plan may elect to provide an annuity to a natural person with an insurable interest in that person or to provide an annuity to a former spouse.

"(2) A person who is married, or has a dependent child may elect to provide an annuity to a former spouse instead of providing an annuity to a spouse or dependent child if the election is made in order to carry out the terms of a written agreement entered into voluntarily with the former spouse (without regard to whether such agreement is included in or approved by a court order).

"(3) In the case of a person electing to provide an annuity under paragraph (1) or (2) of this subsection by virtue of eligibility under subsection (a)(1)(B), the election shall include a designation under subsection (e).

"(4) Any person who elects under paragraph (1) or (2) to provide an annuity to a former spouse shall, at the time of making such election, provide the Secretary concerned with a written statement, in a form to be prescribed by that Secretary, signed by such person and the former spouse setting forth whether the election is being made pursuant to a voluntary written agreement previously entered into by such person as a part of or incident to a proceeding of divorce, dissolution, annulment, or legal separation, and if so, whether such voluntary written agreement has been incorporated in or ratified or approved by a court order."

Effective Date of 1985 Amendment

Amendment by title VII of Pub. L. 99-145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99-145, set out as a note under section 1447 of this title.

Effective Date of 1983 Amendment

Section 941(b) of Pub. L. 98-94 provided that: "In the case of a person who on the date of the enactment of this Act [Sept. 24, 1983] is a person described in subparagraph (A) of subsection (b)(3) of section 1448 of title 10, United States Code (as amended by subsection (a)(2)), such subsection shall apply to that person as if the one-year period provided for in subparagraph (A) of such subsection began on the date of the enactment of this Act."

Option for Certain Participants To Withdraw From Survivor Benefit Plan

Section 711(c) of Pub. L. 99-145 provided that: "A person who during the period beginning on October 19, 1984, and ending on the date of the enactment of this Act [Nov. 8, 1985] became a participant in the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, may elect to withdraw from the Plan before the end of the one-year period beginning on the date of the enactment of this Act. Any person who makes a withdrawal shall be paid the amount of the contributions by such person under the Plan, plus interest on such amount as determined by the Secretary of Defense."

Persons Covered Under Subsections (d) and (f)

Section 712(b) of Pub. L. 99-145 provided that:

"(1) Section 1448(d) of title 10, United States Code, as amended by subsection (a), applies to the surviving spouse and dependent children of a person who dies on active duty after September 20, 1972, and the former spouse of a person who dies after September 7, 1982.

"(2) In the case of the surviving spouse and children of a person who dies during the period beginning on September 21, 1972, and ending on October 1, 1985, the Secretary concerned shall take appropriate steps to locate persons eligible for an annuity under section 1448(d) of title 10, United States Code, as amended by subsection (a). Any such person must submit an application to the Secretary for such an annuity before October 1, 1988, to be eligible to receive such annuity. Any such annuity shall be effective only for months after the month in which the Secretary receives such application."

Section 713(c) of Pub. L. 99-145 provided that:

"(1) Section 1448(f) of title 10, United States Code, as added by subsection (a), shall apply to the surviving spouse and dependent children of any person who dies after September 30, 1978, and the former spouse of a person who dies after September 7, 1982.

"(2) In the case of the surviving spouse and dependents of a person who dies during the period beginning on September 30, 1978, and ending on October 1, 1985, the Secretary concerned shall take appropriate steps to locate persons eligible for an annuity under section 1448(f) of title 10, United States Code, as added by subsection (a). Any such person must submit an application to the Secretary for such an annuity before October 1, 1988, to be eligible to receive such annuity. Any such annuity shall be effective only for months after the month in which the Secretary receives such application."

Revision for Former Spouse Coverage Already in Effect

Section 716(b) of Pub. L. 99-145 provided that: "A person who before the date of the enactment of this Act [Nov. 8, 1985] made an election under section 1448(b) of title 10, United States Code, to provide an annuity for a former spouse may elect, within the one-year period beginning on that date of enactment, to change that election so as to provide an annuity for the former spouse and the dependent children of the person, as authorized by paragraph (4) of that section added by subsection (a). Such an election may be made even though the former spouse for whom the annuity was provided has died."

One-Year Open Period To Switch Computation of SBP Annuity

Section 723(c) of Pub. L. 99-145 provided that: "A person who, before the effective date of this title [see Effective Date of 1985 Amendment note set out under section 1447 of this title], participated in the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, and had elected to provide an annuity to a former spouse may, with the concurrence

of such former spouse, elect to terminate such annuity and provide an annuity to such former spouse under section 1450(a)(1) of such title. Any such election shall be made before the end of the 12-month period beginning on the date of the enactment of this Act [Nov. 8, 1985]."

ONE-YEAR OPEN PERIOD FOR NEW FORMER SPOUSE COVERAGE

Section 723(d) of Pub. L. 99-145 provided that: "A person who before the effective date of this part [part B of title VII of Pub. L. 99-145, see Effective Date of 1985 Amendment note set out under section 1447 of this title] was a participant in the Survivor Benefit Plan and did not elect to provide an annuity to a former spouse may elect to provide an annuity to a former spouse under the Plan. Any such election shall be made before the end of the 12-month period beginning on the date of the enactment of this Act [Nov. 8, 1985]."

INCOME SUPPLEMENT FOR CERTAIN WIDOWS OF RETIRED MEMBERS OF THE UNIFORMED FORCES; SPECIAL ANNUITY FOR WIDOWS OF COMMISSIONED PERSONNEL OF THE PUBLIC HEALTH SERVICE AND NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION IN LIEU OF VA PENSION

Section 4 of Pub. L. 92-425, as amended by Pub. L. 94-496, § 2, Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95-397, title II, § 209, Sept. 30, 1978, 92 Stat. 848; Pub. L. 96-402, § 6, Oct. 9, 1980, 94 Stat. 1708; Pub. L. 98-94, title IX, § 942(a), Sept. 24, 1983, 97 Stat. 654, provided that:

"(a) A person—

"(1) who, on September 21, 1972, was, or during the period beginning on September 22, 1972, and ending on March 20, 1974, became, a widow of a person who was entitled to retired or retainer pay when he died;

[*See main edition for text of (2) and (3)*]

shall be paid an annuity by the Secretary concerned unless she is eligible to receive an annuity under the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter]. However, such a person who is the widow of a retired officer of the Public Health Service or the National Oceanic and Atmospheric Administration, and who would otherwise be eligible for an annuity under this section except that she does not qualify for the pension described in clause (2) of this subsection because the service of her deceased spouse is not considered active duty under section 101(21) of title 38, United States Code, is entitled to an annuity under this section.

[*See main edition for text of (b) to (d)*]

[Section 942(b) of Pub. L. 98-94 provided that: "Any annuity payable by reason of subsection (a) [amending subsec. (a)(1) of this note] shall be payable only for months after September 1983."]

§ 1450. Payment of annuity: beneficiaries

(a) Effective as of the first day after the death of a person to whom section 1448 of this title applies (or on such other day as he may provide under subsection (j)), a monthly annuity under section 1451 of this title shall be paid to—

(1) the eligible widow or widower or the eligible former spouse;

(2) the surviving dependent children in equal shares, if the eligible widow or widower or the eligible former spouse is dead, dies, or otherwise becomes ineligible under this section;

(3) the dependent children in equal shares if the person to whom section 1448 of this title applies (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) elected to provide an annuity for dependent children but not for the spouse or former spouse; or

(4) the natural person designated under section 1448(b) of this title, unless the election to provide an annuity to the natural person has been changed as provided in subsection (f).

(b) An annuity payable to the beneficiary terminates effective as of the first day of the month in which eligibility is lost. An annuity for a widow, widower, or former spouse shall be paid to the widow, widower, or former spouse while the widow, widower, or former spouse is living or, if the widow, widower, or former spouse remarries before reaching age 60, until the widow, widower, or former spouse remarries. If the widow, widower, or former spouse remarries before reaching age 60 and that marriage is terminated by death, annulment, or divorce, payment of the annuity will be resumed effective as of the first day of the month in which the marriage is so terminated. However, if the widow, widower, or former spouse is also entitled to an annuity under the Plan based upon the marriage so terminated, the widow, widower, or former spouse may not receive both annuities but must elect which to receive.

(c) If, upon the death of a person to whom section 1448 of this title applies, the widow, widower, or former spouse of that person is also entitled to compensation under section 411(a) of title 38, the widow, widower, or former spouse may be paid an annuity under this section, but only in the amount that the annuity otherwise payable under this section would exceed that compensation. A reduction in an annuity under this section required by the preceding sentence shall be effective on the date of the commencement of the period of payment of such compensation under title 38.

(d) If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of his retired pay for the purposes of subchapter III of chapter 83 of title 5, an annuity under this section shall not be payable unless, in accordance with section 8339(j) of title 5, he notified the Office of Personnel Management that he did not desire any spouse surviving him to receive an annuity under section 8341(b) of that title.

(e) If no annuity under this section is payable because of subsection (c), any amounts deducted from the retired pay of the deceased under section 1452 of this title shall be refunded to the widow, widower, or former spouse. If, because of subsection (c), the annuity payable is less than the amount established under section 1451 of this title, the annuity payable shall be recalculated under that section. The amount of the reduction in the retired pay required to provide that recalculated annuity shall be computed under section 1452 of this title, and the difference between the amount deducted prior to the computation of that recalculated annuity and the amount that would have been deducted on the basis of that recalculated annu-

ity shall be refunded to the widow, widower, or former spouse.

(f)(1) A person who elects to provide an annuity to a person designated by him under section 1448(b) of this title may, subject to paragraph (2), change that election and provide an annuity to his spouse or dependent child. The Secretary concerned shall notify the former spouse or other natural person previously designated under section 1448(b) of this title of any change of election under the first sentence of this paragraph. Any such change of election is subject to the same rules with respect to execution, revocation, and effectiveness as are set forth in section 1448(a)(5) of this title (without regard to the eligibility of the person making the change of election to make an election under such section).

(2) A person who, incident to a proceeding of divorce, dissolution, or annulment, enters into a voluntary written agreement to elect under section 1448(b) of this title to provide an annuity to a former spouse and who makes an election pursuant to such agreement may not change such election under paragraph (1) unless—

[*See main edition for text of (A) and (B)*]

(3)(A) If a person described in paragraph (2) or (3) of section 1448(b) of this title enters, incident to a proceeding of divorce, dissolution, or annulment, into a voluntary written agreement to elect under section 1448(b) of this title to provide an annuity to a former spouse and such agreement has been incorporated in or ratified or approved by a court order or has been filed with the court of appropriate jurisdiction in accordance with applicable State law, and such person then fails or refuses to make such an election, such person shall be deemed to have made such an election if the Secretary concerned receives a written request, in such manner as the Secretary shall prescribe, from the former spouse concerned requesting that such an election be deemed to have been made and receives a copy of the court order, regular on its face, which incorporates, ratifies, or approves the voluntary written agreement of such person or receives a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law.

(B) An election may not be deemed to have been made under subparagraph (A) in the case of any person unless the Secretary concerned receives a request from the former spouse of the person before October 1, 1985, or within one year of the date of the court order or filing involved, whichever is later.

(C) An election deemed to have been made under subparagraph (A) shall become effective on the first day of the first month which begins after the date of the court order or filing involved.

(4) Nothing in this chapter authorizes any court to order any person to elect under section 1448(b) of this title to provide an annuity to a former spouse unless such person has voluntarily agreed in writing to make such election.

[*See main edition for text of (g) and (h)*]

(i) Except as provided in subsection (*l*)(3)(B), an annuity under this section is not assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(j) An annuity elected by a person providing a reserve-component annuity shall be effective in accordance with the designation made by such person under section 1448(e) of this title. An annuity payable under section 1448(f) of this title shall be effective on the day after the date of the death of the person upon whose service the right to the annuity is based.

(k)(1) If a widow, widower, or former spouse whose annuity has been adjusted under subsection (c) subsequently loses entitlement to compensation under section 411(a) of title 38 because of the remarriage of such widow, widower, or former spouse, and if at the time of such remarriage such widow, widower, or former spouse is 60 years of age or more, the amount of the annuity of such widow, widower, or former spouse shall be readjusted, effective on the effective date of such loss of compensation, to the amount of the annuity which would be in effect with respect to such widow, widower, or former spouse if the adjustment under subsection (c) had never been made.

(2) A widow, widower, or former spouse whose annuity is readjusted under paragraph (1) shall repay any amount refunded under subsection (e) by reason of the adjustment under subsection (c). If the repayment is not made in a lump sum, the widow, widower, or former spouse shall pay interest on the amount to be repaid commencing on the date on which the first such payment is due and applied over the period during which any part of the repayment remains to be paid. The manner in which such repayment shall be made, and the rate of any such interest, shall be prescribed in regulations under section 1455 of this title. An amount repaid under this paragraph (including any such interest) received by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other amount repaid under this paragraph shall be deposited into the Treasury as miscellaneous receipts.

(*l*)(1) Upon application of the beneficiary of a participant in the Plan whose retired pay has been suspended on the basis that the participant is missing (or of a participant in the Plan who would be eligible for retired pay under chapter 67 of this title but for the fact that he is under 60 years of age and whose retired pay, if he were entitled to retired pay, would be suspended on the basis that he is missing), the Secretary concerned may determine for purposes of this subchapter that the participant is presumed dead. Any such determination shall be made in accordance with regulations prescribed under section 1455 of this title. The Secretary concerned may not make a determination for purposes of this subchapter that a participant is presumed dead unless he finds—

(A) that the participant has been missing for at least 30 days; and

(B) that the circumstances under which the participant is missing would lead a reasonably

prudent person to conclude that the participant is dead.

(2) Upon a determination under paragraph (1) with respect to a participant in the Plan, an annuity otherwise payable under this subchapter shall be paid as if the participant died on the date as of which the retired or retainer pay of the participant was suspended.

(3)(A) If, after a determination under paragraph (1), the Secretary concerned determines that the participant is alive, any annuity being paid under this subchapter by reason of this subsection shall be terminated and the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States which may be collected or offset—

(i) from any retired pay otherwise payable to the participant;

(ii) if the participant is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the participant is entitled to any other payment from the United States, from that payment.

(B) If the participant dies before the full recovery of the amount of annuity payments described in subparagraph (A) has been made by the United States, the remaining amount of such annuity payments may be collected from his beneficiary under the Plan if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

(As amended Pub. L. 98-94, title IX, § 941(a)(3), (c)(3), Sept. 24, 1983, 97 Stat. 653; Pub. L. 98-525, title VI, §§ 642(b), 644, Oct. 19, 1984, 98 Stat. 2546, 2548; Pub. L. 99-145, title VII, §§ 713(b), 717, 718, 719(4)–(6), (8)(A), 722, 723(a), (b)(1), title XIII, § 1303(a)(11), Nov. 8, 1985, 99 Stat. 672, 674–677, 739.)

AMENDMENTS

1985—Subsec. (a)(1), (2). Pub. L. 99-145, § 723(a)(1), inserted "or the eligible former spouse" after "widow or widower".

Subsec. (a)(3). Pub. L. 99-145, § 723(a)(2), inserted "(with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title)" after "title applies", and "or former spouse" after "the spouse".

Subsec. (a)(4). Pub. L. 99-145, § 723(a)(3), struck out "former spouse or other" before "natural person" in two places.

Subsec. (b). Pub. L. 99-145, § 723(b)(1), substituted "widow, widower, or former spouse" for "widow or widower" in eight places.

Pub. L. 99-145, § 719(4), substituted "under the Plan" for "under this section".

Subsec. (c). Pub. L. 99-145, § 723(b)(1), substituted "widow, widower, or former spouse" for "widow or widower" in two places.

Pub. L. 99-145, § 718, added provision respecting the effective date of the dependency and indemnity compensation offset.

Subsec. (d). Pub. L. 99-145, § 719(8)(A), substituted "retired pay" for "retired or retainer pay".

Subsec. (e). Pub. L. 99-145, § 719(8)(A), substituted "retired pay" for "retired or retainer pay" in two places.

Pub. L. 99-145, § 723(b)(1), substituted "widow, widower, or former spouse" for "widow or widower" in two places.

Subsec. (f)(3)(A). Pub. L. 99-145, § 722(1), inserted "or has been filed with the court of appropriate jurisdiction in accordance with applicable State law" after "by a court order" and "or receives a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law" after "voluntary written agreement of such person".

Subsec. (f)(3)(B), (C). Pub. L. 99-145, § 722(2), inserted "or filing" after "court order".

Subsec. (i). Pub. L. 99-145, § 1303(a)(11)(A), substituted "subsection (*l*)(3)(B)" for "subsection (*l*)".

Subsec. (j). Pub. L. 99-145, § 719(5), substituted "a person providing a reserve-component annuity" for "any person providing an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title".

Pub. L. 99-145, § 713(b), added provision respecting the effective date of an annuity payable under section 1448(f) of this title.

Subsec. (k). Pub. L. 99-145, § 723(b)(1), substituted "widow, widower, or former spouse" for "widow or widower" wherever appearing.

Subsec. (k)(1). Pub. L. 99-145, § 717(1), (2), designated existing provisions as par. (1) and substituted therein "had never been made." for "had never been made, but such readjustment may not be made until the widow or widower repays any amount refunded under subsection (e) by reason of the adjustment under subsection (c).".

Subsec. (k)(2). Pub. L. 99-145, § 717(3), added par. (2).

Subsec. (*l*)(1). Pub. L. 99-145, § 719(6)(A), (8)(A), substituted in first sentence "the Plan" for "the plan" in two places, and substituted "retired pay" for "retired or retainer pay" before "has been suspended".

Subsec. (*l*)(2). Pub. L. 99-145, § 719(6)(B), struck out "the provision of" before "this subchapter".

Subsec. (*l*)(3)(A). Pub. L. 99-145, § 1303(a)(11)(B), struck out "(notwithstanding subsection (h))" before "may be collected".

Subsec. (*l*)(3)(A)(i). Pub. L. 99-145, § 719(8)(A), substituted "retired pay" for "retried or retainer pay".

1984—Subsec. (f)(3), (4). Pub. L. 98-525, § 644, added par. (3) and redesignated former par. (3) as (4).

Subsec. (i). Pub. L. 98-525, § 642(b)(1), substituted "Except as provided in subsection (*l*), an" for "An".

Subsec. (*l*). Pub. L. 98-525, § 642(b)(2), added subsec. (*l*).

1983—Subsec. (a)(4). Pub. L. 98-94, § 941(a)(3)(A), struck out "at the time the person to whom section 1448 applies became entitled to retired or retainer pay" after "section 1448(b) of this title".

Subsec. (f)(1). Pub. L. 98-94, § 941(a)(3)(B), inserted "(without regard to the eligibility of the person making the change of election to make an election under such section)" after "section 1448(a)(5) of this title".

Pub. L. 98-94, § 941(c)(3)(A), struck out "of this subsection" after "subject to paragraph (2)".

Subsec. (f)(2). Pub. L. 98-94, § 941(c)(3)(B), substituted "or annulment," for "annulment, or legal separation,".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99-145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99-145, set out as a note under section 1447 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1448, 1451, 1452, 1455 of this title; title 38 section 410.

§ 1451. Amount of annuity

(a)(1) In the case of a standard annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)),

the monthly annuity payable to the beneficiary shall be determined as follows:

(A) If the beneficiary is under 62 years of age when becoming entitled to the annuity, the monthly annuity shall be the amount equal to 55 percent of the base amount (as the base amount is adjusted from time to time under subsection 1401a of this title).

(B) If the beneficiary is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to 35 percent of the base amount (as the base amount is adjusted from time to time under section 1401a of this title). However, if the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary, the annuity shall be computed under that subsection.

(2) In the case of a reserve-component annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) If the beneficiary is under 62 years of age when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount (as the base amount is adjusted from time to time under section 1401a of this title) that—

(i) is less than 55 percent; and

(ii) is determined under subsection (f).

(B) If the beneficiary is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount (as the base amount is adjusted from time to time under section 1401a of this title) that—

(i) is less than 35 percent; and

(ii) is determined under subsection (f).

However, if the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary, the annuity shall be computed under that subsection.

(b)(1) In the case of a standard annuity provided to a beneficiary under section 1450(a)(4) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to 55 percent of the retired pay of the person who elected to provide the annuity after the reduction in that pay in accordance with section 1452(c) of this title.

(2) In the case of a reserve-component annuity provided to a beneficiary under section 1450(a)(4) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to a percentage of the retired pay of the person who elected to provide the annuity after the reduction in such pay in accordance with section 1452(c) of this title that—

(A) is less than 55 percent; and

(B) is determined under subsection (f).

(3) For the purposes of paragraph (2), a person—

(A) who provides an annuity that is determined in accordance with that paragraph;

(B) who dies before becoming 60 years of age; and

(C) who at the time of death is otherwise entitled to retired pay,

shall be considered to have been entitled to retired pay at the time of death. The retired pay of such person for the purposes of such paragraph shall be computed on the basis of the rates of basic pay in effect on the date on which the annuity provided by such person is to become effective in accordance with the designation of such person under section 1448(e) of this title.

(c)(1) In the case of an annuity provided under section 1448(d) or 1448(f) of this title, the amount of the annuity shall be determined as follows:

(A) If the person receiving the annuity is under 62 years of age when the member or former member dies, the monthly annuity shall be the amount equal to 55 percent of the retired pay to which the member or former member would have been entitled if the member or former member had been entitled to that pay based upon his years of active service when he died.

(B) If the person receiving the annuity is 62 years of age or older when the member or former member dies, the monthly annuity shall be the amount equal to 35 percent of the retired pay to which the member or former member would have been entitled if the member or former member had been entitled to that pay based upon his years of active service when he died. However, if the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary, the annuity shall be computed under that subsection.

(2) An annuity computed under paragraph (1) that is paid to a surviving spouse shall be reduced by the amount of dependency and indemnity compensation to which the surviving spouse is entitled under section 411(a) of title 38. Any such reduction shall be effective on the date of the commencement of the period of payment of such compensation under title 38.

(3) In the case of an annuity provided by a member described in section 1448(d)(1)(C) of this title, the retired pay to which the member would have been entitled when he died shall be determined based upon the rate of basic pay in effect at the time of death for the highest grade other than a commissioned officer grade in which the member served on active duty satisfactorily, as determined by the Secretary concerned.

(4) In the case of an annuity paid under section 1448(f) of this title, the retired pay of the person providing the annuity shall for the purposes of paragraph (1) be computed on the basis of the rates of basic pay in effect on the effective date of the annuity.

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(d)(1) The annuity of a person whose annuity is computed under clause (A) of subsection (a)(1), (a)(2), or (c)(1) shall be reduced on the first day of the month after the month in which the person becomes 62 years of age.

(2)(A) Except as provided in subparagraph (B), the reduced amount of the annuity shall be the amount of the annuity that the person would be receiving on that date if the annuity had initially been computed under clause (B) of that subsection.

(B) In the case of a person eligible to have the annuity computed under subsection (e) and for whom, at the time the person becomes 62 years of age, an annuity computed with a reduction under subsection (e)(3) is more favorable than an annuity with a reduction described in subparagraph (A), the reduction in the annuity shall be computed in the same manner as a reduction under subsection (e)(3).

(e)(1) The following beneficiaries under the plan are eligible to have an annuity under the Plan computed under this subsection:

(A) A beneficiary receiving an annuity under the Plan on October 1, 1985, as the widow or widower of the person providing the annuity.

(B) A spouse beneficiary of a person who on October 1, 1985—

(i) is a participant in the Plan;

(ii) is entitled to retired pay or is qualified for that pay except that he has not applied for and been granted that pay; or

(iii) would be eligible for retired pay under chapter 67 of this title but for the fact that he is under 60 years of age.

(2) Subject to paragraph (3), an annuity computed under this subsection shall be determined as follows:

(A) In the case of a beneficiary of a standard annuity under section 1450(a) of this title, the annuity shall be the amount equal to 55 percent of the base amount (as the base amount is adjusted from time to time under section 1401a of this title).

(B) In the case of a beneficiary of a reserve-component annuity under section 1450(a) of this title, the annuity shall be the percentage of the base amount (as the base amount is adjusted from time to time under section 1401a of this title) that—

(i) is less than 55 percent; and

(ii) is determined under subsection (f).

(C) In the case of a beneficiary of an annuity under section 1448(d) or 1448(f) of this title, the annuity shall be the amount equal to 55 percent of the retired pay of the person providing the annuity (as that pay is determined under subsection (c)).

(3) An annuity computed under this subsection shall be reduced by the lesser of—

(A) the amount of the survivor benefit, if any, to which the widow or widower would be entitled under title II of the Social Security Act (42 U.S.C. 401 et seq.) based solely upon service by the person concerned as described in section 210(*l*)(1) of such Act (42 U.S.C. 410(*l*)(1)) and calculated assuming that the person concerned lives to age 65; or

(B) 40 percent of the amount of the monthly annuity as determined under paragraph (2).

(4)(A) For the purpose of paragraph (3), a widow or widower shall not be considered as entitled to a benefit under title II of the Social Security Act (42 U.S.C. 401 et seq.) to the extent that such benefit has been offset by deductions under section 203 of such Act (42 U.S.C. 403) on account of work.

(B) In the computation of any reduction made under paragraph (3), there shall be excluded any period of service described in section 210(*l*)(1) of the Social Security Act (42 U.S.C. 410(*l*)(1))—

(i) which was performed after December 1, 1980; and

(ii) which involved periods of service of less than 30 continuous days for which the person concerned is entitled to receive a refund under section 6413(c) of the Internal Revenue Code of 1954 of the social security tax which the person had paid.

(f) The percentage to be applied in determining the amount of an annuity computed under subsection (a)(2), (b)(2), or (e)(2)(B) shall be determined under regulations prescribed by the Secretary of Defense. Such regulations shall be prescribed taking into consideration—

(1) the age of the person electing to provide the annuity at the time of such election;

(2) the difference in age between such person and the beneficiary of the annuity;

(3) whether such person provided for the annuity to become effective (in the event he died before becoming 60 years of age) on the day after his death or on the 60th anniversary of his birth;

(4) appropriate group annuity tables; and

(5) such other factors as the Secretary considers relevant.

(g)(1) Whenever retired pay is increased under section 1401a of this title (or any other provision of law), each annuity that is payable under the Plan shall be increased at the same time by the same total percent. The amount of the increase shall be based on the monthly annuity payable before any reduction under section 1450(c) of this title or under subsection (c)(2).

(2) The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(As amended Pub. L. 98-94, title IX, § 922(a)(14)(B), Sept. 24, 1983, 97 Stat. 642; Pub. L. 98-525, title VI, § 641(a), Oct. 19, 1984, 98 Stat. 2545; Pub. L. 99-145, title VII, § 711(a), (b), Nov. 8, 1985, 99 Stat. 666, 670.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(3)(A), (4)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 6413(c) of the Internal Revenue Code of 1954, referred to in subsec. (e)(4)(B)(ii), is classified to section 6413(c) of Title 26, Internal Revenue Code.

AMENDMENTS

1985—Pub. L. 99-145, § 711(a), amended section generally, eliminating the social security offset to the Plan and establishing a two-tier system under which the beneficiary would receive 55 percent of retired pay before age 62 and 35 percent thereafter in recognition of the entitlement to social security based on military service, and providing benefits to certain beneficiaries under either the old social security offset system or the new two-tier system, whichever is higher.

Subsec. (a)(3). Pub. L. 99-145, § 711(b), repealed Pub. L. 98-525, § 641(a), effective Sept. 1, 1985. See 1984 Amendment note below.

1984—Subsec. (a)(3). Pub. L. 98-525, § 641(a), which substituted "is entitled" for "would be entitled" after "widow or widower" in first sentence and added "or to the extent that the benefit to which the beneficiary is entitled is based on the beneficiary's own earnings or self-employment" at end of second sentence, was repealed effective Sept. 1, 1985, by Pub. L. 99-145, § 711(b). See Effective Date of 1984 Amendment note below.

1983—Subsec. (e). Pub. L. 98-94 added subsec. (e).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by section 711(a) of Pub. L. 99-145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99-145, set out as a note under section 1447 of this title.

Section 711(b) of Pub. L. 99-145 provided in part that the repeal of section 641 of Pub. L. 98-525 [amending this section and enacting provision set out as a note below] is effective Sept. 1, 1985.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 641(b) of Pub. L. 98-525 which provided that the amendments made by subsection (a), amending subsec. (a)(3) of this section, was applicable only in the case of payments of annuities payable for periods that began on or after Sept. 30, 1985, was repealed effective Sept. 1, 1985, by section 711(b) of Pub. L. 99-145.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1448, 1450 of this title.

§ 1452. Reduction in retired pay

(a)(1) Except as provided in subsection (b), the retired pay of a person to whom section 1448 of this title applies who has a spouse or former spouse, or who has a spouse or former spouse and a dependent child, and who has not elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title, or who had elected to provide such an annuity to such a person but has changed his election in favor of his spouse under section 1450(f) of this title, shall be reduced each month—

(A) by an amount equal to 2½ percent of the first $300 (as adjusted from time to time under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount, if the person is providing a standard annuity; or

(B) by an amount prescribed under regulations of the Secretary of Defense, if the person is providing a reserve-component annuity.

(2) If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1) shall be increased by an amount prescribed under regulations of the Secretary of Defense.

(3) The reduction in retired pay prescribed by paragraph (1) shall not be applicable during any month in which there is no eligible spouse or former spouse beneficiary.

(4)(A) Whenever there is an increase in the rates of basic pay of members of the uniformed services effective on or after October 1, 1985, the amount under paragraph (1)(A) with respect to which the percentage factor of 2½ is applied shall be increased by the overall percentage of such increase in the rates of basic pay. The increase under the preceding sentence shall apply only with respect to persons whose retired pay is computed based on the rates of basic pay in effect on or after the date of such increase in rates of basic pay.

(B) In addition to the increase under paragraph (4)(A), the amount under paragraph (1)(A) with respect to which the percentage factor of 2½ is applied shall be further increased at the same time and by the same percentage as an increase in retired pay under section 1401a of this title effective on or after October 1, 1985. Such increase under the preceding sentence shall apply only with respect to persons who initially participate in the Plan on a date which is after both the effective date of such increase under section 1401a and the effective date of the rates of basic pay upon which their retired pay is computed.

(b) The retired pay of a person to whom section 1448 of this title applies who has a dependent child but does not have an eligible spouse or former spouse, or who has a spouse or former spouse but has elected to provide an annuity for dependent children only, shall, as long as he has an eligible dependent child, be reduced by an amount prescribed under regulations of the Secretary of Defense.

(c) The retired pay of a person who has elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title shall be reduced—

(1) in the case of a person providing a standard annuity, by 10 percent plus 5 percent for each full five years the individual designated is younger than that person; or

(2) in the case of a person providing a reserve-component annuity, by an amount prescribed under regulations of the Secretary of Defense.

However, the total reduction under clause (1) may not exceed 40 percent. The reduction in retired pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person receiving retired pay changes his election under section 1450(f) of this title.

(d) If a person who has elected to participate in the Plan has been awarded retired pay and is

not entitled to that pay for any period, he must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period, except when he is called or ordered to active duty for a period of more than 30 days.

(e) When a person who has elected to participate in the Plan waives his retired pay for the purposes of subchapter III of chapter 83 of title 5, he shall not be required to make the deposit otherwise required by subsection (d) as long as that waiver is in effect unless, in accordance with section 8339(i) of title 5, he has notified the Office of Personnel Management that he does not desire any spouse surviving him to receive an annuity under section 8341(b) of title 5.

(f) Except as provided in section 1450(e) of this title, a person is not entitled to any refunds of amounts deducted from retired pay under this section unless the amounts were deducted through administrative error.

(g)(1) Notwithstanding any other provision of this subchapter but subject to paragraphs (2) and (3), any person who has elected to participate in the Plan and who is suffering from a service-connected disability rated by the Veterans' Administration as totally disabling and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty) may discontinue participation in the Plan by submitting to the Secretary concerned a request to discontinue participation in the Plan. Any such person's participation in the Plan shall be discontinued effective on the first day of the first month following the month in which a request under this paragraph is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date. Any request under this paragraph to discontinue participation in the Plan shall be in such form and shall contain such information as the Secretary concerned may require by regulation.

[*See main edition for text of (2) and (3)*]

(4) Upon the death of any person described in paragraph (1) who has discontinued participation in the Plan in accordance with this subsection, any amounts deducted from the retired pay of the deceased under this section shall be refunded to the widow or widower.

(5) Any person described in paragraph (1) who had discontinued participation in the Plan may again elect to participate in the Plan if (A) at any time after having discontinued participation in the Plan the Veterans' Administration reduces such person's service-connected disability rating to less than total, and (B) such person applies to the Secretary concerned, within such period of time after the reduction in such person's service-connected disability rating has been made as the Secretary concerned may prescribe, to again participate in the Plan and includes in such application such information as the Secretary concerned may require. Such person's participation in the Plan under this paragraph is effective beginning on the first day of the month after the month in which the Secretary concerned receives the application for resumption of participation in the Plan, and the Secretary concerned shall begin making reductions in such person's retired pay, or require such person to make deposits in the Treasury under subsection (d), as appropriate, effective on such day.

(h) Whenever retired and retainer pay is increased under section 1401a of this title, the amount of the reduction to be made under subsection (a) or (b) in the retired pay of any person shall be increased at the same time and by the same percentage as such retired pay is increased under section 1401a of this title.

(As amended Pub. L. 99-145, title VII, §§ 714(a), 719(7), (8), 723(b)(2), Nov. 8, 1985, 99 Stat. 672, 675-677.)

AMENDMENTS

1985—Pub. L. 99-145, § 719(8)(B), deleted "or retainer" after "retired" in section catchline.

Subsec. (a)(1). Pub. L. 99-145, § 714(a)(1), (2), designated existing first sentence of subsec. (a) as par. (1); redesignated cl. (1) as (A), inserting "(as adjusted from time to time under paragraph (4))" after "$300" and substituting "a standard annuity" for "an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title"; and redesignated cl. (2) as (B), substituting "a reserve-component annuity" for "an annuity by virtue of eligibility under section 1448(a)(1)(B)".

Pub. L. 99-145, § 719(8)(A), substituted "retired pay" for "retired or retainer pay".

Pub. L. 99-145, § 723(b)(2)(1), inserted "or former spouse" after the first two references to "spouse".

Subsec. (a)(2). Pub. L. 99-145, § 714(a)(3), designated existing second sentence of subsec. (a) as par. (2) and substituted "If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1)" for "As long as there is an eligible spouse and a dependent child, that amount".

Subsec. (a)(3). Pub. L. 99-145, § 714(a)(4), designated existing third sentence of subsec. (a) as par. (3), substituted "paragraph (1)" for "the first sentence of this subsection", and inserted "or former spouse" after "eligible spouse".

Pub. L. 99-145, § 719(8)(A), substituted "retired pay" for "retired or retainer pay".

Subsec. (a)(4). Pub. L. 99-145, § 714(a)(5), added par. (4).

Subsec. (b). Pub. L. 99-145, § 723(b)(2)(2), inserted "or former spouse" after "spouse" in two places.

Pub. L. 99-145, § 719(8)(A), substituted "retired pay" for "retired or retainer pay".

Subsec. (c). Pub. L. 99-145, § 719(7), (8)(A), substituted "retired pay" for "retired or retainer pay" in three places, and substituted "a standard annuity" for "the annuity by virtue of eligibility under section 1448(a)(1)(A) of this title" in cl. (1), "a reserve-component annuity" for "the annuity by virtue of eligibility under section 1448(a)(1)(B) of this title" in cl. (2), and "this subsection" for "this section" in third sentence.

Subsecs. (d) to (h). Pub. L. 99-145, § 719(8)(A), substituted "retired pay" for "retired or retainer pay" wherever appearing.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 714(b) of title VII of Pub. L. 99-145 provided that: "The amendments made by clause (5) of subsection (a) [enacting subsec. (a)(4) of this section] shall apply only with respect to persons who first participate in the Plan on or after the effective date of this title [see note below]."

Amendment by title VII of Pub. L. 99-145, effective Mar. 1, 1986, except as otherwise provided, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99-145, set out as a note under section 1447 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1448, 1450, 1451, 1455 of this title; title 26 section 122.

§ 1455. Regulations

The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service. Those regulations shall—

(1) provide that before the date the member becomes entitled to retired pay—

(A) if the member is married, the member and the member's spouse shall be informed of the elections available under section 1448(a) of this title and the effects of such elections; and

(B) if the notification referred to in section 1448(a)(3)(E) of this title is required, any former spouse of the member shall be informed of the elections available and the effects of such elections; and

(2) establish procedures for depositing the amounts referred to in sections 1448(g), 1450(k)(2), and 1452(d) of this title.

(As amended Pub. L. 99-145, title VII, § 724, Nov. 8, 1985, 99 Stat. 678.)

AMENDMENTS

1985—Pars. (1), (2). Pub. L. 99-145 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

"(1) provide that, when the notification referred to in section 1448(a) of this title is required, the member and his spouse shall, before the date the member becomes entitled to retired or retainer pay, be informed of the elections available and the effects of such elections; and

"(2) establish procedures for depositing the amounts referred to in section 1452(d) of this title."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99-145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99-145, set out as a note under section 1447 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1448, 1450, 1454 of this title.

CHAPTER 74—DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND

Sec.
1461. Establishment and purpose of Fund; definition.
1462. Assets of Fund.
1463. Payments from the Fund.
1464. Board of Actuaries.
1465. Determination of contributions to the Fund.
1466. Payments into the Fund.
1467. Investment of assets of Fund.

§ 1461. Establishment and purpose of Fund; definition

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Military Retirement Fund (hereinafter in this chapter referred to as the "Fund"), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis liabilities of the Department of Defense under military retirement and survivor benefit programs.

(b) In this chapter, "military retirement and survivor benefit programs" means—

(1) the provisions of this title creating entitlement to, or determining the amount of, retired or retainer pay; and

(2) the programs under the jurisdiction of the Department of Defense providing annuities for survivors of members and former members of the armed forces, including chapter 73 of this title, section 4 of Public Law 92-425, and section 5 of Public Law 96-402.

(Added Pub. L. 98-94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 644.)

REFERENCES IN TEXT

Section 4 of Public Law 92-425, referred to in subsec. (b)(2), is set out as a note under section 1448 of this title.

Section 5 of Public Law 96-402, referred to in subsec. (b)(2), is set out as a note under section 1448 of this title.

§ 1462. Assets of Fund

There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund under section 1466 of this title.

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(Added Pub. L. 98-94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645.)

TRANSFER OF APPROPRIATIONS

Section 925(b)(3) of Pub. L. 98-94 provided that: "There shall be transferred into the Fund on October 1, 1984, any unobligated balances of appropriations made to the Department of Defense that are currently available for retired pay, and amounts so transferred shall be part of the assets of the Fund."

§ 1463. Payments from the Fund

(a) There shall be paid from the Fund—

(1) retired pay payable to persons on the retired lists of the Army, Navy, Air Force, and Marine Corps;

(2) retainer pay payable to members of the Fleet Reserve and Fleet Marine Corps Reserve; and

(3) benefits payable under programs under the jurisdiction of the Department of Defense that provide annuities for survivors of members and former members of the armed forces, including chapter 73 of this title, section 4 of Public Law 92-425, and section 5 of Public Law 96-402.

(b) The assets of the Fund are hereby made available for payments under subsection (a).

(Added Pub. L. 98-94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645.)

REFERENCES IN TEXT

Section 4 of Public Law 92-425, referred to in subsec. (a)(3), is set out as a note under section 1448 of this title.

Section 5 of Public Law 96-402, referred to in subsec. (a)(3), is set out as a note under section 1448 of this title.

EFFECTIVE DATE

Section 925(b)(2) of Pub. L. 98-94 provided that: "Sections 1463 (relating to payments from the Fund) and 1466 (relating to payments to the Fund) of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1984."

§ 1464. Board of Actuaries

(a)(1) There is established in the Department of Defense a Department of Defense Retirement Board of Actuaries (hereinafter in this chapter referred to as the "Board"). The Board shall consist of three members, who shall be appointed by the President from among qualified professional actuaries who are members of the Society of Actuaries.

(2)(A) Except as provided in subparagraph (B), the members of the Board shall serve for a term of 15 years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which his predecessor was appointed shall only serve until the end of such term. A member may serve after the end of his term until his successor has taken office. A member of the Board may be removed by the President for misconduct or failure to perform functions vested in the Board, and for no other reason.

(B) Of the members of the Board who are first appointed under this subsection, one each shall be appointed for terms ending five, ten, and fifteen years, respectively, after the date of appointment, as designated by the President at the time of appointment.

(3) A member of the Board who is not otherwise an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay then currently being paid under the General Schedule of subchapter III of chapter 53 of title 5, for each day the member is engaged in the performance of duties vested in the Board and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703 of title 5.

(b) The Board shall report to the Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary.

(c) The Board shall review valuations of the Fund under section 1465(c) of this title and under chapter 95 of title 31 and shall report periodically, not less than once every four years, to the President and Congress on the status of the Fund. The Board shall include in such reports recommendations for such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

(Added Pub. L. 98-94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645, and amended Pub. L. 98-525, title XIV, § 1405(27), Oct. 19, 1984, 98 Stat. 2623.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-525 substituted section "1465(c)" for "1466".

EFFECTIVE DATE

Section 925(b)(1) of Pub. L. 98-94 provided that: "Section 1464 (relating to the Board of Actuaries) of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983."

§ 1465. Determination of contributions to the Fund

(a) Not later than six months after the Board of Actuaries is first appointed, the Board shall determine the amount that is the present value (as of October 1, 1984) of future benefits payable from the Fund that are attributable to service in the armed forces performed before October 1, 1984. That amount is the original unfunded liability of the Fund. The Board shall determine the period of time over which the original unfunded liability should be liquidated and shall determine an amortization schedule for the liquidation of such liability over that period. Contributions to the Fund for the liquidation of the original unfunded liability in accordance with such schedule shall be made as provided in section 1466(b) of this title.

(b)(1) The Secretary of Defense shall determine each year, in sufficient time for inclusion in budget requests for the following fiscal year, the total amount of Department of Defense contributions to be made to the Fund during that fiscal year under section 1466(a) of this title. That amount shall be determined as the product of—

(A) the current estimate of the value of the single level percentage of basic pay to be determined at the time of the next actuarial valuation under subsection (c); and

(B) the total amount of basic pay expected to be paid during that fiscal year to members of the armed forces (other than the Coast Guard) on active duty or in the Selected Reserve.

(2) The amount determined under paragraph (1) for any fiscal year is the amount needed to be appropriated to the Department of Defense for that fiscal year for payments to be made to the Fund during that year under section 1466(a) of this title. The President shall include not less than the full amount so determined in

the budget transmitted to Congress for that fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.

(c)(1) Not less often than every four years, the Secretary of Defense shall carry out an actuarial valuation of Department of Defense military retirement and survivor benefit programs. Each actuarial valuation of such programs shall include a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay to be used for the purposes of subsection (b) and section 1466(a) of this title.

(2) If at the time of any such valuation (or any valuation carried out in order to comply with chapter 95 of title 31) there has been a change in benefits under a military retirement or survivor benefit program that has been made since the last such valuation and such change in benefits increases or decreases the present value of amounts payable from the Fund, the Secretary of Defense shall determine an amortization methodology and schedule for the amortization of the cumulative unfunded liability (or actuarial gain to the Fund) created by such change and any previous such changes so that the present value of the sum of the amortization payments (or reductions in payments that would otherwise be made) equals the cumulative increase (or decrease) in the present value of such amounts.

(3) If at the time of any such valuation (or any valuation carried out in order to comply with chapter 95 of title 31) the Secretary of Defense determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such change in assumptions and any previous such changes in assumptions through an increase or decrease in the payments that would otherwise be made to the Fund.

(4) Contributions to the Fund in accordance with amortization schedules under paragraphs (2) and (3) shall be made as provided in section 1466(b) of this title.

(d) All determinations under this section shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and inflation) and in accordance with generally accepted actuarial principles and practices.

(e) The Secretary of Defense shall provide for the keeping of such records as are necessary for determining the actuarial status of the Fund.

(Added Pub. L. 98-94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 646, and amended Pub. L. 98-525, title XIV, § 1405(28), Oct. 19, 1984, 98 Stat. 2623.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-525 deleted "(A)" after "(c)(1)".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1464, 1466 of this title.

§ 1466. Payments into the Fund

(a) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund for that month the amount that is the product of—

(1) the level percentage of basic pay determined under the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c) of this title; and

(2) the total amount of basic pay paid that month to members of the armed forces (other than the Coast Guard) on active duty or in the Selected Reserve.

Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.

(b)(1) At the beginning of each fiscal year the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury the amount certified to the Secretary by the Secretary of Defense under paragraph (3). Such payment shall be the contribution to the Fund for that fiscal year required by sections 1465(a) and 1465(c) of this title.

(2) At the beginning of each fiscal year the Secretary of Defense shall determine the sum of the following:

(A) The amount of the payment for that year under the amortization schedule determined by the Board of Actuaries under section 1465(a) of this title for the amortization of the original unfunded liability of the Fund.

(B) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1465(c)(2) of this title for the amortization of any cumulative unfunded liability (or any gain) to the Fund resulting from changes in benefits.

(C) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1465(c)(3) of this title for the amortization of any cumulative actuarial gain or loss to the Fund.

(3) The Secretary of Defense shall promptly certify the amount determined under paragraph (2) each year to the Secretary of the Treasury.

(Added Pub. L. 98-94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 647.)

EFFECTIVE DATE

Section effective Oct. 1, 1984, see section 925(b)(2) of Pub. L. 98-94, set out as a note under section 1463 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1462, 1465 of this title.

§ 1467. Investment of assets of Fund

The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary of Defense required to

meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of Defense, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(Added Pub. L. 98-94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 648.)

CHAPTER 75—DEATH BENEFITS

Sec.
1490. Transportation of remains of members entitled to retired or retainer pay who die in a military medical facility.

AMENDMENTS

1983—Pub. L. 98-94, title X, § 1032(a)(2), Sept. 24, 1983, 97 Stat. 672, added item 1490.

§ 1481. Recovery, care, and disposition of remains: decedents covered

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1482, 1490 of this title.

§ 1482. Expenses incident to death

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1490 of this title; title 38 section 901.

§ 1489. Death gratuity: members and employees dying outside the United States while assigned to intelligence duties

(a) The Secretary of Defense may pay a gratuity to the surviving dependents of any member of the armed forces or of any employee of the Department of Defense—

[*See main edition for text of (1)*]

(2) who after October 14, 1980 dies as a result of injuries (excluding disease) sustained outside the United States and whose death—

[*See main edition for text of (A) and (B); (b)*]

(As amended Pub. L. 98-94, title XII, § 1268(9), Sept. 24, 1983, 97 Stat. 706; Pub. L. 99-145, title XIII, § 1303(a)(12), Nov. 8, 1985, 99 Stat. 739.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 substituted "armed forces" for "Armed Forces".

1983—Subsec. (a)(2). Pub. L. 98-94 substituted "October 14, 1980" for "the date of the enactment of this section".

§ 1490. Transportation of remains of members entitled to retired or retainer pay who die in a military medical facility

(a) Subject to subsection (b), when a member entitled to retired or retainer pay or equivalent pay dies while properly admitted under chapter 55 of this title to a medical facility of the armed forces located in the United States, the Secretary concerned may transport the remains, or pay the cost of transporting the remains, of the decedent to the place of burial of the decedent.

(b)(1) Transportation provided under this section may not be to a place outside the United States or to a place further from the place of death than the decedent's last place of permanent residence, and any amount paid under this section may not exceed the cost of transportation from the place of death to the decedent's last place of permanent residence.

(2) Transportation of the remains of a decedent may not be provided under this section if such transportation is authorized by sections 1481 and 1482 of this title or by chapter 23 of title 38.

(c) In this section, "United States" includes the Commonwealth of Puerto Rico and the territories and possessions of the United States.

(Added Pub. L. 98-94, title X, § 1032(a)(1), Sept. 24, 1983, 97 Stat. 671.)

EFFECTIVE DATE

Section 1032(b) of Pub. L. 98-94 provided that: "Section 1490 of title 10, United States Code, as added by subsection (a), shall apply with respect to the transportation of the remains of persons dying after September 30, 1983."

CHAPTER 79—CORRECTION OF MILITARY RECORDS

§ 1552. Correction of military records: claims incident thereto

[*See main edition for text of (a) to (e)*]

(f) With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under subsection (a) may extend only to—

(1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)); or

(2) action on the sentence of a court-martial for purposes of clemency.

(As amended Dec. 6, 1983, Pub. L. 98-209, § 11(a), 97 Stat. 1407.)

REFERENCES IN TEXT

The Uniform Code of Military Justice (Public Law 506 of the 81st Congress), referred to in subsec. (f), is act May 5, 1950, ch. 169, § 1, 64 Stat. 107, which was classified to chapter 22 (§ 551 et seq.) of Title 50, War and National Defense, and was repealed and reenacted as chapter 47 (§ 801 et seq.) of this title by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641, the first section of which enacted this title.

AMENDMENTS

1983—Subsec. (f). Pub. L. 98-209 added subsec. (f).

§ 1553. Review of discharge or dismissal

(a) The Secretary concerned shall, after consulting the Administrator of Veterans' Affairs, establish a board of review, consisting of five members, to review the discharge or dismissal

(other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal. With respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

[*See main edition for text of (b) and (c)*]

(As amended Pub. L. 98-209, § 11(b), Dec. 6, 1983, 97 Stat. 1407.)

REFERENCES IN TEXT

The Uniform Code of Military Justice (Public Law 506 of the 81st Congress), referred to in subsec. (a), is act May 5, 1950, ch. 169, § 1, 64 Stat. 107, which was classified to chapter 22 (§ 551 et seq.) of Title 50, War and National Defense, and was repealed and reenacted as chapter 47 (§ 801 et seq.) of this title by act Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641, the first section of which enacted this title.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-209 added provision that with respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

CHAPTER 81—CIVILIAN EMPLOYEES

Sec.
1587. Employees of nonappropriated fund instrumentalities.
1588. Authority to accept certain voluntary services.
1589. Prohibition on payment of lodging expenses when adequate Government quarters are available.

AMENDMENTS

1984—Pub. L. 98-525, title XIV, § 1401(f)(2), Oct. 19, 1984, 98 Stat. 2618, added item 1589.

1983—Pub. L. 98-94, title XII, §§ 1253(a)(2), 1266(b), Sept. 24, 1983, 97 Stat. 700, 705, added items 1587 and 1588.

[§ 1580. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 663]

Section, added Pub. L. 87-651, title II § 206(a), Sept. 7, 1962, 76 Stat. 519, related to appointment of civilian employees by the Secretary of Defense.

[§§ 1581, 1582. Repealed. Pub. L. 97-295, § 1(19)(A), Oct. 12, 1982, 96 Stat. 1290]

Section 1581, acts Aug. 10, 1956, ch. 1041, 70A Stat. 118; Sept. 2, 1958, Pub. L. 85-861, § 1(34), 72 Stat. 1456; May 29, 1959, Pub. L. 86-36, § 3, 73 Stat. 63; Sept. 23, 1959, Pub. L. 86-377, § 2, 73 Stat. 701; Oct. 4, 1961, Pub. L. 87-367, title II, § 203, 75 Stat. 790; Oct. 11, 1962, Pub. L. 87-793, § 1001(b), 76 Stat. 863, provided for the appointment of a limited number of civilian research and development personnel and prescribed their relationship to civil service provisions.

Section 1582, acts Aug. 10, 1956, ch. 1041, 70A Stat. 118; Sept. 2, 1958, Pub. L. 85-861, § 1(35), 72 Stat. 1456; Sept. 23, 1959, Pub. L. 86-377, § 3, 73 Stat. 701, directed the Secretary of Defense to report annually to Congress on the civilian research and development personnel employed by the Department of Defense under section 1581 of this title.

§ 1584. Laws relating to employment of non-citizens: not applicable to research and development activities

CITIZENSHIP REQUIREMENT NOT APPLICABLE

Pub. L. 99-190, § 101(b) [title VIII, § 8004], Dec. 19, 1985, 99 Stat. 1185, 1202, provided that: "During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense."

Similar provisions were contained in the following prior appropriation acts:

Oct. 21, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8004], 98 Stat. 1904, 1922.

Dec. 8, 1983, Pub. L. 98-212, title VII, § 704, 97 Stat. 1437.

Dec. 21, 1982, Pub. L. 97-377, title I, § 101(c), [title VII, § 704], 96 Stat. 1833, 1349.

§ 1586. Rotation of career-conditional and career employees assigned to duty outside the United States

[*See main edition for text of (a)*]

(b) Notwithstanding any other provision of law, the Secretary of Defense with respect to civilian employees of the Department of Defense other than employees of a military department, and the Secretary of each military department with respect to civilian employees of such military department, may, under such regulations as each such Secretary may prescribe with respect to the employees concerned and in accordance with the policy and other provisions of this section, establish and operate programs of rotation which provide for the granting of the right to return to a position in the United States to each civilian employee in the department concerned—

[*See main edition for text of (1) and (2)*]

(3) who applies, not later than 30 days after his completion of such duty, for the right to return to a position in the United States as provided by subsection (c).

The Secretary of the department concerned may provide by regulation for the waiver of the provisions of paragraphs (2) and (3), or of either of such paragraphs, in those cases in which the application of such paragraphs, or either of them, would be against equity and good conscience or against the public interest.

(c) The right to return to a position in the United States granted under this section shall be without reduction in the seniority, status, and tenure held by the employee immediately before his assignment to duty outside the United States and the employee shall be placed, not later than 30 days after the date on which he is determined to be immediately available to

exercise such right in accordance with the following provisions:

[*See main edition for text of (1) and (2)*]

(3) If the positions described in paragraph (1) and paragraph (2) do not exist, the employee shall be placed in an additional position which shall be established by the department concerned for a period not in excess of 90 days in order to carry out the purposes of this section. Such additional position shall be in the same geographical area as, with rights and benefits not less than the rights and benefits of, and in a grade not lower than the grade of, the position held by the employee immediately before his assignment to duty outside the United States.

(4) If, within 90 days after his placement in a position under paragraph (3) a vacant existing position or new continuing position, for which the employee is qualified, is available for the purposes of this section in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, and in a grade equal to the grade of, the position which he held immediately before his assignment to duty outside the United States, the employee shall be placed in such vacant existing position or new continuing position.

(5) If, within the 90-day period referred to in paragraphs (3) and (4), the employee cannot be placed in a position under paragraph (4), he shall be reassigned or separated under the regulations prescribed by the Office of Personnel Management to carry out sections 3501-3503 of title 5.

(6) If there is a termination of or material change in the activity in which the former position of the employee (referred to in paragraph (1)) was located, he shall be placed, in the manner provided by paragraphs (2), (3), and (4), as applicable, in a position in the department concerned in a geographical area other than the geographical area in which such former position was located.

(d) Each employee who is placed in a position under paragraph (1), (2), (3), (4), or (6) of subsection (c) shall be paid at a rate of basic pay which is not less than the rate of basic pay to which he would have been entitled if he had not been assigned to duty outside the United States.

(e)(1) Each employee who is displaced from a position by reason of the exercise of a return right under subsection (c)(1) shall be placed, as of the date of such displacement, without reduction in seniority, status, and tenure, in a vacant existing position or new continuing position, for which he is qualified, available in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, in a grade equal to the grade of, and at a rate of basic pay not less than the last rate of basic pay which is not less than the last rate of basic pay to which he was entitled while in, the position from which he is displaced.

(2) If the employee cannot be placed in a position under paragraph (1), he shall be reassigned to a position other than the position from which he is displaced, or separated, under the regulations prescribed by the Office of Personnel Management to carry out sections 3501-3503 of title 5.

[*See main edition for text of (f)*]

(g) For the purposes of this section—

(1) "rotation" means the assignment of civilian employees referred to in subsection (b) to duty outside the United States and the return of such employees to duty within the United States; and

[*See main edition for text of (2); (h)*]

(As amended Pub. L. 98-525, title XIV, § 1405(29), Oct. 19, 1984, 98 Stat. 2623.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-525, § 1405(29)(A)(iii), in provisions following par. (3) struck out "of this subsection" after "paragraphs (2) and (3)".

Subsec. (b)(3). Pub. L. 98-525, § 1405(29)(A)(i), (ii), substituted "30" for "thirty" and struck out "of this section" after "subsection (c)".

Subsec. (c). Pub. L. 98-525, § 1405(29)(B)(i), in provisions preceding par. (1) substituted "30" for "thirty".

Subsec. (c)(3). Pub. L. 98-525, § 1405(29)(B)(ii), (iv), substituted "90 days" for "ninety days" and struck out "of this subsection" after "paragraph (2)".

Subsec. (c)(4). Pub. L. 98-525, § 1405(29)(B)(ii), (iv), substituted "90 days" for "ninety days" and struck out "of this subsection" after "paragraph (3)".

Subsec. (c)(5). Pub. L. 98-525, § 1405(29)(B)(iii)-(v), substituted "90-day" for "ninety-day", struck out "of this subsection" after "paragraphs (3) and (4)", and struck out "such" before "paragraph (4)".

Subsec. (c)(6). Pub. L. 98-525, § 1405(29)(B)(vi), struck out "of this subsection" after "paragraph (1)" and "of this subsection," after "as applicable,".

Subsec. (d). Pub. L. 98-525, § 1405(29)(C), struck out "of this section" after "subsection (c)".

Subsec. (e)(1). Pub. L. 98-525, § 1405(29)(C), struck out "of this section" after "subsection (c)(1)".

Subsec. (e)(2). Pub. L. 98-525, § 1405(29)(D), struck out "of this subsection" after "paragraph (1)".

Subsec. (g)(1). Pub. L. 98-525, § 1405(29)(C), struck out "of this section" after "subsection (b)".

§ 1587. Employees of nonappropriated fund instrumentalities

(a) In this section:

(1) "Nonappropriated fund instrumentality employee" means a civilian employee who is paid from nonappropriated funds of Army and Air Force Exchange Service, Navy Resale and Services Support Office, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces.

(2) "Civilian employee" has the meaning given the term "employee" by section 2105(a) of title 5.

(3) "Personnel action", with respect to a nonappropriated fund instrumentality employee (or an applicant for a position as such an employee), means—

(A) an appointment;

(B) a promotion;

(C) a disciplinary or corrective action;

(D) a detail, transfer, or reassignment;

(E) a reinstatement, restoration, or reemployment;

(F) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, or other action described in this paragraph; and

(G) any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

(b) Any civilian employee or member of the armed forces who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or fail to take a personnel action with respect to any nonappropriated fund instrumentality employee (or any applicant for a position as such an employee) as a reprisal for—

(1) a disclosure of information by such an employee or applicant which the employee or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if the information is not specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(2) a disclosure by such an employee or applicant to any civilian employee or member of the armed forces designated by law or by the Secretary of Defense to receive disclosures described in clause (1), of information which the employee or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) This section does not apply to an employee in a position excluded from the coverage of this section by the President based upon a determination by the President that the exclusion is necessary and warranted by conditions of good administration.

(d) The Secretary of Defense shall be responsible for the prevention of actions prohibited by subsection (b) and for the correction of any such actions that are taken. The authority of the Secretary to correct such actions may not be delegated to the Secretary of a military department or to the Assistant Secretary of Defense for Manpower and Logistics.

(e) The Secretary of Defense, after consultation with the Director of the Office of Personnel Management and the Special Counsel of the Merit Systems Protection Board, shall prescribe regulations to carry out this section. Such regulations shall include provisions to protect the confidentiality of employees and applicants making disclosures described in clauses (1) and (2) of subsection (b).

(Added Pub. L. 98–94, title XII, § 1253(a)(1), Sept. 24, 1983, 97 Stat. 699.)

EFFECTIVE DATE

Section 1253(b) of Pub. L. 98–94 provided that: "Section 1587 of such title [this section], as added by subsection (a), shall apply with respect to any conduct prohibited by subsection (b) of such section which occurs after the date of the enactment of this Act [Sept. 24, 1983]."

§ 1588. Authority to accept certain voluntary services

(a) Notwithstanding section 1342 of title 31, the Secretary concerned may accept from any person voluntary services to be provided for a museum or a family support program operated by the military department concerned or the Coast Guard, as appropriate.

(b) A person providing voluntary services under subsection (a) shall be considered to be an employee for the purposes of chapter 81 of title 5, relating to compensation for work-related injuries, and to be an employee of the Government for the purposes of chapter 171 of title 28, relating to tort claims. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purpose by reason of the provision of such services.

(Added Pub. L. 98–94, title XII, § 1266(a), Sept. 24, 1983, 97 Stat. 705, and amended Pub. L. 99–145, title XVI, § 1624(a), Nov. 8, 1985, 99 Stat. 778.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–145 substituted "Secretary concerned" and "operated by the military department concerned or the Coast Guard, as appropriate" for "Secretary of a military department" and "operated by that military department", respectively.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1624(b) of Pub. L. 99–145 provided that: "The amendments made by this section [amending this section] shall take effect on October 1, 1985."

§ 1589. Prohibition on payment of lodging expenses when adequate Government quarters are available

(a) Funds available to the Department of Defense (including funds in any working-capital fund) may not be used to pay the lodging expenses of a civilian employee of the Department of Defense while such employee is on official business away from his designated post of duty or, in the case of a person referred to in section 5703 of title 5, while such person is away from his home or regular place of duty, when adequate Government quarters are available but are not occupied by such employee or person.

(b) Subsection (a) does not apply during a fiscal year to an employee whose duties can be expected to require official travel during more than one-half of the number of the basic administrative work weeks during that fiscal year.

(Added Pub. L. 98–525, title XIV, § 1401(f)(1), Oct. 19, 1984, 98 Stat. 2618.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Pub. L. 98-473, title I, § 101(h) [title VIII, § 8038], Oct. 12, 1984, 98 Stat. 1904, 1930.

Pub. L. 98-212, title VII, § 745, Dec. 8, 1983, 97 Stat. 1446.

Pub. L. 97-377, title I, § 101(c) [title VII, § 749], Dec. 21, 1982, 96 Stat. 1833, 1859.

Pub. L. 97-114, title VII, § 750, Dec. 29, 1981, 95 Stat. 1587.

Pub. L. 96-527, title VII, § 752, Dec. 15, 1980, 94 Stat. 3090.

Pub. L. 96-154, title VII, § 753, Dec. 21, 1979, 93 Stat. 1161.

Pub. L. 95-457, title VIII, § 854, Oct. 13, 1978, 92 Stat. 1253.

Pub. L. 95-111, title VIII, § 853, Sept. 21, 1977, 91 Stat. 908.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

CHAPTER 83—DEFENSE INTELLIGENCE AGENCY CIVILIAN PERSONNEL

Sec.
1604. Civilian personnel management.
1605. Benefits for certain employees of the Defense Intelligence Agency.

AMENDMENTS

1985—Pub. L. 99-145, title XIII, § 1302(a)(2), Nov. 8, 1985, 99 Stat. 737, redesignated item 192 of chapter 8 of this title as item 1605 and transferred it to this chapter.

1984—Pub. L. 98-618, title V, § 501(b), Nov. 8, 1984, 98 Stat. 3302, added item 1604.

§ 1601. Defense Intelligence Senior Executive Service

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1603 of this title.

§ 1602. Defense Intelligence Agency merit pay system

The Secretary of Defense may by regulation establish a merit pay system for such employees of the Defense Intelligence Agency as the Secretary considers appropriate. The merit pay system shall be designed to carry out purposes consistent with those set forth in section 5401 of title 5.

(As amended Pub. L. 98-615, title II, § 204(b), Nov. 8, 1984, 98 Stat. 3216.)

AMENDMENTS

1984—Pub. L. 98-615 substituted "section 5401 of title 5" for "section 5401(a) of title 5".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications, see section 205 of Pub. L. 98-615, set out as a note under section 5401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1603 of this title.

§ 1603. Limit on pay

Nothing in this [1] sections 1601 and 1602 of this title shall be construed to allow the aggregate amount payable to a member of the Defense Intelligence Senior Executive Service under this [1] sections 1601 and 1602 of this title during any fiscal year to exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such year.

(As amended Pub. L. 99-145, title XIII, § 1302(a)(3), Nov. 8, 1985, 99 Stat. 738.)

AMENDMENTS

1985—Pub. L. 99-145 substituted "sections 1601 and 1602 of this title" for "chapter" in two places.

§ 1604. Civilian personnel management

(a) The Secretary of Defense may, without regard to the provisions of any other law relating to the number, classification, or compensation of employees—

(1) establish such positions for civilian officers and employees in the Defense Intelligence Agency as may be necessary to carry out the functions of such Agency;

(2) appoint individuals to such positions; and

(3) fix the compensation of such individuals for service in such positions.

(b) The Secretary of Defense shall, subject to subsection (c), fix the rates of basic pay for positions established under subsection (a) in relation to the rates of basic pay provided in the General Schedule under section 5332 of title 5 for positions subject to such Schedule which have corresponding levels of duties and responsibilities. Except in the case of an officer or employee of the Defense Intelligence Agency serving as a member of the Defense Intelligence Senior Executive Service, no officer or employee of the Defense Intelligence Agency may be paid basic compensation at a rate in excess of the highest rate of basic pay contained in such General Schedule.

(c) The Secretary of Defense is authorized, consistent with section 5341 of title 5, to adopt such provisions of such title as provide for prevailing rate systems of basic pay and to apply such provisions to positions in or under which the Defense Intelligence Agency may employ individuals described by section 5342(a)(2)(A) of such title.

(d) In addition to the basic compensation payable under subsection (b), officers and employees of the Defense Intelligence Agency who are citizens or nationals of the United States and who are stationed outside the continental United States or in Alaska may be paid compensation, in accordance with regulations prescribed by the Secretary of Defense, not in excess of an allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute. Such allowances shall be based on—

(1) living costs substantially higher than in the District of Columbia;

[1] So in original. The word "this" probably should not appear.

(2) conditions of environment which differ substantially from conditions of environment in the continental United States and warrant an allowance as a recruitment incentive; or

(3) both of the factors described in paragraphs (1) and (2).

(e)(1) Notwithstanding any other provision of law, the Secretary of Defense may, during fiscal years 1985 and 1986, terminate the employment of any civilian officer or employee of the Defense Intelligence Agency whenever he considers that action to be in the interests of the United States and he determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such officer or employee cannot be invoked in a manner consistent with the national security. The decisions of the Secretary under this paragraph are final and may not be appealed or reviewed outside the Department of Defense. The Secretary of Defense shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever this termination authority is exercised.

(2) Any termination of employment under this subsection shall not affect the right of the officer or employee involved to seek or accept employment with any other department or agency of the United States if he is declared eligible for such employment by the Director of the Office of Personnel Management.

(3) The Secretary of Defense may delegate authority under this subsection only to the Deputy Secretary of Defense or the Director of the Defense Intelligence Agency or both. An action to terminate any civilian officer or employee by either such officer shall be appealable to the Secretary of Defense.

(Added Pub. L. 98–618, title V, § 501(a), Nov. 8, 1984, 98 Stat. 3301.)

§ 1605. Benefits for certain employees of the Defense Intelligence Agency

(a) The Secretary of Defense may provide to civilian personnel of the Department of Defense who are United States nationals, who are assigned to Defense Attaché Offices and Defense Intelligence Agency Liaison Offices outside the United States, and who are designated by the Secretary of Defense for the purposes of this subsection, allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraphs (2), (3), (4), (6), (7), (8), and (13) of section 901 and sections 705 and 903 of the Foreign Service Act of 1980 (22 U.S.C. 4081(2), (3), (4), (6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5.

(b) The authority of the Secretary of Defense to make payments under subsection (a) is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

(c) Regulations issued pursuant to subsection (a) shall be submitted to the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on Armed Services and the Select Committee on Intelligence of the Senate before such regulations take effect.

(Added Pub. L. 98–215, title V, § 501(a), Dec. 9, 1983, 97 Stat. 1478, § 192, renumbered § 1605 and amended Pub. L. 99–145, title XIII, § 1302(a)(1), Nov. 8, 1985, 99 Stat. 737.)

Amendments

1985—Subsec. (a). Pub. L. 99–145, § 1302(a)(1)(A), (B), struck out references to the Director of the Defense Intelligence Agency and to military personnel, substituted "sections 705 and 903" for "under sections 903, 705, and 2308", and substituted "(22 U.S.C. 4081(2), (3), (4), (6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5." for "(22 U.S.C. 4025; 22 U.S.C. 4081(2), (3), (4), (6), (7), (8), and (13); 22 U.S.C. 4083; 5 U.S.C. 5924(4))."

Subsec. (b). Pub. L. 99–145, § 1302(a)(1)(A), struck out reference to the Director of the Defense Intelligence Agency.

Subsecs. (c), (d). Pub. L. 99–145, § 1302(a)(1)(C), struck out subsec. (c) which read as follows: "Members of the Armed Forces may not receive benefits under both subsection (a) and title 37, United States Code, for the same purpose. The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.", and redesignated former subsec. (d) as (c).

Cross References

Members of Defense Intelligence Agency, entitlement to benefits similar to those provided by this section, see section 431 of Title 37, Pay and Allowances of the Uniformed Services.

CHAPTER 85—PROCUREMENT MANAGEMENT PERSONNEL

Sec.
1621. Definitions.
1622. Education, training, and experience requirements: program managers.
1623. Education, training, and experience requirements: general and flag officers.
1624. Training program: quality assurance personnel.

§ 1621. Definitions

In this chapter:

(1) "Program manager" means an officer or employee of the Department of Defense or member of the armed forces assigned by the Secretary of a military department to have overall responsibility for acquisitions under a major defense acquisition program.

(2) "Procurement command" means the Army Materiel Command, the systems commands of the Navy, the Air Force Systems Command, or Air Force Logistics Command (or any successor organization of any such command).

(3) "Major defense acquisition program" has the meaning given that term in section 139a(a)(1) of this title.

(Added Pub. L. 99–145, title IX, § 924(a)(1), Nov. 8, 1985, 99 Stat. 697.)

§ 1622. Education, training, and experience requirements: program managers

(a) The Secretary of each military department shall prescribe regulations establishing requirements for the education, training, and

experience of any person assigned to duty as the program manager of a major defense acquisition program. Such regulations shall be subject to the approval of the Secretary of Defense.

(b) Regulations under subsection (a) shall require that, before being assigned to duty as a program manager, a person—

(1) must have attended the program management course at the Defense Systems Management College or a comparable program management course at another institution; and

(2) must have at least eight years experience in the acquisition, support, and maintenance of weapon systems, at least two of which were performed while assigned to a procurement command.

(c) A period of time spent pursuing a program of postgraduate education in a technical or management field or attending the course referred to in subsection (b)(1) may be counted toward the eight-year requirement prescribed in subsection (b)(2).

(d) In assigning any person to duty as a program manager, the Secretary concerned may waive the requirements of subsection (b) in individual cases. The authority to waive such requirements may not be delegated.

(Added Pub. L. 99-145, title IX, § 924(a)(1), Nov. 8, 1985, 99 Stat. 698.)

EFFECTIVE DATE

Section 924(b)(3) of Pub. L. 99-145 provided that: "The regulations prescribed under subsection (a) of section 1622 of title 10, United States Code (as added by subsection (a)), shall provide that—

"(A) the requirement described in subsection (b)(1) of such section shall take effect on July 1, 1987; and

"(B) the requirement described in subsection (b)(2) of such section shall take effect on July 1, 1989."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1623 of this title.

§ 1623. Education, training, and experience: [1] flag and general officers

(a) The Secretary of each military department shall prescribe regulations establishing requirements for the education, training, and experience of general or flag officers assigned to duty in a procurement command. Such regulations shall be subject to the approval of the Secretary of Defense.

(b) Regulations prescribed under subsection (a) shall require that in order for an officer of a military department to serve in a flag or general officer grade while assigned to duty in a procurement command, the officer must meet the education and experience requirements for program managers prescribed in section 1622(b) of this title.

(c) The Secretary concerned may waive the requirements for assignment to duty described in subsection (a). The authority to waive such requirements may not be delegated.

[1] So in original. The word "requirements" probably should precede the colon.

(Added Pub. L. 99-145, title IX, § 924(a)(1), Nov. 8, 1985, 99 Stat. 698.)

EFFECTIVE DATE

Section 924(b)(1) of Pub. L. 99-145 provided that: "Section 1623 of title 10, United States Code (as added by subsection (a)), shall take effect on July 1, 1990."

§ 1624. Training program: quality assurance personnel

The Secretary of Defense shall develop a training program for all personnel of the Department of Defense who are responsible for assuring quality in contractor facilities. The program shall be at least four weeks in duration. A person assigned to perform quality assurance duties in the Department of Defense shall, to the maximum extent practicable, attend such program during the first six months of the assignment to such duties.

(Added Pub. L. 99-145, title IX, § 924(a)(1), Nov. 8, 1985, 99 Stat. 698.)

EFFECTIVE DATE

Section 924(b)(2) of Pub. L. 99-145 provided that: "Section 1624 of title 10, United States Code (as added by subsection (a)), shall take effect on January 1, 1987."

PART III—TRAINING

Chap.		Sec.
106.	Educational Assistance for Members of the Selected Reserve	2131
109.	Educational Loan Repayment Programs	2171

AMENDMENTS

1985—Pub. L. 99-145, title VI, § 671(a)(2), Nov. 8, 1985, 99 Stat. 663, added item for chapter 109.

1984—Pub. L. 98-525, title VII, § 705(a)(2), Oct. 19, 1984, 98 Stat. 2567, substituted "Members of the Selected Reserve" for "Enlisted Members of the Selected Reserve of the Ready Reserve" in item for chapter 106.

CHAPTER 101—TRAINING GENERALLY

Sec.	
2003.	Aeronautical rating as pilot: qualifications.
2006.	Department of Defense Education Benefits Fund.
2007.	Limitation on payment of tuition for off-duty training or education.
2008.	Authority to use funds for certain educational purposes.
2009.	Military colleges: female students.

AMENDMENTS

1984—Pub. L. 98-525, title VII, § 706(a)(2), title XIV, §§ 1401(g)(2), 1405(31), Oct. 19, 1984, 98 Stat. 2570, 2619, 2624, substituted a colon for a semicolon in item 2003 and added items 2006 to 2009.

§ 2002. Dependents of members of armed forces: language training

[See main edition for text of (a)]

(b) In this section, "dependent" has the same meaning that it has under section 401 of title 37.

(As amended Pub. L. 98-525, title XIV, § 1405(30), Oct. 19, 1984, 98 Stat. 2624.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-525 substituted "In this section," for "For the purposes of this section, the word".

§ 2005. Advanced education assistance: active duty agreement; reimbursement requirements

[*See main edition for text of (a) and (b)*]

(c) Subject to the provisions of subsection (d), the obligation to reimburse the United States under an agreement described in subsection (a) is, for all purposes, a debt owing the United States.

(d) A discharge in bankruptcy under title 11 shall not release a person from an obligation to reimburse the United States required under the terms of an agreement described in subsection (a) if the final decree of the discharge in bankruptcy was issued within a period of five years after the last day of a period which such person had agreed to serve on active duty. This subsection applies to a discharge in bankruptcy in any proceeding which begins after September 30, 1978.

(e) In this section:

[*See main edition for text of (1) to (3)*]

(f) The Secretary concerned shall require, as a condition to the Secretary providing financial assistance under section 2107 or 2107a of this title to any person, that such person enter into an agreement described in subsection (a). In addition to the requirements of clauses (1) through (4) of such subsection, any agreement required by this subsection shall provide—

(1) that if such person fails to complete the education requirements specified in the agreement, the Secretary will have the option to order such person to reimburse the United States in the manner provided for in clause (3) of such subsection without the Secretary first ordering such person to active duty as provided for under clause (2) of such subsection and sections 2107(f) and 2107a(f) of this title; and

(2) that any amount owed by such person to the United States under such agreement shall bear interest at the rate equal to the highest rate being paid by the United States on the day on which the reimbursement is determined to be due for securities having maturities of ninety days or less and shall accrue from the day on which the member is first notified of the amount due to the United States as a reimbursement under this section.

(As amended Pub. L. 98-94, title X, § 1003(b)(1), title XII, § 1268(10), Sept. 24, 1983, 97 Stat. 656, 706.)

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-94, § 1268(10)(A), struck out "of this section" after "subsection (d)" and "subsection (a)".

Subsec. (d). Pub. L. 98-94, § 1268(10)(A), struck out "of this section" after "subsection (a)".

Subsec. (e). Pub. L. 98-94, § 1268(10)(B), substituted a colon for a dash after "In this section" preceding par. (1).

Subsec. (f). Pub. L. 98-94, § 1003(b)(1), added subsec. (f).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1003(b)(2) of Pub. L. 98-94 provided that: "The amendment made by paragraph (1) [enacting subsec. (f) of this section] shall apply with respect to agreements entered into after September 30, 1983."

§ 2006. Department of Defense Education Benefits Fund

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Education Benefits Fund (hereinafter in this section referred to as the "Fund"), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance Department of Defense education liabilities on an actuarially sound basis.

(b) In this section:

(1) "Department of Defense education liabilities" means liabilities of the Department of Defense for benefits under chapter 30 of title 38 and for benefits under chapter 106 of this title.

(2) "Normal cost", with respect to any period of time, means the total of the following:

(A) The present value of the future benefits payable from the Fund for amounts attributable to increased amounts of educational assistance authorized under section 1415(c) of title 38 to persons who were not on active duty on July 1, 1985, and who during such period enter on active duty.

(B) The present value of the future benefits payable from the Fund for amounts attributable to educational assistance authorized under subchapter III of chapter 30 of title 38 to persons who were not on active duty on July 1, 1985, and who during such period—

(i) enter a fourth year of active duty, in the case of persons eligible for basic educational assistance under section 1411 of such title; or

(ii) enter a period of service that will establish entitlement to such educational assistance under section 1421(b) of such title, in the case of persons eligible for basic educational assistance under section 1412 of such title.

(C) The present value of the future benefits payable from the Fund for educational assistance under chapter 106 of this title to persons who during such period become entitled to such assistance.

(c) There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund by the Secretary of Defense under subsection (g).

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(d) The Secretary of the Treasury shall transfer from the Fund to the Administrator of Veterans' Affairs such amounts as may be necessary to enable the Administrator to make required payments of Department of Defense education liabilities. The Secretary of the

Treasury, the Secretary of Defense, and the Administrator shall enter into an agreement as to how and when, and the amounts in which, such transfers shall be made. Except for investments under subsection (h), amounts in the Fund may not be used for any purpose other than transfers as described in this subsection.

(e)(1)(A) There is established in the Department of Defense a Department of Defense Education Benefits Board of Actuaries (hereinafter in this section referred to as the "Board"). The Board shall consist of three members, who shall be appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries.

(B)(i) Except as provided in clause (ii), the members of the Board shall serve for a term of fifteen years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which his predecessor was appointed shall only serve until the end of such term. A member may serve after the end of his term until his successor has taken office. A member of the Board may be removed by the Secretary of Defense for misconduct or failure to perform functions vested in the Board, and for no other reason.

(ii) Of the members of the Board who are first appointed under this paragraph, one each shall be appointed for terms ending five, ten, and fifteen years, respectively, after the date of appointment, as designated by the Secretary of Defense at the time of appointment.

(C) A member of the Board who is not otherwise an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay then currently being paid under the General Schedule of subchapter III of chapter 53 of title 5, for each day the member is engaged in the performance of duties vested in the Board and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703 of title 5.

(2) The Board shall report to the Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary.

(3) The Board shall review valuations of the Fund under subsection (f) and report periodically, not less than once every four years, to the President and Congress on the status of the Fund and shall recommend such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

(4) The Secretary shall keep, or cause to be kept, such records as necessary for determining the actuarial status of the Fund.

(f)(1) The Secretary of Defense shall carry out periodic actuarial valuations of the educational programs described in subsection (b)(1).

(2) Based on the most recent such valuation, the Secretary of Defense shall estimate the normal cost for the next fiscal year.

(3) If at the time of any such valuation there has been a change in benefits under an education program described in subsection (b)(1) that has been made since the last such valuation and that increases or decreases the present value of benefits payable from the Fund, the Secretary of Defense shall determine an amortization methodology and schedule for the liquidation of the unfunded liability (or negative unfunded liability) thus created such that the present value of the sum of the amortization payments equals the increase or decrease in the present value of such benefits.

(4) If at the time of any such valuation the Secretary of Defense determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the liquidation of such gain or loss through an increase or decrease in the payments that would otherwise be made to the Fund.

(5) Based on the determinations under paragraphs (2), (3), and (4) the Secretary of Defense shall determine the amount needed to be appropriated to the Department of Defense for the next fiscal year for payments to be made to the Fund under subsection (g). The President shall include not less than the full amount so determined in the budget transmitted to Congress for the next fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.

(6) All determinations under this subsection shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and inflation) and in accordance with generally accepted actuarial principles and practices.

(g)(1) The Secretary of Defense shall pay into the Fund each month the amount that, based upon the most recent actuarial valuation of the education programs described in subsection (b)(1), is equal to the actual total normal cost for the preceding month.

(2) The Secretary of Defense shall pay into the Fund at the beginning of each fiscal year (or as soon thereafter as appropriations are available for such purpose) the sum of the following:

(A) The amount of the payment for that year, if any, for the amortization of any liability to the Fund resulting from a change in benefits, as determined by the Secretary of Defense under subsection (f)(3).

(B) The amount of the payment for that year, if any, for the amortization of any actuarial gain or loss to the Fund, as determined by the Secretary of Defense under subsection (f)(4).

(3) Amounts paid into the Fund under this subsection shall be paid from appropriations available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.

(h) The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding

marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(Added Pub. L. 98-525, title VII, § 706(a)(1), Oct. 19, 1984, 98 Stat. 2568.)

FIRST PAYMENT INTO FUND

Section 706(b) of Pub. L. 98-525 provided that: "The first payment into the Department of Defense Education Benefits Fund under section 2006 of title 10, United States Code, as added by subsection (a), shall be made not later than three months after the Board of Actuaries determines the amounts needed to be paid into the Fund for that portion of fiscal year 1985 beginning on July 1, 1985. The first payment shall be made in a lump sum equal to the total of the amounts that would have been paid to the Fund each month between July 1, 1985, and the time such first payment is made."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 1435.

§ 2007. Limitation on payment of tuition for off-duty training or education

(a) The Secretary of a military department may not pay more than 75 percent of the charges of an educational institution for the tuition or expenses of a member of the armed forces enrolled in such institution for education or training during his off-duty periods, except that—

(1) in the case of an enlisted member in the pay grade of E-5 or higher with less than 14 years' service, not more than 90 percent of the charges may be paid;

(2) in the case of a member enrolled in a high school completion program, all of the charges may be paid; and

(3) in the case of a commissioned officer, no part of the charges may be paid unless the officer agrees to remain on active duty for a period of at least two years after the completion of the training or education.

(b) The limitation in subsection (a) does not apply to the Program for Afloat College Education.

(Added Pub. L. 98-525, title XIV, § 1401(g)(1), Oct. 19, 1984, 98 Stat. 2618.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8017], 98 Stat. 1904, 1926.

Dec. 8, 1983, Pub. L. 98-212, title VII, § 720, 97 Stat. 1441.

Dec. 21, 1982, Pub. L. 97-377, title I, § 101(c) [title VII, § 721], 96 Stat. 1833, 1854.

Dec. 29, 1981, Pub. L. 97-114, title VII, § 721, 95 Stat. 1582.

Dec. 15, 1980, Pub. L. 96-527, title VII, § 722, 94 Stat. 3084.

Dec. 21, 1979, Pub. L. 96-154, title VII, § 722, 93 Stat. 1156.

Oct. 13, 1978, Pub. L. 95-457, title VIII, § 822, 92 Stat. 1247.

Sept. 21, 1977, Pub. L. 95-111, title VIII, § 821, 91 Stat. 903.

Sept. 22, 1976, Pub. L. 94-419, title VII, § 721, 90 Stat. 1295.

Feb. 9, 1976, Pub. L. 94-212, title VII, § 721, 90 Stat. 172.

Oct. 8, 1974, Pub. L. 93-437, title VIII, § 821, 88 Stat. 1228.

Jan. 2, 1974, Pub. L. 93-238, title VII, § 722, 87 Stat. 1042.

Oct. 26, 1972, Pub. L. 92-570, title VII, § 722, 86 Stat. 1200.

Dec. 18, 1971, Pub. L. 92-204, title VII, § 722, 85 Stat. 731.

Jan. 11, 1971, Pub. L. 91-668, title VIII, § 822, 84 Stat. 2034.

Dec. 29, 1969, Pub. L. 91-171, title VI, § 622, 83 Stat. 483.

Oct. 17, 1968, Pub. L. 90-580, title V, § 521, 82 Stat. 1133.

Sept. 29, 1967, Pub. L. 90-96, title VI, § 621, 81 Stat. 246.

Oct. 15, 1966, Pub. L. 89-687, title VI, § 621, 80 Stat. 995.

Sept. 29, 1965, Pub. L. 89-213, title VI, § 621, 79 Stat. 877.

Aug. 19, 1964, Pub. L. 88-446, title V, § 521, 78 Stat. 478.

Oct. 17, 1963, Pub. L. 88-149, title V, § 521, 77 Stat. 267.

Aug. 9, 1962, Pub. L. 87-577, title V, § 521, 76 Stat. 332.

Aug. 17, 1961, Pub. L. 87-144, title VI, § 621, 75 Stat. 379.

July 7, 1960, Pub. L. 86-601, title V, § 521, 74 Stat. 353.

Aug. 18, 1959, Pub. L. 86-166, title V, § 621, 73 Stat. 382.

Aug. 22, 1958, Pub. L. 85-724, title VI, § 623, 72 Stat. 727.

Aug. 2, 1957, Pub. L. 85-117, title VI, § 624, 71 Stat. 327.

July 2, 1956, ch. 488, title VI, § 624, 70 Stat. 471.

July 13, 1955, ch. 358, title VI, § 628, 69 Stat. 320.

June 30, 1954, ch. 432, title VII, § 730, 68 Stat. 355.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

§ 2008. Authority to use funds for certain educational purposes

Funds appropriated to the Department of Defense may be used to carry out section 10 of the Act of September 23, 1950 (20 U.S.C. 640), relating to impact aid authorization.

(Added Pub. L. 98-525, title XIV, § 1401(g)(1), Oct. 19, 1984, 98 Stat. 2618.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Pub. L. 98-473, title I, § 101(h) [title VIII, § 8006], Oct. 12, 1984, 98 Stat. 1904, 1923.

Pub. L. 98-212, title VII, § 709, Dec. 8, 1983, 97 Stat. 1439.

Pub. L. 97-377, title I, § 101(c) [title VII, § 709], Dec. 21, 1982, 96 Stat. 1833, 1851.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

§ 2009. Military colleges: female students

(a) Under regulations prescribed by the Secretary of Defense, any college or university desig-

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nated by the Secretary of Defense as a military college shall, as a condition of maintaining such designation, provide that qualified female undergraduate students enrolled in such college or university be eligible to participate in military training at such college or university.

(b) Regulations prescribed under subsection (a) may not require a college or university, as a condition of maintaining its designation as a military college or for any other purpose, to require female undergraduate students enrolled in such college or university to participate in military training.

(Added Pub. L. 98-525, title XIV, § 1401(g)(1), Oct. 19, 1984, 98 Stat. 2619.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in Pub. L. 95-485, title VIII, § 809, Oct. 20, 1978, 92 Stat. 1623, which was set out as a note under section 2102 of this title, and was repealed by Pub. L. 98-525, title XIV, §§ 1403(b), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

CHAPTER 102—JUNIOR RESERVE OFFICERS' TRAINING CORPS

§ 2031. Junior Reserve Officers' Training Corps

(a) The Secretary of each military department shall establish and maintain a Junior Reserve Officers' Training Corps, organized into units, at public and private secondary educational institutions which apply for a unit and meet the standards and criteria prescribed pursuant to this section. Not more than 200 units may be established by all of the military departments each year beginning with the calendar year 1966, and the total number of units which may be established and maintained by all of the military departments under authority of this section, including those units already established on October 13, 1964, may not exceed 1,600. The President shall promulgate regulations prescribing the standards and criteria to be followed by the military departments in selecting the institutions at which units are to be established and maintained and shall provide for the fair and equitable distribution of such units throughout the Nation, except that more than one such unit may be established and maintained at any military institute.

(b) No unit may be established or maintained at an institution unless—

(1) the number of physically fit students in such unit who are at least 14 years of age and are citizens or nationals of the United States is not less than (A) 10 percent of the number of students enrolled in the institution who are at least 14 years of age, or (B) 100, whichever is less;

[*See main edition for text of* (2)]

(3) the institution provides a course of military instruction of not less than three academic years' duration, as prescribed by the Secretary of the military department concerned;

(4) the institution agrees to limit membership in the unit to students who maintain acceptable standards of academic achievement and conduct, as prescribed by the Secretary of the military department concerned; and

(5) the unit meets such other requirements as may be established by the Secretary of the military department concerned.

[*See main edition for text of* (c) *and* (d)]

(As amended Pub. L. 98-525, title IV, § 422, title XIV, § 1405(32), Oct. 19, 1984, 98 Stat. 2520, 2624.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-525, § 1405(32), substituted "October 13, 1964" for "the date of enactment of this section".

Subsec. (b)(1). Pub. L. 98-525, § 422(1), substituted "the number of physically fit students in such unit who are at least 14 years of age and are citizens or nationals of the United States is not less than (A) 10 percent of the number of students enrolled in the institution who are at least 14 years of age, or (B) 100, whichever is less" for "the unit contains at least 100 physically fit students who are at least 14 years of age and are citizens or nationals of the United States".

Subsec. (b)(5). Pub. L. 98-525, § 422(2)-(4), added par. (5).

REDUCTION IN NUMBER OF STUDENTS REQUIRED TO BE IN JUNIOR RESERVE OFFICERS' TRAINING CORPS UNITS FOR PERIOD OF SEPTEMBER 1, 1980, TO AUGUST 31, 1984

Pub. L. 96-342, title VI, § 602, Sept. 8, 1980, 94 Stat. 1087, as amended by Pub. L. 97-86, title VII, § 702(a), Dec. 1, 1981, 95 Stat. 1111; Pub. L. 97-252, title VII, § 702, Sept. 8, 1982, 96 Stat. 728; Pub. L. 98-94, title VII, § 702, Sept. 24, 1983, 97 Stat. 634, provided that: "Notwithstanding the provisions of section 2031(b) of title 10, United States Code, relating to the establishment and maintenance of units of the Junior Reserve Officers' Training Corps, during the period beginning on September 1, 1980, and ending on August 31, 1984, the Secretary of any military department may maintain a unit of the Junior Reserve Officers' Training Corps at any public or private secondary educational institution if—

[*See main edition for text of* (1) *and* (2)]

CHAPTER 103—SENIOR RESERVE OFFICERS' TRAINING CORPS

§ 2101. Definitions

In this chapter:

(1) "Program" means the Senior Reserve Officers' Training Corps of an armed force.

(2) "Member of the program" means a student who is enrolled in the Senior Reserve Officers' Training Corps of an armed force.

(3) "Advanced training" means the training and instruction offered in the Senior Reserve Officers' Training Corps to students in the third and fourth years of a four-year Senior Reserve Officers' Training Corps course, or the equivalent period of training in an approved two-year Senior Reserve Officers' Training Corps course (except that, in the case of a student enrolled in an academic program which has been approved by the Secretary of the military department concerned and which requires more than four academic years for completion of baccalaureate degree

requirements, including elective requirements of the Senior Reserve Officers' Training Corps course, such term includes a fifth academic year or a combination of a part of a fifth academic year and summer sessions).

(As amended Pub. L. 98-94, title X, § 1003(a)(1), title XII, § 1268(11), Sept. 24, 1983, 97 Stat. 656, 706.)

AMENDMENTS

1983—Pub. L. 98-94, § 1268(11)(A), substituted a colon for a dash after "In this chapter" in provision preceding par. (1).

Par. (1). Pub. L. 98-94, § 1268(11)(B), (C), substituted "Program" for "program" and a period for a semicolon after "armed force".

Par. (2). Pub. L. 98-94, § 1268(11)(D), (E), substituted "Member" for "member", and a period for "; and" after "armed force".

Par. (3). Pub. L. 98-94, § 1268(11)(F), substituted "Advanced" for "advanced".

Pub. L. 98-94, § 1003(a)(1), added parenthetical provision relating to a fifth academic year or a combination of a fifth academic year and summer sessions.

§ 2102. Establishment

MILITARY TRAINING FOR FEMALE UNDERGRADUATES AT MILITARY COLLEGES; REGULATIONS

Pub. L. 95-485, title VIII, § 809, Oct. 20, 1978, 92 Stat. 1623, which directed the Secretary of Defense to require that any college or university designated as a military college provide that qualified female undergraduate students be eligible to participate in military training at such college or university, and prohibited the Secretary from requiring such college or university to require female undergraduate students enrolled in such college or university to participate in military training, was repealed by Pub. L. 98-525, title XIV, §§ 1403(b), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985. See section 2009 of this title.

§ 2104. Advanced training; eligibility for

(a) Advanced training shall be provided to eligible members of the program and, if the institution concerned so requests, to eligible applicants for membership in the program.

(b) To be eligible for continuation, or initial enrollment, in the program for advanced training, a person must—

[*See main edition for text of* (1) *to* (4)]

(5) agree in writing that he will accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be, and that he will serve in the armed forces for the period prescribed by the Secretary;

(6) either—

(A) complete successfully—

(i) the first two years of a four-year Senior Reserve Officers' Training Corps course; or

(ii) field training or a practice cruise of not less than six weeks' duration which is prescribed by the Secretary concerned as a preliminary requirement for admission to the advanced course; or

(B) at the discretion of the Secretary concerned, agree in writing to complete field training or a practice cruise, as prescribed by the Secretary concerned, within two years after admission to the advanced course; and

(7) execute a certificate of loyalty in such form as the Secretary of Defense prescribes or take a loyalty oath as prescribed by the Secretary.

[*See main edition for text of* (c) *and* (d)]

(As amended Pub. L. 98-94, title X, § 1003(a)(2), Sept. 24, 1983, 97 Stat. 656; Pub. L. 98-525, title V, § 543(a), title XIV, § 1401(h), Oct. 19, 1984, 98 Stat. 2530, 2619.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (b)(7) of this section were contained in the following prior appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8018], 98 Stat. 1904, 1926.

Dec. 8, 1983, Pub. L. 98-212, title VII, § 722, 97 Stat. 1442.

Dec. 21, 1982, Pub. L. 97-377, title I, § 101(c) [title VII, § 722], 96 Stat. 1833, 1854.

Dec. 29, 1981, Pub. L. 97-114, title VII, § 722, 95 Stat. 1582.

Dec. 15, 1980, Pub. L. 96-527, title VII, § 723, 94 Stat. 3085.

Dec. 21, 1979, Pub. L. 96-154, title VII, § 723, 93 Stat. 1156.

Oct. 13, 1978, Pub. L. 95-457, title VIII, § 823, 92 Stat. 1248.

Sept. 21, 1977, Pub. L. 95-111, title VIII, § 822, 91 Stat. 903.

Sept. 22, 1976, Pub. L. 94-419, title VII, § 722, 90 Stat. 1295.

Feb. 9, 1976, Pub. L. 94-212, title VII, § 722, 90 Stat. 172.

Oct. 8, 1974, Pub. L. 93-437, title VIII, § 822, 88 Stat. 1228.

Jan. 2, 1974, Pub. L. 93-238, title VII, § 723, 87 Stat. 1042.

Oct. 26, 1972, Pub. L. 92-570, title VII, § 723, 86 Stat. 1200.

Dec. 18, 1971, Pub. L. 92-204, title VII, § 723, 85 Stat. 731.

Jan. 11, 1971, Pub. L. 91-668, title VIII, § 823, 84 Stat. 2034.

Dec. 29, 1969, Pub. L. 91-171, title VI, § 623, 83 Stat. 484.

Oct. 17, 1968, Pub. L. 90-580, title V, § 522, 82 Stat. 1133.

Sept. 29, 1967, Pub. L. 90-96, title VI, § 622, 81 Stat. 246.

Oct. 15, 1966, Pub. L. 89-687, title VI, § 622, 80 Stat. 995.

Sept. 29, 1965, Pub. L. 89-213, title VI, § 622, 79 Stat. 877.

Aug. 19, 1964, Pub. L. 88-446, title VI, § 522, 78 Stat. 478.

Oct. 17, 1963, Pub. L. 88-149, title V, § 522, 77 Stat. 267.

Aug. 9, 1962, Pub. L. 87-577, title V, § 522, 76 Stat. 332.

Aug. 17, 1961, Pub. L. 87-144, title VI, § 622, 75 Stat. 379.

July 7, 1960, Pub. L. 86-601, title V, § 522, 74 Stat. 353.

Aug. 18, 1959, Pub. L. 86-166, title V, § 622, 73 Stat. 382.

Aug. 22, 1958, Pub. L. 85-724, title VI, § 624, 72 Stat. 728.

Aug. 2, 1957, Pub. L. 85-117, title VI, § 625, 71 Stat. 327.

July 2, 1956, ch. 488, title VI, § 625, 70 Stat. 471.

July 13, 1955, ch. 358, title VI, § 629, 69 Stat. 320.

June 30, 1954, ch. 432, title VII, § 731, 68 Stat. 356.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-525, § 543(a)(1), struck out ", who have at least two academic years remaining at such educational institution" after "in the program".

Subsec. (b)(6). Pub. L. 98-525, § 543(a)(2), inserted initial word "either", redesignated existing subpars. (A) and (B) as cls. (i) and (ii) of subpar. (A), and added subpar. (B).

Subsec. (b)(7). Pub. L. 98-525, § 1401(h), added par. (7).

1983—Subsec. (a). Pub. L. 98-94 substituted "who have at least two academic years" for "who have two academic years".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 543(b) of Pub. L. 98-525 provided that: "The amendments made by subsection (a) [amending subsecs. (a) and (b)(6) of this section] do not constitute authority for the enactment of new budget authority for a fiscal year beginning before October 1, 1984."

Amendment by section 1401 of Pub. L. 98-525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as an Effective Date note under section 520b of this title.

§ 2107. Financial assistance program for specially selected members

[*See main edition for text of* (a)]

(b) To be eligible for appointment as a cadet or midshipman under this section a member must—

[*See main edition for text of* (1) *to* (4)]

(5) agree in writing that, at the discretion of the Secretary of the military department concerned, he will—

(A)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be, and that, if he is commissioned as a regular officer and his regular commission is terminated before the sixth anniversary of his date of rank, he will accept an appointment, if offered, in the reserve component of that armed force and not resign before that anniversary or before such other date, not beyond the eighth anniversary of the midshipman's date of rank, that the Secretary of Defense may prescribe; and

(ii) serve on active duty for four or more years;

(B) [*See main edition for text of* (i)]

(ii) serve in a reserve component of that armed force until the eighth anniversary of the receipt of such appointment, unless otherwise extended by subsection (d) of section 2108 of this title, under such terms and conditions as shall be prescribed by the Secretary of the military department concerned; or

(C)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be; and

(ii) serve in a reserve component of that armed force until at least the sixth anniversary and, at the discretion of the Secretary of Defense, up to the eighth anniversary of the receipt of such appointment, unless such appointment is otherwise extended by subsection (d) of section 2108 of this title, under such terms and conditions as may be prescribed by the Secretary of the military department concerned.

The performance of service under clause (5)(B) or (5)(C) may include periods of active duty, active duty for training, and other service in an active or inactive status in the reserve component in which appointed, except that performance of service under clause (5)(C) shall include not less than two years of active duty.

(c) The Secretary of the military department concerned may provide for the payment of all expenses in his department of administering the financial assistance program under this section, including tuition, fees, books, and laboratory expenses. In the case of a student enrolled in an academic program which has been approved by the Secretary of the military department concerned and which requires more than four academic years for completion of baccalaureate degree requirements, including elective requirements of the Senior Reserve Officers' Training Corps course, financial assistance under this section may also be provided during a fifth academic year or during a combination of a part of a fifth academic year and summer sessions. At least 50 percent of the cadets and midshipmen appointed under this section must qualify for in-State tuition rates at their respective institutions and will receive tuition benefits at that rate.

[*See main edition for text of* (d) *to* (h)]

(As amended Pub. L. 98-94, title X, § 1003(a)(3), (c)(1), (2), Sept. 24, 1983, 97 Stat. 656, 657; Pub. L. 98-525, title V, § 542(a), title XIV, § 1405(33), Oct. 19, 1984, 98 Stat. 2529, 2624.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-525, § 1405(33), aligned margin of provision following par. (5)(C)(ii) flush with left margin.

Subsec. (b)(5)(A)(i). Pub. L. 98-525, § 542(a)(1), inserted "or before such other date, not beyond the eighth anniversary of the midshipman's date of rank, that the Secretary of Defense may prescribe".

Subsec. (b)(5)(C)(ii). Pub. L. 98-525, § 542(a)(2), substituted "at least the sixth anniversary and, at the discretion of the Secretary of Defense, up to the eighth anniversary" for "the sixth anniversary".

1983—Subsec. (b)(5). Pub. L. 98-94, § 1003(c)(1), struck out "either" after "he will" in provisions preceding subpar. (A)(i), and added subpar. (C).

Pub. L. 98-94, § 1003(c)(2), inserted in provisions following subpar. (C) "or (5)(C)" after "(5)(B)" and ", except that performance of service under clause (5)(C) shall include not less than two years of active duty".

Subsec. (c). Pub. L. 98-94, § 1003(a)(3), added provision relating to a student enrolled in an approved academic program which requires more than four academic years for completion of the baccalaureate degree requirements.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1003(c)(3) of Pub. L. 98-94 provided that: "The amendments made by this subsection [amending subsec. (b) of this section] shall apply with respect to agreements entered into under section 2107(b)(5) of title 10, United States Code, after September 30, 1983."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2005, 2104, 2106, 2107a, 2134 of this title; title 37 sections 209, 416, 422; title 38 sections 1411, 1412.

§ 2107a. Financial assistance program for specially selected members: military junior colleges

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2005, 2108 of this title.

CHAPTER 104—UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sec.
[2116. Repealed.]

AMENDMENTS

1983—Pub. L. 98-94, title XII, § 1268(12)(B), Sept. 24, 1983, 97 Stat. 706, struck out item 2116 "Reports to Congress".

§ 2112. Establishment

F. EDWARD HÉBERT SCHOOL OF MEDICINE

Pub. L. 98-94, title XII, § 1265, Sept. 24, 1983, 97 Stat. 704, provided that: "The School of Medicine of the Uniformed Services University of the Health Sciences shall after the date of the enactment of this Act [Sept. 24, 1983] be known and designated as the 'F. Edward Hébert School of Medicine'. Any reference to such school of medicine in any law, regulation, map, document, or other record of the United States shall after such date be deemed to be a reference to such school of medicine as the F. Edward Hébert School of Medicine."

§ 2113. Board of Regents

[*See main edition for text of* (a) *to* (i)]

(j)(1) The Board also is authorized—

(A) to enter into contracts with the Henry M. Jackson Foundation for the Advancement of Military Medicine established under section 178 of this title, or with any other nonprofit entity, for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education;

(B) subject to paragraph (2), to make available to the Henry M. Jackson Foundation for the Advancement of Military Medicine, on such terms and conditions as the Board determines appropriate, such space, facilities, equipment, and support services within the University as the Board considers necessary to accomplish cooperative enterprises undertaken by such Foundation and the University;

(C) subject to paragraph (2), to enter into contracts with the Henry M. Jackson Foundation for the Advancement of Military Medicine under which the Board may furnish the services of such professional, technical, or clerical personnel as may be necessary to fulfill cooperative enterprises undertaken by such foundation and the University;

(D) to accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property made to the University, including any gift, devise, or bequest for the support of an academic chair, teaching, research, or demonstration project;

(E) subject to paragraph (2), to enter into agreements with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other nonprofit entity, under which scientists or other personnel of the Foundation or other entity may be utilized by the University for the purpose of enhancing the activities of the University in education, research, and technological applications of knowledge; and

(F) to accept the voluntary services of guest scholars and other persons.

(2) The authority of the Board under clauses (B), (C), and (E) of paragraph (1) may be exercised only if—

(A) before the Board enters into any arrangement under which any space, facility, equipment, or support service is made available under clause (B) of such paragraph, before the Board enters into any contract under clause (C) of such paragraph, or before the Board enters into any agreement under clause (E) of such paragraph, it notifies the Committees on Armed Services of the Senate and the House of Representatives in writing of the proposed arrangement, contract, or agreement, as the case may be, the terms and conditions thereof, and, in the case of a proposed agreement under clause (E) of paragraph (1), any appointments proposed to be made under the authority of paragraph (4) in connection with the agreement, and

(B) a period of fifteen days has elapsed following the date on which the notice is received by such committees.

(3) The Board may not enter into any contract with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other entity, if the contract would obligate the University to make outlays in advance of the enactment of budget authority for such outlays.

(4) Scientists or other medical personnel utilized by the University under an agreement described in clause (E) of paragraph (1) may be appointed to any position within the University and may be permitted to perform such duties within the University as the Board may approve.

(5) A person who provides voluntary services under the authority of clause (F) of paragraph (1) shall be considered to be an employee of the Federal Government for the purposes of chapter 81 of title 5, relating to compensation for work-related injuries, and to be an employee of the Federal Government for the purposes of chapter 171 of title 28, relating to tort claims. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purpose by reason of the provision of such services.

(As amended Pub. L. 98-36, § 3, May 27, 1983, 97 Stat. 201; Pub. L. 98-132, § 2(b), Oct. 17, 1983, 97 Stat. 849.)

AMENDMENTS

1983—Subsec. (j). Pub. L. 98-132 inserted "Henry M. Jackson" before "Foundation for the Advancement of Military Medicine" wherever appearing.

Pub. L. 98-36 added subsec. (j).

§ 2114. Students: selection; status; obligation

[See main edition for text of (a) to (d)]

(e)(1) The Board, upon approval of the Secretary of Defense, may enter into agreements with foreign military medical schools for reciprocal education programs under which students at the University receive specialized military medical instruction at the foreign military medical school and military medical personnel of the country of such medical school receive specialized military medical instruction at the University. Any such agreement may be made on a reimbursable basis or a nonreimbursable basis.

(2) Not more than 40 persons at any one time may receive instruction at the University under this subsection. Attendance of such persons at the University may not result in a decrease in the number of students enrolled in the University. Subsection (b) does not apply to students receiving instruction under this subsection.

(3) The Dean of the University, with the approval of the Secretary of Defense, shall determine the countries from which persons may be selected to receive instruction under this subsection and the number of persons that may be selected from each country. The Dean may establish qualifications and methods of selection and shall select those persons who will be permitted to receive instruction at the University. The qualifications established shall be comparable to those required of United States citizens.

(4) Each foreign country from which a student is permitted to receive instruction at the University under this subsection shall reimburse the United States for the cost of providing such instruction, unless such reimbursement is waived by the Secretary of Defense. The Secretary of Defense shall prescribe the rates for reimbursement under this paragraph.

(5) Except as the Dean determines, a person receiving instruction at the University under this subsection is subject to the same regulations governing attendance, discipline, discharge, and dismissal as a student enrolled in the University. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this subsection that differ from the regulations that apply to a student enrolled in the University.

(As amended Pub. L. 98-525, title XV, § 1535, Oct. 19, 1984, 98 Stat. 2633.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-525 added subsec. (e).

[§ 2116. Repealed. Pub. L. 98-94, title XII, § 1268(12)(A), Sept. 24, 1983, 97 Stat. 706]

Section, added Pub. L. 92-426, § 2(a), Sept. 21, 1972, 86 Stat. 716, directed the Secretary of Defense to report periodically to the Committees on Armed Services of the Senate and House of Representatives on the feasibility of establishing educational institutions similar or identical to the University at any other locations he deemed appropriate, with the last such report to be submitted by June 30, 1976.

CHAPTER 105—ARMED FORCES HEALTH PROFESSIONS SCHOLARSHIP PROGRAM

§ 2120. Definitions

In this chapter:

[See main edition for text of (1) to (3)]

(As amended Pub. L. 98-94, title XII, § 1268(13), Sept. 24, 1983, 97 Stat. 706.)

AMENDMENTS

1983—Pub. L. 98-94 substituted a colon for a dash following "In this chapter" in text preceding par. (1).

§ 2121. Establishment

[See main edition for text of (a) to (c)]

(d) Except when serving on active duty pursuant to subsection (c), a member of the program shall be entitled to a stipend at the rate of $579 per month. That rate shall be increased annually by the Secretary of Defense effective on July 1 of each year by an amount (rounded to the next highest multiple of $1) equal to—

(1) the amount of such stipend (as previously adjusted (if at all)), multiplied by

(2) the overall percentage of the adjustment (if such adjustment is an increase) in the rates of basic pay for members of the uniformed services made effective for the fiscal year in which the school year ends.

(As amended Pub. L. 98-94, title IX, § 935(a), Sept. 24, 1983, 97 Stat. 652.)

AMENDMENTS

1983—Subsec. (d). Pub. L. 98-94 amended subsec. (d) generally, substituting "a stipend at the rate of $579 per month" for "a stipend at the rate in effect under paragraph (1)(B) of section 751(g) of the Public Health Service Act (42 U.S.C. 294t(g)) for students in the National Health Service Corps Scholarship program" and adding provision relating to an annual increase in the rate by the Secretary of Defense effective on July 1 of each year.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 935(b) of Pub. L. 98-94 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1983."

MEMBERS OF RESERVE COMPONENTS; SPECIALIZED TRAINING ASSISTANCE IN THE HEALTH PROFESSIONS

Pub. L. 99-145, title VI, § 672(a)-(h), Nov. 8, 1985, 99 Stat. 663, provided that:

"(a) AUTHORIZATION OF PROGRAM.—The Secretary of each military department, under regulations prescribed by the Secretary of Defense, may establish and maintain a program to provide financial assistance to persons engaged in specialized training in the health professions.

"(b) ELIGIBILITY REQUIREMENTS.—To be eligible for financial assistance under this section, a person must be—

"(1) a commissioned officer in the Selected Reserve of a reserve component of the Armed Forces; and

"(2) engaged in a course of specialized training (approved by the Secretary of the military department concerned) in a health profession.

"(c) AMOUNT OF ASSISTANCE.—A person participating in the program provided for under this section shall be entitled to a monthly stipend at the rate paid, on October 1, 1985, to persons participating in the Armed

Forces Health Professions Scholarship Program under chapter 105 of title 10, United States Code. That rate shall be increased annually by the Secretary of Defense effective on July 1 of each year by an amount (rounded to the next highest multiple of $1) equal to—

"(1) the amount of such stipend (as previously adjusted (if at all)), multiplied by

"(2) the overall precentage of the adjustment (if such adjustment is an increase) in the rates of basic pay for members of the uniformed services made effective for the fiscal year in which the school year ends.

"(d) QUALIFICATIONS.—To be eligible for participation in the program provided for in this section, a person must be a citizen of the United States and must—

"(1) be qualified in a health profession as required in regulations prescribed by the Secretary of Defense;

"(2) sign an agreement that, unless sooner separated, the participant will—

"(A) complete the specialized program of training approved by the Secretary of the military department concerned; and

"(B) meet such other requirements as the Secretary concerned may prescribe.

"(e) SELECTED RESERVE OBLIGATION.—A member who participates in a program provided for under this section incurs a Selected Reserve obligation of three years for each year or part thereof for which financial assistance is provided under this section.

"(f) FAILURE TO COMPLETE PROGRAM OF TRAINING.—(1) A member of the program who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in training, or for other reasons, shall be required, at the discretion of the Secretary concerned—

"(A) to perform one year of active duty for each year (or part thereof) for which such person was provided financial assistance under this section; or

"(B) repay the United States an amount equal to the total amount paid to such person under the program.

"(2) The Secretary of a military department, under regulations prescribed by the Secretary of Defense, may relieve a member participating in the program who is dropped from the program from any requirement that may be imposed under paragraph (1), but such relief shall not relieve him from any military obligation imposed by any other law.

"(g) LIMITATIONS ON NUMBER OF PARTICIPANTS.—The number of persons who may be provided financial assistance under this section at any one time, when added to the total number of persons who are participating in the scholarship program provided for under chapter 105 of title 10, United States Code, at any time, may not exceed 6,000.

"(h) DEFINITION.—For the purposes of this section, the term 'specialized course of training' means a course of advanced training—

"(1) in a health profession; and

"(2) designated by the Secretary of the military department concerned to be training in a health profession skill critically needed by the military department concerned."

§ 2124. Members of the program: numbers appointed

The number of persons who may be designated as members of the program for training in each health profession shall be as prescribed by the Secretary of Defense, except that the total number of persons so designated in all of the programs authorized by this chapter shall not, at any time, exceed 6,000.

(As amended Pub. L. 99-145, title VI, § 672(i), Nov. 8, 1985, 99 Stat. 664.)

AMENDMENTS

1985—Pub. L. 99-145 substituted "6,000" for "5,000".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 672(j) of Pub. L. 99-145 provided that: "This section [amending this section and enacting provisions set out as a note under section 2121 of this title] shall take effect on October 1, 1985."

§ 2127. Contracts for scholarships: payments

[See main edition for text of (a)]

(b) The Secretary of Defense may contract with an accredited civilian educational institution for the payment of tuition and other educational expenses of members of the program authorized by this chapter. Payment to such institutions may be made without regard to subsections (a) and (b) of section 3324 of title 31.

[See main edition for text of (c) and (d)]

(As amended Pub. L. 98-525, title XIV, § 1405(56)(A), Oct. 19, 1984, 98 Stat. 2626.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-525 substituted "subsections (a) and (b) of section 3324" for "section 3324(a) and (b)".

CHAPTER 106—EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

Sec.
2131. Educational assistance program: establishment; amount.
2132. Eligibility for educational assistance.
2133. Time limitation for use of entitlement.
2134. Termination of assistance.
2135. Failure to participate satisfactorily; penalties.
2136. Administration of program.
2137. Reports to Congress.
2138. Savings provision.

AMENDMENTS

1984—Pub. L. 98-525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2564, substituted "Members of the Selected Reserve" for "Enlisted Members of the Selected Reserve of the Ready Reserve" in the chapter heading, "Time limitation for use of entitlement" for "Termination of assistance; refund by member" in item 2133, "Termination of assistance" for "Reports to Congress" in item 2134, "Failure to participate satisfactorily; penalties" for "Termination of program" in item 2135, and added items 2136 to 2138.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2005, 2006 of this title; title 38 sections 1433, 1781, 1795.

§ 2131. Educational assistance program: establishment; amount

(a) To encourage membership in units of the Selected Reserve of the Ready Reserve, the Secretary of each military department, under regulations prescribed by the Secretary of Defense, and the Secretary of Transportation, under regulations prescribed by the Secretary with respect to the Coast Guard when it is not operating as a service in the Navy, shall establish and maintain a program to provide educational assistance to members of the Selected Reserve of the Ready Reserve of the armed forces under the jurisdiction of the Secretary concerned who agree to remain members of the

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Selected Reserve for a period of not less than six years.

(b) Each educational assistance program established under subsection (a) shall provide for payment by the Secretary concerned to each person entitled to educational assistance under this chapter who is pursuing a program of education and educational assistance allowance at the following rates:

(1) $140 per month for each month of full-time pursuit of a program of education;

(2) $105 per month for each month of three-quarter-time pursuit of a program of education; and

(3) $70 per month for each month of half-time pursuit of a program of education.

(c)(1) Educational assistance may only be provided under this chapter for pursuit of a program of education at an institution of higher learning and may not be provided to a person after the person has completed a course of instruction required for the award of a baccalaureate degree or the equivalent evidence of completion of study.

(2) Subject to section 1795 of title 38, the maximum number of months of educational assistance that may be provided to any person under this chapter is 36.

(As amended Pub. L. 98-525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2565.)

AMENDMENTS

1984—Pub. L. 98-525 amended section generally, substituting a schedule of payments at stated monthly rates for full-time, three-quarter-time, and half-time pursuit of an education program for former provisions which had set a maximum for any one member of $1,000 for any twelve-month period and $4,000 for the total assistance to any one member.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 705(b) of Pub. L. 98-525 provided that: "The amendments made by this section [amending this chapter] shall take effect on July 1, 1985, and shall apply only to members of the Armed Forces who qualify for educational assistance under chapter 106 of title 10, United States Code, as amended by subsection (a), on or after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2132 of this title.

§ 2132. Eligibility for educational assistance

(a) A person who—

(1) during the period beginning on July 1, 1985, and ending on June 30, 1988—

(A) enlists, reenlists, or extends an enlistment as a Reserve for service in the Selected Reserve for a period of not less than six years; or

(B) is appointed as, or is serving as, a reserve officer and agrees to serve in the Selected Reserve for a period of not less than six years in addition to any other period of obligated service in the Selected Reserve to which the person may be subject; and

(2) before completing initial active duty for training has received a secondary school diploma (or an equivalency certificate);

is entitled to educational assistance under section 2131 of this title.

(b) Educational assistance may not be provided to a member under this chapter until the member—

(1) has completed the initial period of active duty for training required of the member; and

(2) has completed 180 days of service in the Selected Reserve.

(c) Each person who becomes entitled to educational assistance under subsection (a) shall at the time the person becomes so entitled be given a statement in writing summarizing the provisions of this chapter and stating clearly and prominently the substance of sections 2134 and 2135 of this title as such sections may apply to the person.

(d) A person who is entitled to educational assistance under chapter 30 of title 38 based on section 1412 of that title may not also be provided educational assistance under this chapter.

(As amended Pub. L. 98-525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2565.)

AMENDMENTS

1984—Pub. L. 98-525 amended section generally, updating the provisions covering eligibility for educational assistance to cover the period beginning July 1, 1985, and ending June 30, 1988.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as a note under section 2131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2135 of this title.

§ 2133. Time limitation for use of entitlement

(a) Except as provided in subsection (b), the period during which a person entitled to educational assistance under this section may use such person's entitlement expires (1) at the end of the 10-year period beginning on the date on which such person becomes entitled to such assistance, or (2) on the date the person is separated from the Selected Reserve, whichever occurs first.

(b)(1) The provisions of section 1431(e) of title 38 shall apply to the period of entitlement prescribed by subsection (a).

(2) The provisions of section 1431(d) of title 38 shall apply to the period of entitlement prescribed by subsection (a) in the case of a disability incurred in or aggravated by service in the Selected Reserve.

(As amended Pub. L. 98-525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2566.)

AMENDMENTS

1984—Pub. L. 98-525 amended section generally, substituting provisions setting a time limit for the use of educational entitlement for provisions covering the termination of assistance and refund by members. See section 2134 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as a note under section 2131 of this title.

§ 2134. Termination of assistance

Educational assistance may not be provided under this chapter—

(1) to a member receiving financial assistance under section 2107 of this title as a member of the Senior Reserve Officers' Training Corps program; or

(2) to a member who fails to participate satisfactorily in required training as a member of the Selected Reserve.

(As amended Pub. L. 98-94, title XII, § 1268(14), Sept. 24, 1983, 97 Stat. 707; Pub. L. 98-525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2566.)

AMENDMENTS

1984—Pub. L. 98-525 amended section generally, substituting provisions covering termination of educational assistance for provisions relating to reports to Congress. See section 2137 of this title.

1983—Pub. L. 98-94 struck out provision requiring the first report under this section to be submitted not later than Dec. 31, 1977.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as a note under section 2131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2132 of this title.

§ 2135. Failure to participate satisfactorily; penalties

(a)(1) A member of the Selected Reserve of the Ready Reserve of an armed force who fails to participate satisfactorily in required training as a member of the Selected Reserve during a term of enlistment or other period of obligated service that created entitlement of the member to educational assistance under this chapter shall, at the option of the Secretary concerned—

(A) be ordered to active duty for a period of two years or the period of obligated service the person has remaining under section 2132 of this title, whichever is less; or

(B) be required to refund to the United States an amount determined under subsection (b).

(2) The Secretary concerned may waive the requirements of paragraph (1), or may reduce the amount of any refund under clause (B) of such paragraph, in the case of any individual member when the Secretary determines that the failure to participate satisfactorily was due to reasons beyond the control of the member.

(3) Any refund by a member under this section shall not affect the period of obligation of such member to serve as a Reserve in the Selected Reserve.

(b)(1) The amount of a refund under subsection (a) shall be the amount equal to the product of—

(A) the number of months of obligated service remaining under the agreement entered into under section 2132(a)(3) divided by the original number of months of such obligation; and

(B) the total amount of educational assistance provided to the member under this chapter,

as increased by interest determined under paragraph (2).

(2) The amount computed under paragraph (1) shall bear interest at the rate equal to the highest rate being paid by the United States on the day on which the refund is determined to be due for securities having maturities of 90 days or less and shall accrue from the day on which the member is first notified of the amount due to the United States as a refund under this section.

(As amended Pub. L. 98-525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2566.)

AMENDMENTS

1984—Pub. L. 98-525 amended section generally, substituting provisions relating to the failure to participate satisfactorily and penalties for provisions which had designated Sept. 30, 1985, as the termination date for enlistments qualifying for educational assistance.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as a note under section 2131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2132 of this title.

§ 2136. Administration of program

(a) Educational assistance under this chapter shall be provided through the Veterans' Administration, under agreements to be entered into by the Secretary of Defense, and by the Secretary of Transportation, with the Administrator of Veterans' Affairs. Such agreements shall include administrative procedures to ensure the prompt and timely transfer of funds from the Secretary concerned to the Veterans' Administration for the making of payments under this chapter.

(b) Except as otherwise provided in this chapter, the provisions of sections 1663, 1670, 1671, 1673, 1674, 1676, 1682(g), and 1683 of chapter 34 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 1780(a)(5), 1780(b), 1786, 1787(b)(1), and 1792) shall be applicable to the provision of educational assistance under this chapter. The term "eligible veteran", as used in those provisions, shall be deemed for the purpose of the application of those provisions to this chapter to refer to a person eligible for educational assistance under this chapter.

(Added Pub. L. 98-525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2567.)

EFFECTIVE DATE

Section effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as an Effective Date of 1984 Amendment note under section 2131 of this title.

§ 2137. Reports to Congress

The Secretary of Defense shall submit to the Congress a report not later than December 15 of each year concerning the operation of the educational assistance program established by this chapter during the preceding fiscal year. Each such report shall include the number of members of the Selected Reserve of the Ready Reserve of each armed force receiving, and the number entitled to receive, educational assistance under this chapter during the preceding fiscal year.

(Added Pub. L. 98-525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2567.)

EFFECTIVE DATE

Section effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as an Effective Date of 1984 Amendment note under section 2131 of this title.

§ 2138. Savings provision

A member who entered into an agreement under this chapter before July 1, 1985, shall continue to be eligible for educational assistance in accordance with the terms of such agreement and of this chapter as in effect before such date.

(Added Pub. L. 98-525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2567.)

EFFECTIVE DATE

Section effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98-525, set out as an Effective Date of 1984 Amendment note under section 2131 of this title.

CHAPTER 107—EDUCATIONAL ASSISTANCE FOR PERSONS ENLISTING FOR ACTIVE DUTY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2005 of this title; title 38 sections 1433, 1622, 1781, 1795.

§ 2141. Educational assistance program: establishment

REPAYMENT OF LOANS FOR SERVICE IN THE ARMED FORCES; AUTHORIZATION, CRITERIA, ETC.

Section 902 of Pub. L. 96-342, as amended by Pub. L. 97-86, title IV, § 406, Dec. 1, 1981, 95 Stat. 1106; Pub. L. 98-94, title X, § 1034, Sept. 24, 1983, 97 Stat. 672; Pub. L. 98-525, title VII, § 709, Oct. 19, 1984, 98 Stat. 2572, which provided that the Secretary of Defense could repay any loan made, insured, or guaranteed under part B of the Higher Education Act of 1965, or any loan made under part E of that Act, after Oct. 1, 1975, and further provided for the administration and criteria for such repayment, was repealed by Pub. L. 99-145, title VI, § 671(a)(3), Nov. 8, 1985, 99 Stat. 663. See section 2171 et seq. of this title.

§ 2147. Right of member after reenlisting to transfer entitlement to spouse or dependent children

(a)(1)(A) A person who is entitled to educational assistance under section 2142 of this title and who reenlisted in an armed force at any time after the end of the enlistment which established such entitlement may at any time after such reenlistment elect to transfer all or any part of such entitlement to the spouse or dependent child of such person.

(B) The Secretary of the Navy may authorize a member of the Navy or Marine Corps who is entitled to educational assistance under section 2142 of this title and whose enlistment that established such entitlement was the member's second reenlistment as a member of the armed forces to transfer all or part of such entitlement to the spouse or dependent child of such member after the completion of four years of active service of that second reenlistment if that reenlistment was for a period of at least six years.

(C) A transfer under this paragraph may be revoked at any time by the person making the transfer.

[*See main edition for text of (2) and (3); (b) to (d)*]

(As amended Pub. L. 99-145, title VI, § 673, Nov. 8, 1985, 99 Stat. 664.)

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-145 designated existing first sentence as subpar. (A), added subpar. (B), and incorporated existing second sentence as subpar. (C).

CHAPTER 109—EDUCATIONAL LOAN REPAYMENT PROGRAMS

Sec.
2171. General educational loan repayment program.
2172. Education loans for certain health professionals who serve in the Selected Reserve.

§ 2171. General educational loan repayment program

(a)(1) Subject to the provisions of this section, the Secretary of Defense may repay—

(A) any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.); or

(B) or any loan made under part E of such title (20 U.S.C. 1087aa et seq.).

Repayment of any such loan shall be made on the basis of each complete year of service performed by the borrower.

(2) The Secretary may repay loans described in paragraph (1) in the case of any person for—

(A) service performed—

(i) as an enlisted member of the Selected Reserve of the Ready Reserve of an armed force; and

(ii) in a reserve component and military specialty specified by the Secretary of Defense; or

(B) service performed on active duty as an enlisted member in a military specialty specified by the Secretary.

In the case of service described in clause (A) of the first sentence of this paragraph, the Secretary may repay a loan described in paragraph (1) only if the person to whom the loan was made performed such service after the loan was made.

(b) The portion or amount of a loan that may be repaid under subsection (a) is—

(1) 15 percent or $500, whichever is greater, for each year of service, in the case of service described in subsection (a)(2)(A); or

(2) 33⅓ percent or $1,500, whichever is greater, for each year of service, in the case of service described in subsection (a)(2)(B).

(c) If a portion of a loan is repaid under this section for any year, interest on the remainder of such loan shall accrue and be paid in the same manner as is otherwise required.

(d) Nothing in this section shall be construed to authorize refunding any repayment of a loan.

(e) Any individual who transfers from service described in clause (A) or (B) of subsection (a)(2) to service described in the other clause of such subsection during a year shall be eligible to have repaid a portion of such loan determined by giving appropriate fractional credit for each portion of the year so served, in accordance with regulations of the Secretary concerned.

(f) The Secretary of Defense shall, by regulation, prescribe a schedule for the allocation of funds made available to carry out the provisions of this section during any year for which funds are not sufficient to pay the sum of the amounts eligible for repayment under subsection (a).

(Added Pub. L. 99-145, title VI, § 671(a)(1), Nov. 8, 1985, 99 Stat. 661.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (a)(1), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Parts B and E of title IV of the Higher Education Act of 1965 are classified to parts B (§ 1071 et seq.) and D (§ 1087aa et seq.) of subchapter IV of chapter 28 of Title 20, Education, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

EFFECTIVE DATE

Section 671(b)(1) of Pub. L. 99-145 provided that: "The authority provided under section 2171 of title 10, United States Code, as added by subsection (a), shall apply only—

"(A) in the case of persons who enlist or reenlist in the Selected Reserve of the Ready Reserve of an Armed Force or enlist or reenlist for service on active duty after September 30, 1980;

"(B) with respect to service performed after that date; and

"(C) with respect to loans made after October 1, 1975."

§ 2172. Education loans for certain health professionals who serve in the Selected Reserve

(a) Under regulations prescribed by the Secretary of Defense and subject to the other provisions of this section, the Secretary concerned may repay—

(1) a portion of a loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

(2) a loan made under part E of such title (20 U.S.C. 1087aa et seq.) after October 1, 1975; and

(3) a health education assistance loan made or insured under part C of title VII of the Public Health Service Act (42 U.S.C. 294 et seq.).

(b) The Secretary concerned may repay loans described in subsection (a) only in the case of a person who—

(1) performs satisfactory service as an officer in the Selected Reserve of an armed force; and

(2) possesses professional qualifications in a health profession that the Secretary of Defense has determined to be needed critically in order to meet identified wartime combat medical skill shortages.

(c)(1) The amount of any repayment of a loan made under this section on behalf of any person shall be determined on the basis of each complete year of service that is described in subsection (b)(1) and performed by the person after the date on which the loan was made.

(2) Subject to paragraph (3), the portion of a loan that may be repaid under this section on behalf of any person may not exceed $3,000 for each year of service described in paragraph (1).

(3) The total amount that may be repaid on behalf of any person under this section may not exceed $20,000.

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before October 1, 1988.

(Added Pub. L. 99-145, title VI, § 671(a)(1), Nov. 8, 1985, 99 Stat. 662.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (a)(1), (2), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Parts B and E of title IV of the Higher Education Act of 1965 are classified to parts B (§ 1071 et seq.) and D (§ 1087aa et seq.) of subchapter IV of chapter 28 of Title 20, Education, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (a)(3), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part C of title VII of the Public Health Service Act is classified generally to part C (§ 294 et seq.) of subchapter V of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

EFFECTIVE DATE

Section 671(b)(2) of Pub. L. 99-145 provided that: "The authority provided under section 2172 of title 10, United States Code, as added by subsection (a), shall apply only—

"(A) in the case of a person who is first appointed as a commissioned officer of an Armed Force after September 30, 1985; and

"(B) with respect to service performed after that date."

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

Chap.		Sec.
138.	North Atlantic Treaty Organization Acquisition and Cross-Servicing Agreements	[1]2321
142.	Procurement Technical Assistance Cooperative Agreement Program	2411

AMENDMENTS

1984—Pub. L. 98-525, title XII, § 1241(a)(2), Oct. 19, 1984, 98 Stat. 2606, added item for chapter 142.

CHAPTER 131—PLANNING AND COORDINATION

§ 2204. Obligation of appropriations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2384a of this title.

§ 2207. Expenditure of appropriations: limitation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2343 of this title.

§ 2208. Working-capital funds

[*See main edition for text of* (a) *to* (c)]

(d) The Secretary of Defense may provide capital for working-capital funds by capitalizing inventories. In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law.

[*See main edition for text of* (e) *to* (h)]

(i)(1) Regulations under subsection (h) may authorize an article manufactured by a working-capital funded Department of the Army arsenal that manufactures large caliber cannons, gun mounts, or recoil mechanisms to be sold to a person outside the Department of Defense if—

(A) the article is sold to a United States manufacturer, assembler, or developer (i) for use in developing new products, or (ii) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States or a friendly foreign government;

(B) the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

(C) the article is not readily available from a commercial source in the United States; and

(D) the sale is to be made on a basis that does not interfere with performance of work by the arsenal for the Department of Defense or for a contractor of the Department of Defense.

(2) Services related to an article sold under this subsection may also be sold to the purchaser if the services are to be performed in the United States for the purchaser.

(3) Nothing in this subsection shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act to items which incorporate or are produced through the use of an article sold under this subsection.

(j) The Secretary of Defense shall provide that of the total amount of payments received in a fiscal year by funds established under this section for industrial-type activities, not less than 3 percent during fiscal year 1985, not less than 4 percent during fiscal year 1986, and not less than 5 percent during fiscal year 1987 shall be used for the acquisition of capital equipment for such activities.

(k) Reports annually shall be made to the President and to Congress on the condition and operation of working-capital funds established under this section.

(As amended Pub. L. 98-94, title XII, § 1204(a), Sept. 24, 1983, 97 Stat. 683; Pub. L. 98-525, title III, § 305, Oct. 19, 1984, 98 Stat. 2513.)

REFERENCES IN TEXT

Section 38 of the Arms Export Control Act, referred to in subsec. (i)(3), is classified to section 2778 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1984—Subsecs. (i) to (k). Pub. L. 98-525 added subsecs. (i) and (j) and redesignated former subsec. (i) as (k).

1983—Subsec. (d). Pub. L. 98-94 substituted "In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law" for "If this method does not, in the determination of the Secretary of Defense, provide adequate amounts of working capital, such amounts as may be necessary may be appropriated for that purpose".

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1204(b) of Pub. L. 98-94 provided that: "The amendment made by subsection (a) [amending this section] shall apply only with respect to appropriations for fiscal years beginning after September 30, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2210, 2213, 4621, 7227, 9621 of this title; title 40 section 484.

§ 2213. Cooperative military airlift agreements

[*See main edition for text of* (a) *to* (d)]

(e) In this section:

[*See main edition for text of* (1)]

(2) "North Atlantic Treaty Organization subsidiary bodies" has the meaning given to it by section 2350 of this title.

(As amended Pub. L. 99-145, title XIII, § 1304(b), Nov. 8, 1985, 99 Stat. 742.)

REFERENCES IN TEXT

The Arms Export Control Act (22 U.S.C. 2751 et seq.), referred to in subsec. (a)(4), is Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete

[1]Section 2321 redesignated section 2341 by Pub. L. 99-145 without corresponding amendment of Part analysis.

classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

1985—Subsec. (e)(2). Pub. L. 99-145 substituted "section 2350" for "section 2331".

CHAPTER 133—FACILITIES FOR RESERVE COMPONENTS

§ 2233. Acquisition

(a) Subject to sections 2233a, 2234, 2235, 2236, and 2238 of this title and to subsection (c), the Secretary of Defense may—

[*See main edition for text of (1) to (5)*]

(6) contribute to any State such amounts for the construction, alteration, or rehabilitation of critical portions of facilities as the Secretary determines to be required to meet a change in Department of Defense construction criteria or standards related to the execution of the Federal military mission assigned to the unit using the facility.

(b) Title to property acquired by the United States under subsection (a)(1) vests in the United States. Such property may be transferred to any State incident to the expansion, rehabilitation, or conversion of such property under subsection (a)(2) so long as the transfer of such property does not result in the creation of an enclave owned by a State within a Federal installation.

[*See main edition for text of (c) and (d)*]

(e) The Secretary of Defense may procure, or contribute to any State such amounts as the Secretary determines to be necessary to procure, architectural and engineering services and construction design in connection with facilities to be established or developed under this chapter which are not otherwise authorized by law.

[*See main edition for text of (f)*]

(As amended Aug. 28, 1984, Pub. L. 98-407, title VII, § 703(a), 98 Stat. 1517; Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(34), 98 Stat. 2624; Dec. 3, 1985, Pub. L. 99-167, title VII, § 702(a), 99 Stat. 985.)

AMENDMENTS

1985—Subsec. (e). Pub. L. 99-167 amended subsec. (e) generally, inserting ", or contribute to any State such amounts as the Secretary determines to be necessary to procure,".

1984—Subsec. (a). Pub. L. 98-525, § 1405(34)(A), substituted "to subsection (c)" for "subsection (c) of this section".

Subsec. (a)(6). Pub. L. 98-407 substituted "critical portions of facilities" for "arms storage rooms" and "construction criteria or standards related to the execution of the Federal military mission assigned to the unit using the facility" for "standards related to the safekeeping of arms".

Subsec. (b). Pub. L. 98-525, § 1405(34)(B), struck out "or Territory, Puerto Rico, or the District of Columbia" after "State" in two instances. See section 2232(1) of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 703(b) of Pub. L. 98-407 provided that: "The amendments made by subsection (a) [amending subsec. (a)(6) of this section] shall take effect on October 1, 1984."

§ 2233a. Limitation on certain projects; authority to carry out small projects with operation and maintenance funds

(a)(1) Except as provided in paragraph (2), an expenditure or contribution in an amount in excess of $400,000 may not be made under section 2233 of this title for any facility until the Secretary of Defense has notified the Committees on Armed Services and on Appropriations of the Senate and House of Representatives of the location, nature, and estimated cost of the facility and a period of 21 days has passed after receipt of such notification.

[*See main edition for text of (2)*]

(b) Under such regulations as the Secretary of Defense may prescribe, a project authorized under section 2233(a) of this title that costs $100,000 or less may be carried out with funds available for operations and maintenance.

(As amended Pub. L. 98-115, title VII, § 702, Oct. 11, 1983, 97 Stat. 782; Pub. L. 98-407, title VII, § 702, Aug. 28, 1984, 98 Stat. 1517.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-407 substituted "$100,000" for "$50,000".

1983—Subsec. (a)(1). Pub. L. 98-115 substituted "$400,000" for "$200,000".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 702 of Pub. L. 98-407 provided in part that the amendment of this section by Pub. L. 98-407 is effective Oct. 1, 1984.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 702 of Pub. L. 98-115 provided in part that the amendment of this section by Pub. L. 98-115 is effective Oct. 1, 1983.

§ 2236. Contributions to States; other use permitted by States

[*See main edition for text of (a)*]

(b) A contribution made for an armory under clause (4) or (5) of section 2233(a) of this title may not exceed the sum of—

(1) 100 percent of the cost of architectural, engineering and design services (including advance architectural, engineering and design services under section 2233(e) of this title); and

(2) a percentage of the cost of construction (exclusive of the cost of architectural, engineering and design services) calculated so that upon completion of construction the total contribution (including the contribution for architectural, engineering and design services) equals 75 percent of the total cost of construction (including the cost of architectural, engineering and design services).

For the purpose of computing the cost of construction under this subsection, the amount contributed by a State, territory, the Commonwealth of Puerto Rico, or the District of Columbia, as the case may be, may not include the

cost or market value of any real property that it has contributed.

[See main edition for text of (c) and (d)]

(As amended Dec. 3, 1985, Pub. L. 99-167, title VII, § 702(b), 99 Stat. 985.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-167 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "A contribution made for an armory under section 2233(a)(4) or (5) of this title may not be more than 75 percent of the cost of the construction to which it is applied. For the purpose of computing the cost of construction under this subsection, the amount contributed by the State may not include the cost or market value of any real property that it has contributed."

CHAPTER 137—PROCUREMENT GENERALLY

Sec.
2301. Congressional defense procurement policy.
[2303a. Repealed.]
2304. Contracts: competition requirements.
2305. Contracts: planning, solicitation, evaluation, and award procedures.
2305a. Major programs: competitive alternative sources.
2306. Kinds of contracts; cost or pricing data: truth in negotiation.
2317. Encouragement of competition and cost savings.
2318. Advocates for competition.
2319. Encouragement of new competition.[1]
2320. Rights in technical data.
2321. Validation of proprietary data restrictions.
2322. Limitation on small business set-asides.
2323. Commercial pricing for supplies.
2324. Allowable costs under defense contracts.

AMENDMENTS

1985—Pub. L. 99-145, title IX, §§ 911(a)(2), 912(a)(2), Nov. 8, 1985, 99 Stat. 685, 686, added items 2305a and 2324.

1984—Pub. L. 98-577, title III, § 302(c)(2), Oct. 30, 1984, 98 Stat. 3077, struck out item 2303a "Publication of proposed regulations".

Pub. L. 98-525, title XII, § 1217, Oct. 19, 1984, 98 Stat. 2599, added items 2303a and 2317 to 2323.

Pub. L. 98-369, div. B, title VII, § 2727(a), July 18, 1984, 98 Stat. 1194, substituted "Congressional defense procurement policy" for "Declaration of policy" in item 2301, "Contracts: competition requirements" for "Purchases and contracts: formal advertising; exceptions" in item 2304, "Contracts: planning, solicitation, evaluation, and award procedures" for "Formal advertisements for bids; time; opening; award; rejection" in item 2305, and "Kinds of contracts; cost or pricing data: truth in negotiation" for "Kinds of contracts" in item 2306.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2343, 2356, 2406, 2407, 2809, 4504 of this title; title 15 section 637; title 40 section 474; title 41 section 403.

§ 2301. Congressional defense procurement policy

(a) The Congress finds that in order to ensure national defense preparedness, conserve fiscal resources, and enhance defense production capability, it is in the interest of the United States that property and services be acquired for the Department of Defense in the most timely, economic, and efficient manner. It is therefore the policy of Congress that—

(1) full and open competitive procedures shall be used by the Department of Defense in accordance with the requirements of this chapter;

(2) services and property (including weapon systems and associated items) for the Department of Defense be acquired by any kind of contract, other than cost-plus-a-percentage-of-cost contracts, but including multiyear contracts, that will promote the interest of the United States;

(3) contracts, when appropriate, provide incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology;

(4) contracts for advance procurement of components, parts, and materials necessary for manufacture or for logistics support of a weapon system should, if feasible and practicable, be entered into in a manner to achieve economic-lot purchases and more efficient production rates;

(5) the head of an agency use advance procurement planning and market research and prepare contract specifications in such a manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired; and

(6) the head of an agency encourage the development and maintenance of a procurement career management program to ensure a professional procurement work force.

(b) Further, it is the policy of Congress that procurement policies and procedures for the agencies named in section 2303 of this title shall in accordance with the requirements of this chapter—

(1) promote full and open competition;

(2) be implemented to support the requirements of such agencies in time of war or national emergency as well as in peacetime;

(3) promote responsiveness of the procurement system to agency needs by simplifying and streamlining procurement processes;

(4) promote the attainment and maintenance of essential capability in the defense industrial base and the capability of the United States for industrial mobilization;

(5) provide incentives to encourage contractors to take actions and make recommendations that would reduce the costs to the United States relating to the purchase or use of property or services to be acquired under contracts;

(6) promote the use of commercial products whenever practicable; and

(7) require descriptions of agency requirements, whenever practicable, in terms of functions to be performed or performance required.

(c) Further, it is the policy of Congress that a fair proportion of the purchases and contracts entered into under this chapter be placed with small business concerns.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2721, 98 Stat. 1185.)

[1] So in original. Does not conform to section catchline.

AMENDMENTS

1984—Pub. L. 98-369 amended section generally, incorporating existing provisions in subsecs. (a)(2) to (4) and (c) and adding subsecs. (a)(1), (5), (6) and (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99-145, title IX, § 901, Nov. 8, 1985, 99 Stat. 682, provided that: "This title [enacting sections 1621 to 1624, 2305a, 2324, 2397a, and 2406 of this title, amending sections 2304, 2313, 2320, 2323, 2397, and 2411 to 2415 of this title, section 759 of Title 40, Public Buildings, Property, and Works, sections 253 and 418a of Title 41, Public Contracts, and section 2168 of Title 50, Appendix, War and National Defense, enacting provisions set out as notes under sections 139, 139c, 1622 to 1624, 2301, 2304, 2305a, 2307, 2324, 2397a, and 2411 of this title, section 287 of Title 18, Crimes and Criminal Procedure, section 3729 of Title 31, Money and Finance, and section 2168 of Title 50, Appendix, and amending provisions set out as a note under section 418a of Title 41] may be cited as the 'Defense Procurement Improvement Act of 1985'."

SHORT TITLE OF 1984 AMENDMENT

Section 1201 of title XII of Pub. L. 98-525 provided that: "This title [enacting sections 2303a, 2317 to 2323, 2384a, 2402 to 2405, and 2411 to 2416 of this title, amending sections 139a, 139b, 2302, 2305, 2311, 2384, and 2401 of this title, enacting provisions set out as notes under sections 139, 139a, 2301, 2303a, 2305, 2318, 2319, 2322, 2323, 2384, 2384a, 2392, and 2402 of this title, amending provisions set out as notes under sections 2392, 2401, and 2452 of this title, and repealing provisions set out as notes under section 2304 of this title] may be cited as the 'Defense Procurement Reform Act of 1984'."

MINIMUM PERCENTAGE OF COMPETITIVE PROCUREMENTS

Pub. L. 99-145, title IX, § 913, Nov. 8, 1985, 99 Stat. 687, provided that:

"(a) ANNUAL GOAL.—The Secretary of Defense shall establish for each fiscal year a goal for the percentage of defense procurements to be made during that year (expressed in total dollar value of contracts entered into) that are to be competitive procurements.

"(b) ANNUAL REPORT.—(1) The Secretary shall submit to Congress a report each year on the goal for the next fiscal year. Such report shall propose means for promoting and expanding competition in Department of Defense procurement and shall summarize the accomplishments in meeting the established goals for the prior fiscal year.

"(2) The report shall be submitted not later than April 1 of each year with respect to the next fiscal year.

"(c) DEFINITION.—For the purposes of this section, the term 'competitive procurements' means procurements made by the Department of Defense through the use of competitive procedures, as defined in section 2304 of title 10, United States Code."

DEFENSE PROCUREMENT REFORM: CONGRESSIONAL FINDINGS AND POLICY

Section 1202 of Pub. L. 98-525 provided that: "The Congress finds that recent disclosures of excessive payments by the Department of Defense for replenishment parts have undermined confidence by the public and Congress in the defense procurement system. The Secretary of Defense should make every effort to reform procurement practices relating to replenishment parts. Such efforts should, among other matters, be directed to the elimination of excessive pricing of replenishment spare parts and the recovery of unjustified payments. Specifically, the Secretary should—

"(1) direct that officials in the Department of Defense refuse to enter into contracts unless the proposed prices are fair and reasonable;

"(2) continue and accelerate ongoing efforts to improve defense contracting procedures in order to encourage effective competition and assure fair and reasonable prices;

"(3) direct that replenishment parts be acquired in economic order quantities and on a multiyear basis whenever feasible, practicable, and cost effective;

"(4) direct that standard or commercial parts be used whenever such use is technically acceptable and cost effective;

"(5) vigorously continue reexamination of policies relating to acquisition, pricing, and management of replenishment parts and of technical data related to such parts; and

"(6) ensure that persons that have developed products or processes offered or to be offered for sale to the public are not required, as a condition for the procurement of such products or processes by the Department of Defense, to provide to the United States technical data relating to the design, development, or manufacture of such products or processes (except for such data as may be necessary for the United States to operate and maintain the product or use the process if obtained by the United States as an element of performance under the contract)."

PROCUREMENT REQUIREMENTS FOR GOODS WHICH ARE NOT AMERICAN GOODS

Pub. L. 93-365, title VII, § 707, Aug. 5, 1974, 88 Stat. 406, provided that:

"(a) No funds authorized to be appropriated by this or any other Act may be obligated under a contract entered into by the Department of Defense after the date of the enactment of this Act [Aug. 5, 1974] for procurement of goods which are other than American goods unless, under regulations of the Secretary of Defense and subject to the determinations and exceptions contained in title III of the Act of March 3, 1933, as amended (47 Stat. 1520; 41 U.S.C. 10a, 10b), popularly known as the Buy American Act, there is adequate consideration given to—

"(1) the bids or proposals of firms located in labor surplus areas in the United States as designated by the Department of Labor which have offered to furnish American goods;

"(2) the bids or proposals of small business firms in the United States which have offered to furnish American goods;

"(3) the bids or proposals of all other firms in the United States which have offered to furnish American goods;

"(4) the United States balance of payments;

"(5) the cost of shipping goods which are other than American goods; and

"(6) any duty, tariff, or surcharge which may enter into the cost of using goods which are other than American goods.

"(b) For purposes of this section, the term 'goods which are other than American goods' means (1) an end product which has not been mined, produced, or manufactured in the United States, or (2) an end product manufactured in the United States but the cost of the components thereof which are not mined, produced, or manufactured in the United States exceeds the cost of components mined, produced, or manufactured in the United States."

§ 2302. Definitions

In this chapter:

(1) "Head of an agency" means the Secretary of Defense, the Secretary of the Army,

the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration.

(2) "Competitive procedures" means procedures under which the head of an agency enters into a contract pursuant to full and open competition. Such term also includes—

(A) procurement of architectural or engineering services conducted in accordance with title IX of the Federal Property and Administrative Services Act of 1949 (41 [2] U.S.C. 541 et seq.);

(B) the competitive selection for award of basic research proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals;

(C) the procedures established by the Administrator of General Services for the multiple award schedule program of the General Services Administration if—

(i) participation in the program has been open to all responsible sources; and

(ii) orders and contracts under such program result in the lowest overall cost alternative to meet the needs of the United States;

(D) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for such procurements are permitted to compete; and

(E) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of the Small Business Act (15 U.S.C. 638).

(3) The terms "full and open competition" and "responsible source" have the same meanings provided such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(4) "Technical data" means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

(5) "Major system" means a combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major system if (A) the Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement of more than $300,000,000 (based on fiscal year 1980 constant dollars); (B) a civilian agency is responsible for the system and total expenditures for the system are estimated to exceed $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a "major system" established by the agency pursuant to Office of Management and Budget (OMB) Circular A-109, entitled "Major Systems Acquisitions", whichever is greater; or (C) the system is designated a "major system" by the head of the agency responsible for the system.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2722(a), 98 Stat. 1186; Oct. 19, 1984, Pub. L. 98-525, title XII, § 1211, 98 Stat. 2589; Oct. 30, 1984, Pub. L. 98-577, title V, § 504(b)(3), 98 Stat. 3087.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in cl. (2)(A), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title IX of the Federal Property and Administrative Services Act is classified generally to subchapter VI (§ 541 et seq.) of chapter 10 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

AMENDMENTS

1984—Pub. L. 98-369 amended section generally, substituting in cl. (1) "the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force" for "the Secretary, the Under Secretary, or any Assistant Secretary, of the Army, Navy, or Air Force", in cl. (2) a definition of "competitive procedures" for a definition of "negotiate", and in cl. (3) a definition of the terms "full and open competition" and "responsible source" for a definition of "formal advertising".

Cl. (2)(D), (E). Pub. L. 98-577 added subpars. (D) and (E).

Cls. (4), (5). Pub. L. 98-525 added cls. (4) and (5).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2403 of this title.

§ 2303. Applicability of chapter

(a) This chapter applies to the procurement by any of the following agencies, for its use or otherwise, of all property (other than land) and all services for which payment is to be made from appropriated funds:

(1) The Department of Defense.

(2) The Department of the Army.

(3) The Department of the Navy.

(4) The Department of the Air Force.

(5) The Coast Guard.

(6) The National Aeronautics and Space Administration.

[2] So in original. Should be "40".

(b) The provisions of this chapter that apply to the procurement of property apply also to contracts for its installation or alteration.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2722(b), 98 Stat. 1187.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 2722(b)(1)(A), (B), substituted in provisions preceding cl. (1) "procurement" for "purchase, and contract to purchase," and "(other than land) and all services" for "named in subsection (b), and all services,".

Subsec. (a)(1) to (6). Pub. L. 98-369, § 2722(b)(1)(C), (D), added cl. (1) and redesignated existing cls. (1) to (5) as (2) to (6), respectively.

Subsecs. (b), (c). Pub. L. 98-369, § 2722(b)(2), (3), redesignated subsec. (c) as (b). Former subsec. (b), which had provided that this chapter did not cover land but did cover public works, buildings, facilities, vessels, floating equipment, aircraft, parts, accessories, equipment, and machine tools, was struck out.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2301, 2308, 2309, 2313, 2314, 2318, 2320, 2323, 2384a of this title.

[§ 2303a. Repealed. Pub. L. 98-577, title III, § 302(c)(1), Oct. 30, 1984, 98 Stat. 3077]

Section, Pub. L. 98-525, title XII, § 1212(a), Oct. 19, 1984, 98 Stat. 2590, related to publication of proposed regulations. See section 418b of Title 41, Public Contracts.

Section, pursuant to section 1212(b) of Pub. L. 98-525, was to have taken effect with respect to procurement policies, regulations, procedures, or forms first proposed to be issued by an agency on or after the date which was 30 days after the date of enactment of Pub. L. 98-525. Pub. L. 98-525 was approved Oct. 19, 1984. However, before that effective date, the section was repealed by Pub. L. 98-577.

§ 2304. Contracts: competition requirements

(a)(1) Except as provided in subsections (b), (c), and (g) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this chapter and the modifications to regulations promulgated pursuant to section 2752 of the Competition in Contracting Act of 1984; and

(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(2) In determining the competitive procedure appropriate under the circumstances, the head of an agency—

(A) shall solicit sealed bids if—

(i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; and

(B) shall request competitive proposals if sealed bids are not appropriate under clause (A).

(b)(1) The head of an agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service if the head of the agency determines that to do so—

(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of property or services;

(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization; or

(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(2) An executive agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 639; [1] 644).

(3) A contract awarded pursuant to the competitive procedures referred to in paragraphs (1) and (2) shall not be subject to the justification and approval required by subsection (f)(1).

(c) The head of an agency may use procedures other than competitive procedures only when—

(1) the property or services needed by the agency are available from only one responsible source and no other type of property or services will satisfy the needs of the agency;

(2) the agency's need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source or sources in order (A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization, or (B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

[1] See References in Text note below.

(4) the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

(5) a statute expressly authorizes or requires that the procurement be made through another agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale;

(6) the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

(7) the head of the agency—

(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and

(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.

(d)(1) For the purposes of applying subsection (c)(1)—

(A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept the substance of which is not otherwise available to the United States and does not resemble the substance of a pending competitive procurement; and

(B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment when it is likely that award to a source other than the original source would result in (i) substantial duplication of cost to the United States which is not expected to be recovered through competition, or (ii) unacceptable delays in fulfilling the agency's needs, such property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures.

(2) The authority of the head of an agency under subsection (c)(7) may not be delegated.

(e) The head of an agency using procedures other than competitive procedures to procure property or services by reason of the application of subsection (c)(2) or (c)(6) shall request offers from as many potential sources as is practicable under the circumstances.

(f)(1) Except as provided in paragraph (2), the head of an agency may not award a contract using procedures other than competitive procedures unless—

(A) the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification;

(B) the justification is approved—

(i) in the case of a contract for an amount exceeding $100,000 (but equal to or less than $1,000,000), by the competition advocate for the procuring activity (without further delegation);

(ii) in the case of a contract for an amount exceeding $1,000,000 (but equal to or less than $10,000,000), by the head of the procuring activity or a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian, is serving in a position in grade GS–16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) in the case of a contract for an amount exceeding $10,000,000, by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation); and

(C) any required notice has been published with respect to such contract pursuant to section 18 of the Office of Federal Procurement Policy Act and all bids or proposals received in response to that notice have been considered by the head of the agency.

(2) In the case of a procurement permitted by subsection (c)(2), the justification and approval required by paragraph (1) may be made after the contract is awarded. The justification and approval required by paragraph (1) is not required—

(A) when a statute expressly requires that the procurement be made from a specified source;

(B) when the agency's need is for a brand-name commercial item for authorized resale;

(C) in the case of a procurement permitted by subsection (c)(7); or

(D) in the case of a procurement conducted under (i) the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act, or (ii) section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(3) The justification required by paragraph (1)(A) shall include—

(A) a description of the agency's needs;

(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;

(C) a determination that the anticipated cost will be fair and reasonable;

(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

(E) a listing of the sources, if any, that expressed in writing an interest in the procurement; and

(F) a statement of the actions, if any, the agency may take to remove or overcome any barrier to competition before a subsequent procurement for such needs.

(4) The justification required by paragraph (1)(A) and any related information shall be

made available for inspection by the public consistent with the provisions of section 552 of title 5.

(5) In no case may the head of an agency—

(A) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

(B) procure property or services from another agency unless such other agency complies fully with the requirements of this chapter in its procurement of such property or services.

The restriction contained in clause (B) is in addition to, and not in lieu of, any other restriction provided by law.

(g)(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the regulations modified in accordance with section 2752 of the Competition in Contracting Act of 1984 shall provide for special simplified procedures for small purchases of property and services.

(2) For the purposes of this chapter, a small purchase is a purchase or contract for an amount which does not exceed $25,000.

(3) A proposed purchase or contract for an amount above $25,000 may not be divided into several purchases or contracts for lesser amounts in order to use the small purchase procedures required by paragraph (1).

(4) In using small purchase procedures, the head of an agency shall promote competition to the maximum extent practicable.

(h) For the purposes of the following laws, purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures:

(1) The Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", approved June 30, 1936 (commonly referred to as the "Walsh-Healey Act") (41 U.S.C. 35–45).

(2) The Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes", approved March 3, 1931 (commonly referred to as the "Davis-Bacon Act") (40 U.S.C. 276a—276a-5).

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, §§ 2723(a), 2727(b), 98 Stat. 1187, 1194; Oct. 30, 1984, Pub. L. 98-577, title V, § 504(b)(1), (2), 98 Stat. 3086; Nov. 8, 1985, Pub. L. 99-145, title IX, § 961(a)(1), title XIII, § 1303(a)(13), 99 Stat. 703, 739.)

REFERENCES IN TEXT

Section 2752 of the Competition in Contracting Act of 1984, referred to in subsecs. (a)(1)(A) and (g)(1), is section 2752 of Pub. L. 98-369, which is set out as a note under section 403 of Title 41, Public Contracts.

Section 9 of the Small Business Act, referred to in subsec. (b)(2), is classified to section 638 of Title 15, Commerce and Trade.

The General Schedule, referred to in subsec. (f)(1)(B)(ii), is set out under section 5332 of Title 5, Government Organization and Employees.

Section 18 of the Office of Federal Procurement Policy Act, referred to in subsec. (f)(1)(C), is classified to section 416 of Title 41, Public Contracts.

The Wagner-O'Day Act, referred to in subsec. (f)(2)(D), is act June 25, 1938, ch. 697, 52 Stat. 1196, as amended, which is classified to sections 46 to 48c of Title 41. For complete classification of this Act to the Code, see Tables.

The Walsh-Healey Act (41 U.S.C. 35–45), referred to in subsec. (h)(1), is act June 30, 1936, ch. 881, 49 Stat. 2036, as amended, which is classified generally to sections 35 to 45 of Title 41. For complete classification of this Act to the Code, see Short Title note set out under section 35 of Title 41 and Tables. See also section 262 of Title 29, Labor.

The Davis-Bacon Act (40 U.S.C. 276a—276a-5) referred to in subsec. (h)(2), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

AMENDMENTS

1985—Subsec. (a)(1)(B). Pub. L. 99-145, § 1303(a)(13), substituted "procedures" for "krocedures".

Subsec. (f)(2). Pub. L. 99-145, § 961(a)(1), amended second sentence generally. Prior to amendment, second sentence read as follows: "The justification and approval required by paragraph (1) is not required in the case of a procurement permitted by subsection (c)(7) or in the case of a procurement conducted under—

"(A) the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act; or

"(B) the authority of section 8(a) of the Small Business Act (15 U.S.C. 637)."

1984—Pub. L. 98-369, § 2723(a), substituted "Contracts: competition requirements" for "Purchases and contracts: formal advertising; exceptions" in section catchline and struck out subsecs. (a) to (e) and (g) to (i), redesignated subsec. (f) as (h), and added new subsecs. (a) through (g), thereby removing the prior statutory preference for formal advertising and installing instead more competitive procurement procedures, including dual sourcing, but with provision for the use of other than competitive procedures in specified situations.

Subsec. (b)(2). Pub. L. 98-577, § 504(b)(1), substituted provisions to the effect that executive agencies may provide for procurement of property or services covered by this section using competitive procedures but excluding other than small business concerns for provisions which provided that executive agencies shall use competitive procedures but may restrict a solicitation to allow only small business concerns to compete.

Subsec. (b)(3). Pub. L. 98-577, § 504(b)(1), added par. (3).

Subsec. (f)(2). Pub. L. 98-577, § 504(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h). Pub. L. 98-369, § 2727(b), substituted "contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed bid procedures" for "contracts negotiated under this section shall be treated as if they were made with formal advertising".

Pub. L. 98-369, § 2723(a)(1)(B), redesignated subsec. (f) as (h).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 961(e) of Pub. L. 99-145 provided that: "The amendments made by subsections (a) [amending this section and section 253 of Title 41, Public Contracts], (b) [amending section 2323 (now section 2343) of this

title], and (c) [amending section 759 of Title 40, Public Buildings, Property, and Works] shall take effect as if included in the enactment of the Competition in Contracting Act of 1984 (title VII of division B of Public Law 98-369) [see Effective Date of 1985 Amendment note set out under section 251 of Title 41]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

CONSTRUCTION OF 1984 AMENDMENT

Section 2723(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 2304 and 2305 of this title] do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a))."

CONTRACTED ADVISORY AND ASSISTANCE SERVICES

Section 918 of Pub. L. 99-145 provided that:

"(a) ACCOUNTING PROCEDURE.—(1) The Secretary of Defense shall require that there be established within each military department an accounting procedure to aid in the identification and control of expenditures for services identified as contracted advisory and assistance services.

"(2) Not later than six months after the date of the enactment of this Act [Nov. 8, 1985], the Secretary shall submit to Congress a report describing the accounting procedure established in accordance with paragraph (1) and the implementation of that procedure in each military department.

"(b) REGULATIONS TO IDENTIFY CONTRACTED ADVISORY AND ASSISTANCE SERVICES.—(1) The Secretary shall prescribe regulations which specifically describe—

"(A) what services the Department of Defense considers to be contracted advisory and assistance services; and

"(B) of those services, which services are carried out in direct support of a weapon system and are essential to the development, production, or maintenance of the system.

"(2) In prescribing regulations under paragraph (1), the Secretary shall consider the following areas:

"(A) Management and professional services.

"(B) Special studies and analyses.

"(C) Management and support services for research and development activities.

"(D) Training.

"(E) Management review of program-funded organizations.

"(F) Public relations.

"(G) Other consulting services.

"(H) Engineering development and operational systems development related to research and development activities and production activities.

"(I) Technical assistance.

"(J) Technical representation.

"(K) Quality control, testing, and inspection services.

"(L) Specialized medical services.

"(M) Architectural and engineering services, other than in connection with construction.

"(N) Technical and management assistance for weapons systems management and review.

"(3) Regulations required by paragraph (1) shall be prescribed not later than six months after the date of the enactment of this Act [Nov. 8, 1985].

"(c) CONGRESSIONAL BUDGET DOCUMENTS.—Budget documents presented to Congress in support of the annual budget for the Department of Defense—

"(1) shall identify the total amount requested for contracted advisory and assistance services (as defined under regulations prescribed under subsection (b));

"(2) shall identify the amount requested for each category of such services established by regulations prescribed under subsection (b); and

"(3) within each such category, shall separately set forth amounts for such services described in subsection (b)(1)(B)."

ASSIGNMENT OF PRINCIPAL CONTRACTING OFFICERS

Section 925 of Pub. L. 99-145 provided that:

"(a) DEVELOPMENTAL POLICY.—The Secretary of Defense shall develop a policy regarding the mobility and regular rotation of principal administrative and corporate administrative contracting officers in the Department of Defense.

"(b) REPORT.—The Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives not later than January 1, 1986, a report on such policy.

"(c) IMPLEMENTATION.—Such policy shall be implemented not later than April 1, 1986."

PROHIBITION ON FELONS CONVICTED OF DEFENSE-CONTRACT-RELATED FELONIES AND PENALTY ON EMPLOYMENT OF SUCH PERSONS BY DEFENSE CONTRACTORS

Section 932 of Pub. L. 99-145 provided that:

"(a) PROHIBITION.—A person who is convicted of fraud or any other felony arising out of a contract with the Department of Defense shall be prohibited from working in a management or supervisory capacity on any defense contract for a period, as determined by the Secretary of Defense, of not less than one year from the date of the conviction.

"(b) PENALTY.—A defense contractor who knowingly employs a person under a prohibition under subsection (a) shall be fined not more than $500,000.

"(c) EFFECTIVE DATE.—Subsection (a) shall apply only with respect to crimes committed after the date of the enactment of this Act [Nov. 8, 1985]."

REIMBURSEMENT, INTEREST CHARGES, AND PENALTIES FOR OVERPAYMENTS DUE TO COST AND PRICING DATA

Section 934(a) of Pub. L. 99-145 provided that: "If the United States makes an overpayment to a contractor under a contract with the Department of Defense subject to [section] 2306(f) of title 10, United States Code, and the overpayment was due to the submission by the contractor of inaccurate, incomplete, or noncurrent cost and pricing data, the contractor shall be liable to the United States—

"(1) for interest on the amount of such overpayment to be computed from the date the payment was made to the contractor to the date the Government is repaid by the contractor at the applicable rate prescribed by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) [see Tables for classification]; and

"(2) if the submission of such inaccurate, incomplete, or noncurrent cost and pricing data was a knowing submission, an amount equal to the amount of the overpayment."

NON-GOVERNMENT PERSONNEL FOR PERFORMANCE OF SERVICES AND ACTIVITIES

Section 1233 of Pub. L. 99-145 provided that: "The Secretary of Defense shall take such action as may be necessary to ensure that, in each case in which it has been determined in accordance with law that performance of a service or activity by non-Government personnel would be cost effective and in the best interests of national security, such service or activity is performed by non-Government personnel."

LIMITATION ON CONTRACTING-OUT CORE LOGISTICS FUNCTIONS

Section 1231(a)-(e) of Pub. L. 99-145 declared that certain specifically described functions of the Department of Defense shall be deemed logistics activities necessary to maintain the logistics capability described in section 307(a)(1) of Pub. L. 98-525, set out below, contained a description of the functions, i.e., depot-level maintenance of mission-essential materiel at spe-

cifically located activities of the Army, the Navy, the Marine Corps, the Air Force, the Defense Logistics Agency, and the Defense Mapping Agency; included certain matters within the specified functions and excluded certain functions; and defined "mission-essential materiel" as related to such functions.

Section 307 of Pub. L. 98-525, as amended by Pub. L. 99-145, title XII, § 1231(f), Nov. 8, 1985, 99 Stat. 733, provided that:

"(a)(1) It is essential for the national defense that Department of Defense activities maintain a logistics capability (including personnel, equipment, and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.

"(2) The Secretary of Defense shall identify those logistics activities that are necessary to maintain the logistics capability described in paragraph (1).

"(b)(1) Except as provided in paragraph (2), performance of a logistics activity identified by the Secretary under subsection (a)(2) may not be contracted for performance by non-Government personnel under the procedures and requirements of Office of Management and Budget Circular A-76 or any successor administrative regulation or policy (hereinafter in this section referred to as 'OMB Circular A-76').

"(2) The Secretary of Defense may waive paragraph (1) in the case of any logistics activity and provide that performance of such activity shall be considered for conversion to contractor performance in accordance with OMB Circular A-76. Any such waiver shall be made under regulations prescribed by the Secretary and shall be based on a determination by the Secretary that Government performance of the activity is no longer required for national defense reasons. Such regulations shall include criteria for determining whether Government performance of a logistics activity identified under subsection (a)(2) is no longer required for national defense reasons.

"(3) A waiver under paragraph (2) may not take effect until—

"(A) the Secretary has submitted a report on the waiver to the Committees on Armed Services of the Senate and House of Representatives; and

"(B) a period of 20 days of continuous session of Congress or 40 calendar days has passed after the receipt of the report by those committees.

"(4) For purposes of paragraph (3)(B), the continuity of a session of Congress is broken only by an adjournment sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of such 20-day period.

"(c) Identification of logistics activities that are necessary to maintain the logistics capability described in subsection (a)(1) shall be completed, and a report describing those activities (including a detailed specification or listing) shall be submitted to the Committees on Armed Services of the Senate and House of Representatives, not later than April 1, 1985."

Written Warranties in Prime Contracts for Major Systems Acquisitions for Coast Guard

Pub. L. 99-190, § 101(e) [title I, § 100], Dec. 19, 1985, 99 Stat. 1267, 1269, provided that: "the Secretary of Transportation shall issue regulations requiring that written warranties shall be included in all contracts with prime contractors for major systems acquisitions of the Coast Guard: *Provided further,* That any such written warranty shall not apply in the case of any system or component thereof that has been furnished by the Government to a contractor: *Provided further,* That the Secretary of Transportation may provide for a waiver of the requirements for a warranty where: (1) the waiver is necessary in the interest of the national defense or the warranty would not be cost effective; and (2) the Committees on Appropriations of the Senate and the House of Representatives are notified in writing of the Secretary's intention to waive and reasons for waiving such requirements: *Provided further,* That the requirements for such written warranties shall not cover combat damage."

Similar provisions were contained in the following prior appropriations act:

Pub. L. 98-473, title I, § 101(i) [title I, § 100], Oct. 12, 1984, 98 Stat. 1944, 1946.

Shipbuilding Claims for Contract Price Adjustments

Pub. L. 98-473, title I, § 101(h) [title VIII, § 8078], Oct. 12, 1984, 98 Stat. 1904, 1938, provided that: "None of the funds hereafter available to the Department of Defense shall be used to adjust any contract price for amounts set forth in any shipbuilding claim, request for equitable adjustment, or demand for payment incurred due to the preparation, submission, or adjudication of any such shipbuilding claim, request, or demand under a contract entered into after the date of enactment of this Act [Oct. 12, 1984] arising out of events occurring more than eighteen months prior to the submission of such shipbuilding claim, request, or demand. For the purposes of this section, requirement for submission of a shipbuilding claim, request, or demand is met only when the certification required in section 6(c)(1) of the Contract Disputes Act of 1978 [41 U.S.C. 605(c)(1)] and supporting data are provided."

Pub. L. 98-212, title VII, § 787, Dec. 8, 1983, 97 Stat. 1453, which contained similar provisions relating to shipbuilding claims for contract price adjustments, was repealed by Pub. L. 98-525, title XII, § 1234(b)(2), Oct. 19, 1984, 98 Stat. 2604, effective Oct. 19, 1984. See section 2405 of this title.

Weapon System Guarantees; Government-as-Source Exception; Waiver

Pub. L. 98-212, title VII, § 794, Dec. 8, 1983, 97 Stat. 1454, which provided for weapon system guarantees, Government-as-Source exception, and waiver, was repealed by Pub. L. 98-525, title XII, § 1234(b)(1), Oct. 19, 1984, 98 Stat. 2604, effective Jan. 1, 1985. See section 2403 of this title.

Fighter Aircraft Engine Warranty

Pub. L. 97-377, title I, § 101(c) [title VII, § 797], Dec. 21, 1982, 96 Stat. 1865, provided that: "None of the funds made available in the Act or any subsequent Act shall be available for the purchase of the alternate or new model fighter aircraft engine that does not have a written warranty or guarantee attesting that it will perform not less than 3,000 tactical cycles. The warranty will provide that the manufacturer must perform the necessary improvements or replace any parts to achieve the required performance at no cost to the Government."

Restrictions on Conversion of Performance of Commercial and Industrial Type Functions From Department of Defense Personnel to Private Contractors; Annual Report to Congress

Pub. L. 96-342, title V, § 502, Sept. 8, 1980, 94 Stat. 1086, as amended by Pub. L. 97-252, title XI, § 1112(a), Sept. 8, 1982, 96 Stat. 747; Pub. L. 99-145, title XII, § 1234(a), Nov. 8, 1985, 99 Stat. 734, provided that:

"(a) No commercial or industrial type function of the Department of Defense that on October 1, 1980, is being performed by Department of Defense civilian employees may be converted to performance by a private contractor—

"(1) to circumvent any civilian personnel ceiling; or

"(2) unless the Secretary of Defense provides to the Congress in a timely manner—

[*See main edition for text of (A) to (C)*]

"(D) a report, to be submitted with the certification required by subparagraph (C), showing—

"(i) the potential economic effect on employees affected, and the potential economic effect on the local community and Federal Government if more than 75 employees are involved, of contracting for performance of such function;

[*See main edition for text of (ii) and (iii); (b) and (c)*]

"(d) Except as provided in subsection (a)(1), subsections (a) through (c) shall not apply to a commercial or industrial type function of the Department of Defense that is being performed by 40 or fewer Department of Defense civilian employees.

[*See main edition for text of (e) and (f)*]

[Section 1234(b) of Pub. L. 99-145 provided that: "The amendments made by subsection (a) [amending this note] shall take effect on January 1, 1986."]

[Section 1112(b) of Pub. L. 97-252 provided that: "The amendments made by subsection (a) [amending this note] shall take effect on October 1, 1982."]

DISCRIMINATION IN PETROLEUM SUPPLIES TO ARMED FORCES PROHIBITED; ENFORCEMENT PROCEDURE; PENALTIES; EXPIRATION

Pub. L. 94-106, title VIII, § 816, Oct. 7, 1975, 89 Stat. 540, as amended by Pub. L. 98-620, title IV, § 402(8), Nov. 8, 1984, 98 Stat. 3357, provided that:

[*See main edition for text of (a) and (b)*]

"(c) [*See main edition for text of (1) to (3)*]

"(4) In any proceeding brought in any district court of the United States pursuant to this section, the Attorney General may file with the clerk of such court a certificate of the Secretary of Defense that, in his opinion, the proceeding is of critical importance to the effective operation of the Armed Forces of the United States and that immediate relief from the discrimination is necessary, a copy of which shall be immediately furnished by such clerk to the chief judge of the circuit (or, in his absence, the presiding circuit judge) in which the proceeding is pending. Upon receipt of the copy of such certificate, it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge, to hear and determine such proceeding.

[*See main edition for text of (5); (d) to (h)*]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2306, 2310, 2311, 2343, 2407 of this title; title 15 section 637; title 41 sections 416, 417; title 50 sections 403c, 1432, 1651.

§ 2305. Contracts: planning, solicitation, evaluation, and award procedures

(a)(1)(A) In preparing for the procurement of property or services, the head of an agency shall—

(i) specify the agency's needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(ii) use advance procurement planning and market research; and

(iii) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(B) Each solicitation under this chapter shall include specifications which—

(i) consistent with the provisions of this chapter, permit full and open competition; and

(ii) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(C) For the purposes of subparagraphs (A) and (B), the type of specification included in a solicitation shall depend on the nature of the needs of the agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

(i) function, so that a variety of products or services may qualify;

(ii) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(iii) design requirements.

(2) In addition to the specifications described in paragraph (1), a solicitation for sealed bids or competitive proposals (other than for small purchases) shall at a minimum include—

(A) a statement of—

(i) all significant factors (including price) which the head of the agency reasonably expects to consider in evaluating sealed bids or competitive proposals; and

(ii) the relative importance assigned to each of those factors; and

(B)(i) in the case of sealed bids—

(I) a statement that sealed bids will be evaluated without discussions with the bidders; and

(II) the time and place for the opening of the sealed bids; or

(ii) in the case of competitive proposals—

(I) a statement that the proposals are intended to be evaluated with, and awards made after, discussions with the offerors, but might be evaluated and awarded without discussions with the offerors; and

(II) the time and place for submission of proposals.

(b)(1) The head of an agency shall evaluate sealed bids and competitive proposals based solely on the factors specified in the solicitation.

(2) All sealed bids or competitive proposals received in response to a solicitation may be rejected if the head of the agency determines that such action is in the public interest.

(3) Sealed bids shall be opened publicly at the time and place stated in the solicitation. The head of the agency shall evaluate the bids without discussions with the bidders and, except as provided in paragraph (2), shall award a contract with reasonable promptness to the responsible bidder whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and the other price-related factors included in the solicitation. The award of a contract shall be made by transmitting written notice of the award to the successful bidder.

(4)(A) The head of an agency shall evaluate competitive proposals and may award a contract—

(i) after discussions conducted with the offerors at any time after receipt of the proposals and before the award of the contract; or

(ii) without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the United States.

(B) In the case of award of a contract under subparagraph (A)(i), the head of the agency shall conduct, before such award, written or oral discussions with all responsible sources who submit proposals within the competitive range, considering only price and the other factors included in the solicitation.

(C) In the case of award of a contract under subparagraph (A)(ii), the head of the agency shall award the contract based on the proposals received (and as clarified, if necessary, in discussions conducted for the purpose of minor clarification).

(D) Except as provided in paragraph (2), the head of the agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the United States, considering only price and the other factors included in the solicitation. The head of the agency shall award the contract by transmitting written notice of the award to such source and shall promptly notify all other offerors of the rejection of their proposals.

(5) If the head of an agency considers that a bid or proposal evidences a violation of the antitrust laws, he shall refer the bid or proposal to the Attorney General for appropriate action.

(c) The Secretary of Defense shall ensure that before a contract for the delivery of supplies to the Department of Defense is entered into—

(1) when the appropriate officials of the Department are making an assessment of the most advantageous source for acquisition of the supplies (considering quality, price, delivery, and other factors), there is a review of the availability and cost of each item of supply—

(A) through the supply system of the Department of Defense; and

(B) under standard Government supply contracts, if the item is in a category of supplies defined under regulations of the Secretary of Defense as being potentially available under a standard Government supply contract; and

(2) there is a review of both the procurement history of the item and a description of the item, including, when necessary for an adequate description of the item, a picture, drawing, diagram, or other graphic representation of the item.

(d)(1)(A) The Secretary of Defense shall ensure that, in preparing a solicitation for the award of a development contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer proposals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(B) The proposals that the head of an agency is to consider requiring in a solicitation for the award of a development contract are the following:

(i) Proposals to incorporate in the design of the major system items which are currently available within the supply system of the Federal agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source.

(ii) With respect to items that are likely to be required in substantial quantities during the system's service life, proposals to incorporate in the design of the major system items which the United States will be able to acquire competitively in the future.

(2)(A) The Secretary of Defense shall ensure that, in preparing a solicitation for the award of a production contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer proposals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(B) The proposals that the head of an agency is to consider requiring in a solicitation for the award of a production contract are proposals identifying opportunities to ensure that the United States will be able to obtain on a competitive basis items procured in connection with the system that are likely to be reprocured in substantial quantities during the service life of the system. Proposals submitted in response to such requirement may include the following:

(i) Proposals to provide to the United States the right to use technical data to be provided under the contract for competitive reprocurement of the item, together with the cost to the United States, if any, of acquiring such technical data and the right to use such data.

(ii) Proposals for the qualification or development of multiple sources of supply for the item.

(3) If the head of an agency is making a noncompetitive award of a development contract or a production contract for a major system, the factors specified in paragraphs (1) and (2) to be considered in evaluating an offer for a contract may be considered as objectives in negotiating the contract to be awarded.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2723(b), 98 Stat. 1191; Oct. 19,

1984, Pub. L. 98-525, title XII, § 1213(a), 98 Stat. 2591; Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1303(a)(14), 99 Stat. 739.)

AMENDMENTS

1985—Subsec. (b)(5). Pub. L. 99-145 aligned the margin of par. (5).

1984—Subsecs. (c), (d). Pub. L. 98-525 added subsecs. (c) and (d).

Catchline, subsecs. (a) to (d). Pub. L. 98-369 substituted "Contracts: planning, solicitation, evaluation, and award procedures" for "Formal advertisements for bids; time; opening; award; rejection" and completely revised the text to substitute a program using solicitation requirements covering military procurement for former provisions which had used the approach of utilizing formal advertisements, struck out former provisions which had directed that, except in cases where the Secretary of Defense had determined that military requirements necessitated the specification of container size, no advertisement or invitation to bid for the carriage of government property in other than government-owned cargo containers could specify carriage of such property in cargo containers of any stated length, height, or width, and carried forward into new subsecs. (a)(1)(A)(iii), (B)(i), and (b)(2) and (5) the content of former section.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 1213(b) of Pub. L. 98-525 provided that: "The amendment made by subsection (a) [amending this section] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984]."

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

CONSTRUCTION OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 as not superseding or affecting the provisions of section 637(a) of Title 15, Commerce and Trade, see section 2723(c) of Pub. L. 98-369, set out as a note under section 2304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2310, 2320 of this title; title 42 section 1594; title 50 section 403c.

§ 2305a. Major programs: competitive alternative sources

(a)(1) The Secretary of Defense may not begin full-scale development under a major program until—

(A) the Secretary prepares an acquisition strategy for the program; and

(B) the Secretary submits to the Committees on Armed Services of the Senate and House of Representatives a report describing the acquisition strategy for that program.

(2) The report required by paragraph (1)(B) shall be submitted not later than the date of the submission of the President's budget to Congress for the fiscal year for which the initial request is made for appropriations for full-scale development of the program.

(3) If the Secretary proposes to revise an acquisition strategy prepared under paragraph (1) after the report on that strategy is submitted under that paragraph, the Secretary shall submit to the committees a report describing the proposed revision. Such a revision may not be implemented until 60 days after the date on which the report on the revision is received by those committees.

(4) The Secretary shall ensure that contracts for each major program are awarded in accordance with the acquisition strategy for such program.

(b)(1) The acquisition strategy prepared under subsection (a) for a major program shall provide that there will be competitive alternative sources available for the system (and each major subsystem) under the program throughout the period from the beginning of full-scale development through the end of production.

(2) In carrying out this subsection, the Secretary may provide that the requirement for competitive alternative sources for a system or subsystem is satisfied even though the sources for that system or subsystem do not develop or produce identical systems if the systems developed or produced serve similar functions and compete effectively with each other.

(c)(1) In preparing an acquisition strategy for a major program, the Secretary may waive subsection (b) with respect to full-scale development of that program if the Secretary determines that the application of that subsection to full-scale development of that program—

(A) would not materially reduce the technological risks associated with the program;

(B) would not likely result in an improvement in design commensurate with the additional cost;

(C) would result in unacceptable delays in fulfilling the needs of the Department of Defense; or

(D) would be adverse to the national security interests of the United States.

(2) In preparing an acquisition strategy for a major program, the Secretary may waive the requirement of subsection (b) with respect to production under the program if the Secretary determines that the application of that subsection to production under the program—

(A) would increase the total cost for the program;

(B) would result in unacceptable delays in fulfilling the needs of the Department of Defense; or

(C) would be adverse to the national security interests of the United States.

(3) If the Secretary grants a waiver under paragraph (1) or (2), the report submitted under subsection (a) with respect to that program—

(A) shall include notice that the waiver has been made; and

(B) shall set forth the reasons for the waiver, together with supporting documentation of comparative cost and schedule estimates and other background material.

(4) The Secretary shall separately exercise the authority under paragraphs (1) and (2) for each major defense acquisition program.

(d) In this section:

(1) "Major program" means a major defense acquisition program, as such term is defined in section 139a(a) of this title.

(2) "Major subsystem", with respect to a major program, means a subsystem of the

system developed under the program that is purchased directly by the United States and for which—

(A) the amount for research, development, test and evaluation is 10 percent or more of the amount specified in section 139a(a)(1)(B) of this title as the research, development, test and evaluation funding criterion for identification of a major defense acquisition program; or

(B) the amount for production is 10 percent or more of the amount specified in section 139a(a)(1)(B) of this title as the production funding criterion for identification of a major defense acquisition program.

(Added Pub. L. 99-145, title IX, § 912(a)(1), Nov. 8, 1985, 99 Stat. 685.)

EFFECTIVE DATE

Section 912(b) of Pub. L. 99-145 provided that: "Section 2305a of title 10, United States Code, as added by subsection (a), shall apply with respect to major defense acquisition programs for which funds for full-scale development are first requested for a fiscal year after fiscal year 1986."

§ 2306. Kinds of contracts; cost or pricing data: truth in negotiation

(a) The cost-plus-a-percentage-of-cost system of contracting may not be used. Subject to the limitation in the preceding sentence, the other provisions of this section, and other applicable provisions of law, the head of an agency, in awarding contracts under this chapter after using procedures other than sealed-bid procedures, may enter into any kind of contract that he considers will promote the best interests of the United States.

(b) Each contract awarded under this chapter after using procedures other than sealed-bid procedures shall contain a warranty, determined to be suitable by the head of the agency, that the contractor has employed or retained no person or selling agency to solicit or obtain the contract under an understanding or agreement for a commission, percentage, brokerage, or contingent fee, except a bona fide employee or established commercial or selling agency maintained by him to obtain business. If a contractor breaks such a warranty the United States may annul the contract without liability or may deduct the commission, percentage, brokerage, or contingent fee from the contract price or consideration.

(c) No cost contract, cost-plus-a-fixed-fee contract, or incentive contract may be made under this chapter unless the head of the agency determines that such a contract is likely to be less costly to the United States than any other kind of contract or that it is impracticable to obtain property or services of the kind or quality required except under such a contract.

[*See main edition for text of (d)*]

(e) Each cost contract and each cost-plus-a-fixed-fee contract shall provide for notice to the agency by the contractor before the making, under the prime contract, of—

(1) a cost-plus-a-fixed-fee subcontract; or

(2) a fixed-price subcontract or purchase order involving more than the greater of (A) the small purchase amount under section 2304(g) of this title, or (B) 5 percent of the estimated cost of the prime contract.

(f)(1) A prime contractor or any subcontractor shall be required to submit cost or pricing data under the circumstances listed below, and shall be required to certify that, to the best of such contractor's or subcontractor's knowledge and belief, the cost or pricing data submitted was accurate, complete and current—

(A) before the award of any prime contract under this chapter entered into after using procedures other than sealed-bid procedures, if the price is expected to exceed $100,000;

(B) before the pricing of any contract change or modification if the price adjustment is expected to exceed $100,000, or such lesser amount as may be prescribed by the head of the agency;

(C) before the award of a subcontract at any tier, when the prime contractor and each higher tier subcontractor have been required to furnish such a certificate, if the price of such subcontract is expected to exceed $100,000; or

(D) before the pricing of any contract change or modification to a subcontract covered by clause (C), if the price adjustment is expected to exceed $100,000, or such lesser amount as may be prescribed by the head of the agency.

(2) Any prime contract or change or modification thereto under which such certificate is required shall contain a provision that the price to the Government, including profit or fee, shall be adjusted to exclude any significant sums by which it may be determined by the head of the agency that such price was increased because the contractor or any subcontractor required to furnish such a certificate, furnished cost or pricing data which, as of a date agreed upon between the parties (which date shall be as close to the date of agreement on the price as is practicable), was inaccurate, incomplete, or noncurrent.

(3) The requirements of this subsection need not be applied to contracts or subcontracts where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation or, in exceptional cases where the head of the agency determines that the requirements of this subsection may be waived and states in writing his reasons for such determination.

(4) When cost or pricing data is not required to be submitted by this subsection, such data may nevertheless be required by the head of the agency if the head of the agency determines that such data is necessary for the evaluation by the agency of the reasonableness of the price of the contract or subcontract.

(5) For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this subsection, any authorized representative of the head of the agency who is an employee of the United States Government shall have the right, until the expiration of three years after final

payment under the contract or subcontract, to examine all books, records, documents, and other data of the contractor or subcontractor related to the proposal for the contract, the discussions conducted on the proposal, pricing, or performance of the contract or subcontract.

[*See main edition for text of (g) and (h)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2724, 98 Stat. 1192; Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1303(a)(15), 99 Stat. 739.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145, § 1303(a)(15)(A), inserted a period at the end.

Subsec. (b). Pub. L. 99-145, § 1303(a)(15)(B), struck out "of this title" before "shall contain".

1984—Pub. L. 98-369, § 2724(f), substituted "Kinds of contracts; cost or pricing data; truth in negotiation" for "Kinds of contracts" in section catchline.

Subsec. (a). Pub. L. 98-369, § 2724(a), substituted "the limitation in the preceding sentence, the other provisions of this section, and other applicable provisions of law, the head of an agency, in awarding contracts under this chapter after using procedures other than sealed-bid procedures, may enter into" for "this limitation and subject to subsections (b)-(f), the head of any agency may, in negotiating contracts under section 2304 of this title, make".

Subsec. (b). Pub. L. 98-369, § 2724(b), substituted "awarded under this chapter after using procedures other than sealed-bid procedures" for "negotiated under section 2304".

Subsec. (c). Pub. L. 98-369, § 2724(c), substituted "this chapter" for "section 2304 of this title,".

Subsec. (e)(2). Pub. L. 98-369, § 2724(d), substituted "the greater of (A) the small purchase amount under section 2304(g) of this title, or (B)" for "$25,000 or".

Subsec. (f)(1). Pub. L. 98-369, § 2724(e)(A)(i), (ii), substituted "such contractor's or subcontractor's" for "his" and struck out "he" before "submitted was accurate" in provisions preceding subpar. (A).

Subsec. (f)(1)(A). Pub. L. 98-369, § 2724(3)(A)(iii), (vi), (vii), substituted "prime contract under this chapter entered into after using procedures other than sealed-bid procedures, if" for "negotiated prime contract under this title where", "$100,000" for "$500,000", and "before" for "prior to".

Subsec. (f)(1)(B). Pub. L. 98-369, § 2724(e)(A)(iv), (vi), (vii), substituted "if" for "for which", "$100,000" for "$500,000", and "before" for "prior to".

Subsec. (f)(1)(C). Pub. L. 98-369, § 2724(e)(A)(v)-(vii), substituted "when" for "where", "$100,000" for "$500,000", and "before" for "prior to".

Subsec. (f)(1)(D). Pub. L. 98-369, § 2724(e)(A)(iv), (vi), (vii), substituted "if" for "for which", "$100,000" for "$500,000", and "before" for "prior to".

Subsec. (f)(2). Pub. L. 98-369, § 2724(e)(B), (D), (E), struck out "negotiated" before "price as is practicable" and before "is based on adequate price competition", redesignated as par. (3) the proviso formerly set out in this par., and as part of the redesignation substituted a period for ": *Provided*, That" after "or noncurrent".

Subsec. (f)(3). Pub. L. 98-369, § 2724(e)(E), designated as par. (3) the proviso formerly set out in par. (2). Former par. (3) redesignated (5).

Subsec. (f)(4). Pub. L. 98-369, § 2724(e)(F), added par. (4).

Subsec. (f)(5). Pub. L. 98-369, § 2724(e)(C), redesignated former par. (3) as (5) and in par. (5) as so redesignated substituted "proposal for the contract, the discussions conducted on the proposal" for "negotiation".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2310, 2313, 2343, 2406 of this title; title 50 section 403c.

§ 2307. Advance payments

LIMITATIONS ON PROGRESS PAYMENTS

Pub. L. 99-145, title IX, § 916, Nov. 8, 1985, 99 Stat. 688, provided that:

"(a) IN GENERAL.—The Secretary of Defense shall ensure that any payment for work in progress (including materials, labor, and other items) under a defense contract that provides for such payments is commensurate with the work, which meets standards of quality established under the contract, that has been accomplished.

"(b) REQUIREMENTS WITH RESPECT TO UNDEFINITIZED CONTRACTS.—The Secretary shall ensure that progress payments referred to in subsection (a) are not made for more than 80 percent of the work accomplished under a defense contract so long as the Secretary has not made the contractual terms, specifications, and price definite.

"(c) WAIVER OF SMALL PURCHASES.—This section does not apply to contracts for amounts less than the threshold for small purchases applicable under section 2304(g)(2) of title 10, United States Code.

"(d) EFFECTIVE DATE.—This section shall apply only to contracts for which solicitations are issued on or after 150 days after the enactment of this Act [Nov. 8, 1985]."

§ 2310. Determinations and decisions

(a) Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or, except for determinations and decisions under section 2304 or 2305 of this title, for a class of purchases or contracts. Such a determination or decision, including a determination or decision under section 2304 or 2305 of this title, is final.

(b) Each determination or decision under section 2306(c), 2306(g)(1), 2307(c), or 2313(c) of this title shall be based on a written finding by the person making the determination or decision, which finding shall set out facts and circumstances that—

(1) clearly indicate why the type of contract selected under section 2306(c) of this title is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required except under such a contract;

(2) support the findings required by section 2306(g)(1) of this title;

(3) clearly indicate why advance payments under section 2307(c) of this title would be in the public interest; or

(4) clearly indicate why the application of section 2313(b) of this title to a contract or subcontract with a foreign contractor or foreign subcontractor would not be in the public interest.

Such a finding is final and shall be kept available in the agency for at least six years after the date of the determination or decision. A copy of the finding shall be submitted to the

General Accounting Office with each contract to which it applies.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2725, 98 Stat. 1193; Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1303(a)(16), 99 Stat. 739.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 added "this" after "2305 of".

1984—Subsec. (a). Pub. L. 98-369, § 2725(1), inserted ", except for determinations and decisions under section 2304 or 2305 of title," and ", including a determination or decision under section 2304 or 2305 of this title,".

Subsec. (b). Pub. L. 98-369, § 2725(2), amended subsec. (b) generally, deleting requirement that determinations to negotiate contracts be based on written findings by the contracting officers making the determinations.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

§ 2311. Delegation

Except as provided in section 2304(d)(2) of this title, the head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2726, 98 Stat. 1194; Oct. 19, 1984, Pub. L. 98-525, title XII, § 1214, 98 Stat. 2592; Oct. 30, 1984, Pub. L. 98-577, title V, § 505, 98 Stat. 3087.)

AMENDMENTS

1984—Pub. L. 98-577 struck out "(A)" before "Except as provided in" and struck out subsec. (b) which related to delegation of authority by heads of procuring activities of agencies of certain functions.

Pub. L. 98-525 designated existing provisions as subsec. (a) and added subsec. (b).

Pub. L. 98-369 inserted language relating to the exception provided in section 2304(d)(2) of this title and struck out provision that the power to make determinations and decisions under clauses (11)-(16) of section 2304(a) of this title could not be delegated, but that the power to make a determination or decision under section 2304(a)(11) of this title could be delegated to any other officer of official of that agency who was responsible for procurement, and only for contracts requiring the expenditure of not more than $5,000,000.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

§ 2313. Examination of books and records of contractor

[*See main edition for text of* (a)]

(b) Except as provided in subsection (c), each contract awarded after using procedures other than sealed-bid procedures shall provide that the Comptroller General and his representatives are entitled, until the expiration of three years after final payment, to examine any books, documents, papers, or records of the contractor, or any of his subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract.

[*See main edition for text of* (c)]

(d)(1) The Director of the Defense Contract Audit Agency (or any successor agency) may require by subpoena the production of books, documents, papers, or records of a contractor, access to which is provided to the Secretary of Defense by subsection (a) or by section 2306(f) of this title.

(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.

(3) The authority provided by paragraph (1) may not be redelegated.

(4) The Director (or any successor official) shall submit an annual report to the Secretary of Defense on the exercise of such authority during the preceding year and the reasons why such authority was exercised in any instance. The Secretary shall forward a copy of each such report to the Committees on Armed Services of the Senate and House of Representatives.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2727(c), 98 Stat. 1195; Nov. 8, 1985, Pub. L. 99-145, title IX, § 935, 99 Stat. 700.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-145 added subsec. (d).

1984—Subsec. (b). Pub. L. 98-369 substituted "awarded after using procedures other than sealed bid procedures" for "negotiated under this chapter".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2310, 2343 of this title; title 50 section 403c.

§ 2317. Encouragement of competition and cost savings

The Secretary of Defense shall establish procedures to ensure that personnel appraisal systems of the Department of Defense give appropriate recognition to efforts to increase competition and achieve cost savings in areas relating to contracts covered by this chapter.

(Added Pub. L. 98-525, title XII, § 1215, Oct. 19, 1984, 98 Stat. 2592.)

§ 2318. Advocates for competition

(a)(1) In addition to the advocates for competition established or designated pursuant to section 20(a) of the Office of Federal Procurement Policy Act, the Secretary of Defense shall designate an officer or employee of the Defense

Logistics Agency to serve as the advocate for competition of the agency.

(2) The advocate for competition of the Defense Logistics Agency shall carry out the responsibilities and functions provided for in sections 20(b) and 20(c) of the Office of Federal Procurement Policy Act.

(b) Each advocate for competition of an agency named in section 2303(a) of this title shall be a general or flag officer if a member of the armed forces or a grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule), if a civilian employee and shall be designated to serve for a minimum of two years.

(c) Each advocate for competition of an agency of the Department of Defense shall transmit to the Secretary of Defense a report describing his activities during the preceding year. The report of each advocate for competition shall be included in the annual report of the Secretary of Defense required by section 21 of the Office of Federal Procurement Policy Act, in the form in which it was submitted to the Secretary.

(Added Pub. L. 98-525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2593.)

REFERENCES IN TEXT

Sections 20(a), (b), (c), and 21 of the Office of Federal Procurement Act, referred to in subsecs. (a) and (c), are classified to sections 418(a), (b), (c), and 419 of Title 41, Public Contracts.

The General Schedule, referred to in subsec. (b), is set out under section 5332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section 1216(c)(1) of Pub. L. 98-525 provided that: "Section 2318 of title 10, United States Code (as added by subsection (a)), shall take effect on April 1, 1985."

§ 2319. Encouragement of new competitors

(a) In this section, "qualification requirement" means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

(b) Except as provided in subsection (c), the head of the agency shall, before establishing a qualification requirement—

(1) prepare a written justification stating the necessity for establishing the qualification requirement and specify why the qualification requirement must be demonstrated before contract award;

(2) specify in writing and make available to a potential offeror upon request all requirements which a prospective offeror, or its product, must satisfy in order to become qualified, such requirements to be limited to those least restrictive to meet the purposes necessitating the establishment of the qualification requirement;

(3) specify an estimate of the costs of testing and evaluation likely to be incurred by a potential offeror in order to become qualified;

(4) ensure that a potential offeror is provided, upon request and on a reimbursable basis, a prompt opportunity to demonstrate its ability to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned or of another agency obtained through interagency agreement, or under contract, or other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency);

(5) if testing and evaluation services are provided under contract to the agency for the purposes of clause (4), provide to the extent possible that such services be provided by a contractor who is not expected to benefit from an absence of additional qualified sources and who shall be required in such contract to adhere to any restriction on technical data asserted by the potential offeror seeking qualification; and

(6) ensure that a potential offeror seeking qualification is promptly informed as to whether qualification is attained and, in the event qualification is not attained, is promptly furnished specific information why qualification was not attained.

(c)(1) Subsection (b) of this section does not apply with respect to a qualification requirement established by statute or administrative action before the date of the enactment of the Defense Procurement Reform Act of 1984 unless such requirement is a qualified products list.

(2)(A) Except as provided in subparagraph (B), if it is unreasonable to specify the standards for qualification which a prospective offeror or its product must satisfy, a determination to that effect shall be submitted to the advocate for competition of the procuring activity responsible for the purchase of the item subject to the qualification requirement. After considering any comments of the advocate for competition reviewing such determination, the head of the purchasing office may waive the requirements of clauses (2) through (6) of subsection (b) for up to two years with respect to the item subject to the qualification requirement.

(B) The waiver authority provided in this paragraph does not apply with respect to a qualified products list.

(3) A potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror (A) is not on a qualified bidders list, qualified manufacturers list, or qualified products list, or (B) has not been identified as meeting a qualification requirement established after the date of the enactment of the Defense Procurement Reform Act of 1984 if the potential offeror can demonstrate to the satisfaction of the contracting officer that the potential offeror or its product meets the standards established for qualification or can meet such standards before the date specified for award of the contract.

(4) Nothing contained in this subsection requires the referral of an offer to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act if the basis for the referral is a challenge by the offeror to either the validity of the qualification requirement or the offeror's compliance with such requirement.

(5) The head of an agency need not delay a proposed procurement in order to comply with subsection (b) or in order to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification.

(6) The requirements of subsection (b) also apply before enforcement of any qualified products list, qualified manufacturers list, or qualified bidders list.

(d)(1) If the number of qualified sources or qualified products available to compete actively for an anticipated future requirement is fewer than two actual manufacturers or the products of two actual manufacturers, respectively, the head of the agency concerned shall—

(A) periodically publish notice in the Commerce Business Daily soliciting additional sources or products to seek qualification, unless the contracting officer determines that such publication would compromise national security; and

(B) bear the cost of conducting the specified testing and evaluation (excluding the costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern which has met the standards specified for qualification and which could reasonably be expected to compete for a contract for that requirement, but such costs may be borne only if the head of the agency determines that such additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to amortize the costs incurred by the agency within a reasonable period of time considering the duration and dollar value of anticipated future requirements.

(2) The head of an agency shall require a prospective contractor requesting the United States to bear testing and evaluation costs under paragraph (1)(B) to certify as to its status as a small business concern under section 3 of the Small Business Act.

(e) Within seven years after the establishment of a qualification requirement under subsection (b) or within seven years following an agency's enforcement of a qualified products list, qualified manufacturers list, or qualified bidders list, any such qualification requirement shall be examined and revalidated in accordance with the requirements of subsection (b). The preceding sentence does not apply in the case of a qualification requirement for which a waiver is in effect under subsection (c)(2).

(f) Except in an emergency as determined by the head of the agency, whenever the head of the agency determines not to enforce a qualification requirement for a solicitation, the agency may not thereafter enforce that qualification requirement unless the agency complies with the requirements of subsection (b).

(Added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2593.)

REFERENCES IN TEXT

Date of the enactment of the Defense Procurement Reform Act of 1984, referred to in subsec. (c)(1) and (3), is the date of enactment of title XII of Pub. L. 98–525, which was approved Oct. 19, 1984.

Section 8(b)(7) of the Small Business Act, referred to in subsec. (c)(4), is classified to section 637(b)(7) of Title 15, Commerce and Trade.

Section 3 of the Small Business Act, referred to in subsec. (d)(2), is classified to section 632 of Title 15.

EFFECTIVE DATE

Section 1216(c)(2) of Pub. L. 98–525 provided that: "Sections 2319, 2320, and 2321 of title 10, United States Code (as added by subsection (a)), shall apply with respect to solicitations issued after the end of the one-year period beginning on the date of the enactment of this Act [Oct. 19, 1984]."

§ 2320. Rights in technical data

(a) The legitimate proprietary interest of the United States and of a contractor in technical or other data shall be defined in regulations of the Department of Defense prescribed as part of the single system of Government-wide procurement regulations as defined in section 4(4) of the Office of Federal Procurement Policy Act. Such regulations may not impair any right of the United States or of any contractor with respect to patents or copyrights or any other right in technical data otherwise established by law. The following factors shall be considered in prescribing such regulations:

(1) Whether the item or process to which the technical data pertains was developed—

(A) exclusively with Federal funds;

(B) exclusively at private expense; or

(C) in part with Federal funds and in part at private expense.

(2) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97-219; 15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

(3) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(4) The policy set forth in section 1202(6) of the Defense Procurement Reform Act of 1984.

(b) Regulations prescribed under subsection (a) shall require that, whenever practicable, a contract for supplies or services entered into by an agency named in section 2303 of this title contain appropriate provisions relating to technical data, including provisions—

(1) defining the respective rights of the United States and the contractor or subcontractor (at any tier) regarding any technical data to be delivered under the contract;

(2) specifying the technical data, if any, to be delivered under the contract and delivery schedules for such delivery;

(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

(4) establishing separate contract line items for the technical data, if any, to be delivered under the contract;

(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the United States to use such data;

(6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver such revised technical data to an agency within a time specified in the contract;

(7) requiring the contractor to furnish written assurance at the time the technical data is delivered or is made available that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;

(8) establishing remedies to be available to the United States when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

(9) authorizing the head of the agency to withhold payments under the contract (or exercise such other remedies as the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

(c) Nothing in this section or in section 2305(d) of this title prohibits the Secretary of Defense from prescribing standards for determining whether a contract entered into by the Department of Defense shall provide for a time to be specified in the contract after which the United States shall have the right to use (or have used) for any purpose of the United States all technical data required to be delivered to the United States under the contract or providing for such a period of time (not to exceed 7 years) as a negotiation objective.

(d) The Secretary of Defense shall by regulation establish programs which provide domestic business concerns an opportunity to purchase or borrow replenishment parts from the United States for the purpose of design replication or modification, to be used by such concerns in the submission of subsequent offers to sell the same or like parts to the United States. Nothing in this subsection limits the authority of the head of an agency to impose restrictions on such a program related to national security considerations, inventory needs of the United States, the improbability of future purchases of the same or like parts, or any additional restriction otherwise required by law.

(Added Pub. L. 98-525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2595, and amended Pub. L. 98-577, title III, § 301(b), Oct. 30, 1984, 98 Stat. 3076; Pub. L. 99-145, title IX, § 961(d)(1), Nov. 8, 1985, 99 Stat. 703.)

REFERENCES IN TEXT

Section 4(4) of the Office of Federal Procurement Policy Act, referred to in subsec. (a), is classified to section 403(4) of Title 41, Public Contracts.

Section 1202 of the Defense Procurement Reform Act of 1984, referred to in subsec. (a)(4), is section 1202 of Pub. L. 98-525, which is set out as a note under section 2301 of this title.

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-145 substituted "the item or process to which the technical data pertains" for "the technical data".

1984—Subsec. (a). Pub. L. 98-577 substituted "in regulations of the Department of Defense prescribed as part" for "in regulations prescribed as part" in the matter preceding par. (1).

EFFECTIVE DATE

Section applicable with respect to solicitations issued after the end of the one-year period beginning Oct. 19, 1984, see section 1216(c)(2) of Pub. L. 98-525, set out as a note under section 2319 of this title.

§ 2321. Validation of proprietary data restrictions

(a) A contract for supplies or services entered into by the Department of Defense which provides for the delivery of technical data shall provide that—

(1) a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction asserted by the contractor or subcontractor on the right of the United States to use such technical data; and

(2) the contracting officer may review the validity of any restriction asserted by the contractor or by a subcontractor under the contract on the right of the United States to use technical data furnished to the United States under the contract if the contracting officer determines that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the United States would make it impracticable to procure the item competitively at a later time.

(b) If after such review the contracting officer determines that a challenge to the asserted restriction is warranted, the contracting officer shall provide written notice to the contractor or subcontractor asserting the restriction. Such notice shall—

(1) state the grounds for challenging the asserted restriction; and

(2) require a response within 60 days justifying the current validity of the asserted restriction.

(c) If a contractor or subcontractor asserting a restriction subject to this section submits to the contracting officer a written request, showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, additional time to adequately permit the submission of such justification shall be provided by the contracting officer as appropriate. If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one

challenge, the contracting officer initiating the first in time challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each such challenge.

(d)(1) Upon a failure by the contractor or subcontractor to submit any response under subsection (b), the contracting officer shall issue a decision pertaining to the validity of the asserted restriction.

(2) After review of any justification submitted in response to the notice provided pursuant to subsection (b), the contracting officer shall, within 60 days of receipt of any justification submitted, issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

(e) If a claim pertaining to the validity of the asserted restriction is submitted in writing to a contracting officer by a contractor or subcontractor at any tier, such claim shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(f)(1) If, upon final disposition, the contracting officer's challenge to the restriction on the right of the United States to use such technical data is sustained—

(A) the restriction on the right of the United States to use the technical data shall be cancelled; and

(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor, as appropriate, shall be liable to the United States for payment of the cost to the United States of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the United States in challenging the asserted restriction, unless special circumstances would make such payment unjust.

(2) If, upon final disposition, the contracting officer's challenge to the restriction on the right of the United States to use such technical data is not sustained—

(A) the United States shall continue to be bound by the restriction; and

(B) the United States shall be liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the United States is found not to be made in good faith.

(Added Pub. L. 98-525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2597.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (e), is Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

PRIOR PROVISIONS

Another section 2321 of this title was contained in chapter 138 and was renumbered section 2341 of this title.

EFFECTIVE DATE

Section applicable with respect to solicitations issued after the end of the one-year period beginning Oct. 19, 1984, see section 1216(c)(2) of Pub. L. 98-525, set out as a note under section 2319 of this title.

§ 2322. Limitation on small business set-asides

(a) The head of an agency may not authorize a procurement to be set-aside for participation only by small business concerns in the case of a procurement under the Foreign Military Sales Program, if the foreign purchaser specifies the sources qualified to meet the requirement and only one of those sources is a small business concern.

(b) This section expires two years after the effective date of this section.

(Added Pub. L. 98-525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2598.)

REFERENCES IN TEXT

For effective date of this section, referred to in subsec. (b), see Effective Date note below.

PRIOR PROVISIONS

Another section 2322 of this title was contained in chapter 138 and was renumbered section 2342 of this title.

EFFECTIVE DATE

Section 1216(c)(3) of Pub. L. 98-525 provided that: "Section 2322 of title 10, United States Code (as added by subsection (a)), shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 19, 1984]."

§ 2323. Commercial pricing for supplies

(a) Except in the case of an offer submitted with a written statement under subsection (b)(2) and except as provided in subsection (c), a contract entered into using other than competitive procedures by an agency named in section 2303(a) of this title for the purchase of items that are offered for sale to the public may not result in a price to the United States that exceeds the lowest price at which such items are sold by the contractor to the public.

(b) A person who submits an offer to such an agency for the supply of items that it offers for sale to the public (1) shall certify in the offer that the price offered is not more than its lowest commercial price for the items, or (2) shall submit with the offer a written statement specifying the amount of the difference between its lowest commercial price for the items and the price offered and providing a justification for that difference.

(c) Subsections (a) and (b) do not apply to a contract if the contracting officer determines that the use of the price otherwise required by subsection (a) for such contract is not appropriate because of—

(1) national security considerations; or

(2) differences in quantities, quality, delivery, or other terms and conditions of the contract from commercial contract terms.

(Added Pub. L. 98-525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2598.)

PRIOR PROVISIONS

Another section 2323 of this title was contained in chapter 138 and was renumbered section 2343 of this title.

EFFECTIVE DATE

Section 1216(c)(4) of Pub. L. 98-525 provided that: "Section 2323 of title 10, United States Code (as added by subsection (a)), shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984]."

§ 2324. Allowable costs under defense contracts

(a)(1) The Secretary of Defense shall require that a covered contract provide that if the contractor submits to the Department of Defense a proposal for settlement of indirect costs incurred by the contractor for any period after such costs have been accrued and if that proposal includes the submission of a cost which is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or the Department of Defense Supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

(2) If the Secretary determines by clear and convincing evidence that a cost submitted by a contractor in its proposal for settlement is unallowable under paragraph (1), the Secretary shall assess a penalty against the contractor in an amount equal to—

(A) the amount of the disallowed costs; plus

(B) interest (to be computed based on regulations issued by the Secretary) to compensate the United States for the use of any funds which a contractor has been paid in excess of the amount to which the contractor was entitled.

(b) If the Secretary determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of such contractor before the submission of such proposal, the Secretary shall assess a penalty against the contractor, in addition to the penalty assessed under subsection (a), in an amount equal to two times the amount of such cost.

(c) An action of the Secretary under subsection (a) or (b)—

(1) shall be considered a final decision for the purposes of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605); and

(2) is appealable in the manner provided in section 7 of such Act (41 U.S.C. 606).

(d) If any penalty is assessed under subsection (a) or (b) with respect to a proposal for settlement of indirect costs, the Secretary may assess an additional penalty of not more than $10,000 per proposal.

(e)(1) The following costs are not allowable under a covered contract:

(A) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(B) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(C) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(D) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations of the Secretary of Defense.

(E) Costs of membership in any social, dining, or country club or organization.

(F) Costs of alcoholic beverages.

(G) Contributions or donations, regardless of the recipient.

(H) Costs of advertising designed to promote the contractor or its products.

(I) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(J) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(2)(A) The Secretary shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications.

(B) The Secretary shall submit to the committees named in subparagraph (C) any proposed regulations that would make substantive changes to regulations prescribed under the second sentence of subparagraph (A) before the publication of such proposed regulations in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

(C) The committees named in this subparagraph are—

(i) the Committees on Armed Services and on Government Operations of the House of Representatives; and

(ii) the Committees on Armed Services and on Governmental Affairs of the Senate.

(f)(1) The Secretary shall prescribe proposed regulations to amend those provisions of the Department of Defense Supplement to the Federal Acquisition Regulation dealing with the allowability of contractor costs. The amendments shall define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts. These regulations shall, at a minimum, clarify the cost principles applicable to contractor costs of the following:

(A) Air shows.

(B) Membership in civic, community, and professional organizations.

(C) Recruitment.

(D) Employee morale and welfare.

(E) Actions to influence (directly or indirectly) executive branch action on regulatory

and contract matters (other than costs incurred in regard to contract proposals pursuant to solicited or unsolicited bids).

(F) Community relations.

(G) Dining facilities.

(H) Professional and consulting services, including legal services.

(I) Compensation.

(J) Selling and marketing.

(K) Travel.

(L) Public relations.

(M) Hotel and meal expenses.

(N) Expense of corporate aircraft.

(O) Company-furnished automobiles.

(P) Advertising.

(2) The regulations shall require that a contracting officer not resolve any questioned costs until he has obtained—

(A) adequate documentation with respect to such costs; and

(B) the opinion of the defense contract auditor on the allowability of such costs.

(3) The regulations shall provide that, to the maximum extent practicable, the defense contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

(4) The regulations shall require that all categories of costs designated in the report of the defense contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are paid will be reflected in the settlement.

(g) The regulations of the Secretary required to be prescribed under subsections (e) and (f)(1) shall require, to the maximum extent practicable, that such regulations apply to all subcontractors of a covered contract.

(h)(1) A proposal for settlement of indirect costs applicable to a covered contract shall include a certification by an official of the contractor that, to the best of the certifying official's knowledge and belief, all indirect costs included in the proposal are allowable. Any such certification shall be in a form prescribed by the Secretary.

(2) The Secretary of Defense or the Secretary of the military department concerned may, in an exceptional case, waive the requirement for certification under paragraph (1) in the case of any contract if the Secretary—

(A) determines in such case that it would be in the interest of the United States to waive such certification; and

(B) states in writing the reasons for that determination and makes such determination available to the public.

(i) The submission to the Department of Defense of a proposal for settlement of costs for any period after such costs have been accrued that includes a cost that is expressly specified by statute or regulation as being unallowable, with the knowledge that such cost is unallowable, shall be subject to the provisions of section 287 of title 18 and section 3729 of title 31.

(j)(1) The Comptroller General shall periodically evaluate the implementation of this section by the Secretary of Defense. Such evaluation shall consider the extent to which—

(A) such implementation is consistent with congressional intent;

(B) such implementation achieves the objective of eliminating unallowable costs charged to defense contracts; and

(C) such implementation (as well as the provisions of this section and the regulations prescribed under this section) could be improved or strengthened.

(2) The Comptroller General shall submit to the committees named in subsection (e)(2)(C) a report on such evaluation within 90 days of publication by the Secretary of Defense in the Federal Register of regulations that make substantive changes in regulations prescribed under subsection (e) or (f) or in any other regulations of the Department of Defense pertaining to allowable costs under covered contracts.

(k) In this section, "covered contract" means a contract for an amount more than $100,000 entered into by the Department of Defense other than a fixed-price contract without cost incentives.

(Added Pub. L. 99-145, title IX, § 911(a)(1), Nov. 8, 1985, 99 Stat. 682, and amended Pub. L. 99-190, § 101(b) [title VIII, § 8112(a)], Dec. 19, 1985, 99 Stat. 1185, 1223.)

PRIOR PROVISIONS

Another section 2324 of this title was contained in chapter 138 and was renumbered section 2344 of this title.

AMENDMENTS

1985—Subsec. (e)(2). Pub. L. 99-190, § 101(b) [§ 8112(a)(1)], designated the existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (h)(2). Pub. L. 99-190, § 101(b) [§ 8112(a)(2)], inserted ", in an exceptional case," in provisions preceding subpar. (A).

Subsecs. (j), (k). Pub. L. 99-190, § 101(b) [§ 8112(a)(3)], added subsec. (j) and redesignated former subsec. (j) as (k).

EFFECTIVE DATE

Section 911(c) of Pub. L. 99-145 provided that: "Section 2324 of title 10, United States Code, as added by subsection (a), shall apply only to contracts for which solicitations are issued on or after the date on which such regulations are prescribed."

REGULATIONS; PROMULGATION; PUBLICATION; SUBMISSION TO CONGRESS; INITIAL EVALUATION AND REPORT

Section 101(b) [title VIII, § 8112(b), (c)] of Pub. L. 99-190 provided that:

"(b) CONGRESSIONAL COMMITTEE REVIEW OF PROPOSED INITIAL REGULATIONS.—(1) The regulations required under section 911(b) of the Department of Defense Authorization Act, 1986 (Public Law 99-145), to be prescribed not later than 150 days after the date of the enactment of such Act [Nov. 8, 1985] shall be submitted to the committees named in paragraph (2) before the publication of such regulations in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

"(2) The committees named in this paragraph are—

"(A) the Committees on Armed Services and on Government Operations of the House of Representatives; and

"(B) the Committees on Armed Services and on Government Affairs of the Senate.

"(c) INITIAL COMPTROLLER GENERAL EVALUATION AND REPORT.—The Comptroller General shall submit to the committees named in subsection (b)(2) a report on

the Comptroller General's initial evaluation under subsection (j)(1) of section 2324 of title 10, United States Code, as added by subsection (a). Such report shall be submitted within 180 days of the publication by the Secretary of Defense under section 911(b) of the Department of Defense Authorization Act, 1986 (Public Law 99-145), of the regulations referred to in such section."

Section 711(b) of Pub. L. 99-145 provided that:

"(1) Not later than 150 days after the date of the enactment of this Act [Nov. 8, 1985], the Secretary of Defense shall prescribe the regulations required by subsections (e) and (f) of section 2324 of title 10, United States Code, as added by subsection (a). Such regulations shall be published in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

"(2) The Secretary shall review such regulations at least once every five years. The results of each such review shall be made public."

BURDEN OF PROOF IN GOVERNMENT CONTRACT DISPUTE RESOLUTION

Section 933 of Pub. L. 99-145 provided that: "In a proceeding before the Armed Services Board of Contract Appeals, the United States Claims Court, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the Department of Defense is in issue, the burden of proof shall be upon the contractor to establish that such costs are reasonable."

CHAPTER 138—NORTH ATLANTIC TREATY ORGANIZATION ACQUISITION AND CROSS-SERVICING AGREEMENTS

Sec.
2341. Authority to acquire logistic support, supplies, and services for United States armed forces in Europe.
2342. Cross-servicing agreements.
2343. Law applicable to acquisition and cross-servicing agreements.
2344. Methods of payment for acquisitions and transfers by the United States.
2345. Liquidation of accrued credits and liabilities.
2346. Crediting of receipts.
2347. Limitation on amounts that may be obligated or accrued by the United States.
2348. Inventories of supplies not to be increased.
2349. Annual reports.
2350. Definitions.

AMENDMENTS

1985—Pub. L. 99-145, title XIII, § 1304(a)(6), Nov. 8, 1985, 99 Stat. 742, renumbered items 2321 to 2328 as 2341 to 2348, respectively, and items 2330 and 2331 as 2349 and 2350, respectively, and struck out item 2329 "Regulations".

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2213 of this title.

[§§ 2321 to 2331. Transferred or Repealed]

CODIFICATION

Sections 2321 to 2328, 2330, and 2331, were renumbered sections 2341 to 2348, 2349, and 2350, respectively, of this title, by Pub. L. 99-145, title XIII, § 1304(a)(1), (3), Nov. 8, 1985, 99 Stat. 741.

Section 2329, added Pub. L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, which required the Secretary of Defense to prescribe regulations to implement this chapter, was repealed by Pub. L. 99-145, title XIII, § 1304(a)(2), Nov. 8, 1985, 99 Stat. 741.

§ 2341. Authority to acquire logistic support, supplies, and services for United States armed forces in Europe

Subject to section 2343 of this title and subject to the availability of appropriations, the Secretary of Defense may acquire from the Governments of North Atlantic Treaty Organization countries and from North Atlantic Treaty Organization subsidiary bodies logistic support, supplies, and services for elements of the armed forces deployed in Europe and adjacent waters.

(Added Pub. L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1016, § 2321, and renumbered § 2341 and amended Pub. L. 99-145, title XIII, § 1304(a)(1), (4), Nov. 8, 1985, 99 Stat. 741.)

AMENDMENTS

1985—Pub. L. 99-145, § 1304(a)(4), substituted "section 2343" for "section 2323".

SHORT TITLE

Section 1 of Pub. L. 96-323 provided: "That this Act [enacting this chapter] may be cited as the 'North Atlantic Treaty Organization Mutual Support Act of 1979'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2343 of this title.

§ 2342. Cross-servicing agreements

Subject to section 2343 of this title and to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into agreements with the Government of any North Atlantic Treaty Organization country and with any North Atlantic Treaty Organization subsidiary body under which the United States agrees to provide logistic support, supplies, and services to military forces of such country or subsidiary body deployed in Europe and adjacent waters in return for the reciprocal provision of logistic support, supplies, and services by such country or subsidiary body to elements of the armed forces deployed in Europe and adjacent waters.

(Added Pub. L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1016, § 2322, and renumbered § 2342 and amended Pub. L. 99-145, title XIII, § 1304(a)(1), (4), Nov. 8, 1985, 99 Stat. 741.)

AMENDMENTS

1985—Pub. L. 99-145, § 1304(a)(4), substituted "section 2343" for "section 2323".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2343 of this title.

§ 2343. Law applicable to acquisition and cross-servicing agreements

(a) Except as provided in subsection (b), acquisition of logistic support, supplies, and services under section 2341 of this title and agreements entered into under section 2342 of this title shall be made in accordance with chapter 137 of this title and the provisions of this chapter.

(b) Sections 2207, 2304(a), 2306(a), 2306(b), 2306(e), 2306(f), and 2313 of this title, section 3741 of the Revised Statutes (41 U.S.C. 22), and section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168) shall not apply to acquisitions made under the authority of section 2341 of this title or to agreements entered into under section 2342 of this title.

(Added Pub. L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1017, § 2323, and renumbered § 2343 and amended Pub. L. 99-145, title IX, § 961(b), title XIII, § 1304(a)(1), (5), Nov. 8, 1985, 99 Stat. 703, 741.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145, § 1304(a)(5), substituted "section 2341" for "section 2321" and "section 2342" for "section 2322".

Subsec. (b). Pub. L. 99-145, § 1304(a)(5), substituted "section 2341" for "section 2321" and "section 2342" for "section 2322".

Pub. L. 99-145, § 961(b), substituted "section 2304(a)" for "section 2304(g)".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by section 961(b) of Pub. L. 99-145 effective as if included in enactment of Competition in Contracting Act of 1984, Pub. L. 98-369, div. B, title VII, making amendment applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 961(e) of Pub. L. 99-145, set out as a note under section 2304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2341, 2342 of this title.

§ 2344. Methods of payment for acquisitions and transfers by the United States

(a) Logistics support, supplies, and services may be acquired or transferred by the United States under the authority of this chapter on a reimbursement basis or by replacement-in-kind or exchange of supplies or services of an identical or substantially identical nature.

(b)(1) In entering into agreements with the Government of another North Atlantic Treaty Organization country for the acquisition or transfer of logistic support, supplies, and services on a reimbursement basis, the Secretary of Defense shall negotiate for adoption of the following pricing principles for reciprocal application:

(A) The price charged by a supplying country for logistics support, supplies, and services specifically procured by the supplying country from its contractors for a recipient country shall be no less favorable than the price for identical items or services charged by such contractors to the armed forces of the supplying country, taking into account price differentials due to delivery schedules, points of delivery, and other similar considerations.

(B) The price charged a recipient country for supplies furnished by a supplying country from its inventory, and the price charged a recipient country for logistics support and services furnished by the officers, employees, or governmental agencies of a supplying country, shall be the same as the price charged for identical supplies, support, or services acquired by an armed force of the supplying country from such governmental sources.

(2) To the extent that the Secretary of Defense is unable to obtain mutual acceptance by the other country involved of the reciprocal pricing principles for reimbursable transactions set forth in paragraph (1)—

(A) the United States may not acquire from such country any logistic support, supply, or service not governed by such reciprocal pricing principles unless the United States forces commander acquiring such support, supply, or service determines (after price analysis) that the price thereof is fair and reasonable; and

(B) transfers by the United States to such country under this chapter of any logistic support, supply, or service that is not governed by such reciprocal pricing principles shall be subject to the pricing provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(3) To the extent that indirect costs (including charges for plant and production equipment), administrative surcharges, and contract administration costs with respect to any North Atlantic Treaty Organization country are not waived by operation of the reciprocal pricing principles of paragraph (1), the Secretary of Defense may, on a reciprocal basis, agree to waive such costs.

(4) The pricing principles set forth in paragraph (2) and the waiver authority provided in paragraph (3) shall also apply to agreements with North Atlantic Treaty Organization subsidiary bodies under this chapter.

(Added Pub. L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1017, § 2324, amended Pub. L. 97-22, § 11(a)(8), July 10, 1981, 95 Stat. 138, and renumbered § 2344, Pub. L. 99-145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (b)(2)(B), is Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

1981—Subsec. (b)(2)(B). Pub. L. 97-22 substituted "this chapter" for "this Act".

§ 2345. Liquidation of accrued credits and liabilities

Credits and liabilities of the United States accrued as a result of acquisitions and transfers of logistic support, supplies, and services under the authority of this chapter shall be liquidated not less often than once every three months by direct payment to the entity supplying such support, supplies, or services by the entity receiving such support, supplies, or services.

(Added Pub. L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2325, and renumbered § 2345, Pub. L. 99-145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741.)

§ 2346. Crediting of receipts

Any receipt of the United States as a result of an agreement entered into under this chapter shall be credited to applicable appropriations, accounts, and funds of the Department of Defense.

(Added Pub. L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2326, and renumbered § 2346, Pub. L. 99-145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741.)

§ 2347. Limitation on amounts that may be obligated or accrued by the United States

(a) Except during a period of active hostilities involving the North Atlantic Treaty Organization, the total amount of reimbursable liabilities that the United States may accrue under this chapter (before the computation of offsetting balances) may not exceed $100,000,000 in any fiscal year, and of such amount not more than $25,000,000 in liabilities may be accrued for the acquisition of supplies (other than petroleum, oils, and lubricants).

(b) Except during a period of active hostilities involving the North Atlantic Treaty Organization, the total amount of reimbursable credits that the United States may accrue under this chapter (before the computation of offsetting balances) may not exceed $100,000,000 in any fiscal year.

(Added Pub. L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2327, and renumbered § 2347, Pub. L. 99-145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741.)

§ 2348. Inventories of supplies not to be increased

Inventories of supplies for elements of the armed forces may not be increased for the purpose of transferring supplies under the authority of this chapter to military forces of any North Atlantic Treaty Organization country or any North Atlantic Treaty Organization subsidiary body.

(Added Pub. L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2328, amended Pub. L. 97-22, § 11(a)(8), July 10, 1981, 95 Stat. 138, and renumbered § 2348, Pub. L. 99-145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741.)

AMENDMENTS

1981—Pub. L. 97-22 substituted "this chapter" for "this Act".

§ 2349. Annual reports

The Secretary of Defense shall submit to the Congress not later than February 1 of each year a report containing—

(1) a description of each agreement entered into under the authority of this chapter that was in effect during the fiscal year preceding the fiscal year in which such report is submitted;

(2) a report of the dollar value of each reimbursable acquisition or transfer of logistic support, supplies, or services by the United States (by appropriation, account, or fund) during such fiscal year under each such agreement;

(3) a report of nonreimbursable acquisitions and transfers of logistic support and services by the United States (by appropriation, account, and fund) during such fiscal year under each such agreement; and

(4) a description of each agreement entered into (or expected to be entered into) under the authority of this chapter that is expected to be in effect during the fiscal year in which such report is submitted, together with a report of the estimated total dollar value of acquisitions and transfers by the United States (by appropriation, account, or fund) expected to be made during such fiscal year under each such agreement.

(Added Pub. L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2330, and renumbered § 2349, Pub. L. 99-145, title XIII, § 1304(a)(3), Nov. 8, 1985, 99 Stat. 741.)

§ 2350. Definitions

In this chapter:

(1) "Logistic support, supplies, and services" means food, billeting, transportation, petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, base operations support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, and port services.

(2) "North Atlantic Treaty Organization subsidiary bodies" means—

(A) any organization within the meaning of the term "subsidiary bodies" in article I of the multilateral treaty on the Status of the North Atlantic Treaty Organisation, National Representatives and International Staff, signed at Ottawa on September 20, 1951 (TIAS 2992; 5 UST 1087); and

(B) any international military headquarters or organization to which the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty, signed at Paris on August 28, 1952 (TIAS 2978; 5 UST 870), applies.

(Added Pub. L. 96-323, § 2(a), Aug. 4, 1980, 94 Stat. 1019, § 2331, and renumbered § 2350, Pub. L. 99-145, title XIII, § 1304(a)(3), Nov. 8, 1985, 99 Stat. 741.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2213 of this title.

CHAPTER 139—RESEARCH AND DEVELOPMENT

Sec.
2362. Testing requirements: wheeled or tracked armored vehicles.
2363. Encouragement of technology transfer.

AMENDMENTS

1985—Pub. L. 99-145, title I, § 123(a)(2), title XIV, § 1457(b), Nov. 8, 1985, 99 Stat. 601, 763, added items 2362 and 2363.

§ 2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment

USE OF RESEARCH AND DEVELOPMENT FUNDS FOR TEST FACILITIES AND EQUIPMENT

Pub. L. 99-190, § 101(b) [title VIII, § 8015], Dec. 19, 1985, 99 Stat. 1185, 1205, provided that: "During the current fiscal year and hereafter, appropriations available to the Department of Defense for research and development may be used for the purposes of section 2353 of title 10, United States Code, and for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Service concerned."

§ 2356. Contracts: delegations

[*See main edition for text of (a)*]

(b) Subject to other provisions of law, the power to negotiate and administer contracts for research or development, or both, may be further delegated. In this section "negotiate" means make without a solicitation for sealed bids under chapter 137 of this title.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VII, § 2727(d), 98 Stat. 1195.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 substituted "a solicitation for sealed bids under chapter 137 of this title" for "the formal advertising prescribed by section 2305 of this title".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

§ 2361. Availability of appropriations

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2361	31:649c(2).	Aug. 10, 1956, ch. 1041, § 40(2), 70A Stat. 636; Nov. 17, 1971, Pub. L. 92-156, § 201(b), 85 Stat. 424.

The words "Unless otherwise provided in the appropriation Act concerned" are omitted as unnecessary and for consistency. The word "Funds" is substituted for "moneys" for consistency in title 10.

§ 2362. Testing requirements: wheeled or tracked armored vehicles

(a) The Secretary of Defense shall provide that a contract for procurement by the Department of Defense under a major vehicle program may not be entered into unless the testing carried out during the development of the vehicle meets the requirements of subsection (b).

(b) The testing of a vehicle referred to in subsection (a) shall include testing of the vulnerability of such vehicle to the most capable weapon that is likely to be a combat threat to the vehicle and against which the vehicle is designed to survive. Such tests—

(1) shall be carried out in a manner modeled after the Joint Live-Fire Test Program for the Bradley Fighting Vehicle; and

(2) if the test vehicle is to replace an existing vehicle, shall at least include test shots fired under the same conditions at both the test vehicle and the vehicle it is to replace, with each vehicle being equipped with all of the elements with which the vehicle would be equipped in combat.

(c)(1) The Secretary of Defense shall submit to the defense committees a report with respect to the testing of each vehicle for which testing is required under this section.

(2) A report under paragraph (1)—

(A) shall be submitted in both a classified and unclassified form;

(B) shall be submitted with the first request to Congress for appropriations for procurement—

(i) of the vehicle; or

(ii) of modifications to an existing vehicle.

(3) Each such report shall include—

(A) a complete description of the firing parameters used in the testing and an analysis of the effect on the vehicle of each test shot made;

(B) a description and justification of the merit and pass/fail criterion used in carrying out the test;

(C) a description of the potential shortcomings of the vehicle that were revealed by the testing and (if any were revealed) the plan of the Secretary to incorporate into the design of the vehicle changes that are considered cost effective and that are necessary to overcome such shortcomings; and

(D) if the test vehicle is to replace an existing vehicle, a comparison—

(i) of the estimated unit cost of each newly developed vehicle (or of the newly developed survivability modifications being made to an existing vehicle); with

(ii) the unit cost of the vehicle that is to be replaced by the test vehicle.

(d) The Secretary of Defense shall include in the Department of Defense plan referred to as the Test and Evaluation Master Plan that is established for any major vehicle program an estimated cost and schedule of the testing to be carried out with respect to the program.

(e) In this section:

(1) "Major vehicle program" means a major defense acquisition program for the acquisition of—

(A) a newly developed combat wheeled or tracked armored vehicle; or

(B) a combat wheeled or tracked armored vehicle with significant newly developed survivability modifications.

(2) "Major defense acquisition program" means a program subject to the Selected Acquisition Report requirements of section 139a of this title.

(3) "Defense committees" means the Committees on Armed Services and on Appropriations of the Senate and House of Representatives.

(Added Pub. L. 99-145, title I, § 123(a)(1), Nov. 8, 1985, 99 Stat. 599.)

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EFFECTIVE DATE

Section 123(b) of Pub. L. 99-145 provided that: "The amendments made by subsection (a) [enacting this section] shall take effect on January 1, 1987."

§ 2363. Encouragement of technology transfer

(a) The Secretary of Defense shall encourage, to the extent consistent with national security objectives, the transfer of technology between laboratories and research centers of the Department of Defense and other Federal agencies, State and local governments, colleges and universities, and private persons in cases that are likely to result in the maximum domestic use of such technology.

(b) The Secretary shall examine and implement methods, in addition to the encouragement referred to in subsection (a), that are consistent with national security objectives and will enable Department of Defense personnel to promote technology transfer in cases referred to in subsection (a).

(Added Pub. L. 99-145, title XIV, § 1457(a), Nov. 8, 1985, 99 Stat. 762.)

CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS

Sec.
2384. Supplies: identification of supplier and sources.
2384a. Supplies: economic order quantities.
[2390. Repealed.]
2397a. Requirements relating to private employment contacts between certain Department of Defense procurement officials and defense contractors.
2401. Requirement for authorization by law of certain contracts relating to vessels and aircraft.
2401a. Procurement of communications support and related supplies and services.
2402. Prohibition of contractors limiting subcontractor sales directly to the United States.
2403. Major weapon systems: contractor guarantees.
2404. Acquisition of petroleum: authority to waive contract procedures.
2405. Limitation on adjustment of shipbuilding contracts.
2406. Cost and price management.
2407. Acquisition of defense equipment under North Atlantic Treaty Organization cooperative projects.

AMENDMENTS

1985—Pub. L. 99-145, title IX, §§ 917(b), 923(a)(2), title XI, § 1102(b)(2), Nov. 8, 1985, 99 Stat. 690, 697, 712, added items 2397a, 2406, and 2407.

1984—Pub. L. 98-525, title X, § 1005(b), title XII, § 1235(1), (2), Oct. 19, 1984, 98 Stat. 2579, 2604, substituted in item 2384 "identification of supplier and sources" for "marking with name of contractor" and added items 2401a, 2384a, and 2402 to 2405.

1983—Pub. L. 98-94, title XII, §§ 1202(a)(2), 1259(b), Sept. 24, 1983, 97 Stat. 681, 703, struck out item 2390 "Suggestions for improving procurement policies", and added item 2401.

§ 2381. Contracts: regulations for bids

[*See main edition for text of* (a) *and* (b)]

(c) Proceedings under this section are subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), unless exempted therefrom under section 201(a) of that Act (40 U.S.C. 481(a)).

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(35), 98 Stat. 2624.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-525 substituted "section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)" for "section 486 of title 40" and "section 201(a) of that Act (40 U.S.C. 481(a))" for "section 481(a) of this title".

§ 2382. Contract profit controls during emergency periods

REFERENCES IN TEXT

The United States Court of Claims, referred to in subsec. (d), and the United States Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97-164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

§ 2384. Supplies: identification of supplier and sources

(a) The Secretary of Defense shall require that the contractor under a contract with the Department of Defense for the furnishing of supplies to the United States shall mark or otherwise identify supplies furnished under the contract with the identity of the contractor, the national stock number for the supplies furnished (if there is such a number), and the contractor's identification number for the supplies.

(b) The Secretary of Defense shall prescribe regulations requiring that, whenever practicable, each contract requiring the delivery of supplies shall require that the contractor identify—

(1) the actual manufacturer or producer of the item or of all sources of supply of the contractor for that item;

(2) the national stock number of the item (if there is such a number) and the identification number of the actual manufacturer or producer of the item or of each source of supply of the contractor for the item; and

(3) the source of any technical data delivered under the contract.

(c) Identification of supplies and technical data under this section shall be made in the manner and with respect to the supplies prescribed by the Secretary of Defense.

(As amended Oct. 19, 1984, Pub. L. 98-525, title XII, § 1231(a), 98 Stat. 2599.)

AMENDMENTS

1984—Pub. L. 98-525 amended section generally, substituting "identification of supplier and sources" for "marking with name of contractor" in section catchline, and, in text, substituting provisions designated subsec. (a) and relating to the marking of supplies, providing the national stock number for the supplies furnished, and the contractor's identification number for requirement that each contractor furnishing supplies to a military department mark the supplies with his name in the manner directed by the Secretary of

the Department and prohibition of receipt of supplies unless so marked and adding subsecs. (b) and (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1231(b) of Pub. L. 98-525 provided that: "The amendment made by subsection (a) [amending this section] shall take effect at the end of the one-year period beginning on the date of the enactment of this Act [Oct. 19, 1984]."

§ 2384a. Supplies: economic order quantities

(a)(1) An agency referred to in section 2303(a) of this title shall procure supplies in such quantity as (A) will result in the total cost and unit cost most advantageous to the United States, where practicable, and (B) does not exceed the quantity reasonably expected to be required by the agency.

(2) The Secretary of Defense shall take paragraph (1) into account in approving rates of obligation of appropriations under section 2204 of this title.

(b) Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity of the supplies proposed to be procured is economically advantageous to the United States and, if applicable, to recommend a quantity or quantities which would be more economically advantageous to the United States. Each such recommendation shall include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

(Added Pub. L. 98-525, title XII, § 1233(a), Oct. 19, 1984, 98 Stat. 2600.)

EFFECTIVE DATE

Section 1233(b) of Pub. L. 98-525 provided that: "The amendment made by subsection (a) [enacting this section] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984]."

§ 2388. Liquid fuels: contracts for storage, handling, and distribution

[See main edition for text of (a) and (b)]

(c) A contract under this section may contain an option for the purchase by the United States of the facility covered by the contract at the expiration or termination of the contract, without regard to subsections (a) and (b) of section 3324 of title 31, and before approval of title to the underlying land by the Attorney General.

[See main edition for text of (d)]

(As amended Pub. L. 98-525, title XIV, § 1405(56)(A), Oct. 19, 1984, 98 Stat. 2626.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-525 substituted "subsections (a) and (b) of section 3324" for "section 3324(a) and (b)".

[§ 2390. Repealed. Pub. L. 98-94, title XII, § 1259(a), Sept. 24, 1983, 97 Stat. 703]

Section, added Pub. L. 95-79, title VIII, § 815(a), July 30, 1977, 91 Stat. 337, and amended Pub. L. 96-470, title I, § 104(a), Oct. 19, 1980, 94 Stat. 2238; Pub. L. 96-513, title V, § 511(80), Dec. 12, 1980, 94 Stat. 2927, required the Secretary of Defense to request each commissioned officer, and each civilian employee above grade GS-12, who was scheduled for retirement and who was or had been at any time within one year prior to such scheduled retirement, assigned to, or employed in, military procurement to submit suggestions for methods to improve procurement policies.

§ 2391. Military base reuse studies and community planning assistance

[See main edition for text of (a)]

(b) *[See main edition for text of (1)]*

(2) In the case of the establishment or expansion of a military installation, assistance may be made under paragraph (1) only if (A) community impact assistance or special impact assistance is not otherwise available, and (B) the establishment or expansion involves the assignment to the installation of (i) more than 2,000 military, civilian, and contractor Department of Defense personnel, or (ii) more military, civilian, and contractor Department of Defense personnel than the number equal to 10 percent of the number of persons employed in counties or independent municipalities within fifteen miles of the installation, whichever is lesser.

[See main edition for text of (3) to (5); (c) to (e)]

(As amended Pub. L. 98-115, title VIII, § 808, Oct. 11, 1983, 97 Stat. 789.)

AMENDMENTS

1983—Subsec. (b)(2). Pub. L. 98-115 substituted "2,000" for "2,500".

EFFECTIVE DATE OF 1983 AMENDMENT

Section 808 of Pub. L. 98-115 provided in part that the amendment of this section by Pub. L. 98-115 is effective Oct. 1, 1983.

§ 2392. Prohibition on use of funds to relieve economic dislocations

CONTRACTS MADE BY DEFENSE LOGISTICS AGENCY; PAYMENTS OF PRICE DIFFERENTIALS TO RELIEVE ECONOMIC DISLOCATIONS; TEST PROGRAM; INTERIM REPORTS

Pub. L. 97-252, title XI, § 1109, Sept. 8, 1982, 96 Stat. 746, as amended by Pub. L. 98-94, title XII, § 1205, Sept. 24, 1983, 97 Stat. 683; Pub. L. 98-525, title XII, § 1254, Oct. 19, 1984, 98 Stat. 2611, provided that:

"(a) The Secretary of Defense should conduct a test program during fiscal years 1983, 1984, and 1985 in accordance with this subsection to test the effect of exempting certain contracts of the Department of Defense from the provisions of section 2392 of title 10, United States Code, and paying a price differential under such contracts for the purpose of relieving economic dislocations. Under such test program, the Secretary of Defense may exempt from the provisions of such section any contract (other than a contract for the purchase of fuel) made by the Defense Logistics Agency during fiscal years 1983, 1984, and 1985 if the contract is to be awarded to an individual or firm located in a Labor Surplus Area (as defined and identified by the Department of Labor) and if the Secretary determines—

[*See main edition for text of (1) to (4)*]

"(b) Not later than April 15, 1983, April 15, 1984, and April 15, 1985 the President shall submit a report to Congress on the implementation and results to that date of the test program authorized by subsection (a). The report shall include an assessment of the costs and benefits of the test program."

[Amendment of subsecs. (a) and (b) by Pub. L. 98-525, § 1254(a), was made effective Oct. 1, 1984; and amendment of subsec. (a) by Pub. L. 98-525, § 1254(b), was made effective as of Oct. 1, 1982.]

Similar provisions were contained in the following prior authorization act:

1982—Dec. 1, 1981, Pub. L. 97-86, title IX, § 913(b), (c), 95 Stat. 1124.

§ 2394a. Procurement of energy systems using renewable forms of energy

[*See main edition for text*]

(As amended Pub. L. 98-525, title XIV, § 1405(36), Oct. 19, 1984, 98 Stat. 2624.)

AMENDMENTS

1984—Pub. L. 98-525 substituted "using" for "powered by" in section catchline.

§ 2395. Availability of appropriations for procurement of technical military equipment and supplies

HISTORICAL AND REVISION NOTES

1982 ACT (PUB. L. 97-258)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2394	31:649c(1).	Aug. 10, 1956, ch. 1041, § 40(1), 70A Stat. 636; Nov. 17, 1971, Pub. L. 92-156, § 201(b), 85 Stat. 424.

The words "Unless otherwise provided in the appropriation Act concerned" are omitted as unnecessary and for consistency. The word "Funds" is substituted for "moneys" for consistency in title 10. The word "military" is added before "public" for clarity. The words "including moneys appropriated to the Department of the Navy for the procurement and construction of guided missiles" are omitted as included in "technical military equipment".

1982 ACT (PUB. L. 97-295)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2395	10:2394.	Sept. 13, 1982, Pub. L. 97-258, § 2(b)(4)(B), 96 Stat. 1053.

This redesignates 10:2394 (enacted by Pub. L. 97-258) as 10:2395 because of the enactment of another 10:2394 by Pub. L. 97-214, § 6(a)(1), July 12, 1982, 96 Stat. 171, and amends the section generally to eliminate the words "and the construction of military public works" because of section 10(b)(5) of the Military Construction Codification Act (Pub. L. 97-214, July 12, 1982, 96 Stat. 176) which struck corresponding words from the source statute for 10:2394 subsequent to Apr. 15, 1982, the cut-off date prescribed by section 4(a) of Pub. L. 97-258, section 2(b)(4)(B) of which enacted 10:2394.

§ 2396. Advances for payments for compliance with foreign laws, rent in foreign countries, tuition, and pay and supplies of armed forces of friendly foreign countries

HISTORICAL AND REVISION NOTES

1982 ACT (PUB. L. 97-258)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2395(a)	31:529l.	July 13, 1955, ch. 358, § 602, 69 Stat. 314.
2395(b)	31:529j.	Oct. 19, 1965, Pub. L. 89-265, 79 Stat. 989.

In subsection (a), the words "On and after July 13, 1955" are omitted as executed. The words "An advance" are substituted for "section 529 of this title shall not apply in the case of payments" because of the restatement.

In subsection (b), the words "armed force of the United States" are substituted for "Army, Navy, Air Force, Marine Corps, or Coast Guard" because of 10:101(4) and to avoid confusion with the phrase "armed force of a friendly foreign country".

In subsection (b)(1), before clause (A), the words "the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy" are substituted for "the Secretary of the Treasury in their respective areas of responsibility" because of 14:3 and 49:1655(b)(1) and (2). The words "disbursing official" are substituted for "cashiers, disbursing officers" for consistency with other titles of the United States Code and to eliminate unnecessary words.

1982 ACT (PUB. L. 97-295)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2396	10:2395.	Sept. 13, 1982, Pub. L. 97-258, § 2(b)(4)(B), 96 Stat. 1053.

This redesignates 10:2395 as 10:2396 because of the redesignation of 10:2394 (enacted by Pub. L. 97-258) as 10:2395, and substitutes "any other" for "another" in subsec. (b)(2)(C).

§ 2397. Employees or former employees of defense contractors: reports

(a) In this section:

(1) "Contract" means a contract awarded (including the net amount of modifications to, and the exercise of options under, the contract) that involves at least $25,000.

[*See main edition for text of (2) and (3)*]

(b) [*See main edition for text of (1)*]

(2)(A) If a person to whom this subsection applies (i) was employed by, or served as a consultant or otherwise to, a defense contractor at any time during a year at an annual pay rate of at least $25,000 and the defense contractor was awarded contracts by the Department of Defense during the preceding year that totaled at least $10,000,000, and (ii) within the 2-year period ending on the day before the person began the employment or consulting relationship, the person served on active duty or was a civilian employee for the Department, the person shall file a report with the Secretary of Defense in such manner and form as the Secre-

tary may prescribe. The person shall file the report not later than 90 days after the date on which the person began the employment or consulting relationship.

(B) The person shall file an additional report each time, during the 2-year period beginning on the date the active duty or civilian employment with the Department terminated, that the person's job with the defense contractor significantly changes or the person commences an employment or consulting relationship with another defense contractor under the conditions described in the first sentence. A person required to file an additional report under this subparagraph shall file the report within 30 days after the date of the change or the date the employment or consulting relationship commences, as the case may be.

(3) The report shall contain the following information:

[*See main edition for text of (A) to (C)*]

(D) A description of the duties and work performed or to be performed by the person for the defense contractor, and a description of any similar duties or work performed for which the person had at least partial responsibility as a civilian official or employee of the Department of Defense or a member of the armed forces during the 2-year period referred to in paragraph (2)(A)(ii).

(E) The military grade of the person while on active duty or the gross pay rate while performing civilian service for the Department.

(F) A description of the duties and the work performed by the person while on active duty or performing civilian service for the Department during the 2-year period referred to in paragraph (2)(A)(ii) and a description of the type of work performed and the extent to which such work was performed by the person for the defense contractor that has employed the person or has retained the person as a consultant.

[*See main edition for text of (G) and (H)*]

(I) A statement describing any disqualification action taken by the person during the 2-year period referred to in paragraph (2)(A)(ii) with respect to any involvement in a matter concerning the defense contractor.

(c)(1) A person who (A) holds civilian office or employment (including employment as a consultant or part-time employee) in the Department at any time during a year at a pay rate at least equal to the minimum rate for GS-13, and (B) within the 2-year period before the effective date of employment with the Department was employed by, or served as a consultant or otherwise to, a defense contractor at any time during a year at an annual pay rate of at least $25,000 and the contractor was awarded contracts by the Department during that year that total at least $10,000,000, shall file a report with the Secretary in the way and at the time prescribed by the Secretary.

(2) The report shall contain the following information:

[*See main edition for text of (A) and (B)*]

(C) A description of the duties and work performed by the person with the Department and a description of any similar duties or work for which the person had at least partial responsibility as an employee or consultant of the defense contractor during the 2-year period referred to in paragraph (1)(B).

[*See main edition for text of (D) and (E)*]

(F) A description of the duties and work performed by the person for the defense contractor and a description of the type of work and the extent to which such work was performed by the person in connection with contracts of the defense contractor with the Department during the 2-year period referred to in paragraph (1)(B).

[*See main edition for text of (G) and (H); (d)*]

(e) Before April 1 of each year, the Secretary shall report to Congress the names of persons who have filed reports for the preceding year under this section. The names shall be listed, by groups, under the names of the appropriate defense contractors. The Secretary may include for each name appropriate additional information.

(f)(1) A person who fails to comply with the filing requirements of this section shall be liable to the United States for an administrative penalty in the amount of $10,000, or in such lesser amount as may be determined by the Secretary of Defense, considering all the relevant circumstances.

(2) The Secretary shall determine whether a person has failed to file a report required by this section and shall determine the amount of the penalty under paragraph (1). The Secretary shall make the determinations on the record after opportunity for an agency hearing as provided in subchapter II of chapter 5 of title 5, United States Code. The determinations of the Secretary shall be subject to judicial review under chapter 7 of such title.

(As amended Pub. L. 99-145, title IX, § 922, Nov. 8, 1985, 99 Stat. 693.)

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-145, § 922(a), struck out "by negotiation" after "awarded" and substituted "$25,000" for "$10,000".

Subsec. (b)(2). Pub. L. 99-145, § 922(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "A person to whom this subsection applies who (A) was employed by, or served as a consultant or otherwise to, a defense contractor at any time during a fiscal year at an annual pay rate of at least $15,000 and the contractor was awarded contracts by the Department during that fiscal year that total at least $10,000,000, and (B) within the 3-year period before the beginning of that fiscal year served on active duty or performed civilian service for the Department, shall file a report with the Secretary of Defense (before February 16 of the next succeeding fiscal year) in the way prescribed by the Secretary."

Subsec. (b)(3)(D). Pub. L. 99-145, § 922(c)(1), added cl. (D) and struck out former cl. (D) which read: "A brief description of the duties and work performed by the person for the defense contractor."

Subsec. (b)(3)(F). Pub. L. 99-145, § 922(c)(2), substituted "A description" for "A brief description" and "2-year period referred to in paragraph (2)(A)(ii) and a

description of the type of work performed and the extent to which such work was performed by the person for the defense contractor that has employed the person or has retained the person as a consultant" for "3-year period before that duty or service ended".

Subsec. (b)(3)(I). Pub. L. 99-145, § 922(c)(3), added cl. (I).

Subsec. (c)(1). Pub. L. 99-145, § 922(d)(1), struck out "fiscal" before "year" in three places and substituted "2-year" for "3-year" and "$25,000" for "$15,000".

Subsec. (c)(2)(C). Pub. L. 99-145, § 922(d)(2)(A), added cl. (C) and struck out former cl. (C) which read: "A brief description of the duties with the Department."

Subsec. (c)(2)(F). Pub. L. 99-145, § 922(d)(2)(B), added cl. (F) and struck out former cl. (F) which read: "A brief description of the duties and the work performed by the person for the defense contractor."

Subsec. (e). Pub. L. 99-145, § 922(e), substituted "preceding year" for "preceding fiscal year".

Subsec. (f). Pub. L. 99-145, § 922(f), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "A person not complying with the filing requirements of this section shall be fined not more than $1,000, or imprisoned not more than 6 months, or both."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2397a of this title.

§ 2397a. Requirements relating to private employment contacts between certain Department of Defense procurement officials and defense contractors

(a) In this section:

(1) "Contract" has the same meaning as provided in section 2397(a)(1) of this title.

(2) "Covered defense official" means any individual who is serving—

(A) as a civilian officer or employee of the Department of Defense in a position for which the rate of pay is equal to or greater than the minimum rate of pay payable for grade GS-11 under the General Schedule; or

(B) on active duty in the armed forces in a pay grade of O-4 or higher.

(3) "Defense contractor" has the same meaning as provided in section 2397(a)(2) of this title.

(4) "Designated agency ethics official" has the same meaning as the term "designated agency official" in section 209(10) of the Ethics in Government Act of 1978 (92 Stat. 1850; 5 U.S.C. App.).

(5) "Employment" means a relationship under which an individual furnishes services in return for any payment or other compensation paid directly or indirectly to the individual for the services.

(6) "Procurement function" includes, with respect to a contract, any function relating to—

(A) the negotiation, award, administration, or approval of the contract;

(B) the selection of a contractor;

(C) the approval of changes in the contract;

(D) quality assurance, operation and developmental testing, the approval of payment, or auditing under the contract; or

(E) the management of the procurement program.

(b)(1) If a covered defense official who has participated in the performance of a procurement function in connection with a contract awarded by the Department of Defense contacts, or is contacted by, the defense contractor to whom the contract was awarded (or an agent of such contractor) regarding future employment opportunities for the official with the defense contractor, the official (except as provided in paragraph (2)) shall—

(A) promptly report the contact to the official's supervisor and to the designated agency ethics official (or his designee) of the agency in which the covered defense official is employed; and

(B) for any period for which future employment opportunities for the covered defense official have not been rejected by either the covered defense official or the defense contractor, disqualify himself from all participation in the performance of procurement functions relating to contracts of the defense contractor.

(2) A covered defense official is not required to report the first contact with a defense contractor under paragraph (1)(A) or to disqualify himself under paragraph (1)(B) if the defense official terminates the contact immediately. However, if an additional contact of the same or a similar nature is made by or with the defense contractor, the covered defense official shall report (as provided in paragraph (1)) the contact and all contacts of the same or a similar nature made by or with the defense contractor during the 90-day period ending on the date the additional contact is made.

(c) A report required by subsection (b)(1) shall include—

(1) the date of each contact covered by the report; and

(2) a brief description of the substance of the contact.

(d)(1)(A) If the Secretary of Defense determines under paragraph (2) that a person has failed promptly to make a report required by subsection (b)(1)(A) or (b)(2) or has failed to disqualify himself in any case in which he is required to do so under subsection (b)(1)(B)—

(i) the person may not accept or continue employment with the defense contractor during the 10-year period beginning with the date of separation from Government service; and

(ii) the Secretary may impose on the person an administrative penalty in the amount of $10,000, or in such lesser amount as may be prescribed by the Secretary, taking into consideration all the circumstances.

(B) An individual who accepts or continues employment prohibited by subparagraph (A)(i) shall be liable to the United States for an administrative penalty as provided in subparagraph (A)(ii). Such penalty may be in addition to any penalty previously imposed on the individual under subparagraph (A)(ii) for failure promptly to make a report relating to the defense contractor by whom the individual is employed as required by subsection (b)(1)(A) or (b)(2).

(C) The Secretary of Defense may take action against an individual under this paragraph before, on, or after the date on which the individual's employment with the Government is terminated.

(2)(A) The Secretary of Defense shall determine—

(i) whether an individual has failed promptly to make a report required by subsection (b)(1)(A) or (b)(2) or has failed to disqualify himself in any case in which he is required to do so under subsection (b)(1)(B) and whether to impose a penalty under paragraph (1)(A)(ii) and the amount of such penalty; and

(ii) whether an individual is liable to the United States for an administrative penalty under paragraph (1)(B) and the amount of such penalty.

There shall be a rebuttable presumption in favor of a covered defense official that failure to report a contact with a defense contractor or failure to disqualify himself from participation in the performance of certain procurement functions is not a violation of subsection (b)(1)(A) or (b)(2) or subsection (b)(1)(B), as the case may be, if the defense official has received an opinion in writing from the designated agency ethics official under subsection (e) stating that a report or disqualification by the official was not necessary.

(B) Determinations of the Secretary under subparagraph (A) shall be made on the record after opportunity for an agency hearing as provided in subchapter II of chapter 5 of title 5. The determinations of the Secretary shall be subject to judicial review under chapter 7 of such title.

(e) If a designated agency ethics official or his designee receives a report required by subsection (b) or a request for advice from a covered defense official relating to a contact described in such subsection, the designated agency ethics official or his designee may issue a written opinion regarding the necessity of a covered defense official to file a report or disqualify himself from participation in certain procurement functions, as the case may be.

(f) A covered defense official should request the advice of his supervisor and the appropriate designated agency ethics official (or his designee) on matters to which this section applies.

(Added Pub. L. 99-145, title IX, § 923(a)(1), Nov. 8, 1985, 99 Stat. 695.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(2)(A), is set out under section 5332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section 923(b) of Pub. L. 99-145 provided that: "The amendments made by subsection (a) [enacting this section] shall take effect with respect to contacts (referred to in section 2397a of title 10, United States Code, as added by subsection (a) of this section) made on or after the date of enactment of this Act [Nov. 8, 1985]."

POST-GOVERNMENT-SERVICE EMPLOYMENT BARS ON SENIOR DEFENSE OFFICIALS

Section 921 of Pub. L. 99-145 provided that: "Whoever being a Presidential appointee in Federal employment acts as a primary government representative in the negotiation of a government contract or the settlement thereof with a defense contractor shall not within two years after the termination of said activities with such contractor accept employment from that contractor and upon a knowing violation of this provision the employee shall be punished, upon conviction, with a prison term of up to one year and a fine of up to $5,000 and said defense contractor shall forfeit up to $50,000 in liquidated damages to the Federal Government which shall be provided for in the contract. The Secretary of Defense shall implement this provision by appropriate regulations."

§ 2401. Requirement for authorization by law of certain contracts relating to vessels and aircraft

(a)(1) The Secretary of a military department may make a contract for the lease of a vessel or aircraft or for the provision of a service through use by a contractor of a vessel or aircraft only as provided in subsection (b) if—

(A) the contract will be a long-term lease or charter; or

(B) the terms of the contract provide for a substantial termination liability on the part of the United States.

(2) The Secretary of a military department may make a contract that is an agreement to lease or charter or an agreement to provide services and that is (or will be) accompanied by a contract for the actual lease, charter, or provision of services only as provided in subsection (b) if the contract for the actual lease, charter, or provision of services is (or will be) a contract described in paragraph (1).

(b)(1) The Secretary may make a contract described in subsection (a)(1) if—

(A) the Secretary has been specifically authorized by law to make the contract;

(B) before a solicitation for proposals for the contract was issued the Secretary notified the Committees on Armed Services and on Appropriations of the Senate and House of Representatives of the Secretary's intention to issue such a solicitation; and

(C) the Secretary has notified the Committees on Armed Services and on Appropriations of the Senate and House of Representatives of the proposed contract and provided a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than providing for the lease, charter, or services involved through purchase of the vessel or aircraft to be used under the contract, and a period of 30 days of continuous session of Congress has expired following the date on which notice was received by such committees.

(2) For purposes of paragraph (1)(C), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in a computation of such 30-day period.

(c)(1) Funds may not be appropriated for any fiscal year to or for any armed force or obligated or expended for—

(A) the long-term lease or charter of any aircraft or naval vessel; or

(B) for the lease or charter of any aircraft or naval vessel the terms of which provide for a substantial termination liability on the part of the United States,

unless funds for that purpose have been specifically authorized by law.

(2) Funds appropriated to the Department of Defense pursuant to an authorization contained in the Department of Defense Authorization Act, 1984 (Public Law 98-94), or in any other law enacted after September 24, 1983, may not be used to indemnify any person under the terms of a contract entered into under this section—

(A) for any amount paid or due by any person to the United States for any liability arising under the Internal Revenue Code of 1954; or

(B) to pay any attorneys' fees in connection with such contract.

(d)(1)(A) In this section, the term "long-term lease or charter" (except as provided in subparagraph (B)) means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of five years or longer or more than one-half the useful life of the vessel or aircraft; or

(ii) the initial term of which is for a period of less than five years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is five years or longer.

Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of five years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of five years or longer.

(B) In the case of an agreement under which the lessor first places the property in service under the agreement or the property has been in service for less than one year and there is allowable to the lessor or charterer an investment tax credit or depreciation for the property leased, chartered, or otherwise provided under the agreement under section 168 of the Internal Revenue Code of 1954 (unless the lessor or charterer has elected depreciation on a straightline method for such property), the term "long-term lease or charter" means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of three years or longer; or

(ii) the initial term of which is for a period of less than three years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is three years or longer.

Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of three years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of three years or longer.

(2) For the purposes of this section, the United States shall be considered to have a substantial termination liability under a contract—

(A) if there is an agreement by the United States under the contract to pay an amount not less than the amount equal to 25 percent of the value of the vessel or aircraft under lease or charter, calculated on the basis of the present value of the termination liability of the United States under such charter or lease (as determined under regulations prescribed by the Secretary of Defense); or

(B) if (as determined under regulations prescribed by the Secretary of Defense) the sum of—

(i) the present value of the amount of the termination liability of the United States under the contract as of the end of the term of the contract (exclusive of any option to extend the contract); and

(ii) the present value of the total of the payments to be made by the United States under the contract (excluding any option to extend the contract) attributable to capital-hire,

is more than one-half the price of the vessel or aircraft involved.

(e)(1) Whenever a request is submitted to Congress for the authorization of the long-term lease or charter of aircraft or naval vessels or for the authorization of a lease or charter of aircraft or naval vessels which provides for a substantial termination liability on the part of the United States, the Secretary of Defense shall submit with that request an analysis of the cost to the United States (including lost tax revenues) of any such lease or charter arrangement compared with the cost to the United States of direct procurement of the aircraft or naval vessels by the United States.

(2) Any such analysis shall be reviewed and evaluated by the Director of the Office of Management and Budget and the Secretary of the Treasury within 30 days after the date on which the request and analysis are submitted to Congress. The Director and Secretary shall conduct such review and evaluation on the basis of the guidelines issued pursuant to subsection (f) and shall report to Congress in writing on the results of their review and evaluation at the earliest practicable date, but in no event more than 45 days after the date on which the request and analysis are submitted to the Congress.

(3) Whenever a request is submitted to Congress for the authorization of funds for the Department of Defense for the long-term lease or charter of aircraft or naval vessels authorized under this section, the Secretary of Defense—

(A) shall indicate in the request what portion of the requested funds is attributable to capital-hire; and

(B) shall reflect such portion in the appropriate procurement account in the request.

(f) The Director of the Office of Management and Budget and the Secretary of the Treasury shall jointly issue guidelines for determining under what circumstances the Department of Defense may use lease or charter arrangements

for aircraft and naval vessels rather than directly procuring such aircraft and vessels.

(Added Pub. L. 98-94, title XII, § 1202(a)(1), Sept. 24, 1983, 97 Stat. 679, and amended Pub. L. 98-525, title XII, § 1232(a), Oct. 19, 1984, 98 Stat. 2600.)

REFERENCES IN TEXT

The Department of Defense Authorization Act, 1984, referred to in subsec. (c)(2), is Pub. L. 98-94, Sept. 24, 1983, 97 Stat. 614, as amended. For complete classification of this Act to the Code, see Tables.

The Internal Revenue Code of 1954, referred to in subsecs. (c)(2)(A), (d)(1)(B), is classified generally to Title 26, Internal Revenue Code. Section 168 of the Internal Revenue Code of 1954 is classified to section 168 of Title 26.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-525, § 1232(a)(1), designated existing provisions as par. (1) and redesignated as cls. (A) and (B) former cls. (1) and (2), respectively, and added par. (2).

Subsec. (f). Pub. L. 98-525, § 1232(a)(2), struck out second sentence which read "Such guidelines shall be issued not later than 90 days after the date of enactment of this section [Sept. 24, 1983]."

EFFECTIVE DATE

Section 1202(a)(3) of Pub. L. 98-94 provided that: "Section 2401 of title 10, United States Code, as added by paragraph (1), shall not apply in the case of any lease or charter agreement entered into by the Department of Defense before December 1, 1983."

ISSUANCE OF GUIDELINES

Section 1232(a)(2) of Pub. L. 98-525 provided in part that: "The guidelines required to be issued under that subsection [subsec. (f) of this section] shall be issued not later than October 31, 1984."

LIMITATION ON FUNDS AVAILABLE TO DEPARTMENT OF DEFENSE TO ENTER INTO CONTRACTS DURING FISCAL YEAR 1984

Section 1202(d) of Pub. L. 98-94 provided that: "Funds available to the Department of Defense may not be used to enter into any contract during fiscal year 1984 under section 2401 of title 10, United States Code, as added by subsection (a), the term of which is for 3 years or more, inclusive of any option for contract extension or renewal, for any vessels, aircraft, or vehicles, through a lease, charter, or similar agreement, that imposes an estimated termination liability (excluding the estimated value of the leased item at the time of termination) on the United States exceeding 50 percent of the original purchase value of the vessel, aircraft, or vehicle involved for which the Congress has not specifically provided budget authority for the obligation of 10 percent of such termination liability."

LIMITATION ON USE OF FUNDS APPROPRIATED PURSUANT TO AUTHORIZATIONS CONTAINED IN DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1984

Section 1202(b) of Pub. L. 98-94 provided that: "Funds appropriated pursuant to an authorization contained in this Act may not be used to indemnify any person under the terms of a contract entered into with the United States under section 2401 of title 10, United States Code (as added by subsection (a))—

"(1) for any amount paid or due by any person to the United States for any liability arising under the Internal Revenue Code of 1954 [Title 26, Internal Revenue Code]; or

"(2) to pay any attorneys' fees in connection with such contract."

§ 2401a. Procurement of communications support and related supplies and services

(a) As an alternative means of obtaining communications support and related supplies and services, the Secretary of Defense, subject to the approval of the Secretary of State, may enter into an arrangement with the Minister of Defense or other appropriate official of any allied country or with the North Atlantic Treaty Organization (NATO), under which, in return for being provided communications support and related supplies and services, the United States would agree to provide to such country or NATO an equivalent value of communications support and related supplies and services.

(b) Any arrangement entered into under this section shall require that any accrued credits and liabilities resulting from an unequal exchange of communications support and related supplies and services during the term of such arrangement would be liquidated by direct payment to the party having provided the greater amount of communications support and related supplies and services. Payments received by the United States shall be credited to the appropriation from which such communications support and related supplies and services have been provided.

(c) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives copies of all documents evidencing an arrangement entered into under subsection (a) not later than 45 days after entering into such an arrangement.

(d) In this section, "allied country" means—

(1) a country that is a member of the North Atlantic Treaty Organization, or

(2) Australia, New Zealand, Japan, or the Republic of Korea.

(Added Pub. L. 98-525, title X, § 1005(a), Oct. 19, 1984, 98 Stat. 2578.)

§ 2402. Prohibition of contractors limiting subcontractor sales directly to the United States

(a) Each contract for the purchase of supplies or services made by the Department of Defense shall provide that the contractor will not—

(1) enter into any agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the United States of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales to the United States described in clause (1).

(b) This section does not prohibit a contractor from asserting rights it otherwise has under law.

(Added Pub. L. 98-525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2601.)

EFFECTIVE DATE

Section 1234(c) of Pub. L. 98-525 provided that: "Section 2402 of title 10, United States Code (as added by subsection (a)), shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984]."

§ 2403. Major weapon systems: contractor guarantees

(a) In this section:

(1) "Weapon system" means items that can be used directly by the armed forces to carry out combat missions and that cost more than $100,000 or for which the eventual total procurement cost is more than $10,000,000. Such term does not include commercial items sold in substantial quantities to the general public.

(2) "Prime contractor" means a party that enters into an agreement directly with the United States to furnish part or all of a weapon system.

(3) "Design and manufacturing requirements" means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials, and finished product tests for the weapon system being produced.

(4) "Essential performance requirements", with respect to a weapon system, means the operating capabilities or maintenance and reliability characteristics of the system that are determined by the Secretary of Defense to be necessary for the system to fulfill the military requirement for which the system is designed.

(5) "Component" means any constituent element of a weapon system.

(6) "Mature full-scale production" means the manufacture of all units of a weapon system after the manufacture of the first one-tenth of the eventual total production or the initial production quantity of such system, whichever is less.

(7) "Initial production quantity" means the number of units of a weapon system contracted for in the first year of full-scale production.

(8) "Head of an agency" has the meaning given that term in section 2302 of this title.

(b) Except as otherwise provided in this section, the head of an agency may not after January 1, 1985, enter into a contract for the production of a weapon system unless each prime contractor for the system provides the United States with written guarantees that—

(1) the item provided under the contract will conform to the design and manufacturing requirements specifically delineated in the production contract (or in any amendment to that contract);

(2) the item provided under the contract, at the time it is delivered to the United States, will be free from all defects in materials and workmanship;

(3) the item provided under the contract will conform to the essential performance requirements of the item as specifically delineated in the production contract (or in any amendment to that contract); and

(4) if the item provided under the contract fails to meet the guarantee specified in clause (1), (2), or (3), the contractor will at the election of the Secretary of Defense or as otherwise provided in the contract—

(A) promptly take such corrective action as may be necessary to correct the failure at no additional cost to the United States; or

(B) pay costs reasonably incurred by the United States in taking such corrective action.

(c) The head of the agency concerned may not require guarantees under subsection (b) from a prime contractor for a weapon system, or for a component of a weapon system, that is furnished by the United States to the contractor.

(d) Subject to subsection (e)(1), the Secretary of Defense may waive part or all of subsection (b) in the case of a weapon system, or component of a weapon system, if the Secretary determines—

(1) that the waiver is necessary in the interest of national defense; or

(2) that a guarantee under that subsection would not be cost-effective.

The Secretary may not delegate authority under this subsection to any person who holds a position below the level of Assistant Secretary of Defense or Assistant Secretary of a military department.

(e)(1) Before making a waiver under subsection (d) with respect to a weapon system that is a major defense acquisition program for the purpose of section 139a of this title, the Secretary of Defense shall notify the Committees on Armed Services and on Appropriations of the Senate and House of Representatives in writing of his intention to waive any or all of the requirements of subsection (b) with respect to that system and shall include in the notice an explanation of the reasons for the waiver.

(2) Not later than February 1 of each year, the Secretary of Defense shall submit to the committees specified in paragraph (1) a report identifying each waiver made under subsection (d) during the preceding calendar year for a weapon system that is not a major defense acquisition program for the purpose of section 139a of this title and shall include in the report an explanation of the reasons for the waivers.

(f) The requirement for a guarantee under subsection (b)(3) applies only in the case of a contract for a weapon system that is in mature full-scale production. However, nothing in this section prohibits the head of the agency concerned from negotiating a guarantee similar to the guarantee described in that subsection for a weapon system not yet in mature full-scale production. When a contract for a weapon system not yet in mature full-scale production is not to include the full guarantee described in subsection (b)(3), the Secretary shall comply with the notice requirements of subsection (e).

(g) Nothing in this section prohibits the head of the agency concerned from—

(1) negotiating the specific details of a guarantee, including reasonable exclusions, limitations and time duration, so long as the negotiated guarantee is consistent with the general requirements of this section;

(2) requiring that components of a weapon system furnished by the United States to a contractor be properly installed so as not to invalidate any warranty or guarantee provided by the manufacturer of such component to the United States;

(3) reducing the price of any contract for a weapon system or other defense equipment to take account of any payment due from a contractor pursuant to subclause (B) of subsection (b)(4);

(4) in the case of a dual source procurement, exempting from the requirements of subsection (b)(3) an amount of production by the second source contractor equivalent to the first one-tenth of the eventual total production by the second source contractor; and

(5) using written guarantees to a greater extent than required by this section, including guarantees that exceed those in clauses (1), (2), and (3) of subsection (b) and guarantees that provide more comprehensive remedies than the remedies specified under clause (4) of that subsection.

(h)(1) The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this section.

(2) This section does not apply to the Coast Guard or to the National Aeronautics and Space Administration.

(Added Pub. L. 98-525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2601.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in Pub. L. 98-212, title VII, § 794, Dec. 8, 1983, 97 Stat. 1454, which was set out as a note under section 2304 of this title, and was repealed by Pub. L. 98-525, title XII, § 1234(b)(1), Oct. 19, 1984, 98 Stat. 2604, eff. Jan. 1, 1985.

§ 2404. Acquisition of petroleum: authority to waive contract procedures

(a) The Secretary of Defense may, for any purchase of petroleum, waive the application of any provision of law prescribing procedures to be followed in the formation of contracts, prescribing terms and conditions to be included in contracts, or regulating the performance of contracts if the Secretary determines—

(1) that petroleum market conditions have adversely affected (or will in the near future adversely affect) the acquisition of petroleum by the Department of Defense; and

(2) the waiver will expedite or facilitate the acquisition of petroleum for Government needs.

(b) A waiver under subsection (a) may be made with respect to a particular contract or with respect to classes of contracts. Such a waiver that is applicable to a contract for the purchase of petroleum may also be made applicable to a subcontract under that contract.

(c) The Secretary of Defense may acquire petroleum by exchange of petroleum or petroleum derivatives.

(d) The Secretary of Defense shall notify the Congress within 10 days of the date on which any waiver is made under this section and of the reasons for the necessity of exercising such waiver.

(e) In this section, "petroleum" means natural or synthetic crude, blends of natural or synthetic crude, and products refined or derived from natural or synthetic crude or from such blends.

(Added Pub. L. 98-525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2604.)

§ 2405. Limitation on adjustment of shipbuilding contracts

(a) The Secretary of a military department may not adjust any price under a shipbuilding contract entered into after December 7, 1983, for an amount set forth in a claim, request for equitable adjustment, or demand for payment under the contract (or incurred due to the preparation, submission, or adjudication of any such claim, request, or demand) arising out of events occurring more than 18 months before the submission of the claim, request, or demand.

(b) For the purposes of subsection (a), a claim, request, or demand shall be considered to have been submitted only when the contractor has provided the certification required by section 6(c)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)(1)) and the supporting data for the claim, request, or demand.

(Added Pub. L. 98-525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2604.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in Pub. L. 98-473, title I, § 101(h) [title VIII, § 8078], Oct. 12, 1984, 98 Stat. 1904, 1938, and Pub. L. 98-212, title VII, § 787, Dec. 8, 1983, 97 Stat. 1453, which were set out as a note under section 2304 of this title. Section 787 of Pub. L. 98-212 was repealed by Pub. L. 98-525, title XII, § 1234(b)(2), Oct. 19, 1984, 98 Stat. 2604, eff. Oct. 19, 1984.

§ 2406. Cost and price management

(a) In this section:

(1) "Covered contract" means a contract that is awarded by a defense agency using procedures as defined in chapter 137 of this title and that is subject to the provisions of section 2306(f) of this title, including contracts for full-scale engineering, development, or production.

(2) "Defense agency" means the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Defense Logistics Agency.

(b)(1) A defense agency that is responsible for the acquisition of property (including major manufactured end items) or services under a covered contract shall cause to be recorded the contractor's proposed and negotiated cost and pricing data acquired by the agency into appropriate categories. Such categories shall include labor costs, material costs, subcontract costs, overhead costs, general and administrative costs, fee or profit, recurring costs, and nonrecurring costs.

(2)(A) A defense agency that is responsible for the acquisition of major manufactured end items under a covered contract shall cause to be

recorded the proposed and negotiated bills of labor for labor use by the prime contractor and each associate contractor in manufacturing the item and for labor used by each such contractor in performing routine testing relating to the item. The bill of labor relating to the labor used by any such contractor shall reflect such contractor's computation of the work required in manufacturing parts and subassemblies for the end item and in performing routine testing of such parts and subassemblies.

(B) Each contractor preparing a bill of labor referred to in subparagraph (A) shall specify in the bill of labor the current industrial engineering standard hours of work content (also known as "should-take times") for the work included in a component of the bill of labor and for the total work included in the bill of labor. The contractor shall base the standard hours of work content specified in the bill of labor on the "fair day's work" concept, as such term is understood in competitive commercial manufacturing industries in the United States. The contractor's standard hours of work content included in the bill of labor may not vary from time standards derived from commercially available predetermined time standard systems widely used in the United States, as determined by the defense agency, subject to verification by audit.

(C) The head of a defense agency acquiring a bill of labor referred to in subparagraph (A) shall provide for the maintenance of the information relating to standard hours of work content included under subparagraph (B) and shall review such information to determine changes in measured work content as work progresses under the contract to which the bill of labor relates.

(3) A defense agency that is responsible for the acquisition of major manufactured end items under a covered contract shall cause to be recorded the proposed and negotiated bills of material used by the prime contractor and each associate contractor under the contract in manufacturing the item and of material used by each such contractor in performing routine testing relating to the item. The bill of material used by any such contractor shall reflect such contractor's computation of the material required for manufacturing parts and subassemblies for the end item and for routine testing of such parts and subassemblies. The costs set out in the bill of material shall be expressed in current dollars and shall be maintained and received in a manner similar to the manner provided for bills of labor in paragraph (2)(C).

(4) A defense agency that is responsible for the acquisition of property (including major manufactured end items) or services under a covered contract shall cause to be recorded incurred costs under the contract in the same manner as the defense agency categorizes and records proposed and negotiated costs, including grouping the costs as provided under paragraph (1).

(c)(1) Nothing in this section shall prohibit a contractor from submitting a request for payment or reimbursement for any bill of labor or any bill of material developed pursuant to an approved system of cost principles and procedures.

(2) Nothing in this section shall require the submission of the information to be submitted under this section if the contractor does not maintain such information on the date of the enactment of this section.

(Added Pub. L. 99-145, title IX, § 917(a), Nov. 8, 1985, 99 Stat. 689.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 99-145, which was approved Nov. 8, 1985.

§ 2407. Acquisition of defense equipment under North Atlantic Treaty Organization cooperative projects

(a)(1) If the President delegates to the Secretary of Defense the authority to carry out section 27(d) of the Arms Export Control Act (22 U.S.C. 2767(d)), relating to North Atlantic Treaty Organization (NATO) cooperative projects (as defined in such section), the Secretary may utilize his authority under this title in carrying out contracts or obligations incurred under such section.

(2) Except as provided in subsection (c), chapter 137 of this title shall apply to such contracts (referred to in paragraph (1)) entered into by the Secretary of Defense. Except to the extent waived under subsection (c) or some other provision of law, all other provisions of law relating to procurement, if otherwise applicable, shall apply to such contracts entered into by the Secretary of Defense.

(b) When contracting or incurring obligations under section 27(d) of the Arms Export Control Act for cooperative projects, the Secretary of Defense may require subcontracts to be awarded to particular subcontractors in furtherance of the cooperative project.

(c)(1) Subject to paragraph (2), when entering into contracts or incurring obligations under section 27(d) of the Arms Export Control Act outside the United States, the Secretary of Defense may waive with respect to any such contract or subcontract the application of any provision of law, other than a provision of the Arms Export Control Act or section 2304 of this title, that specifically—

(A) prescribes procedures to be followed in the formation of contracts;

(B) prescribes terms and conditions to be included in contracts;

(C) prescribes requirements for or preferences to be given to goods grown, produced, or manufactured in the United States or in United States Government-owned facilities or for services to be performed in the United States; or

(D) prescribes requirements regulating the performance of contracts.

(2) A waiver may not be made under paragraph (1) unless the Secretary determines that the waiver is necessary to ensure that the cooperative project will significantly further NATO standardization, rationalization, and interoperability.

(3) The authority of the Secretary to make waivers under this subsection may be delegated only to the Deputy Secretary of Defense or the

Acquisition Executive designated for the Office of the Secretary of Defense.

(d)(1) The Secretary of Defense shall notify the Congress each time he requires that a prime contract be awarded to a particular prime contractor or that a subcontract to be awarded to a particular subcontractor to comply with a cooperative agreement. The Secretary shall include in each such notice the reason for exercising his authority to designate a particular contractor or subcontractor, as the case may be.

(2) The Secretary shall also notify the Congress each time he exercises a waiver under subsection (c) and shall include in such notice the particular provision or provisions of law that were waived.

(3) A report under this subsection shall be required only to the extent that the information required by this subsection has not been provided in a report made by the President under section 27(e) of the Arms Export Control Act (22 U.S.C. 2767(e)).

(e)(1) In carrying out a cooperative project under section 27 of the Arms Export Control Act, the Secretary of Defense may agree that a participant (other than the United States) may make a contract for requirements of the United States under the project if the Secretary determines that such a contract will significantly further NATO standardization, rationalization, and interoperability. Except to the extent waived under this section or under any other provision of law, the Secretary shall ensure that such contract will be made on a competitive basis and that United States sources will not be precluded from competing under the contract.

(2) If a participant (other than the United States) in a NATO cooperative project makes a contract on behalf of such project to meet the requirements of the United States, the contract may permit the contracting party to follow its own procedures relating to contracting.

(f) In carrying out a cooperative project, the Secretary of Defense may also agree to the disposal of property that is jointly acquired by the members of the project without regard to any laws of the United States applicable to the disposal of property owned by the United States. Disposal of such property may include a transfer of the interest of the United States in such property to one of the other governments participating in the cooperative agreement or the sale of such property. Payment for the transfer or sale of any interest of the United States in any such property shall be made in accordance with the terms of the cooperative agreement.

(g) Nothing in this section shall be construed as authorizing—

(1) the Secretary of Defense to waive any of the financial management responsibilities administered by the Secretary of the Treasury; or

(2) to waive the cargo preference laws of the United States, including the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 [1] U.S.C. 1241(b)).

[1] So in original. Probably should be "46 App.".

(Added Pub. L. 99-145, title XI, § 1102(b)(1), Nov. 8, 1985, 99 Stat. 710.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (c)(1), is Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

The cargo preference laws, referred to in subsec. (g)(2), include act Mar. 26, 1934, ch. 90, 48 Stat. 500, which is classified to section 1241-1 of Title 46, Appendix, Shipping.

NATO COOPERATIVE RESEARCH AND DEVELOPMENT

Section 1103 of Pub. L. 99-145 provided that:

"(a) FINDINGS.—The Congress hereby finds—

"(1) that for more than a decade the member nations of the North Atlantic Treaty Organization (NATO) have provided in the aggregate significantly larger resources for defense purposes than have the member nations of the Warsaw Treaty Organization;

"(2) that, despite this fact, the Warsaw Treaty Organization member nations have produced and deployed many more major combat items such as tanks, armored personnel carriers, artillery pieces and rocket launchers, armed helicopters, and tactical combat aircraft than have the member nations of NATO; and

"(3) that a major reason for this discouraging performance by NATO is inadequate cooperation among NATO nations in research, development, and production of military end-items of equipment and munitions.

"(b) CONGRESSIONAL REQUEST FOR COOPERATION ON R&D.—The Congress, therefore, urges and requests the President, the Secretary of Defense, and the United States Representative to the North Atlantic Treaty Organization to pursue diligently opportunities for member nations of NATO to cooperate—

"(1) in research and development on defense equipment and munitions; and

"(2) in the production of defense equipment, including—

"(A) coproduction of conventional defense equipment by the United States and other member nations of NATO; and

"(B) production by United States contractors of conventional defense equipment designed and developed by other member nations of NATO.

"(c) FUNDS FOR COOPERATIVE PROJECTS.—(1) Of the funds appropriated pursuant to the authorizations in section 201(a) $200,000,000 shall be available, in equal amounts, to the Army, Navy, Air Force, and Defense Agencies only for NATO cooperative research and development projects as provided in this section.

"(2) As used in this section, the term 'cooperative research and development project' means a project involving joint participation by the United States and one or more other member nations of NATO under a memorandum of understanding (or other formal agreement) to carry out a joint research and development program—

"(A) to develop new conventional defense equipment and munitions; or

"(B) to modify existing military equipment to meet United States military requirements.

"(d) RESTRICTIONS.—(1) A memorandum of understanding (or other formal agreement) to conduct a cooperative research and development project may not be entered into unless the Secretary of Defense determines that the proposed project enhances the ongoing multinational effort to improve NATO's conventional defense capabilities through the application of emerging technology.

"(2) The Secretary may not delegate the authority to make a determination under paragraph (1) except to the Deputy Secretary of Defense or the Under Secretary of Defense for Research and Engineering.

"(e) RESTRICTIONS ON PROCUREMENT OF EQUIPMENT AND SERVICES.—In order to assure substantial participation on the part of other member nations of NATO in approved cooperative research and development projects, funds made available under subsection (c) for such projects may not be used to procure equipment or services from any foreign government, foreign research organization, or other foreign entity.

"(f) COOPERATIVE OPPORTUNITIES DOCUMENT.—(1)(A) In order to ensure that opportunities to conduct cooperative research and development projects are considered during the early decision points in the Department of Defense's formal development review process in connection with any planned project of the Department of Defense, the Under Secretary of Defense for Research and Engineering shall prepare a formal arms cooperation opportunities document for review by the Defense Systems Acquisition Review Council at its formal meetings.

"(B) The Under Secretary shall also prepare an arms cooperation opportunities document for review of each new project for which a Justification of Major Systems New Start document is prepared.

"(2) The formal arms cooperation opportunities document referred to in paragraph (1) shall include the following:

"(A) A statement indicating whether or not a project similar to the one under consideration by the Department of Defense is in development or production by one or more of the other NATO member nations.

"(B) If a project similar to the one under consideration by the Department of Defense is in development by one or more other member nations of NATO, an assessment by the Under Secretary of Defense for Research and Engineering as to whether that project could satisfy, or could be modified in scope so as to satisfy, the military requirements of the project of the United States under consideration by the Department of Defense.

"(C) An assessment of the advantages and disadvantages with regard to program timing, developmental and life cycle costs, technology sharing, and Rationalization, Standardization, and Interoperability (RSI) of seeking to structure a cooperative development program with one or more other NATO member nations.

"(D) The recommendation of the Under Secretary of Defense for Research and Engineering as to whether the Department of Defense should explore the feasibility and desirability of a cooperative development program with one or more other member nations of NATO.

"(g) SIDE-BY-SIDE TESTING.—(1) It is the sense of Congress—

"(A) that the Department of Defense should perform more side-by-side testing of conventional defense equipment manufactured by the United States and other member nations of NATO; and

"(B) that such testing should be conducted at the late stage of the development process when there is usually only a single United States prime contractor.

"(2) In addition to any funds appropriated for activities of the Director of Defense Test and Evaluation pursuant to section 201(a), $50,000,000 shall be available to the Director, from any other funds appropriated to the Department of Defense for fiscal year 1986, for the acquisition of items of the type specified in paragraph (3) manufactured by other member nations of NATO for side-by-side comparison testing with comparable items of United States manufacture.

"(3) Items that may be acquired by the Director of Defense Test and Evaluation under paragraph (2) include the following:

"(A) Submunitions and dispensers.

"(B) Anti-tank and anti-armor guided missiles.

"(C) Mines, for both land and naval warfare.

"(D) Runway-cratering devices.

"(E) Torpedoes.

"(F) Mortar systems.

"(G) Light armored vehicles and major subsystems thereof.

"(H) Utility vehicles.

"(I) High-velocity anti-tank guns.

"(J) Short-Range Air Defense Systems (SHORADS).

"(K) Mobile air defense systems and components.

"(4) The Director of Defense Test and Evaluation shall notify the Committees on Armed Services and on Appropriations of the Senate and House of Representatives of his intent to obligate funds made available to carry out this subsection not less than 30 days before such funds are obligated.

"(5) Not later than February 1 of each year, the Director of Defense Test and Evaluation shall submit to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives a report—

"(A) on the systems, subsystems, and munitions produced by other member nations of NATO that were evaluated during the previous fiscal year by the Director; and

"(B) on the obligation of any funds under this subsection during the previous fiscal year.

"(h) SECRETARY TO ENCOURAGE SIMILAR NATO PROGRAMS.—The Secretary of Defense shall encourage other member nations of NATO to establish programs similar to the one provided for in this section."

CHAPTER 142—PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM

Sec.
2411. Definitions.
2412. Purposes.
2413. Cooperative agreements.
2414. Limitation.
2415. Distribution.
2416. Regulations.

§ 2411. Definitions

In this chapter:

(1) "Eligible entity" means—

(A) a State (as defined in section 6302(5) of title 31);

(B) a local government (as defined in section 6302(2) of title 31); and

(C) a private, nonprofit organization.

(2) "Distressed entity" means an eligible entity (within the meaning of paragraph (1)(B)) that—

(A) has a per capita income of 80 percent or less of the State average; or

(B) has an unemployment rate one percent greater than the national average for the most recent 24-month period for which statistics are available.

(3) "Secretary" means the Secretary of Defense acting through the Director of the Defense Logistics Agency.

(Added Pub. L. 98-525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2605, and amended Pub. L. 99-145, title IX, § 919(a), Nov. 8, 1985, 99 Stat. 691.)

AMENDMENTS

1985—Pub. L. 99-145 amended section generally. Prior to amendment, section read as follows: "In this chapter:

"(1) 'Eligible entity' means a State (as defined in section 6302(5) of title 31), a local government (as defined in section 6302(2) of that title), or a private, nonprofit organization that enters into a cooperative agreement with the Secretary under this chapter to furnish procurement technical assistance to business entities and to defray at least one-half of the costs of furnishing such assistance.

"(2) 'Secretary' means the Secretary of Defense acting through the Director of the Defense Logistics Agency."

EFFECTIVE DATE OF 1985 AMENDMENT

Section 919(d) of Pub. L. 99-145 provided that: "The amendments made by subsections (a) and (b) [amending sections 2411 to 2415 of this title] shall take effect on October 1, 1985."

§ 2412. Purposes

The purposes of the program authorized by this chapter are—

(1) to increase assistance by the Department of Defense to eligible entities furnishing procurement technical assistance to business entities; and

(2) to assist eligible entities in the payment of the costs of establishing and carrying out new procurement technical assistance programs and maintaining existing procurement technical assistance programs.

(Added Pub. L. 98-525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2605, and amended Pub. L. 99-145, title IX, § 919(a), Nov. 8, 1985, 99 Stat. 692.)

AMENDMENTS

1985—Pub. L. 99-145 amended section generally, substituting "assistance by the Department of Defense to eligible entities" for "Department of Defense assistance for eligible entities" in par. (1).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99-145, set out as a note under section 2411 of this title.

§ 2413. Cooperative agreements

(a) The Secretary, in accordance with the provisions of this chapter, may enter into cooperative agreements with eligible entities to carry out the purposes of this chapter.

(b) Under any such cooperative agreement, the eligible entity shall agree to furnish procurement technical assistance to business entities and the Secretary shall agree to defray not more than one-half of the eligible entity's cost of furnishing such assistance, except that in the case of an eligible entity that is a distressed entity, the Secretary may agree to furnish more than one-half, but not more than three-fourths, of such cost.

(c) In entering into cooperative agreements under subsection (a), the Secretary shall assure that at least one procurement technical assistance program is carried out in each Department of Defense contract administration services region during each fiscal year.

(Added Pub. L. 98-525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2605, and amended Pub. L. 99-145, title IX, § 919(a), Nov. 8, 1985, 99 Stat. 692.)

AMENDMENTS

1985—Pub. L. 99-145 amended section generally, substituting ", in accordance with the provisions of this chapter, may enter" for "may, in accordance with the provisions of this chapter, enter" in subsec. (a), adding subsec. (b), and redesignating former subsec. (b) as (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99-145, set out as a note under section 2411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2415 of this title.

§ 2414. Limitation

The value of the assistance furnished by the Secretary to any eligible entity to carry out a procurement technical assistance program under a cooperative agreement under this chapter during any fiscal year may not exceed $150,000.

(Added Pub. L. 98-525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2606, and amended Pub. L. 99-145, title IX, § 919(a), Nov. 8, 1985, 99 Stat. 692.)

AMENDMENTS

1985—Pub. L. 99-145 amended section generally, substituting "Secretary" for "Department of Defense" and "program under" for "program pursuant to".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99-145, set out as a note under section 2411 of this title.

§ 2415. Distribution

(a)(1) During a fiscal year specified in paragraph (2), the Secretary shall reserve the applicable percentage prescribed in paragraph (2), out of funds appropriated to carry out this chapter in such fiscal year, for the purpose of furnishing assistance pursuant to cooperative agreements entered into under section 2413 of this title with eligible entities which have carried out a procurement technical assistance program before such fiscal year. The Secretary may use the remainder of such funds during such fiscal year for the purpose of furnishing assistance pursuant to cooperative agreements entered into under such section with eligible entities which have not carried out a procurement technical assistance program before such fiscal year.

(2) For the purposes of paragraph (1), the applicable percentage during fiscal years 1986 and 1987 is 75 percent.

(3) This subsection shall apply only to the first $3,000,000 appropriated to carry out this chapter in each of fiscal years 1986 and 1987.

(b) During any fiscal year after fiscal year 1987, the Secretary shall allocate assistance under this chapter in accordance with such cooperative agreements as the Secretary enters into pursuant to section 2413 of this title.

(c) For any amount appropriated to carry out this chapter for fiscal year 1986 or 1987 in excess of $3,000,000, the Secretary shall allo-

cate funds available for assistance under this chapter equally to each Defense Contract Administration Services region. If in any such fiscal year there is an insufficient number of satisfactory proposals in a region for cooperative agreements to allow effective use of the funds allocated to that region, the funds remaining with respect to that region shall be reallocated among the remaining regions.

(Added Pub. L. 98-525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2606, and amended Pub. L. 99-145, title IX, § 919(b), Nov. 8, 1985, 99 Stat. 692.)

AMENDMENTS

1985—Subsec. (a)(2). Pub. L. 99-145, § 919(b)(1)(A), substituted "fiscal years 1986 and 1987" for "fiscal year 1985 is 50 percent and during fiscal year 1986".

Subsec. (a)(3). Pub. L. 99-145, § 919(b)(1)(B), added par. (3).

Subsec. (b). Pub. L. 99-145, § 919(b)(2), substituted "1987" for "1986".

Subsec. (c). Pub. L. 99-145, § 919(b)(3), added subsec. (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99-145, set out as a note under section 2411 of this title.

§ 2416. Regulations

The Secretary of Defense shall prescribe regulations to carry out this chapter.

(Added Pub. L. 98-525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2606.)

CHAPTER 145—CATALOGING AND STANDARDIZATION

§ 2452. Duties of Secretary of Defense

REGULATIONS RELATING TO INCREASES IN PRICES FOR SPARE PARTS AND REPLACEMENT EQUIPMENT

Pub. L. 98-94, title XII, § 1215, Sept. 24, 1983, 97 Stat. 688, as amended by Pub. L. 98-525, title XII, § 1244, Oct. 19, 1984, 98 Stat. 2609, provided that:

"(a) Not later than 120 days after the date of the enactment of this Act [Sept. 24, 1983], the Secretary of Defense shall issue regulations which—

"(1) except as provided in clause (2), prohibit the purchase of any spare part or replacement equipment when the price of such part or equipment, since a time in the past specified by the Secretary (in terms of days or months) or since the most recent purchase of such part or equipment by the Department of Defense, has increased in price by a percentage in excess of a percentage threshold specified by the Secretary in such regulations, and

"(2) permit the purchase of such spare part or equipment (notwithstanding the prohibition contained in clause (1)) if the contracting officer for such part or equipment certifies in writing to the head of the procuring activity before the purchase is made that—

"(A) such officer has evaluated the price of such part or equipment and concluded that the increase in the price of such part or equipment is fair and reasonable, or

"(B) the national security interests of the United States require that such part or equipment be purchased despite the increase in price of such part or equipment.

"(b)(1) The Secretary shall publish the regulations issued under this section in the Federal Register.

"(2) The Secretary may provide in such regulations for the waiver of the prohibition in subsection (a)(1) and compliance with the requirements of subsection (a)(2) in the case of a purchase of any spare part or replacement equipment made or to be made through competitive procedures.

"(c) Not less than 30 days before the Secretary publishes such regulatons in accordance with subsection (b), the Secretary shall submit the text of the proposed regulations to the Committees on Armed Services of the Senate and House of Representatives."

REPORT ON MANAGEMENT OF ACQUISITION OF SPARE PARTS

Pub. L. 98-94, title XII, § 1216, Sept. 24, 1983, 97 Stat. 688, provided:

"(a) The Secretary of Defense shall submit to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives, by June 1, 1984, a comprehensive report on the management by the Department of Defense of acquisition of initial and replenishment spare parts and on the status of efforts within the Department of Defense (including particularly the Defense Logistics Agency and the military departments) to correct problems associated with increased costs of such parts. The Secretary shall include in such report the following:

"(1) An analysis of the extent of overcharging on spare parts and shortages of spare parts.

"(2) The status of efforts (if any) to ensure that procurement method codes (PMCs) used to denote the method of procurement for spare parts are accurately and appropriately applied.

"(3) With respect to technical data required by a contract to be delivered to the Department of Defense, the status of efforts (if any) to identify and obtain such data that are missing and to identify and correct such data that are inaccurate or incomplete.

"(4) The status of efforts to enhance the Department of Defense High-Dollar Spare Parts Breakout Program.

"(5) The organizational identity of personnel assigned to the efforts referred to in paragraphs (1) through (4).

"(6) A brief summary of any audit, investigation, or study relating to the acquisition or management of spare or replenishment parts conducted by or for any organization within the Department of Defense during the period beginning on the date of the interim report required in subsection (b) and ending on the date of the submission of the report under this subsection, to be accompanied by a copy of all current regulations or proposed defense regulations relating specifically to the acquisition or management of spare or replenishment parts.

"(7) An analysis of the feasibility and desirability of establishing a statutory or contractual time limit on the protection from disclosure outside the Department of Defense given technical data delivered by contractors to the Department of Defense with limited rights (as defined in the Defense Acquisition Regulations).

"(8) An analysis of the feasibility and desirability of withholding Department of Defense contracts from contractors who have obtained unreasonable profits on defense contracts or have sold items to the Department of Defense at unjustifiable prices, until any such excess amounts have been repaid.

"(b) Not later than December 1, 1983, the Secretary shall submit to the committees named in subsection (a) an interim report stating briefly the actions being taken by the Department of Defense to improve the acquisition and management of spare parts by the Department. Such interim report shall include the identity of any working groups and a description of any studies being done.

"(c) The Secretary of Defense shall put into effect at the earliest practicable date policies and procedures to achieve a long-term solution to problems relating to excessive costs of, and long lead times in the acquisi-

tion of, initial and replenishment spare parts. In formulating such policies and procedures, the Secretary shall consider the following recommendations:

"(1) Parts should be acquired competitively whenever feasible and practicable.

"(2) Parts should be acquired through Federal Supply Schedules and the Department of Defense supply system.

"(3) Parts should be acquired in economic order quantities and on a multiyear basis whenever feasible and practicable.

"(4) On all major system acquisitions, contractors should be required to identify in their contract proposals the cost to the Government of acquiring unlimited rights in technical data and the extent to which the contractor uses standard commercial products in order to allow the Government to assess the desirability of acquiring those unlimited rights and to enable the Government to assess properly the total lifecycle cost of the system.

"(5) Contractors should be required to identify the manufacturer of a part and the manufacturer's part number.

"(6) Consideration should be given early in the acquisition process to determinations of whether acquisition of unlimited rights in technical data is desirable, taking into consideration that the cost of acquiring reprocurement data may in some instances outweigh the benefits to be derived from such acquisition.

"(7) When unlimited data rights in technical data are acquired from a contactor, the contractor should be required to provide to the Government data necessary to incorporate changes in design or technology.

"(8) Before ordering any spare part, the contracting officer should review the acquisition history of that part."

CHAPTER 147—UTILITIES AND SERVICES

Sec.
2483. Sale of electricity from alternate energy and cogeneration production facilities.
2484. Commissary stores: expenses.
2485. Commissary stores: donation of unmarketable food.

AMENDMENTS

1985—Pub. L. 99-145, title XIV, § 1460(b), Nov. 8, 1985, 99 Stat. 765, added item 2485.

1984—Pub. L. 98-525, title XIV, § 1401(i)(2), Oct. 19, 1984, 98 Stat. 2620, added item 2484.

Pub. L. 98-407, title VIII, § 810(b), Aug. 28, 1984, 98 Stat. 1523, added item 2483.

§ 2483. Sale of electricity from alternate energy and cogeneration production facilities

(a) The Secretary of a military department may sell, contract to sell, or authorize the sale by a contractor to a public or private utility company of electrical energy generated from alternate energy or cogeneration type production facilities which are under the jurisdiction (or produced on land which is under the jurisdiction) of the Secretary concerned. The sale of such energy shall be made under such regulations, for such periods, and at such prices as the Secretary concerned prescribes consistent with the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.).

(b) Proceeds from sales under subsection (a) shall be credited to the appropriation account currently available to the military department concerned for the supply of electrical energy.

(Added Pub. L. 98-407, title VIII, § 810(a), Aug. 28, 1984, 98 Stat. 1523.)

REFERENCES IN TEXT

The Public Utility Regulatory Policies Act of 1978, referred to in subsec. (a), is Pub. L. 95-617, Nov. 9, 1978, 92 Stat. 3117, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

§ 2484. Commissary stores: expenses

(a) Except to the extent authorized in regulations prescribed by the Secretary of a military department and approved by the Secretary of Defense and except as provided in subsection (b), funds available to the Department of Defense may not be used to pay, in connection with the operation of any commissary store—

(1) the cost of purchases (including commercial transportation in the United States to the place of sale) and the cost of maintenance of operating equipment and supplies;

(2) the actual or estimated cost of utilities furnished by the United States;

(3) the actual or estimated cost of shrinkage, spoilage, and pilferage of merchandise under the control of the commissary store; or

(4) costs incurred in connection with obtaining the face value amount of manufacturer or vendor cents-off discount coupons by the commissary store (or other entity acting on behalf of the commissary store).

(b) Appropriated funds may be used to pay any costs described in subsection (a) but only to the extent that appropriation accounts used to pay such costs are reimbursed for the payment of such costs, including, in the case of any costs incurred in connection with discount coupons referred to in subsection (a)(4), all fees or moneys received for handling or processing such coupons. The sales prices in commissary stores shall be adjusted to the extent necessary to provide sufficient gross revenues from the sales of such stores to make such reimbursements. Such adjustments shall be made under regulations prescribed by the Secretary of the military department concerned and approved by the Secretary of Defense.

(c) Under regulations prescribed by the Secretary of Defense, utilities may be furnished without cost to a commissary store outside the United States or in Alaska or Hawaii.

(d) Transportation outside the United States may be furnished in connection with the operation of commissary stores outside the United States.

(Added Pub. L. 98-525, title XIV, § 1401(i)(1), Oct. 19, 1984, 98 Stat. 2619.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8010], 98 Stat. 1904, 1924.

Dec. 8, 1983, Pub. L. 98-212, title VII, § 713, 97 Stat. 1440.

Dec. 21, 1982, Pub. L. 97-377, title I, § 101(c) [title VII, § 714], 96 Stat. 1833, 1852.

Dec. 29, 1981, Pub. L. 97-114, title VII, § 714, 95 Stat. 1580.

Dec. 15, 1980, Pub. L. 96-527, title VII, § 715, 94 Stat. 3083.

Dec. 21, 1979, Pub. L. 96-154, title VII, § 715, 93 Stat. 1155.
Oct. 13, 1978, Pub. L. 95-457, title VIII, § 815, 92 Stat. 1246.
Sept. 21, 1977, Pub. L. 95-111, title VIII, § 814, 91 Stat. 902.
Sept. 22, 1976, Pub. L. 94-419, title VII, § 714, 90 Stat. 1293.
Feb. 9, 1976, Pub. L. 94-212, title VII, § 714, 90 Stat. 171.
Oct. 8, 1974, Pub. L. 93-437, title VIII, § 814, 88 Stat. 1227.
Jan. 2, 1974, Pub. L. 93-238, title VII, § 714, 87 Stat. 1040.
Oct. 26, 1972, Pub. L. 92-570, title VII, § 714, 86 Stat. 1198.
Dec. 18, 1971, Pub. L. 92-204, title VII, § 714, 85 Stat. 729.
Jan. 11, 1971, Pub. L. 91-668, title VIII, § 814, 84 Stat. 2032.
Dec. 29, 1969, Pub. L. 91-171, title VI, § 614, 83 Stat. 482.
Oct. 17, 1968, Pub. L. 90-580, title V, § 513, 82 Stat. 1132.
Sept. 29, 1967, Pub. L. 90-96, title VI, § 613, 81 Stat. 244.
Oct. 15, 1966, Pub. L. 89-687, title VI, § 613, 80 Stat. 993.
Sept. 29, 1965, Pub. L. 89-213, title VI, § 613, 79 Stat. 875.
Aug. 19, 1964, Pub. L. 88-446, title V, § 513, 78 Stat. 477.
Oct. 17, 1963, Pub. L. 88-149, title V, § 513, 77 Stat. 266.
Aug. 9, 1962, Pub. L. 87-577, title V, § 513, 76 Stat. 330.
Aug. 17, 1961, Pub. L. 87-144, title VI, § 613, 75 Stat. 377.
July 7, 1960, Pub. L. 86-601, title V, § 513, 74 Stat. 351.
Aug. 18, 1959, Pub. L. 86-166, title V, § 613, 73 Stat. 380.
Aug. 22, 1958, Pub. L. 85-724, title VI, § 613, 72 Stat. 725.
Aug. 2, 1957, Pub. L. 85-117, title VI, § 614, 71 Stat. 325.
July 2, 1956, ch. 488, title VI, § 614, 70 Stat. 469.
July 13, 1955, ch. 358, title VI, § 617, 69 Stat. 317.
June 30, 1954, ch. 432, title VII, § 717, 68 Stat. 353.
Aug. 1, 1953, ch. 305, title VI, § 624, 67 Stat. 353.
July 10, 1952, ch. 630, title VI, § 627, 66 Stat. 535.
Oct. 18, 1951, ch. 512, title VI, § 628, 65 Stat. 449.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

§ 2485. Commissary stores: donation of unmarketable food

(a) The Secretary of a military department may donate commissary store food described in subsection (b) to authorized charitable nonprofit food banks.

(b) Food that may be donated under this section is food of a commissary store—

(1) that is—

(A) unmarketable;

(B) unsaleable; and

(C) certified as edible by appropriate food inspection technicians; and

(2) that would otherwise be destroyed as unusable.

(c) A donation under this section shall take place at the site of the commissary that is donating the food.

(d) A donation under this section may only be made to an entity that is authorized by the Secretary of Defense or the Secretary of Health and Human Services to receive donations under this section.

(e) This section does not authorize any service (including transportation) to be provided in connection with a donation under this section.

(Added Pub. L. 99-145, title XIV, § 1460(a), Nov. 8, 1985, 99 Stat. 764.)

CHAPTER 151—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

Sec.
2546. Shelter for homeless; incidental services.
2547. Excess nonlethal supplies: humanitarian relief.

AMENDMENTS

1985—Pub. L. 99-145, title XIV, § 1454(b), Nov. 8, 1985, 99 Stat. 761, added item 2547.
1983—Pub. L. 98-94, title III, § 305(a)(2), Sept. 24, 1983, 97 Stat. 629, added item 2546.

§ 2546. Shelter for homeless; incidental services

(a)(1) The Secretary of a military department may make military installations under his jurisdiction available for the furnishing of shelter to persons without adequate shelter. The Secretary may, incidental to the furnishing of such shelter, provide services as described in subsection (b). Shelter and incidental services provided under this section may be provided without reimbursement.

(2) The Secretary concerned shall carry out this section in cooperation with appropriate State and local governmental entities and charitable organizations. The Secretary shall, to the maximum extent practicable, use the services and personnel of such entities and organizations in determining to whom and the circumstances under which shelter is furnished under this section.

(b) Services that may be provided incident to the furnishing of shelter under this section are the following:

(1) Utilities.
(2) Bedding.
(3) Security.
(4) Transportation.
(5) Renovation of facilities.
(6) Minor repairs undertaken specifically to make suitable space available for shelter to be provided under this section.
(7) Property liability insurance.

(c) Shelter and incidental services may only be provided under this section to the extent that the Secretary concerned determines will not interfere with military preparedness or ongoing military functions.

(d) The Secretary concerned may provide bedding for support of shelters for the homeless that are operated by entities other than the Department of Defense. Bedding may be provided under this subsection without reimbursement, but may only be provided to the extent that the Secretary determines that the provision of such bedding will not interfere with military requirements.

(e) The Secretary of Defense shall prescribe regulations for the administration of this section.

(Added Pub. L. 98-94, title III, § 305(a)(1), Sept. 24, 1983, 97 Stat. 628, and amended Pub. L. 99-167, title VIII, § 825, Dec. 3, 1985, 99 Stat. 992.)

AMENDMENTS

1985—Subsecs. (d), (e). Pub. L. 99-167 added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE

Section 305(b) of Pub. L. 98-94 provided that: "Section 2546 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983."

§ 2547. Excess nonlethal supplies: humanitarian relief

(a) The Secretary of Defense may make available for humanitarian relief purposes any nonlethal excess supplies of the Department of Defense.

(b) Excess supplies made available for humanitarian relief purposes under this section shall be transferred to the Secretary of State, who shall be responsible for the distribution of such supplies.

(c) This section does not constitute authority to conduct any activity which, if carried out as an intelligence activity by the Department of Defense, would require—

(1) a finding under section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422); or

(2) a notice to the intelligence committees under section 501(a)(1) of the National Security Act of 1947 (50 U.S.C. 413).

(d)(1) The Secretary of State shall submit an annual report on the disposition of all excess supplies transferred by the Secretary of Defense to the Secretary of State under this section during the preceding year.

(2) Such reports shall be submitted to the Committees on Armed Services and on Foreign Relations of the Senate and the Committees on Armed Services and on Foreign Affairs of the House of Representatives.

(3) Such reports shall be submitted not later than June 1 of each year.

(e) In this section:

(1) "Nonlethal excess supplies" means property, other than real property, of the Department of Defense—

(A) that is excess property, as defined in regulations of the Department of Defense; and

(B) that is not a weapon, ammunition, or other equipment or material that is designed to inflict serious bodily harm or death.

(2) "Intelligence committees" means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(Added Pub. L. 99-145, title XIV, § 1454(a), Nov. 8, 1985, 99 Stat. 761.)

CHAPTER 153—EXCHANGE OF MATERIAL AND DISPOSAL OF OBSOLETE, SURPLUS, OR UNCLAIMED PROPERTY

§ 2571. Interchange of property and services

[*See main edition for text of (a) to (c)*]

(d) No agency or official of the executive branch of the Federal Government may establish any regulation, program, or policy or take any other action which precludes, directly or indirectly, the Secretaries concerned from exercising the authority provided in this section.

(As amended Dec. 3, 1985, Pub. L. 99-167, title VIII, § 821, 99 Stat. 991.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-167 added subsec. (d).

§ 2577. Disposal of recyclable materials

(a)(1) The Secretary of Defense shall prescribe regulations to provide for the sale of recyclable materials held by a military department or defense agency and for the operation of recycling programs at military installations. Such regulations shall include procedures for the designation by the Secretary of a military department (or by the Secretary of Defense with respect to facilities of a defense agency) of military installations that have established a qualifying recycling program for the purposes of subsection (b)(2).

[*See main edition for text of (2); (b) and (c)*]

(As amended Pub. L. 98-525, title XIV, § 1405(37), Oct. 19, 1984, 98 Stat. 2624.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-525 substituted "purposes" for "puposes".

CHAPTER 157—TRANSPORTATION

Sec.
2637. Transportation between residence and place of work for senior defense officials.
2638. Transportation of civilian clothing of enlisted members.
2639. Transportation to and from school for certain minor dependents.

AMENDMENTS

1984—Pub. L. 98-525, title VI, § 614(b), title XIV, § 1401(j)(2), Oct. 19, 1984, 98 Stat. 2540, 2620, added items 2637 to 2639.

§ 2631. Supplies: preference to United States vessels

DELEGATION OF AUTHORITY UNDER THE CARGO PREFERENCE ACT

Memorandum of the President of the United States, Aug. 7, 1985, 50 F.R. 36565, provided:

Memorandum for the Honorable Caspar W. Weinberger, the Secretary of Defense

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of Defense all the functions vested in me by the Cargo preference Act of 1904, 10 U.S.C. 2631. This authority may be redelegated.

This memorandum shall be published in the Federal Register.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2407 of this title.

§ 2636. Deductions from carriers because of loss or damage to material in transit

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2636	31:489a.	June 25, 1956, ch. 442, § 1, 70 Stat. 336.

The words "An amount deducted from an amount due" are substituted for "Moneys arising from deductions made from" for clarity. The words "military or naval" and "account of" are omitted as surplus. The words "a military department" are substituted for "the Departments of the Army, Navy, or Air Force" because of 10:101(7). The Department of War was designated the Department of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Department of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488).

§ 2637. Transportation between residence and place of work for senior defense officials

Passenger motor vehicles of the United States may be used to provide transportation between the residences and places of work or employment of the Deputy Secretary of Defense, the Under Secretaries of Defense, and the members of the Joint Chiefs of Staff.

(Added Pub. L. 98-525, title VI, § 614(a), Oct. 19, 1984, 98 Stat. 2540.)

§ 2638. Transportation of civilian clothing of enlisted members

The Secretary of the military department concerned may provide for the transportation of the civilian clothing of any person entering the armed forces as an enlisted member to the member's home of record.

(Added Pub. L. 98-525, title XIV, § 1401(j)(1), Oct. 19, 1984, 98 Stat. 2620.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8005], 98 Stat. 1904, 1922.

Dec. 8, 1983, Pub. L. 98-212, title VII, § 708, 97 Stat. 1438.

Dec. 21, 1982, Pub. L. 97-377, title I, § 101(c) [title VII, § 708], 96 Stat. 1833, 1850.

Dec. 29, 1981, Pub. L. 97-114, title VII, § 708, 95 Stat. 1579.

Dec. 15, 1980, Pub. L. 96-527, title VII, § 708, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96-154, title VII, § 708, 93 Stat. 1152.

Oct. 13, 1978, Pub. L. 95-457, title VIII, § 808, 92 Stat. 1244.

Sept. 21, 1977, Pub. L. 95-111, title VIII, § 807, 91 Stat. 899.

Sept. 22, 1976, Pub. L. 94-419, title VII, § 707, 90 Stat. 1291.

Feb. 9, 1976, Pub. L. 94-212, title VII, § 707, 90 Stat. 168.

Oct. 8, 1974, Pub. L. 93-437, title VIII, § 807, 88 Stat. 1225.

Jan. 2, 1974, Pub. L. 93-238, title VII, § 707, 87 Stat. 1038.

Oct. 26, 1972, Pub. L. 92-570, title VII, § 707, 86 Stat. 1196.

Dec. 18, 1971, Pub. L. 92-204, title VII, § 707, 85 Stat. 727.

Jan. 11, 1971, Pub. L. 91-668, title VIII, § 807, 84 Stat. 2030.

Dec. 29, 1969, Pub. L. 91-171, title VI, § 607, 83 Stat. 480.

Oct. 17, 1968, Pub. L. 90-580, title V, § 506, 82 Stat. 1129.

Sept. 29, 1967, Pub. L. 90-96, title VI, § 606, 81 Stat. 242.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

§ 2639. Transportation to and from school for certain minor dependents

Funds appropriated to the Department of Defense may be used to provide minor dependents of members of the armed forces and of civilian officers and employees of the Department of Defense with transportation to and from primary and secondary schools if the schools attended by the dependents are not accessible by regular means of transportation.

(Added Pub. L. 98-525, title XIV, § 1401(j)(1), Oct. 19, 1984, 98 Stat. 2620.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in the following prior appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(h) [title VIII, § 8005], 98 Stat. 1904, 1922.

Dec. 8, 1983, Pub. L. 98-212, title VII, § 708, 97 Stat. 1438.

Dec. 21, 1982, Pub. L. 97-377, title I, § 101(c) [title VII, § 708], 96 Stat. 1833, 1850.

Dec. 29, 1981, Pub. L. 97-114, title VII, § 708, 95 Stat. 1579.

Dec. 15, 1980, Pub. L. 96-527, title VII, § 708, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96-154, title VII, § 708, 93 Stat. 1152.

Oct. 13, 1978, Pub. L. 95-457, title VIII, § 808, 92 Stat. 1244.

Sept. 21, 1977, Pub. L. 95-111, title VIII, § 807, 91 Stat. 899.

Sept. 22, 1976, Pub. L. 94-419, title VII, § 707, 90 Stat. 1291.

Feb. 9, 1976, Pub. L. 94-212, title VII, § 707, 90 Stat. 168.

Oct. 8, 1974, Pub. L. 93-437, title VIII, § 807, 88 Stat. 1225.

Jan. 2, 1974, Pub. L. 93-238, title VII, § 707, 87 Stat. 1038.

Oct. 26, 1972, Pub. L. 92-570, title VII, § 707, 86 Stat. 1196.

Dec. 18, 1971, Pub. L. 92-204, title VII, § 707, 85 Stat. 727.

Jan. 11, 1971, Pub. L. 91-668, title VIII, § 807, 84 Stat. 2030.

Dec. 29, 1969, Pub. L. 91-171, title VI, § 607, 83 Stat. 480.

Oct. 17, 1968, Pub. L. 90-580, title V, § 506, 82 Stat. 1129.
Sept. 29, 1967, Pub. L. 90-96, title VI, § 606, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89-687, title VI, § 606, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89-213, title VI, § 606, 79 Stat. 873.
Aug. 19, 1964, Pub. L. 88-446, title V, § 506, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88-149, title V, § 506, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87-577, title V, § 506, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87-144, title VI, § 606, 75 Stat. 375.
July 7, 1960, Pub. L. 86-601, title V, § 506, 74 Stat. 350.
Aug. 18, 1959, Pub. L. 86-166, title V, § 606, 73 Stat. 378.
Aug. 22, 1958, Pub. L. 85-724, title VI, § 606, 72 Stat. 724.
Aug. 2, 1957, Pub. L. 85-117, title VI, § 607, 71 Stat. 323.
July 2, 1956, ch. 488, title VI, § 607, 70 Stat. 468.
July 13, 1955, ch. 358, title VI, § 609, 69 Stat. 315.
June 30, 1954, ch. 432, title VII, § 709, 68 Stat. 351.
Aug. 1, 1953, ch. 305, title VI, § 614, 67 Stat. 351.
July 10, 1952, ch. 630, title VI, § 616, 66 Stat. 533.
Oct. 18, 1951, ch. 512, title VI, § 616, 65 Stat. 446.
Sept. 6, 1950, ch. 896, ch. X, title VI, § 619, 64 Stat. 755.
Oct. 29, 1949, ch. 787, title VI, § 625, 63 Stat. 1021.
June 24, 1948, ch. 632, § 2, 62 Stat. 667.
July 30, 1947, ch. 357, title I, § 2, 61 Stat. 589.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as a note under section 520b of this title.

CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NONEXCESS PROPERTY

Sec.
2667a. Sale and replacement of nonexcess real property.
2672. Acquisition: interests in land when cost is not more than $200,000.
2683. Relinquishment of legislative jurisdiction; minimum drinking age on military installations.
2691. Restoration of land used by permit or lease from other agencies.
2692. Storage and disposal of nondefense toxic and hazardous materials.

AMENDMENTS

1985—Pub. L. 99-167, title VIII, § 810(b)(2), Dec. 3, 1985, 99 Stat. 990, substituted "$200,000" for "$100,000" in item 2672.

Pub. L. 99-145, title XII, § 1224(c)(2), Nov. 8, 1985, 99 Stat. 729, inserted "; minimum drinking age on military installations" in item 2683.

1984—Pub. L. 98-407, title VIII, §§ 804(b), 805(b), Aug. 28, 1984, 98 Stat. 1519, 1521, added items 2691 and 2692.

1983—Pub. L. 98-115, title VIII, § 807(a)(2), (c)(2), Oct. 11, 1983, 97 Stat. 788, 789; Pub. L. 99-167, title VIII, § 806(a), Dec. 3, 1985, 99 Stat. 988, added item 2667a "Sale and replacement of nonexcess real property", with such item to be struck out effective Oct. 1, 1996.

[§ 2661a. Repealed. Pub. L. 97-295, § 1(31)(A), Oct. 12, 1982, 96 Stat. 1296]

Section, added Pub. L. 97-258, § 2(b)(6)(B), Sept. 13, 1982, 96 Stat. 1054, authorized appropriations for advance design of military public works not otherwise authorized and for construction management of foreign government funded projects used primarily by United States armed forces, and required preliminary reports to Congress on military public works whose projected advance costs exceeded a specified level.

The repeal of this section by Pub. L. 97-295 reflected the effect of section 7(2) and (8) of the Military Construction Codification Act (Pub. L. 97-214, July 12, 1982, 96 Stat. 173), which repealed the source statutes of this section (subsec. (a) was based on acts Sept. 28, 1951, ch. 434, § 504, 65 Stat. 364; July 15, 1955, ch. 368, § 512, 69 Stat. 352; Dec. 23, 1981, Pub. L. 97-99, § 902, 95 Stat. 1381 (31 U.S.C. 723); and subsec. (b) was based on acts Sept. 12, 1966, Pub. L. 89-568, § 612, 80 Stat. 756; Dec. 27, 1974, Pub. L. 93-552, § 607, 88 Stat. 1763 (31 U.S.C. 723a)) subsequent to Apr. 15, 1982, the cut-off date prescribed by section 4(a) of Pub. L. 97-258, section 2(b)(6)(B) of which enacted this section.

§ 2664. Acquisition of property for lumber production

REFERENCES IN TEXT

Section 3 of the Maritime Act of 1981 (46 U.S.C. 1602), referred to in subsec. (a)(3), is classified to section 1602 of Title 46, Appendix, Shipping.

§ 2665. Sale of certain interests in land; logs

[*See main edition for text of* (a)]

(b) The President, through an executive department, may sell to any person or foreign government any forest products produced on land owned or leased by a military department or the Department of Transportation.

(c) Sales under subsection (a) or (b) shall be at prices determined by the President acting through the selling agency.

(d) Appropriations of the Department of Defense available for operation and maintenance during a fiscal year may be reimbursed for all expenses of production of forest products pursuant to this section from amounts received as proceeds from the sale of any such property during such fiscal year.

(e)(1) Each State in which is located a military installation or facility from which forest products are sold in a fiscal year is entitled at the end of such year to an amount equal to 40 percent of (A) the amount received by the United States during such year as proceeds from the sale of forest products produced on such installation or facility, less (B) the amount of reimbursement of appropriations of the Department of Defense under subsection (d) for all expenses of production of forest products during such year attributable to such installation or facility.

[*See main edition for text of* (2) *and* (3)]

(f)(1) There is in the Treasury a reserve account administered by the Secretary of Defense for the purposes of this section. Balances in the account may be used for expenses of the military departments—

(A) for improvements of forest lands;

(B) for unanticipated contingencies in the administration of forest lands and the production of forest products for which other sources of funds are not available in a timely manner; and

(C) for expenses to enable operations of forest lands and the production of forest products to continue from the end of one fiscal year through the beginning of the next fiscal year without disruption.

(2) Subject to paragraph (3), there shall be deposited into the reserve account not later than December 31 of each year, for credit to the preceding fiscal year, an amount equal to one-half of the amount (if any) remaining of the total amount received by the United States during that fiscal year as proceeds from the sale of forest products after (A) the reimbursement of appropriations of the Department of Defense under subsection (d) for expenses of production of forest products during that fiscal year, and (B) the payment to States under subsection (e) for that fiscal year.

(3) The balance in the reserve account may not exceed $4,000,000. If a deposit under paragraph (2) would cause the balance in the account to exceed that amount, the deposit shall be made only to the extent the amount of the deposit would not cause the balance in the account to exceed $4,000,000.

(As amended Aug. 28, 1984, Pub. L. 98-407, title VIII, § 809(a), 98 Stat. 1522.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-407, § 809(a)(1), substituted "forest products produced on land owned or leased by a military department or the" for "logs wholly or partly manufactured by, or otherwise procured for, the Army, Navy, or Air Force, or".

Subsec. (d). Pub. L. 98-407, § 809(a)(2), substituted "forest products" for "lumber and timber products".

Subsec. (e)(1). Pub. L. 98-407, § 809(a)(3), substituted "forest products" for "timber and timber products" in two places and "40 percent" for "25 percent".

Subsec. (f). Pub. L. 98-407, § 809(a)(4), added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 809(b) of Pub. L. 98-407 provided that:

"(b)(1) Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall take effect on October 1, 1984.

"(2) The amendment made by subsection (a)(2)(B) [probably should be '(a)(3)(B)', which amended subsec. (e)(1) of this section] shall apply with respect to payments to States for fiscal years beginning after September 30, 1984."

§ 2667a. Sale and replacement of nonexcess real property

(a)(1) Subject to paragraph (2), the Secretary of Defense may carry out real property transactions in accordance with this section. Any such transaction shall consist of—

(A) the sale of any real property under the control of the Department of Defense other than property described in paragraph (3); and

(B) such acquisition of land, construction and acquisition of facilities to replace facilities included in the property to be sold, and relocation of Department of Defense activities to such replacement facilities as may be required to ensure efficient and effective continuity of defense functions being carried out at the property to be sold.

(2) A transaction under this section may not be carried out unless the transaction is specifically authorized by law.

(3) A transaction under this section may not include the sale of any of the following:

(A) Public domain lands.

(B) Property which can be considered excess under the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(C) Property that the Secretary of the Interior has determined under subsection (b)(2) to be suitable for use as a public park or recreation area and with respect to which the Secretary of the Interior has sent a notification to the Secretary of Defense under such subsection.

(b)(1) A proposal to Congress for authorization of a transaction under this section shall include—

(A) a description of the property to be sold (including the specific location of the property);

(B) an estimate of the fair market value of the property to be sold;

(C) an explanation of the need for any property or facilities to replace property or facilities to be sold under the transaction;

(D) an estimate of the costs of such replacement facilities and of relocation from the property to be sold to the replacement facilities; and

(E) a net financial statement for the transaction, including a schedule of estimated expenditures under the transaction and a schedule of the estimated proceeds to be realized from the sale of property under the transaction.

(2) Before proposing a transaction to Congress under this section, the Secretary of Defense shall notify the Secretary of the Interior in writing of the proposed transaction. The transaction may not be proposed to Congress if the Secretary of the Interior notifies the Secretary of Defense in writing not later than 60 days after receipt of the notification that he has determined that the property proposed to be sold under the transaction is suitable for use as a public park or recreation area. Any such determination by the Secretary of the Interior shall be made in accordance with procedures and standards used by the Secretary under section 203(k)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(2)).

(c) A transaction authorized pursuant to this section—

(1) shall be accomplished, to the extent feasible, using competitive bid procedures or qualified contract realty brokers;

(2) may not be carried out unless the property to be conveyed under the transaction will be sold for at least the equivalent of its fair market value;

(3) may not be carried out unless the amount of the estimated proceeds from the sale of property under the transaction exceeds the amount of the costs of such transaction described in subsection (e); and

(4) may not be carried out unless the activities intended to be performed at the replacement facilities are substantially similar in

character or nature to those performed at the property to be sold.

(d)(1) The sale of any real property pursuant to a transaction authorized under this section shall be conducted by the Administrator of General Services. The Administrator may sell such property upon such credit terms and financial conditions as he and the Secretary of Defense may agree upon. The Administrator shall execute such documents for the transfer of title and take such other actions as necessary to dispose of such property under the provisions of this section.

(2) Proceeds from any such sale shall be covered into the Treasury.

(3) The Secretary of Defense shall reimburse the Administrator for expenses incurred in making such sales as authorized by subsection (e)(3).

(e) To the extent provided for in appropriation Acts, the Secretary of Defense—

(1) may carry out the acquisition of land and the construction and acquisition of facilities included as part of an authorized transaction under this section;

(2) may pay the reasonable relocation expenses made necessary by the transaction; and

(3) may pay all expenses incident to the sale of property under the transaction, including reimbursement of expenses under subsection (d)(3).

(f) Upon completion of a transaction under this section—

(1) ninety-five percent of the proceeds remaining from the sale of property under the transaction (after subtracting the amount of applicable costs described in subsection (e)) shall remain in the Treasury; and

(2) an amount equal to five percent of the proceeds remaining from the sale of property under the transaction (after subtracting the amount of applicable costs described in subsection (e)) shall be credited to the account established under subsection (g).

(g)(1) There is hereby established on the books of the Treasury an account to be known as the Department of Defense Facilities Replacement Management Account (hereinafter in this section referred to as the "account"). The account shall be administered by the Secretary of Defense and shall be administered as a single account.

(2) The account may be used for—

(A) advanced planning, design, and other expenses related to potential future transactions; and

(B) advances where necessary to meet expenses of an authorized transaction before appropriations are made available for the transaction.

(3) An expenditure from the account in an amount greater than $300,000 may not be made until the Secretary of Defense has notified the appropriate committees of Congress in writing of the proposed expenditure and a period of 21 days has elapsed after the date of the receipt of that notification by those committees.

(4) Any unobligated moneys in the account at the end of a fiscal year in excess of $50,000,000 (or in excess of any lesser amount determined by the Secretary of Defense to be sufficient for the purpose of this section) shall be covered into the Treasury.

(Added Pub. L. 98-115, title VIII, § 807(a)(1), Oct. 11, 1983, 97 Stat. 786.)

REPEAL OF SECTION

Section 807(c)(1), (3) of Pub. L. 98-115, as amended effective Oct. 1, 1985, by Pub. L. 99-167, title VIII, § 806(a), Dec. 3, 1985, 99 Stat. 988, provided that, effective on October 1, 1986, this section is repealed, and the Department of Defense Facilities Replacement Management Account established by this section is abolished and any balance in such account is transferred into the Treasury.

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a)(3)(B), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. The provisions of that Act relating to management and disposal of Government property are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

§ 2668. Easements for rights-of-way

(a) If the Secretary of a military department finds that it will not be against the public interest, he may grant, upon such terms as he considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under his control, to a State, Territory, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Territory, Commonwealth, or possession, for—

[*See main edition for text of (1) to (9)*]

(10) any other purpose that he considers advisable, except a purpose covered by section 2669 of this title or by the Act of March 4, 1911 (43 U.S.C. 961).

[*See main edition for text of (b) to (d)*]

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(38), 98 Stat. 2624.)

AMENDMENTS

1984—Subsec. (a)(10). Pub. L. 98-525 substituted "the Act of March 4, 1911 (43 U.S.C. 961)" for "section 961 of title 43".

§ 2672. Acquisition: interest [1] in land when cost is not more than $200,000

(a) Subject to subsection (b), the Secretary of a military department may acquire any interest in land that—

[1] So in original. Probably should be "interests".

(A) he or his designee determines is needed in the interest of national defense; and

(B) does not cost more than $200,000, exclusive of administrative costs and the amounts of any deficiency judgments.

This section does not apply to the acquisition, as a part of the same project, of more than one parcel of land unless the parcels are noncontiguous, or, if contiguous, unless the total cost is not more than $200,000. The authority to acquire an interest in land under this section includes authority to make surveys and acquire interests in land (including temporary use), by gift, purchase, exchange of land owned by the United States, or otherwise.

(b) The Secretary of a military department may not enter into a contract under this section for the acquisition of any interest in land the cost of which exceeds $100,000 unless—

(1) the Secretary has notified the appropriate committees of Congress of his intent to acquire such interest, the cost of the interest, and the reasons for acquiring the interest; and

(2) a period of 21 days has elapsed from the date the notification is received by the committees.

(As amended Pub. L. 99-167, title VIII, § 810(a), (b)(1), Dec. 3, 1985, 99 Stat. 989, 990.)

AMENDMENTS

1985—Pub. L. 99-167 substituted "interest in land when cost is not more than $200,000" for "interests in land when cost is not more than $100,000" in section catchline and, in text, designated existing provisions as subsec. (a), and in subsec. (a) as so designated, substituted "Subject to subsection (b), the" for "The", redesignated cls. (1) and (2) as (A) and (B), substituted "$200,000" for "$100,000" in two places, and added subsec. (b).

§ 2672a. Acquisition: interests in land when need is urgent

(a) The Secretary of a military department may acquire any interest in land that—

(1) he or his designee determines is needed in the interest of national defense;

(2) is required to maintain the operational integrity of a military installation; and

(3) considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

(b) Appropriations available for military construction may be used for the purposes of this section. The authority to acquire an interest in land under this section includes authority to make surveys and acquire interests in land (including temporary use), by gift, purchase, exchange of land owned by the United States, or otherwise. The Secretary of a military department contemplating action under this section shall provide notice, in writing, to the Committees on Armed Services of the Senate and House of Representatives at least 30 days in advance of any action being taken.

(As amended Pub. L. 98-525, title XIV, § 1405(39), Oct. 19, 1984, 98 Stat. 2624.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-525, § 1405(39)(A), (B), designated first sentence as subsec. (a) and substituted in par. (2) thereof "operational" for "operation".

Subsec. (b). Pub. L. 98-525, § 1405(39)(C), (D), designated second sentence as subsec. (b) and substituted "this section shall" for "this provision will" and "Committees on Armed Services" for "Armed Services Committees".

§ 2675. Leases: foreign countries

[*See main edition for text of* (a)]

(b) A lease may not be entered into under this section for structures or related real property in any foreign country if the average estimated annual rental during the term of the lease is more than $250,000 until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed lease is submitted to the Committees on Armed Services of the Senate and House of Representatives.

(As amended Pub. L. 98-525, title XIV, § 1405(40), Oct. 19, 1984, 98 Stat. 2624.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-525 substituted "30" for "thirty".

§ 2676. Acquisition: limitation

[*See main edition for text of* (a) *and* (b)]

(c) [*See main edition for text of* (1)]

(2) A land acquisition project may not be placed under contract if, based upon the agreed price for the land or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land—

(A) the scope of the acquisition, as approved by Congress, is proposed to be reduced by more than 25 percent; or

(B) the agreed price for the land or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land,[1] exceeds the amount appropriated for the project by more than (i) 25 percent, or (ii) 200 percent of the amount specified by law as the maximum amount for a minor military construction project, whichever is lesser,

until subsection (d) is complied with.

[*See main edition for text of* (d)]

(e) The Secretary concerned shall promptly pay any deficiency judgment against the United States awarded by a court in an action for condemnation of any interest in land or resulting from a final settlement of an action for condemnation of any interest in land. Payments under this subsection may be made from funds available to the Secretary concerned for military construction projects and without regard to the limitations of subsections (c) and (d).

(As amended Pub. L. 98-407, title VIII, § 802, Aug. 28, 1984, 98 Stat. 1519.)

[1] See 1984 Amendment note below.

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98-407, § 802(1), inserted "or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land" in provisions preceding subpar. (A).

Subsec. (c)(2)(B). Pub. L. 98-407, § 802(2), inserted "or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land,". Insertion of new language following "the agreed price for the land" was executed to text notwithstanding directory language of Pub. L. 98-407 that made a reference to a nonexistent comma following "the agreed price for the land".

Subsec. (e). Pub. L. 98-407, § 802(3), added subsec. (e).

§ 2677. Options: property required for military construction projects

[See main edition for text of (a)]

(b) As consideration for an option acquired under subsection (a), the Secretary may pay, from funds available to his department for real property activities, an amount that is not more than 12 percent of the appraised fair market value of the property.

(As amended Pub. L. 98-407, title VIII, § 803, Aug. 28, 1984, 98 Stat. 1519.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-407 substituted "12 percent" for "5 percent".

§ 2683. Relinquishment of legislative jurisdiction; minimum drinking age on military installations

[See main edition for text of (a)]

(b) The authority granted by this [1] subsection (a) is in addition to and not instead of that granted by any other provision of law.

(c)(1) Except as provided in paragraphs (2) and (3), the Secretary concerned shall establish and enforce as the minimum drinking age on a military installation located in a State the age established by the law of that State as the State minimum drinking age.

(2)(A) In the case of a military installation located—

(i) in more than one State; or

(ii) in one State but within 50 miles of another State or Mexico or Canada,

the Secretary concerned may establish and enforce as the minimum drinking age on that military installation the lowest applicable age.

(B) In subparagraph (A), "lowest applicable age" means the lowest minimum drinking age established by the law—

(i) of a State in which a military installation is located; or

(ii) of a State or jurisdiction of Mexico or Canada that is within 50 miles of such military installation.

(3)(A) The commanding officer of a military installation may waive the requirement of paragraph (1) if such commanding officer determines that the exemption is justified by special circumstances.

(B) The Secretary of Defense shall define by regulations what constitute special circumstances for the purposes of this paragraph.

(4) In this subsection:

(A) "State" includes the District of Columbia.

(B) "Minimum drinking age" means the minimum age or ages established for persons who may purchase, possess, or consume alcoholic beverages.

(As amended Pub. L. 99-145, title XII, § 1224(a), (b)(1), (c)(1), Nov. 8, 1985, 99 Stat. 728, 729.)

AMENDMENTS

1985—Pub. L. 99-145, § 1224(c)(1), inserted "; minimum drinking age on military installations" in section catchline.

Subsec. (b). Pub. L. 99-145, § 1224(b)(1), substituted "subsection (a)" for "section".

Subsec. (c). Pub. L. 99-145, § 1224(a), added subsec. (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1224(d) of Pub. L. 99-145 provided that: "The amendments made by this section [amending this section and section 473 of Title 50, Appendix, War and National Defense] shall take effect 90 days after the date of the enactment of this Act [Nov. 8, 1985]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 App. section 473.

§ 2687. Base closures and realignments

(a) Notwithstanding any other provision of law, no action may be taken to effect or implement—

(1) the closure of any military installation at which at least 300 civilian personnel are authorized to be employed;

(2) any realignment with respect to any military installation referred to in paragraph (1) involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at such military installation at the time the Secretary of Defense or the Secretary of the military department concerned notifies the Congress under subsection (b) of the Secretary's plan to close or realign such installation; or

(3) any construction, conversion, or rehabilitation at any military facility other than a military installation referred to in clause (1) or (2) which will or may be required as a result of the relocation of civilian personnel to such facility by reason of any closure or realignment to which clause (1) or (2) applies,

unless and until the provisions of subsection (b) are complied with.

(b) No action described in subsection (a) with respect to the closure of, or a realignment with respect to, any military installation referred to in such subsection may be taken unless and until—

(1) the Secretary of Defense or the Secretary of the military department concerned notifies the Committees on Armed Services of the Senate and House of Representatives, as part of an annual request for authorization of

[1] So in original. The word "this" probably should not appear.

appropriations to such Committees, of the proposed closing or realignment and submits with the notification an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such closure or realignment; and

(2) a period of 30 legislative days or 60 calendar days, whichever is longer, expires following the day on which the notice and evaluation referred to in clause (1) have been submitted to such committees, during which period no irrevocable action may be taken to effect or implement the decision.

(c) This section shall not apply to the closure of a military installation, or a realignment with respect to a military installation, if the President certifies to the Congress that such closure or realignment must be implemented for reasons of national security or a military emergency.

(d)(1) After the expiration of the period of time provided for in subsection (b)(2) with respect to the closure or realignment of a military installation, funds which would otherwise be available to the Secretary to effect the closure or realignment of that installation may be used by him for such purpose.

(2) Nothing in this section restricts the authority of the Secretary to obtain architectural and engineering services under section 2807 of this title.

(e) In this section:

(1) "Military installation" means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

(2) "Civilian personnel" means direct-hire, permanent civilian employees of the Department of Defense.

(3) "Realignment" includes any action which both reduces and relocates functions and civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

(4) "Legislative day" means a day on which either House of Congress is in session.

(As amended Pub. L. 98-525, title XIV, § 1405(41), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 99-145, title XII, § 1202(a), Nov. 8, 1985, 99 Stat. 716.)

AMENDMENTS

1985—Pub. L. 99-145 amended section generally, thereby applying the section only to closure of bases with more than 300 civilian personnel authorized to be employed and to realignments involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at bases with more than 300 authorized civilian employees, eliminating the advance public notice required by the Secretary of Defense or the Secretary of the military department concerned when an installation is a candidate for closure or realignment, requiring that all base closure or realignment proposals be submitted to the Committee on Armed Services of the Senate and of the House of Representatives as part of the annual budget request and that such proposals contain an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such action, providing that no irrevocable action to implement the closure to realignment could be taken until the expiration of 30 legislative days or 60 calendar days, whichever is longer, and making explicit the authority of the Secretary to obtain architectural and engineering services under section 2807 of this title and to use funds that would otherwise be available to effect the closure or realignment after expiration of the notice period.

1984—Subsec. (a)(2). Pub. L. 98-525, § 1405(41)(A), substituted "1,000" for "one thousand".

Subsec. (b)(2). Pub. L. 98-525, § 1405(41)(B), inserted "(42 U.S.C. 4321 et seq.)".

Subsec. (b)(4). Pub. L. 98-525, § 1405(41)(C), substituted "60" for "sixty".

Subsec. (d)(1)(B). Pub. L. 98-525, § 1405(41)(D), substituted "300" for "three hundred".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1202(b) of Pub. L. 99-145 provided that: "The amendment made by subsection (a) [amending this section] shall apply to closures and realignments completed on or after the date of the enactment of this Act [Nov. 8, 1985], except that any action taken to effect or implement any closure or realignment for which a public announcement was made pursuant to section 2687(b)(1) of title 10, United States Code, after April 1, 1985, and before the date of enactment of this Act shall be subject to the provisions of section 2687 of such title as in effect on the day before such date of enactment."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to title 2 section 902.

§ 2691. Restoration of land used by permit or lease from other agencies

(a) The Secretary of the military department concerned may remove improvements and take any other action necessary in the judgment of the Secretary to restore land used by that military department by permit or lease from another military department or Federal agency if the restoration is required by the permit or lease making that land available to the military department. The Secretary concerned may carry out this section using funds available for operations and maintenance or for military construction.

(b) Unless otherwise prohibited by law or the terms of the permit or lease, before restoration of any land under subsection (a) is begun, the Secretary concerned shall determine, under the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), whether another military department or Federal agency has a use for the land in its existing, improved state. During the period required to make such a determination, the Secretary may provide for maintenance and repair of improvements on the land to the standards established for excess property by the Administrator of General Services.

(Added Pub. L. 98-407, title VIII, § 804(a), Aug. 28, 1984, 98 Stat. 1519, and amended Pub. L. 99-145, title XIII, § 1303(a)(17), Nov. 8, 1985, 99 Stat. 739.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (b), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of the act related to management and disposal of Government property are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

AMENDMENTS

1985—Pub. L. 99-145 substituted "used by" for "used of" in section catchline.

§ 2692. Storage and disposal of nondefense toxic and hazardous materials

(a)(1) Except as otherwise provided in this section, the Secretary of Defense may not permit the use of an installation of the Department of Defense for the storage or disposal of any material that is a toxic or hazardous material and that is not owned by the Department of Defense.

(2) The Secretary of Defense shall define by regulation what materials are hazardous or toxic materials for the purposes of this section, including specification of the quantity of a material that serves to make it hazardous or toxic for the purposes of this section. The definition shall include materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of that Act (42 U.S.C. 9602) and shall include materials that are of an explosive, flammable, or pyrotechnic nature.

(b) Subsection (a) does not apply to—

(1) the storage of strategic and critical materials in the National Defense Stockpile under an agreement for such storage with the Administrator of General Services;

(2) the temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible for Federal law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance with an agreement between the Secretary of Defense and the head of the Federal agency concerned;

(3) the temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities;

(4) the disposal of excess explosives produced under a Department of Defense contract, if the head of the military department concerned determines, in each case, that an alternative feasible means of disposal is not available to the contractor, taking into consideration public safety, available resources of the contractor, and national defense production requirements;

(5) the temporary storage of nuclear materials or nonnuclear classified materials in accordance with an agreement with the Secretary of Energy;

(6) the storage of materials that constitute military resources intended to be used during peacetime civil emergencies in accordance with applicable Department of Defense regulations; and

(7) the temporary storage of materials of other Federal agencies in order to provide assistance and refuge for commercial carriers of such material during a transportation emergency.

(c) The Secretary of Defense may grant exceptions to subsection (a) when essential to protect the health and safety of the public from imminent danger if the Secretary otherwise determines the exception is essential and if the storage or disposal authorized does not compete with private enterprise.

(d)(1) The Secretary may assess a charge for any storage or disposal provided under this section. Any such charge shall be on a reimbursable cost basis.

(2) In the case of storage under this section authorized because of an imminent danger, the storage provided shall be temporary and shall cease once the imminent danger no longer exists. In all other cases of storage or disposal authorized under this section, the storage or disposal authorized shall be terminated as determined by the Secretary.

(Added Pub. L. 98-407, title VIII, § 805(a), Aug. 28, 1984, 98 Stat. 1520.)

CHAPTER 163—MILITARY CLAIMS

Sec.
2734a. Property loss; personal injury or death: incident to noncombat activities of armed forces in foreign countries; international agreements.

AMENDMENTS

1984—Pub. L. 98-525, title XIV, § 1405(42)(B), Oct. 19, 1984, 98 Stat. 2625, substituted in item 2734a "in foreign countries" for ": foreign countries".

§ 2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force

(a) Under such regulations as the Secretary concerned may prescribe, he, or, subject to appeal to him, the Judge Advocate General of an armed force under his jurisdiction, or the chief Counsel of the Coast Guard, as appropriate, if designated by him, may settle, and pay in an amount not more than $100,000, a claim against the United States for—

[*See main edition for text of (1) to (3)*]

either caused by a civilian officer or employee of that department, or the Coast Guard, or a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, acting within the scope of his employment, or otherwise incident to noncombat activities of that department, or the Coast Guard.

[*See main edition for text of (b) and (c)*]

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Comptroller General for payment under section 1304 of title 31.

[*See main edition for text of (e) and (f)*]

(g) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed $25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

[*See main edition for text of (h)*]

(As amended Oct. 30, 1984, Pub. L. 98-564, § 1, 98 Stat. 2918.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-564, § 1(1), substituted "Chief Counsel" for "chief legal officer" and "$100,000" for "$25,000" in provisions preceding par. (1).

Subsec. (d). Pub. L. 98-564, § 1(2), amended subsec. (d) generally, substituting "$100,000" for "$25,000" and provisions requiring Secretary to report excess to the Comptroller General for provisions requiring reporting to Congress.

Subsec. (g). Pub. L. 98-564, § 1(3), substituted provisions permitting officers and employees of the Secretary concerned to settle claims not otherwise payable under this section in amounts not to exceed $25,000 and providing for an appeal to the Secretary concerned or his designee for provisions which provided for delegation of claims settlement authority by the Secretary for cases not to exceed $5,000 and for appeal therefrom.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2735, 2736 of this title; title 5 section 5564; title 31 section 1304; title 37 section 554.

§ 2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries

(a) To promote and to maintain friendly relations through the prompt settlement of meritorious claims, the Secretary concerned, or an officer or employee designated by the Secretary, may appoint, under such regulations as the Secretary may prescribe, one or more claims commissions, each composed of one or more officers or employees or combination of officers or employees of the armed forces, to settle and pay in an amount not more than $100,000, a claim against the United States for—

[*See main edition for text of (1) to (3)*]

if the damage, loss, personal injury, or death occurs outside the United States, or the Territories, Commonwealths, or possessions, and is caused by, or is otherwise incident to noncombat activities of, the armed forces under his jurisdiction, or is caused by a member thereof or by a civilian employee of the military department concerned or the Coast Guard, as the case may be. The claim of an insured, but not that of a subrogee, may be considered under this subsection. In this section, "foreign country" includes any place under the jurisdiction of the United States in a foreign country. An officer or employee may serve on a claims commission under the jurisdiction of another armed force only with the consent of the Secretary of his department, or his designee, but shall perform his duties under regulations of the department appointing the commission.

[*See main edition for text of (b)*]

(c) The Secretary concerned may appoint any officer or employee under the jurisdiction of the Secretary to act as an approval authority for claims determined to be allowable under subsection (a) in an amount in excess of $10,000.

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Comptroller General for payment under section 1304 of title 31.

[*See main edition for text of (e) to (h)*]

(As amended Oct. 30, 1984, Pub. L. 98-564, § 2, 98 Stat. 2918.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-564, § 2(1), substituted "$100,000" for "$25,000" and added provisions whereby employees as well as officers of the Secretary may settle claims in the matter preceding par. (1).

Pub. L. 98-564, § 2(2), added "or employee" after "An officer" in last sentence.

Subsec. (c). Pub. L. 98-564, § 2(3), substituted provisions whereby the Secretary may appoint officers and employees to act as approval authority for claims in excess of $10,000 for provisions which provided that allowance of a claim for more than $2,500 may be subject to the approval of any commissioned officer designated by the Secretary concerned.

Subsec. (d). Pub. L. 98-564, § 2(4), substituted provisions providing that if the Secretary considers a claim in excess of $100,000 meritorious, the Secretary may pay $100,000 and report any excess amount to the Comptroller General for provisions which provided that for claims in excess of $25,000 the Secretary may pay $25,000 and certify any excess to Congress as a legal claim to be paid from appropriations.

§ 2734a. Property loss; personal injury or death: incident to noncombat activities of armed forces in foreign countries; international agreements

[*See main edition for text*]

(As amended Pub. L. 98-525, title XIV, § 1405(42)(A), Oct. 19, 1984, 98 Stat. 2625.)

AMENDMENTS

1984—Pub. L. 98-525 substituted "in foreign countries" for "; foreign coun-countries" in section catchline.

§ 2736. Property loss; personal injury or death: advance payment

(a) Under such regulations as the Secretary of a military department may prescribe, payment of an amount not in excess of $10,000 may be made in advance of the submission of a claim to or for any person, or his legal representatives, who was injured or killed, or whose property was damaged or lost, under circumstances for which allowance of a claim is authorized by law. Payments under this subsection are limited to those which would otherwise

be payable under section 2733 or 2734 of this title or section 715 of title 32.

[*See main edition for text of (b) to (d)*]

(As amended Pub. L. 98-564, § 3, Oct. 30, 1984, 98 Stat. 2919.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-564 substituted "$10,000" for "$1,000".

CHAPTER 165—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
2774. Claims for overpayment of pay and allowances, and travel and transportation allowances.
2775. Liability of members assigned to military housing.

AMENDMENTS

1985—Pub. L. 99-224, § 2(b), Dec. 28, 1985, 99 Stat. 1742, substituted "and" for "other than" in item 2774.

Pub. L. 99-167, title VIII, § 802(d)(2), Dec. 3, 1985, 99 Stat. 987, substituted "assigned to military housing" for "for damage to housing and related equipment and furnishings" in item 2775.

1984—Pub. L. 98-407, title VIII, § 801(a)(2), Aug. 28, 1984, 98 Stat. 1518, substituted "members for damage to housing and related equipment and furnishings" for "member for damages to family housing, equipment, and furnishings" in item 2775.

§ 2773. Designation, powers, and accountability of deputy disbursing officials

HISTORICAL AND REVISION NOTES

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2773(a)	10:2773. 31:103a.	July 3, 1926, ch. 775, 44 Stat. 888; June 6, 1972, Pub. L. 92-310, § 231(bb), 86 Stat. 212.
2773(b)	31:103b.	July 31, 1953, ch. 300, 67 Stat. 296; June 6, 1972, Pub. L. 92-310, § 231(ff), 86 Stat. 213.

In the section, the words "disbursing official" are substituted for "disbursing officer" for consistency with other titles of the United States Code. The words "Secretary of the Treasury" are substituted for "Treasurer of the United States" because of section 1(a) of Reorganization Plan No. 26 of 1950 (eff. July 31, 1950, 64 Stat. 1280), restated as section 321 of the revised title contained in section 1 of the bill. The text of 10:2773 is omitted as being superseded by 31:103a and 103b.

In subsection (a)(1), before clause (A), the words "With the approval of a Secretary of a military department when the Secretary considers it necessary" are substituted for "When, in the opinion of the Secretary of the Army, Navy, or Air Force, the exigencies of the service so require . . . with the approval of the head of their executive department" in 31:103a because of 10:101(7), to eliminate unnecessary words, and for consistency. The title of Secretary of War was changed to Secretary of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Secretary of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488). The words "deputy disbursing official" are substituted for "deputies" for clarity. In clause (A), the words "to make payments" are substituted for "for the purpose of having them make disbursements" to eliminate unnecessary words. In clause (C), the words "to be performed by such disbursing officers" are omitted as unnecessary.

In subsection (a)(2), the words "deputy disbursing official" are substituted for "agent officer" for clarity and consistency.

In subsection (b)(1), the word "disabled" is substituted for "incapacity" for consistency in the title. The word "until" is substituted for "for a period of time not to extend beyond" to eliminate unnecessary words.

In subsection (b)(2), the words "The deputy disbursing official, and not the former disbursing official or the estate of the former disbursing official" are substituted for "The former disbursing officer or his estate . . . but the deputy disbursing officer shall be responsible therefor" for clarity and because of the restatement. The word "liable" is substituted for "subject to any legal liability or penalty" to eliminate unnecessary words. The word "actions" is substituted for "official acts and defaults". The words "in the name or in the place of the former disbursing officer" are omitted as unnecessary.

§ 2774. Claims for overpayment of pay and allowances, and travel and transportation allowances

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances, to or on behalf of a member or former member of the uniformed services, as defined in section 101(3) of title 37, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

[*See main edition for text of (1) and (2)*]

(b) The Comptroller General or the Secretary concerned, as the case may be, may not exercise his authority under this section to waive any claim—

[*See main edition for text of (1)*]

(2) if application for waiver is received in his office after the expiration of three years immediately following the date on which the erroneous payment was discovered.

[*See main edition for text of (c) to (f)*]

(As amended Pub. L. 99-224, § 2(a), Dec. 28, 1985, 99 Stat. 1741.)

AMENDMENTS

1985—Pub. L. 99-224, § 2(a)(1), substituted "and" for "other than" in section catchline.

Subsec. (a). Pub. L. 99-224, § 2(a)(2), substituted "made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances" for ", other than travel and transportation allowances, made before or after October 2, 1972".

Subsec. (b)(2). Pub. L. 99-224, § 2(a)(3), struck out "of pay or allowances, other than travel and transportation allowances," after "payment".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-224 applicable to any claim arising out of an erroneous payment of travel and transportation allowances made on or after Dec. 28, 1985, see section 4 of Pub. L. 99-224, set out as a note under section 5584 of Title 5, Government Organization and Employees.

§ 2775. Liability of members assigned to military housing

(a)(1) A member of the armed forces shall be liable to the United States for damage to any family housing unit or unaccompanied personnel housing unit, or damage to or loss of any equipment or furnishings of any family housing unit or unaccompanied personnel housing unit, assigned to or provided such member if it is determined, under regulations prescribed by the Secretary of Defense and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy, that the damage or loss was caused by the abuse or negligence of the member (or a dependent of the member) or of a guest of the member (or a dependent of the member).

(2) A member of the armed forces—

(A) who is assigned or provided a family housing unit; and

(B) who fails to clean satisfactorily that housing unit (as determined under regulations prescribed by the Secretary of Defense or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy) upon termination of the assignment or provision of that housing unit,

shall be liable to the United States for the cost of cleaning made necessary as a result of that failure.

(b) The Secretary of Defense and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy may establish limitations on liability under this section, including (in the case of liability under subsection (a)(1)) different limitations based upon the degree of abuse or negligence involved, and may compromise or waive a claim of the United States under this section.

(c)(1) The Secretary concerned may deduct from a member's pay an amount sufficient to pay for the cost of any repair or replacement made necessary as the result of any abuse or negligence referred to in subsection (a)(1), or the cost of any cleaning made necessary by a failure to clean satisfactorily a family housing unit referred to in subsection (a)(2), for which the member is liable. Regulations implementing this section may also provide for the collection of amounts owed under this section by any other authorized means.

(2) The final determination of an amount to be deducted from the pay of an officer of an armed force in accordance with regulations prescribed under this section shall be deemed to be a special order authorizing such deduction for the purposes of section 1007 of title 37.

(d) Amounts received under this section shall be credited to the family housing operations and maintenance account, in the case of damage to a family housing unit (or the equipment or furnishings of a family housing unit) or failure to clean satisfactorily a family housing unit, or to the operations and maintenance account, in the case of damage to an unaccompanied personnel housing unit (or the equipment or furnishings of an unaccompanied personnel housing unit), of the military department or defense agency concerned, or the operating expenses account of the Coast Guard, as appropriate. Amounts so credited shall be available for use for the same purposes and under the same circumstances as other funds in those accounts.

(e) The Secretary of Defense, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy, shall prescribe regulations to carry out this section. Such regulations shall include—

(1) regulations for determining the cost of repairs and replacements made necessary as the result of abuse or negligence for which a member is liable under subsection (a)(1);

(2) regulations for determining the cost of cleaning made necessary as a result of the failure to clean satisfactorily for which a member is liable under subsection (a)(2); and

(3) provisions for limitations of liability, the compromise or waiver of claims, and the collection of amounts owed under this section.

(As amended Pub. L. 98-407, title VIII, § 801(a)(1), Aug. 28, 1984, 98 Stat. 1517; Pub. L. 99-167, title VIII, § 802(a)-(d)(1), Dec. 3, 1985, 99 Stat. 986.)

AMENDMENTS

1985—Pub. L. 99-167, § 802(d)(1), substituted "assigned to military housing" for "for damage to housing and related equipment and furnishings" in section catchline.

Subsec. (a). Pub. L. 99-167, § 802(a), (b)(1), designated existing provisions as par. (1), and in par. (1) as so designated, added "and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy", and added par. (2).

Subsec. (b). Pub. L. 99-167, § 802(b)(1), (c)(1), added "and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy" and "(in the case of liability under subsection (a)(1))".

Subsec. (c)(1). Pub. L. 99-167, § 802(c)(2), substituted "subsection (a)(1), or the cost of any cleaning made necessary by a failure to clean satisfactorily a family housing unit referred to in subsection (a)(2)," for "subsection (a)".

Subsec. (d). Pub. L. 99-167, § 802(b)(2), (c)(3), added "or failure to clean satisfactorily a family housing unit" and ", or the operating expenses account of the Coast Guard, as appropriate".

Subsec. (e). Pub. L. 99-167, § 802(c)(4), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "The Secretary of Defense shall prescribe regulations to carry out the provisions of this section, including (1) regulations for determining the cost of repairs and replacements made necessary as the result of abuse or negligence referred to in subsection (a), and (2) regulations providing for limitations of liability, the compromise or waiver of claims, and the collection of amounts owed under this section."

1984—Catchline. Pub. L. 98-407 substituted "Liability of members for damage to housing and related equipment and furnishings" for "Liability of member for damages to family housing, equipment, and furnishings".

Subsec. (a). Pub. L. 98-407 amended subsec. (a) generally, inserting references to unaccompanied personnel housing units, and expanding liability of members

of the Armed Forces to include damages caused by the abuse or negligence of a guest of the member or of a dependent of the member.

Subsec. (b). Pub. L. 98-407 added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 98-407 redesignated former subsec. (b) as (c), in subsec. (c)(1) as so redesignated substituted reference to any abuse or negligence for which the member is liable for reference to any abuse or negligence on the part of such member or any dependent of such member, added provision that regulations implementing this section may also provide for the collection of amounts owed under this section by any other authorized means, and in subsec. (c)(2), as so redesignated, substituted reference to regulations prescribed under this section for reference to regulations issued under this section. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98-407 redesignated former subsec. (c) as (d), and in subsec. (d) as so redesignated substituted provisions requiring that amounts received under this section be credited either to the family housing operations and maintenance account of the department or agency concerned, (in the case of damage to family housing or equipment or furnishings therein) or the operations and maintenance account of the department or agency concerned (in the case of damage to an unaccompanied personnel housing unit or equipment or furnishings therein) for provisions that amounts deducted from members' pay under this section had to be credited to the Department of Defense Military Family Housing Management Account provided for in section 2831 of this title. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98-407 redesignated former subsec. (d) as (e)(1), in subsec. (e)(1) as so redesignated substituted reference to abuse or negligence referred to in subsec. (a) for reference to abuse or negligence on the part of a member or dependent of a member, and added par. (2).

PROMULGATION OF REGULATIONS AND APPLICABILITY OF 1984 AMENDMENTS

Section 801(b) of Pub. L. 98-407 provided that:

"(1) Regulations shall be prescribed under subsection (e) of section 2775 of title 10, United States Code, as amended by subsection (a), not later than 180 days after the date of the enactment of this Act [Aug. 28, 1984]. That section shall apply with respect to the liability of a member under such section for damage or loss to an unaccompanied personnel housing unit (or the equipment or furnishings of an unaccompanied personnel housing unit) or for damage or loss caused by a guest of the member or of a dependent of the member to a family housing unit (or the equipment or furnishings of a family housing unit) only in the case of damage or loss caused on or after the date that such regulations take effect.

"(2) The authority of the Secretary of Defense under subsection (b) of such section is applicable to any claim of the United States under such section, whether such claim arose before, on, or after the date of the enactment of this Act [Aug. 28, 1984]."

§ 2776. Use of receipts of public money for current expenditures

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2776	31:493a.	Aug. 1, 1953, ch. 305, § 611, 67 Stat. 350.

The words "disbursing official" are substituted for "officer . . . on disbursing duty" for consistency with other titles of the United States Code. The words "On and after August 1, 1953" are omitted as executed. The words "Secretary of the Treasury" are substituted for "Treasury of the United States" because of section 1(a) of Reorganization Plan No. 26 of 1950 (eff. July 31, 1950, 64 Stat. 1280), restated in section 321 of the revised title contained in section 1 of the bill. The words ' from sales or other sources" are omitted as surplus. The words "with" and "being" are added because of the restatement. The words "of appropriations, funds, and accounts to be . . . in the settlement of their disbursing accounts" are omitted as unnecessary.

PRIOR PROVISIONS

Act Aug. 1, 1953, cited as the source of this section in the Historical and Revision Notes above, is known as the Department of Defense Appropriation Act, 1954. Similar provisions were contained in the following prior appropriation acts:

July 10, 1952, ch. 630, title VI, § 613, 66 Stat. 532.
Oct. 18, 1951, ch. 512, title VI, § 613, 65 Stat. 446.
Sept. 6, 1950, ch. 896, ch. X, title VI, § 615, 64 Stat. 753.
Oct. 29, 1949, ch. 787, title VI, § 618, 63 Stat. 1020.
June 24, 1948, ch. 632, 62 Stat. 651.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 551.
July 16, 1946, ch. 583, § 1, 60 Stat. 543.
July 3, 1945, ch. 265, § 1, 59 Stat. 386.
June 28, 1944, ch. 303, § 1, 58 Stat. 575.
July 1, 1943, ch. 185, § 1, 57 Stat. 349.
July 2, 1942, ch. 477, § 1, 56 Stat. 613.
June 30, 1941, ch. 262, § 1, 55 Stat. 369.
June 13, 1940, ch. 343, § 1, 54 Stat. 355.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 597.
June 11, 1938, ch. 347, § 1, 52 Stat. 646.
July 1, 1937, ch. 423, § 1, 50 Stat. 446.

§ 2777. Requisitions for advances and removal of charges outstanding in accounts of advances

[*See main edition for text of (a) and (b)*]

(c) Subsection (b) does not affect the financial liability of a disbursing official or agent.

(As amended Pub. L. 98-525, title XIV, § 1405(43), Oct. 19, 1984, 98 Stat. 2625.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2777(a)	31:536.	June 5, 1920, ch. 240 (1st, 2d pars. under heading "Advances to Disbursing Officers"), 41 Stat. 975.
	31:537.	
	31:539.	June 19, 1878, ch. 312, §§ 1, 2, 20 Stat. 167.
	31:540.	
2777(b), (c).	31:95b (related to Army, Navy, Air Force).	June 4, 1954, ch. 264, § 1 (related to Army, Navy, Air Force), 68 Stat. 175; June 6, 1972, Pub. L. 92-310, § 231(gg), 86 Stat. 213.

In the section, the words "disbursing official" are substituted for "disbursing officers" for consistency with other titles of the United States Code.

In subsection (a), before clause (1), the words "Secretary of a military department" are substituted for "Secretary of the Army" in 31:536 and for "Secretary of the Navy" in 31:539 because of 10:101(7). The title of Secretary of War was changed to Secretary of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Secretary of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488). In clause (1), the word "General" in 31:539 is omitted as

surplus. In clause (3), the words "and 'Pay of the Navy' shall be used only for its legitimate purpose, as provided by law" are omitted as unnecessary. In clause (5), the words "by pay and counterwarrant" in 31:537 and 540 are omitted as unnecessary.

In subsection (b), before clause (1), the word "appropriate" is omitted as surplus. The words "deducting the amount of the charge from" are substituted for "debiting" for clarity. In clause (2)(B), the word "concerned" is omitted as surplus.

In subsection (c), the words "in any way" and "of the United States" are omitted as surplus.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-525 struck out "of this section" after "Subsection (b)".

§ 2778. Accounts of the military departments

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2778	31:44 (1st sentence). 31:103.	June 10, 1921, ch. 18, § 304 (1st par. 1st sentence), 42 Stat. 24. R.S. § 283; July 31, 1894, ch. 174, § 10 (3d sentence words after semicolon related to § 283), 28 Stat. 208.

In the section, before clause (1), the words "Comptroller General" are substituted for "General Accounting Office" for consistency. In clause (1)(A), the words "regard to" are omitted as surplus. The words "military departments" are substituted for "Departments of the Army, Navy, and Air Force" because of 10:101(7). The title of Secretary of War was changed to Secretary of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Secretary of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488). In clause (2), the word "settled" is substituted for "finally adjusted" for consistency in the revised title and with other titles of the United States Code. In clause (4), the words "deem necessary and" are omitted as surplus.

§ 2779. Use of funds because of fluctuations in currency exchange rates of foreign countries

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2779(a)	31:628-2.	July 25, 1979, Pub. L. 96-38, § 100 (last par. under heading "General Provisions"), 93 Stat. 100.
2779(b)	31:628-3.	Nov. 30, 1979, Pub. L. 96-130, § 100 (par. under heading "Foreign Currency Fluctuation, Construction, Defense"), 93 Stat. 1010.

In subsection (a)(1), before clause (A), the words "during the current fiscal year or on and after July 25, 1979" are omitted as executed. The words "from an appropriation to which they were transferred" are omitted as surplus. In clause (A), the words "of foreign countries" are added for consistency.

In subsection (a)(2), the words "back to the Foreign Currency Fluctuations, Defense appropriation" are substituted for "authorized by this provision" for clarity.

In subsection (b)(1), the words "the sum of", "which shall be derived", and "to appropriations and funds" are omitted as surplus. The word "only" is added for clarity. The words "for those appropriations or funds" are omitted as surplus. The words "available during fiscal year 1980, or thereafter" are omitted as executed. The words "Department of Defense" are substituted for "military departments and Defense agencies" because of 10:101(5).

In subsection (b)(2), the words "or fund" are omitted as surplus. The words "now or on and after November 30, 1979" are omitted as executed. The words "contained within appropriations or other provisions of law", "hereby", and "applicable" are omitted as surplus.

In subsection (b)(3), the words "contracts or other . . . entered into" are omitted as surplus.

CHAPTER 167—DEFENSE MAPPING AGENCY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 14 section 82.

CHAPTER 169—MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

SUBCHAPTER I—MILITARY CONSTRUCTION

Sec.
2809. Test of long-term facilities contracts.

AMENDMENTS

1985—Pub. L. 99-167, title VIII, § 811(b), Dec. 3, 1985, 99 Stat. 991, added item 2809.

§ 2805. Unspecified minor construction

(a) Within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out minor military construction projects not otherwise authorized by law. A minor military construction project is a military construction project (1) that is for a single undertaking at a military installation, and (2) that has an approved cost equal to or less than the amount specified by law as the maximum amount for a minor military construction project.

[See main edition for text of (b)]

(c) The Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified military construction project costing not more than 20 percent of the amount specified by law as the maximum amount for a minor military construction project.

[See main edition for text of (d)]

(As amended Pub. L. 99-167, title VIII, § 809, Dec. 3, 1985, 99 Stat. 989.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-167, § 809(1), added "an amount equal to 125 percent of".

Subsec. (c). Pub. L. 99-167, § 809(2), substituted "The" for "Only funds authorized for minor construction projects may be used to accomplish unspecified minor construction projects, except that the".

§ 2807. Architectural and engineering services and construction design

(a) Within amounts appropriated for military construction and military family housing, the Secretary concerned may obtain architectural and engineering services and may carry out construction design in connection with military construction projects, family housing projects, and projects undertaken in connection with the authority provided under section 2854 of this title that are not otherwise authorized by law. Amounts available for such purposes may be used for construction management of projects that are funded by foreign governments directly or through international organizations and for which elements of the armed forces of the United States are the primary user.

[See main edition for text of (b) and (c)]

(As amended Pub. L. 98-115, title VIII, § 804, Oct. 11, 1983, 97 Stat. 785.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-115 substituted "Within amounts appropriated for military construction and military family housing" for "Within amounts appropriated for such purposes" and inserted ", family housing projects, and projects undertaken in connection with the authority provided under section 2854 of this title that are" after "in connection with military construction projects".

ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN CONTRACTS FOR MILITARY CONSTRUCTION PROJECTS

Pub. L. 98-212, title VII, § 796, Dec. 8, 1983, 97 Stat. 1455, provided that: "No funds appropriated for the Departments of Defense, Army, Navy, or the Air Force shall be obligated by their respective Secretaries for architectural and engineering services and construction design contracts for Military Construction projects in the amount of $85,000 and over, unless competition for such contracts is open to all firms regardless of size in accordance with 40 U.S.C. § 541, et seq."

SMALL BUSINESS SET-ASIDE FOR ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN

Section 806 of Pub. L. 98-115 provided that:

"(a) The Secretary of Defense shall conduct a comprehensive review of current policies and practices of the Department of Defense with regard to the award of contracts for architectural and engineering services and construction design for military construction projects. The Secretary shall conduct such review with a view to determining whether current policies and practices of the Department of Defense result in a reasonable distribution of such contracts to firms of all sizes throughout the architect-engineer community.

"(b) Upon the completion of such review, the Secretary shall modify current policies and practices of the Department to the extent necessary to ensure—

"(1) that small business concerns (as defined in section 3 of the Small Business Act [15 U.S.C. 632]) are assured of a reasonable share of such contracts; and

"(2) that large architect-engineer firms are not precluded from competing for such contracts when the estimated amount of such contracts is greater than a reasonable threshold amount prescribed by the Secretary.

"(c) Not later than March 1, 1984, the Secretary shall submit to the appropriate committees of Congress a written report on the results of the review required by subsection (a) and on any changes made to current policies and practices as required by subsection (b).

"(d) For the purposes of this section:

"(1) The term 'reasonable share' means an appropriate percentage share of all contracts referred to in subsection (a) as determined by the Secretary of Defense after consultation with the Admininstrator of the Small Business Administration and representatives of the architect-engineer community.

"(2) The term 'reasonable threshold amount' means an appropriate estimated contract dollar amount determined by the Secretary of Defense after consultation with the Administrator of the Small Business Administration and representatives of the architect-engineer community."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 138, 2687, 2861 of this title.

§ 2809. Test of long-term facilities contracts

(a)(1) The Secretary concerned may enter into contracts for the construction, management, and operation of facilities on or near military installations in the United States for the provision of child care services, waste water treatment or depot supply activities in cases in which the Secretary concerned determines that the facilities can be more efficiently and more economically provided under long-term contracts than by other appropriate means.

(2) Each contract entered into under subsection (a) shall be awarded through the use of competitive procedures as provided in chapter 137 of this title.

(3) A contract under this section may be for any period not in excess of twenty years, excluding the period for construction. A contract under this section shall include a provision that the obligation of the United States to make payments under the contract in any fiscal year is subject to the availability of appropriations for that purpose.

(4) A contract may not be entered into under this section until—

(A) the Secretary concerned submits to the appropriate committees of the Congress, in writing, a justification of the need for the facility for which the contract is to be awarded and an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost effective when compared with alternative means of furnishing the same facility; and

(B) a period of 21 calendar days has expired following the date on which the justification and the economic analysis are received by the committees.

(b) Each Secretary concerned may enter into not more than 5 contracts under the authority of subsection (a) of this section, other than contracts for child care centers.

(c) The authority to enter into contracts under this section shall expire on September 30, 1987, but shall not affect the validity of any contract entered into under the authority of this section before that date.

(Added Pub. L. 99-167, title VIII, § 811(a), Dec. 3, 1985, 99 Stat. 990.)

SUBCHAPTER II—MILITARY FAMILY HOUSING

Sec.
2833. Family housing support.
2834. Participation in Department of State housing pools.

AMENDMENTS

1985—Pub. L. 99-167, title VIII, §§ 804(b)(2), 808(b), Dec. 3, 1985, 99 Stat. 987, 989, added items 2833 and 2834.

§ 2821. Requirement for authorization of appropriations for construction and acquisition of military family housing

[*See main edition for text of* (a)]

(b) In addition to the funds authorized to be appropriated by law in any fiscal year for the purposes described in subsection (a), there are authorized to be appropriated such additional sums as may be necessary for increases in salary, pay, retirement, and other employee benefits authorized by law for civilian employees of the Department of Defense whose compensation is provided for by funds appropriated for the purposes described in such subsection.

[*See main edition for text of* (c)]

(d) Amounts authorized by law for construction and acquisition of military family housing and facilities include amounts for—

(1) minor construction;

(2) improvements to existing military family housing units and facilities;

(3) relocation of military family housing units under section 2827 of this title; and

(4) architectural and engineering services and construction design.

(As amended Pub. L. 99-145, title XIII, § 1303(a)(18), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99-167, title VIII, § 804(a), Dec. 3, 1985, 99 Stat. 987.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 substituted "such subsection" for "such paragraph".

Subsec. (d). Pub. L. 99-167 added subsec. (d).

MILITARY HOUSING RENTAL GUARANTEE PROGRAM

Pub. L. 98-115, title VIII, § 802, Oct. 11, 1983, 97 Stat. 783, as amended by Pub. L. 98-407, title VIII, § 806(b), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 99-167, title VIII, § 801(a), Dec. 3, 1985, 99 Stat. 985, provided that:

"(a) The Secretary of a military department, under uniform regulations prescribed by the Secretary of Defense, may enter into an agreement to assure the occupancy of rental housing to be constructed by a private developer or by a State or local housing authority on private land, on land owned by a State or local government, or on land owned by the United States, if the housing is to be located on or near a new military installation or an existing military installation that has a shortage of housing to meet the requirements of eligible members of the Armed Forces (with or without accompanying dependents). An agreement under this section shall include a provision that the obligation of the United States to make payments under the agreement in any fiscal year is subject to the availability of appropriations for that purpose.

"(b) An agreement under subsection (a)—

"(1) may not assure the occupancy of more than 97 percent of the units constructed under the agreement;

"(2) shall establish initial rental rates that are not more than rates for comparable rental dwelling units in the same general market area and may include an escalation clause for operation and maintenance costs which shall (if included) be effective for the term of agreement;

"(3) may not apply to existing housing;

"(4) shall require that the housing units be constructed to Department of Defense specifications;

"(5) may not be for a term in excess of 15 years;

"(6) may not [be] renewed;

"(7) may not assure more than an amount equivalent to the shelter rent of the housing units, determined on the basis of amortizing initial construction costs;

"(8) may only be entered into to the extent that there is a validated deficit in military family housing;

"(9) may only be entered into if existing military-controlled housing at all installations in the commuting area (except for a new installation or an installation for which there is projected a significant increase in the number of families due to an increase in the number of authorized personnel) has exceeded 97 percent use for a period of not less than 18 consecutive months immediately preceding the date on which the agreement is entered into, excluding units temporarily inactivated for major repair or improvements;

"(10) shall provide for priority of occupancy for military families; and

"(11) shall include a clause rendering the agreement null and void if, in the opinion of the Secretary of the military department concerned, the owner of the housing fails to maintain a satisfactory level of operation and maintenance.

"(c) An agreement under subsection (a) shall be made through the use of publicly advertised, competitively bid or competitively negotiated procedures.

"(d) An agreement may not be entered into under subsection (a) until—

"(1) the Secretary of Defense submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed agreement is cost effective when compared with alternative means of furnishing the same housing facilities; and

"(2) a period of 21 calendar days has expired following the date on which the economic analysis is received by those committees.

"(e) The Secretary concerned may require that disputes arising under an agreement entered into under subsection (a) be decided in accordance with the procedures provided for by the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

"(f) This section may be implemented only by a pilot program. In carrying out such pilot program—

"(1) the Secretary of each military department may not enter into more than two agreements under this section; and

"(2) the Secretary of a military department may not enter into such an agreement for more than 300 family housing units at one location.

"(g)(1) In addition to the agreements authorized by subsection (f), the Secretary of the Army may enter into one agreement under this section for not more than 600 family housing units at one location if the agreement is necessary in order to provide sufficient family housing to accommodate a major restationing action by the Army. The Secretary of the Army may not enter into an agreement under this subsection and a contract under section 2828(g)(8) of title 10, United States Code.

"(2) In addition to the contracts authorized by subsection (f) and paragraph (1) of this subsection, the

Secretary of each military department may enter into one or more agreements under this paragraph for not more than a total of 600 family housing units.

"(h) An agreement may not be entered into under this section after September 30, 1986."

[Section 806(c) of Pub. L. 98-407 provided that amendment of this note by Pub. L. 98-407 is effective Oct. 1, 1984.]

FAMILY HOUSING CONSTRUCTED OVERSEAS

Pub. L. 98-115, title VIII, § 803, Oct. 11, 1983, 97 Stat. 784, as amended by Pub. L. 98-407, title VIII, § 812, Aug. 28, 1984, 98 Stat. 1524, provided that:

"(a) The Secretary of Defense shall ensure that any contract entered into for the construction of military family housing for the Department of Defense in a foreign country shall (1) require the use of manufactured or factory-built housing which is fabricated in the United States by a United States contractor, or (2) in the case of concrete housing, the use of housing (A) that is produced in a plant that was fabricated in the United States by a United States company, and (B) for which the materials, fixtures, and equipment used in the construction of such housing (other than cement, sand, and aggregates) are manufactured in the United States.

"(b) The Secretary of Defense may waive subsection (a) with respect to not more than 10 percent of the total number of military family housing units authorized to be constructed in foreign countries in any year if—

"(1) the Secretary determines that with respect to such units compliance with the requirement in such subsection is infeasible; and

"(2) the Secretary—

"(A) notifies the appropriate committees of the Congress in writing of his intention to waive such requirements and includes in the notification the justification for the waiver, and

"(B) a period of 21 days has elapsed after the receipt by such committees of the notice.

"(c) This section shall apply to any contract entered into after the date of the enactment of this Act [Oct. 11, 1983]."

§ 2832. Requirement for authorization of number of family housing units

[*See main edition for text of (a)*]

(b) Subsection (a) does not apply to the following:

[*See main edition for text of (1) and (2)*]

(3) Housing units acquired under the Homeowners Assistance Program referred to in section 2832 of this title.

(As amended Pub. L. 98-525, title XIV, § 1405(44), Oct. 19, 1984, 98 Stat. 2625.)

AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98-525 substituted "section 2832" for "section 2833".

§ 2827. Relocation of military family housing units

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2821 of this title.

§ 2828. Leasing of military family housing

[*See main edition for text of (a)*]

(b) [*See main edition for text of (1) and (2)*]

(3)(A) Except as provided in subparagraph (B), not more than 500 housing units may be leased under subsection (a) for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation) exceeds the maximum annual domestic family housing unit lease amount but does not exceed 120 percent of that amount.

(B) During fiscal years 1986 and 1987, the number of housing units that may be leased pursuant to the provisions of subparagraph (A) may be increased by 500 units for each such fiscal year. The Secretary concerned shall provide written notification to the Committees on Armed Services of the Senate and House of Representatives concerning the location, purpose, and cost of the additional units permitted by this subparagraph. Such notification shall be made periodically as the leases are entered into.

[*See main edition for text of (c)*]

(d)(1) Leases of housing units in foreign countries under subsection (c) for assignment as family housing may be for any period not in excess of ten years, and the costs of such leases for any year may be paid out of annual appropriations for that year.

(2) The Secretary may enter into an agreement under this paragraph in connection with a lease entered into under subsection (c). Such an agreement—

(A) shall be for the purpose of compensating a developer for any costs resulting from the termination of the lease during the construction of the housing units that are to be occupied pursuant to the lease;

(B) may be for a period not in excess of three years; and

(C) shall include a provision that the obligation of the United States to make payments under the agreement in any fiscal year is subject to the availability of appropriations.

[*See main edition for text of (e) and (f)*]

(g)(1) Notwithstanding any other provision of law, the Secretary of a military department may enter into a contract for the lease of family housing units to be constructed on or near a military installation within the United States under the Secretary's jurisdiction at which there is a validated deficit in family housing. Housing units leased under this subsection shall be assigned, without rental charge, as family housing to members of the armed forces who are eligible for assignment to military family housing. A contract under this section shall include a provision that the obligation of the United States to make payments under the contract in any fiscal year is subject to the availability of appropriations for that purpose.

(2) Each contract under paragraph (1) shall be awarded through the use of publicly advertised, competitively bid or competitively negotiated contracting procedures. Such a contract may provide for the contractor of the housing facilities to operate and maintain such housing facilities during the term of the lease.

(3) Each contract under this subsection shall require that housing units constructed pursu-

ant to the contract shall be constructed to Department of Defense specifications.

(4) A contract under this subsection may be for any period not in excess of 20 years (excluding the period required for construction of the housing facilities).

(5) A contract under this subsection shall provide that, upon the termination of the lease period, the United States shall have the right of first refusal to acquire all right, title, and interest to the housing facilities constructed and leased under the contract.

(6) A contract may not be entered into for the lease of housing facilities under this subsection until—

(A) the Secretary of Defense submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost effective when compared with alternative means of furnishing the same housing facilities; and

(B) a period of 21 calendar days has expired following the date on which the economic analysis is received by those committees.

(7) This subsection may be implemented only by a pilot program. In carrying out such pilot program—

(A) the Secretary of each military department may not enter into more than two contracts under this subsection; and

(B) any such contract may not be for more than 300 family housing units.

(8)(A) In addition to the contracts authorized by paragraph (7), the Secretary of the Army may enter into one contract under this subsection for not more than 600 family housing units at one location if the contract is necessary in order to provide sufficient family housing to accommodate a major restationing action by the Army. The Secretary of the Army may not enter into a contract under this paragraph and an agreement under section 802(g) of the Military Construction Authorization Act, 1984 (Public Law 98-115; 97 Stat. 783).

(B) In addition to the contracts authorized by paragraph (7) and subparagraph (A), the Secretary of each military department may enter into one or more contracts under this subparagraph for not more than a total of 600 family housing units.

(9) A contract may not be entered into under this subsection after September 30, 1986.

(As amended Pub. L. 98-115, title VIII, § 801, Oct. 11, 1983, 97 Stat. 782; Pub. L. 98-407, title VIII, § 806(a), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 99-167, title VIII, §§ 801(b), 803, 805, Dec. 3, 1985, 99 Stat. 985, 987, 988.)

REFERENCES IN TEXT

Section 802(g) of the Military Construction Authorization Act, 1984, referred to in subsec. (g)(8)(A), is section 802(g) of Pub. L. 98-115, which is set out as a note under section 2821 of this title.

AMENDMENTS

1985—Subsec. (b)(3). Pub. L. 9-167, § 805, designated existing provisions as subpar. (A), and in subpar. (A) as so designated, substituted "Except as provided in subparagraph (B), not" for "Not", and added subpar. (B).

Subsec. (d). Pub. L. 99-167, § 803, designated existing provisions as par. (1), and added par. (2).

Subsec. (g)(8). Pub. L. 99-167, § 801(b)(2), designated existing provisions as subpar. (A), and added subpar. (B).

Subsec. (g)(9). Pub. L. 99-167, § 801(b)(1), substituted "September 30, 1986" for "October 1, 1985".

1984—Subsec. (g)(8), (9). Pub. L. 98-407 added par. (8) and redesignated former par. (8) as (9).

1983—Subsec. (g). Pub. L. 98-115 added subsec. (g).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 806(c) of Pub. L. 98-407 provided that: "The amendments made by this section [amending this section and provisions set out as a note under section 2821 of this title] shall take effect on October 1, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2822, 2834 of this title.

§ 2833. Family housing support

Amounts authorized by law for support of military family housing include amounts for—

(1) operating expenses;

(2) leasing expenses;

(3) maintenance of real property expenses;

(4) payments of principal and interest on mortgage debts incurred; and

(5) payments of mortgage insurance premiums authorized under section 222 of the National Housing Act (12 U.S.C. 1715m).

(Added Pub. L. 99-167, title VIII, § 804(b)(1), Dec. 3, 1985, 99 Stat. 987.)

§ 2834. Participation in Department of State housing pools

(a) The Secretary concerned may enter into an agreement with the Secretary of State under which the Secretary of State agrees to provide housing and related services for personnel under the jurisdiction of the Secretary concerned who are assigned to duty in a foreign country if the Secretary concerned determines—

(1) that there is a shortage of adequate housing in the area of the foreign country in which such personnel are assigned to duty; and

(2) that participation in the Department of State housing pool is the most cost-effective means of providing housing for such personnel.

The Secretary concerned shall reimburse the Secretary of State, as provided in the agreement, for housing and related services furnished personnel under the jurisdiction of the Secretary concerned.

(b) Agreements entered into with the Secretary of State under this section may not be executed until (1) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed agreement, and (2) a period of 21 days has elapsed after the day on which the notification is received by the committees.

(c) In computing the number of leases for which the maximum lease amount may be waived by the Secretary concerned under the

second sentence of section 2828(e)(1) of this title, housing made available to the Department of Defense under this section shall be included.

(Added Pub. L. 99-167, title VIII, § 808(a), Dec. 3, 1985, 99 Stat. 989.)

SUBCHAPTER III—ADMINISTRATION OF MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

Sec.
2860. Availability of appropriations for five years.[1]
2862. Turn-key selection procedures.

AMENDMENTS

1985—Pub. L. 99-167, title VIII, § 807(b), Dec. 3, 1985, 99 Stat. 988, added item 2862.

§ 2852. Military construction projects: waiver of certain restrictions

(a) The Secretary of Defense and the Secretaries of the military departments may carry out authorized military construction projects and authorized military family housing projects without regard to subsections (a) and (b) of section 3324 of title 31.

[See main edition for text of (b)]

(As amended Pub. L. 99-145, title XIII, § 1303(a)(19), Nov. 8, 1985, 99 Stat. 739.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 substituted "subsections (a) and (b) of section 3324" for "section 3324(a) and (b)".

§ 2853. Authorized cost variations

[See main edition for text of (a) to (d)]

(e) After a contract for a project has been entered into, the Secretary concerned may carry out such project in an amount above the amount appropriated for such project by Congress in order to meet the costs of change orders or contractor claims. In the case of a contract to be carried out above the amount appropriated for which there has not been a cost variation under subsection (a), (b), (c), or (d), the Secretary concerned shall promptly report to the appropriate committees of Congress on the revised cost for the project and the reasons for the revised cost if the total cost under the contract is more than the amount specified by law as the maximum amount for a minor military construction project and exceeds the amount appropriated for the project by more than 25 percent. In the case of a contract to be carried out above the amount appropriated for which there has been a cost variation under subsection (a), (b), (c), or (d), the Secretary concerned shall promptly report to the appropriate committees of Congress on the revised cost for the project and the reasons for the revised cost, regardless of the amount by which the revised cost exceeds the amount approved for the project by the modification under subsection (a), (b), (c), or (d).

(As amended Pub. L. 98-407, title VIII, § 807, Aug. 28, 1984, 98 Stat. 1521.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-407 inserted "is more than the amount specified by law as the maximum amount for a minor military construction project and".

§ 2854. Restoration or replacement of damaged or destroyed facilities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 138, 2807 of this title.

§ 2855. Law applicable to contracts for architectural and engineering services and construction design

(a) Contracts for architectural and engineering services and construction design in connection with a military construction project or a military family housing project shall be awarded in accordance with title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.).

(b)(1) In the case of a contract referred to in subsection (a)—

(A) if the Secretary concerned estimates that the initial award of the contract will be in an amount greater than or equal to the threshold amount determined under paragraph (2), the contract may not be set aside exclusively for award to small business concerns; and

(B) if the Secretary concerned estimates that the initial award of the contract will be in an amount less than the threshold amount determined under paragraph (2), the contract shall be awarded in accordance with the set aside provisions of the Small Business Act (15 U.S.C. 631 et seq.).

(2) The initial threshold amount under paragraph (1) is $85,000. The Secretary of Defense may revise that amount in order to ensure that small business concerns receive a reasonable share of contracts referred to in subsection (a).

(3) This subsection does not restrict the award of contracts to small business concerns under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(As amended Pub. L. 98-407, title VIII, § 808(a), Aug. 28, 1984, 98 Stat. 1521.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title IX of the Federal Property and Administrative Services Act is classified generally to subchapter VI (§ 541 et seq.) of chapter 10 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

The Small Business Act, referred to in subsec. (b)(1)(B), is Pub. L. 85-536, July 18, 1958, 72 Stat. 384, as amended, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

[1] Section catchline amended by Pub. L. 99-173 without corresponding amendment of chapter analysis.

AMENDMENTS

1984—Pub. L. 98-407 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 808(b) of Pub. L. 98-407 provided that: "Subsection (b) of section 2855 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts awarded after September 30, 1984, except that the authority of the Secretary of Defense under paragraph (2) of that subsection shall apply only with respect to contracts awarded after September 30, 1985."

§ 2857. Use of renewable forms of energy in new facilities

[See main edition for text of (a)]

(b)(1) The Secretary concerned shall require that the design of all new facilities (including family housing) shall include consideration of energy systems using solar energy or other renewable forms of energy in those cases in which use of such forms of energy has the potential for significant savings of fossil-fuel-derived energy.

[See main edition for text of (2), (c) and (d)]

(As amended Pub. L. 98-525, title XIV, § 1405(45)(A), Oct. 19, 1984, 98 Stat. 2625.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-525 substituted "use of such forms of energy has the potential for" for "use of solar energy has the potential for".

1982—Subsec. (b)(1). Pub. L. 97-321, § 801(b)(1)(B), substituted "energy systems using solar energy or other renewable forms of energy" for "solar energy systems" and directed that "such form of energy has" be substituted for "a solar energy has", but "a solar energy has" did not appear in par. (1). See 1984 Amendment note above.

Subsec. (b)(2). Pub. L. 97-321, § 801(b)(1)(B)(i), substituted "energy systems using solar energy or other renewable forms of energy" for "solar energy systems".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1405(45)(B) of Pub. L. 98-525 provided that: "The amendment made by subparagraph (A) [amending subsec. (b)(1) of this section] shall take effect as if it had been included in the amendments made by section 801 of Public Law 97-321."

§ 2860. Availability of appropriations

Funds appropriated to a military department or defense agency for a fiscal year for military construction or military family housing purposes may remain available beyond such fiscal year to the extent provided in the appropriation Acts.

(As amended Pub. L. 99-167, title VIII, § 812(a), Dec. 3, 1985, 99 Stat. 991; Pub. L. 99-173, § 121(b), Dec. 10, 1985, 99 Stat. 1029.)

AMENDMENTS

1985—Pub. L. 99-173 substituted "Availability of appropriations" for "Availability of appropriations for five years" as section catchline, and amended text generally. Prior to amendment, text read as follows: "Subject to the provisions of appropriation Acts, any funds appropriated to a military department or defense agency for the construction of military projects may be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were appropriated if the funds obligated for such project (1) are obligated from funds available for military construction projects, and (2) do not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law."

Pub. L. 99-167 struck out subsection designation "(a)" and "and except as otherwise provided under subsection (b)" after "provisions of appropriation Acts", and struck out subsec. (b) which provided: "Should a requirement develop to obligate funds for a military construction project after the end of the fourth fiscal year after the fiscal year for which such funds were appropriated, such obligation may be made after the end of the 21-day period beginning on the date on which the appropriate committees of Congress receive notification of the need for such obligation and the reasons therefor."

EFFECTIVE DATE OF 1985 AMENDMENTS

Section 121(c) of Pub. L. 99-173 provided that: "The amendment made by subsection (b) [amending this section] shall apply to funds appropriated after the date of the enactment of Public Law 99-103 [Sept. 30, 1985]."

Section 812(b) of Pub. L. 99-167 provided that: "The amendments made by subsection (a) [amending this section] shall apply to funds appropriated after September 30, 1985."

§ 2862. Turn-key selection procedures

(a)(1) The Secretaries of the military departments, with the approval of the Secretary of Defense, may use one-step turn-key selection procedures for the purpose of entering into contracts for the construction of authorized military construction projects.

(2) In this section, "one-step turn-key selection procedures" means procedures used for the selection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary concerned.

(b) The Secretary of a military department may not, during any fiscal year, enter into more than three contracts for military construction projects using procedures authorized by this section.

(c) The authority under this section shall expire on October 1, 1990.

(Added Pub. L. 99-167, title VIII, § 807(a), Dec. 3, 1985, 99 Stat. 988.)

EFFECTIVE DATE

Section 807(c) of Pub. L. 99-167 provided that: "The amendments made by this section [enacting this section] shall take effect on October 1, 1986."

Subtitle B—Army

PART I—ORGANIZATION

CHAPTER 303—DEPARTMENT OF THE ARMY

§ 3012. Secretary of the Army: powers and duties; delegation by

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 3013. Under Secretary of the Army; Assistant Secretaries of the Army

There are an Under Secretary of the Army and five Assistant Secretaries of the Army in the Department of the Army. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate. One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of the Army. One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Civil Works. He shall have as his principal duty the overall supervision of the functions of the Department of the Army relating to programs for conservation and development of the national water resources including flood control, navigation, shore protection, and related purposes.

(As amended Sept. 24, 1983, Pub. L. 98-94, title XII, § 1212(c)(1), 97 Stat. 687.)

AMENDMENTS

1983—Pub. L. 98-94 substituted "five" for "four" as the number of Assistant Secretaries of the Army.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective Oct. 1, 1983, see section 1212(e) of Pub. L. 98-94, set out as a note under section 136 of this title.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 3017. Secretary of the Army: successors to duties

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, set out as a note under section 3347 of Title 5, Government Organization and Employees.

CHAPTER 305—THE ARMY STAFF

§ 3031. Composition: assignment and detail of members of Army and civilians

[*See main edition for text of* (a) *to* (c)]

[(d) Repealed. Pub. L. 98-525, title V, § 515, Oct. 19, 1984, 98 Stat. 2522.]

(As amended Oct. 19, 1984, Pub. L. 98-525, title V, § 515, 98 Stat. 2522.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-525 struck out subsec. (d) which provided that no commissioned officer who was assigned or detailed to duty in the executive part of the Department of the Army could serve for a tour of duty of more than four years, but that the Secretary could extend such a tour of duty if he made a special finding that the extension was necessary in the public interest, that no officer could be assigned or detailed to duty in the executive part of the Department of the Army within two years after relief from that duty, except upon a special finding by the Secretary that the assignment or detail was necessary in the public interest, and that the subsection did not apply in time of war, or of national emergency declared by Congress.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 515 of Pub. L. 98-525 provided in part that the repeal of subsec. (d) of this section is effective Oct. 1, 1984.

PART II—PERSONNEL

CHAPTER 337—APPOINTMENTS AS RESERVE OFFICERS

Sec.
3380. Commissioned officers: promotion of reserve commissioned officers on active duty and not on the active duty list.

AMENDMENTS

1983—Pub. L. 98-94, title X, § 1015(a)(2), Sept. 24, 1983, 97 Stat. 667, substituted "promotion of reserve commissioned officers on active duty and not on the active duty list" for "election to continue on active duty after promotion" in item 3280.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 133, 1005, 1006, 1007 of this title.

§ 3353. Commissioned officers: service credit upon original appointment

(a)(1) For the purpose of this chapter and chapter 363 of this title and under regulations prescribed by the Secretary of Defense, a person receiving an original appointment as a reserve commissioned officer in the Army or an assignment to an officer category in which advanced education or training or special experience is required or will be directly used shall be credited at the time of such appointment or assignment with any service as a commissioned officer, except service as a commissioned warrant officer, that he performed as a regular officer on active duty or as a reserve officer in an active status in any armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service before such appointment or assignment.

[*See main edition for text of* (2); (b) *to* (d)]

(As amended Pub. L. 98-94, title X, § 1007(c)(3), Sept. 24, 1983, 97 Stat. 662.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-94 substituted "this chapter and chapter 363" for "chapters 337 and 363"

and inserted ", the National Oceanic and Atmospheric Administration, or the Public Health Service".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 689, 3359, 3360, 3396 of this title.

§ 3359. Commissioned officers: original appointment; determination of grade

(a) Except as provided in subsections (b) and (c), the commissioned grade in which a person credited with service under section 3353 of this title is originally appointed as a reserve officer of the Army (based on the service credited under that section) shall be determined as follows:

(1) For persons with less than three years of service—second lieutenant.

(2) For persons with at least three, but less than seven, years of service—first lieutenant.

(3) For persons with at least seven, but less than 14, years of service—captain.

(4) For persons with at least 14, but less than 21, years of service—major.

(5) For persons with at least 21 years of service—lieutenant colonel.

(6) For persons with at least 23 years of service—lieutenant colonel or colonel, as the Secretary of the Army determines.

(b) In the case of a person who is originally appointed as a reserve officer in the Medical Corps of the Army during the period beginning on October 1, 1983, and ending on September 30, 1987, and who is credited with service under section 3353 of this title, the commissioned grade in which that person is appointed (based on the service credited under that section) shall be determined as follows:

(1) For persons with at least four, but less than 14, years of service—captain.

(2) For persons with at least 14, but less than 21, years of service—major.

(3) For persons with at least 21 years of service—lieutenant colonel.

(4) For persons with at least 23 years of service—lieutenant colonel or colonel, as the Secretary of the Army determines.

(c) Under regulations prescribed by the Secretary concerned, a person who is originally appointed as a reserve officer of the Army and who is a former commissioned officer may be appointed in the reserve grade equivalent to the grade held by that person when discharged or separated and may be credited with time in that grade for promotion purposes equal to the time in grade held by that person when discharged or separated.

(As amended Pub. L. 98-94, title X, § 1014(a), Sept. 24, 1983, 97 Stat. 666; Pub. L. 98-525, title V, § 521(a), Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99-145, title V, § 521(a), Nov. 8, 1985, 99 Stat. 631.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 substituted "September 30, 1987" for "September 30, 1985".

1984—Subsec. (a). Pub. L. 98-525, § 521(a)(1), substituted "subsections (b) and (c)" for "subsection (b)".

Subsec. (c). Pub. L. 98-525, § 521(a)(2), added subsec. (c).

1983—Pub. L. 98-94 designated existing provisions as subsec. (a) and in provisions preceding par. (1) of subsec. (a), as so designated, substituted "Except as provided in subsection (b), the commissioned grade in which a person credited with service under section 3353 of this title is originally appointed as a reserve officer of the Army (based on the service credited under that section) shall be determined as follows" for "Based upon the service credited under section 3353 of this title, the commissioned grade in which a person credited with service under that section is originally appointed as a reserve officer of the Army is", and added subsec. (b).

ARMY AND AIR FORCE RESERVE OFFICERS ORIGINALLY APPOINTED AFTER SEPTEMBER 14, 1981; APPOINTMENT IN RESERVE GRADE EQUIVALENT TO FORMER GRADE

Section 521(c) of Pub. L. 98-525 provided that:

"(1) Under regulations prescribed by the Secretary of the military department concerned, a reserve officer of the Army or Air Force originally appointed after September 14, 1981, who at the time of that appointment was a former commissioned officer and who was appointed in a reserve grade lower than the grade held by that person when discharged may be appointed in the reserve grade equivalent to the officer's former grade.

"(2) An original reserve appointment in the Army or the Air Force of a person who (at the time of the appointment) was a former commissioned officer which (A) was made during the period beginning on September 15, 1981, and ending on the day before the date of the enactment of this Act [Oct. 19, 1984], and (B) was made in a grade formerly held by that person shall be considered to have been a valid appointment at the time made, and any officer who received such an appointment is entitled to all the rights, privileges, and benefits of the grade to which appointed as of the original date of that appointment."

RESERVE OFFICERS DESIGNATED AS MEDICAL OFFICERS IN ARMY MEDICAL CORPS AND IN AIR FORCE; PROMOTION TO CAPTAIN

Section 1014(c) of Pub. L. 98-94 provided that: "Reserve officers in the Medical Corps of the Army and Reserve officers of the Air Force designated as medical officers who have at least four years of commissioned service and who on the date of the enactment of this Act [Sept. 24, 1983] have a reserve grade below the grade of captain shall be eligible for immediate promotion to the grade of captain if otherwise qualified."

§ 3360. Commissioned officers: promotion service

[*See main edition for text of* (a)]

(b) For the purposes of sections 3363, 3364, 3365, 3366(a) (column 2), 3367, 3370, 3371(a), 3382, 3819, and 3820(c) of this title, an officer's years of service are computed by adding—

[*See main edition for text of* (1) *to* (3)]

No service may be counted more than once.

(c) For the purposes of section 3369 of this title, an officer's years of service are the greater of—

[*See main edition for text of* (1) *and* (2)]

No service may be counted more than once.

(As amended Pub. L. 98-94, title X, § 1016(b), Sept. 24, 1983, 97 Stat. 668.)

REFERENCES IN TEXT

Section 22 of Public Law 85-861, referred to in subsecs. (b)(3), (c)(1), is set out as a note under section 3353 of this title.

AMENDMENTS

1983—Subsecs. (b), (c). Pub. L. 98-94 temporarily struck out last sentence which provided that for a person credited with service under section 3353 of this title or section 22 of Public Law 85-861, no service before appointment or transfer could be counted under cl. (1) or (2). See Effective and Termination Dates of 1983 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Section 1016(d) of Pub. L. 98-94, as amended by Pub. L. 99-145, title V, § 521(c), Nov. 8, 1985, 99 Stat. 631, provided that: "The amendments made by this section [amending sections 3360, 3853, and 8853 of this title] shall be effective only for the period beginning on October 1, 1983, and ending on September 30, 1987."

§ 3364. Commissioned officers: selection for promotion; order of promotion; zone of consideration list; declination of promotion

[See main edition for text of (a) to (d)]

(e) Notwithstanding any other provision of this title, a reserve commissioned officer who has been in an inactive status may not be considered for promotion until at least one year after the date on which he is returned to an active status. However, the Secretary may waive the preceding sentence and any other provision of this subtitle relating to the required status of officers eligible to be considered for promotion in order to permit consideration for promotion to the reserve grade of major general of an officer in the reserve grade of brigadier general—

(1) who is in an inactive status pursuant to a transfer to the inactive status list under section 3375(2) of this title and who has been on that list for less than one year; or

(2) who has been in an active status for less than one year, if the officer was returned to that status from a transfer to the inactive status list under section 3375(2) of this title.

[See main edition for text of (f) to (j)]

(As amended Pub. L. 98-525, title V, § 512, Oct. 19, 1984, 98 Stat. 2521.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-525 added provision authorizing the Secretary to waive any provision of this subtitle relating to the required status of officers eligible to be considered for promotion in order to permit consideration for promotion to the reserve grade of major general of an officer in the reserve grade of brigadier general (1) who is in an inactive status pursuant to a transfer to the inactive status list under section 3375(2) of this title and who has been on that list for less than one year; or (2) who has been in an active status for less than one year, if the officer was returned to that status from a transfer to the inactive status list under section 3375(2) of this title.

§ 3375. Commissioned officers: generals ceasing to occupy commensurate positions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 3364 of this title.

§ 3380. Commissioned officers: promotion of reserve commissioned officers on active duty and not on the active duty list

(a) Notwithstanding any other provision of law, a reserve commissioned officer on active duty for duty described in clause (1)(B), (1)(C), or (7) of section 523(b) of this title who is recommended by a selection board for promotion to, or found qualified for Federal recognition in, a higher reserve grade may, in accordance with regulations prescribed by the Secretary of Defense and subject to the limitations of section 524 of this title, be promoted to or extended Federal recognition in such higher reserve grade and may continue to serve on active duty, or be ordered to serve on active duty, in such higher reserve grade.

(b) Notwithstanding any other provision of law, the service in grade for promotion purposes only of any reserve commissioned officer who is promoted to or extended Federal recognition in a higher reserve grade but whose promotion to or recognition in such higher reserve grade was delayed solely because of limitations imposed in accordance with regulations prescribed by the Secretary of Defense under subsection (a) or contained in section 524 of this title, is the date such officer would have been promoted to or recognized in such higher reserve grade if the limitations did not exist. In computing service in grade for the purposes of determining the date for discharge or transfer to the Retired Reserve under chapter 363 of this title, the date the officer would have been promoted to or recognized in such higher grade had the limitations not existed shall be considered the date of promotion to or recognition in such higher grade.

(c) Regulations prescribed by the Secretary of Defense under subsection (a) shall prohibit the promotion of an officer under the authority of that subsection unless the duty assignment of the officer requires a higher grade than the grade currently held by the officer.

(d) The authority to promote officers under this section shall expire on September 30, 1987.

(As amended Pub. L. 98-94, title X, § 1015(a)(1), Sept. 24, 1983, 97 Stat. 667; Pub. L. 99-145, title V, § 521(b), Nov. 8, 1985, 99 Stat. 631.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-145 substituted "September 30, 1987" for "September 30, 1985".

1983—Pub. L. 98-94 amended section generally, substituting section catchline "Commissioned officers: promotion of reserve commissioned officers on active duty and not on the active duty list" for "Commissioned officers: election to continue on active duty after promotion". Prior to amendment section read as follows:

"(a) A reserve commissioned officer on active duty (other than for training) who is promoted to a reserve grade that is higher than the grade in which he is serving continues to serve on active duty in the grade in which he was serving immediately before that promotion. Unless he expressly declines the promotion he shall be treated as if he had accepted, on the date of that promotion, an appointment in a temporary grade equal to the grade in which he was serving before that promotion. If he elects not to continue on active duty in the grade in which he is serving, he shall, except as

provided in subsection (b), be relieved from active duty and be promoted on the day after he is relieved or on the date on which he would have been promoted if he had stayed on active duty, whichever is the later. If he is relieved from active duty after the date on which he would have been promoted if he had stayed on active duty, he shall be credited with the service he would have had if he had remained on active duty and had been promoted.

"(b) A reserve commissioned officer on active duty (other than for training) who has not completed the period of active duty that he is required by law or regulation to perform as a member of a reserve component, and who is recommended or found qualified for promotion to a higher reserve grade, may not elect to be relieved from active duty under subsection (a), but may decline the promotion if he does not desire to serve on active duty in a grade lower than his reserve grade. If he so declines the promotion, he shall, if he applies, be promoted to the grade for which he was recommended or found qualified upon being temporarily promoted to that higher grade or, subject to subsection (a), upon completing his period of required active duty."

CHAPTER 345—RANK AND COMMAND

§ 3579. Command: commissioned officers of Army Medical Department

(a) Except as provided in subsection (b), a commissioned officer of the Army Medical Department is not entitled to exercise command because of his rank, except within the Army Medical Department.

[*See main edition for text of* (b)]

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(46), 98 Stat. 2625.)

Amendments

1984—Subsec. (a). Pub. L. 98-525 substituted "subsection (b)" for "subsection (c)".

CHAPTER 353—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
[3681 to 3683. Repealed.]

Amendments

1985—Pub. L. 99-145, title XIII, § 1301(b)(1)(B), Nov. 8, 1985, 99 Stat. 735, struck out item 3683 "Service credit: certain service as a nurse, woman medical specialist, or civilian employee of Army Medical Department to be counted".

[§ 3683. Repealed. Pub. L. 99-145, title XIII, § 1301(b)(1)(A), Nov. 8, 1985, 99 Stat. 735]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 210; Aug. 25, 1959, Pub. L. 86-197, § 1(4), 73 Stat. 426, related to service credit for certain service as a nurse, woman medical specialist, or civilian employee of Army Medical Department.

Person Performing Active Service on Day Before Repeal of Section

Section 1301(b)(1)(C) of Pub. L. 99-145 provided that: "The repeal made by subparagraph (A) [repealing this section] shall not apply in the case of a person who performed active service described in section 3683 of title 10, United States Code, as such section was in effect on the day before the date of the enactment of this Act [Nov. 8, 1985]."

§ 3686. Members of Army National Guard of United States: credit for service as members of Army National Guard

For the purposes of laws providing benefits for members of the Army National Guard of the United States and their dependents and beneficiaries—

(1) military training, duty, or other service performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard for which he is entitled to pay from the United States shall be considered military training, duty, or other service, as the case may be, in Federal service as a Reserve of the Army;

(2) full-time National Guard duty performed by a member of the Army National Guard of the United States shall be deemed to be active duty in Federal service as a Reserve of the Army, except that for purposes of title 38 such duty shall be considered to be active duty for training; and

[*See main edition for text of* (3)]

(As amended Oct. 19, 1984, Pub. L. 98-525, title IV, § 414(a)(7)(A), 98 Stat. 2519.)

Codification

Cl. (1) is set out in this supplement to correct typographical error appearing in the main edition.

Amendments

1984—Cl. (2). Pub. L. 98-525 substituted "full-time National Guard duty performed by a member of the Army National Guard of the United States shall be deemed to be active duty in Federal service as a Reserve of the Army, except that for purposes of title 38 such duty shall be considered to be active duty for training" for "full-time training or other full-time duty performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard under sections 316 and 502 through 505 of title 32 for which he is entitled to pay from the United States, or for which he has waived such pay, shall be considered active duty for training in Federal service as a Reserve of the Army".

CHAPTER 361—SEPARATION FOR VARIOUS REASONS

§ 3819. Army Reserve officers: discharge for failure of promotion to first lieutenant

(a) Except as provided in sections 1005 and 1006 of this title, each second lieutenant of the Army Reserve who is in an active status and not on the active-duty list shall be discharged from his reserve appointment if he is not promoted before or on the date on which he completes three years of service computed under section 3360(b) of this title.

(b) Except as provided by section 1006 of this title, each second lieutenant of the Army Reserve who is on the active-duty list of the Army and is found not qualified for promotion to the reserve grade of first lieutenant shall be discharged from his reserve appointment not later than the end of the 18-month period beginning on the date on which he is first found not qualified for promotion to that grade, unless he is promoted to that grade before the end of that period.

(As amended Pub. L. 98-525, title V, § 528(b), Oct. 19, 1984, 98 Stat. 2526.)

AMENDMENTS

1984—Pub. L. 98-525 designated existing provisions as subsec. (a), substituted "in an active status and not on the active-duty list" for "in an active status", and added subsec. (b).

CHAPTER 363—SEPARATION OR TRANSFER TO RETIRED RESERVE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 133, 1005, 1006, 1007, 3353, 3380 of this title.

§ 3843. Age 60: reserve officers below major general

[*See main edition for text of (a)*]

(b) Except as provided in section 3845 of this title, each commissioned officer in a reserve grade below brigadier general who is not a member of the Retired Reserve shall, on the last day of the month in which he becomes 60 years of age—

[*See main edition for text of (1) and (2)*]

(As amended Pub. L. 99-145, title XIII, § 1303(a)(20)(A), Nov. 8, 1985, 99 Stat. 739.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 struck out "after July 1, 1960," after "this title,".

§ 3848. Twenty-eight years: reserve first lieutenants, captains, majors, and lieutenant colonels

(a) Each officer in the reserve grade of first lieutenant, captain, major, or lieutenant colonel who is not a member of the Retired Reserve shall, 30 days after he completes 28 years of service computed under section 3853 of this title—

[*See main edition for text of (1) and (2); (b)*]

(c) Notwithstanding subsections (a) and (b), the Secretary of the Army may authorize the retention in an active status until age 60 of an officer who would otherwise be removed from an active status under this section who—

(1) is an officer of the Army National Guard of the United States assigned to a headquarters or headquarters detachment of a State or territory, the Commonwealth of Puerto Rico, the Canal Zone, or the District of Columbia; or

(2) is employed—

(A) as a technician under section 709 of title 32 in a position for which membership in the National Guard is required as a condition of employment; or

(B) as a technician of the Army Reserve in a position for which membership in the Army Reserve is required as a condition of employment.

[*See main edition for text of (d)*]

(As amended Pub. L. 99-145, title V, § 522(a)(1), title XIII, § 1303(a)(20)(B), Nov. 8, 1985, 99 Stat. 631, 739.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145, § 1303(a)(20)(B), substituted "Each" for "After July 1, 1960, each".

Subsec. (c). Pub. L. 99-145, § 522(a)(1), amended subsec. (c) generally, thereby expanding coverage to include reserve officers who are employed as civilian technicians in the Army Reserve in positions that require membership in the Army Reserve.

§ 3851. Thirty years or five years in grade: reserve colonels and brigadier generals

(a) Each officer in the reserve grade of colonel or brigadier general who is not a member of the Retired Reserve or the adjutant general or assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia shall, 30 days after he completes 30 years of service computed under section 3853 of this title or on the fifth anniversary of the date of his appointment in his current reserve grade, whichever is later—

[*See main edition for text of (1) and (2); (b)*]

(c) Notwithstanding subsections (a) and (b), the Secretary of the Army may authorize the retention in an active status until age 60 of an officer in the reserve grade of brigadier general who would otherwise be removed from an active status under this section, except that not more than 10 officers may be retained under this subsection at any time.

(d) Notwithstanding subsections (a) and (b), the Secretary of the Army may authorize the retention in an active status until age 60 of an officer who would otherwise be removed from an active status under this section who—

(1) is an officer of the Army National Guard of the United States assigned to a headquarters or headquarters detachment of a State or territory, the Commonwealth of Puerto Rico, the Canal Zone, or the District of Columbia; or

(2) is employed—

(A) as a technician under section 709 of title 32 in a position for which membership in the National Guard is required as a condition of employment; or

(B) as a technician of the Army Reserve in a position for which membership in the Army Reserve is required as a condition of employment.

(As amended Pub. L. 98-525, title V, § 513, Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99-145, title V, § 522(a)(2), title XIII, § 1303(a)(20)(B), Nov. 8, 1985, 99 Stat. 631, 739.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsecs. (a) and (d)(1), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145, § 1303(a)(20)(B), substituted "Each" for "After July 1, 1960, each".

Subsec. (d). Pub. L. 99-145, § 522(a)(2), which directed the amendment of subsec. (c) generally, was executed to subsec. (d) as the probable intent of Congress in view of the redesignation of subsec. (c) as (d) by Pub. L. 98-525. The amendment expanded coverage to include reserve officers who are employed as civilian

technicians in the Army Reserve in positions that require membership in the Army Reserve.

1984—Subsec. (c). Pub. L. 98-525, § 513(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98-525, § 513(1), redesignated former subsec. (c) as (d) and, in subsec. (d) as so redesignated, struck out "of this section" after "subsections (a) and (b)" in the provisions preceding par. (1).

§ 3852. Thirty-five years or five years in grade: reserve major generals

(a) Each officer in the reserve grade of major general who is not a member of the Retired Reserve or the adjutant general or assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia shall, 30 days after he completes 35 years of service computed under section 3853 of this title, or on the fifth anniversary of the date of his appointment to that grade, whichever is later—

[*See main edition for text of (1) and (2)*]

(b) Notwithstanding subsection (a), an officer in the reserve grade of major general who would otherwise be removed from an active status under this section may, in the discretion of the Secretary of the Army, be retained in an active status, but not later than the date on which he becomes 62 years of age. Not more than 10 officers may be retained under this subsection at any one time.

(As amended Pub. L. 99-145, title V, § 523, title XIII, § 1303(a)(20)(B), Nov. 8, 1985, 99 Stat. 632, 739.)

Amendments

1985—Subsec. (a). Pub. L. 99-145, § 1303(a)(20)(B), substituted "Each" for "After July 1, 1960, each".

Pub. L. 99-145, § 523(1), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 99-145, § 523(2), added subsec. (b).

§ 3853. Computation of years of service

For the purpose of determining whether a reserve commissioned officer may be transferred to the Retired Reserve, or discharged, under this chapter, his years of service are the greater of—

(1) the sum of (A) his years of service as a commissioned officer of any component of the armed forces or of the Army without specification of component, and (B) his years of service before June 15, 1933, as a commissioned officer in the federally recognized National Guard or in a federally recognized commissioned status in the National Guard, and in the National Guard after June 14, 1933, if his service therein was continuous from the date of his Federal recognition as an officer therein to the date of his appointment in the National Guard of the United States; and

(2) the number of years by which his age exceeds 25 years.

No service may be counted more than once.

(As amended Pub. L. 98-94, title X, § 1016(a), Sept. 24, 1983, 97 Stat. 668.)

Amendments

1983—Pub. L. 98-94 temporarily amended cl. (1) by inserting "and" at the end of subcl. (A) and striking out ", and (C) the years of service credited to him under section 3353 of this title or section 22 of Public Law 85-861" following subcl. (B), and struck out the last sentence which provided that for a person credited with service under section 3353 of this title or section 22 of Public Law 85-861, no service before appointment could be counted. See Effective and Termination Dates of 1983 Amendment note below.

Effective and Termination Dates of 1983 Amendment

Amendment by Pub. L. 98-94 effective for the period beginning Oct. 1, 1983, and ending Sept. 30, 1987, see section 1016(d) of Pub. L. 98-94, as amended, set out as a note under section 3360 of this title.

CHAPTER 367—RETIREMENT FOR LENGTH OF SERVICE

§ 3925. Computation of years of service: voluntary retirement; enlisted members

References in Text

Section 3683 of this title, referred to in subsec. (a), was repealed (subject to a savings clause) by Pub. L. 99-145, title XIII, § 1301(b)(1)(A), (C), Nov. 8, 1985, 99 Stat. 735.

§ 3926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers

References in Text

Section 3683 of this title, referred to in subsec. (d), was repealed (subject to a savings clause) by Pub. L. 99-145, title XIII, § 1301(b)(1)(A), (C), Nov. 8, 1985, 99 Stat. 735.

CHAPTER 369—RETIRED GRADE

Sec.

[3963. Repealed.]

Amendments

1985—Pub. L. 99-145, title XIII, § 1301(b)(2)(B), Nov. 8, 1985, 99 Stat. 735, struck out item 3963 "Higher grade for service during certain periods: regular and reserve commissioned officers".

[§ 3963. Repealed. Pub. L. 99-145, title XIII, § 1301(b)(2)(A), Nov. 8, 1985, 99 Stat. 735]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 230; Sept. 2, 1958, Pub. L. 85-861, § 1(60), (100), 72 Stat. 1462, 1489; Dec. 12, 1980, Pub. L. 96-513, title V, § 502(20), 94 Stat. 2910, related to higher grade for service during certain periods for regular and reserve commissioned officers.

Member of Regular Army on Day Before Repeal of Section

Section 1301(b)(2)(C) of Pub. L. 99-145 provided that: "The repeal made by subparagraph (C) [probably should be (A) repealing this section] shall not apply in the case of a member of the Regular Army described in section 3963 of title 10, United States Code, as such section was in effect on the day before the date of the enactment of this Act [Nov. 8, 1985]."

§ 3964. Higher grade after 30 years of service: Army warrant officers; regular enlisted members

Each warrant officer of the Army, and each enlisted member of the Regular Army, who is retired before or after this title is enacted is entitled, when his active service plus his service on the retired list totals 30 years, to be ad-

vanced on the retired list to the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the Army.

(As amended Oct. 19, 1984, Pub. L. 98-525, title V, § 533(c), 98 Stat. 2528.)

AMENDMENTS

1984—Pub. L. 98-525 substituted "highest grade" for "highest temporary grade".

CHAPTER 371—COMPUTATION OF RETIRED PAY

§ 3991. Computation of retired pay

The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed "For sections", retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or the table in section 1401 of this title, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title.

Formula	For sections	Column 1 For a person who first became a member of uniformed service (as defined in section 1407(a)(2) of this title) after September 7, 1980, take the monthly retired pay base as computed under section 1407(c). For all others, take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
A	3911 3918 3920 3924	Monthly basic pay [2] of member's retired grade.[1]	2½% of years of service credited to him under section 1405 of this title.[4]		Excess over 75% of pay upon which computation is based.
B	3914	Monthly basic pay [2] to which member was entitled on day before he retired.	2½% of years of service credited to him under section 3925.[4]	10% of product of columns 1 and 2 for extraordinary heroism in line of duty.[5]	Excess over 75% of pay upon which computation is based.
C	3917	Monthly basic pay [2] to which member was entitled on day before he retired.	2½% of years of service credited to him under section 3925.[4]		Excess over 75% of pay upon which computation is based.

[1] For the purposes of this section, determine member's retired grade as if section 3962(b) did not apply and, for an officer who has served as Chief of Staff, compute at the highest rates of basic pay applicable to him while he served in that office.
[2] Compute at rates applicable on date of retirement.
[3] Compute at rates applicable on date of retirement, or if the member has served as sergeant major of the Army, compute at the highest basic pay applicable to him while he so served, if such basic pay is greater.
[4] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.
[5] The Secretary of the Army's determination as to extraordinary heroism is conclusive for all purposes.

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, §§ 922(a)(7), 923(a)(1), (2)(F), 97 Stat. 641, 642.)

AMENDMENTS

1983—Pub. L. 98-94, § 922(a)(7), added "The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1."

Pub. L. 98-94, § 923(a)(1), (2)(F), in footnote 4 to the table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98-94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

§ 3992. Recomputation of retired pay to reflect advancement on retired list

An enlisted member of the Army who is advanced on the retired list under section 3964 of this title is entitled to recompute his retired pay under formula A of the following table, and a warrant officer of the Army so advanced is entitled to recompute his retired pay under formula B of that table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

Formula	Column 1 For a person who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) after September 7, 1980, take the monthly retired pay base as computed under section 1407(c). For all others, take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
A	Monthly basic pay or base and longevity pay, as the case may be,[1] of grade to which member is advanced on retired list.	2½% of years of service credited to him under section 3925 of this title.[2]		Excess over 75% of pay upon which computation is based.
B	Monthly basic pay or base and longevity pay, as the case may be,[1] of grade to which member is advanced on retired list.	2½% of years of service credited to him under section 1405 of this title.[2]		Excess over 75% of pay upon which computation is based.

[1] Compute at rate applicable on date of retirement.
[2] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, §§ 922(a)(8), 923(a)(1), (2)(G), 97 Stat. 641-643.)

AMENDMENTS

1983—Pub. L. 98-94, § 922(a)(8), inserted: "The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1."

Pub. L. 98-94, § 923(a)(1), (2)(G), in footnote 2 to the table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98-94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

CHAPTER 373—CIVILIAN EMPLOYEES

Sec.
[4021 to 4023. Repealed.]

AMENDMENTS

1983—Pub. L. 98-94, title IX, § 932(b)(2), Sept. 24, 1983, 97 Stat. 650, struck out item 4022 "Contract surgeons".

[§ 4022. Repealed. Pub. L. 98-94, title IX, § 932(b)(1), Sept. 24, 1983, 97 Stat. 650]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 233, related to the employment of contract surgeons in an emergency. See section 1091 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1983, but with contracts entered into under the authority of this section before Oct. 1, 1983, which are in effect on Oct. 1, 1983, to remain in effect in accordance with the terms of such contracts, see section 932(f) of Pub. L. 98-94, set out as an Effective Date note under section 1091 of this title.

PART III—TRAINING

CHAPTER 401—TRAINING GENERALLY

§ 4309. Rifle ranges: recommendations to Congress; regulations

[*See main edition for text of* (a)]

(b) All rifle ranges established under subsection (a) and all rifle ranges already constructed, in whole or in part with funds provided by the United States, may be used by members of the armed forces and by all able-bodied persons capable of bearing arms, under regulations prescribed by the authorities controlling those ranges and approved by the Secretary.

(As amended Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1301(b)(3)(A), 99 Stat. 735.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 substituted "persons" for "males".

§ 4313. National rifle matches and small-arms school: expenses

(a) Competitors at the National Matches under section 4312 of this title may draw not more than $1.50 a day as a subsistence allowance. If meals are furnished, a sum not to exceed $1.50 per competitor per day may be spent for that purpose while the contest is in progress.

[*See main edition for text of* (b)]

(As amended Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1301(b)(3)(B), 99 Stat. 735.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 substituted "competitor" for "man".

CHAPTER 403—UNITED STATES MILITARY ACADEMY

Sec.
4344. Selection of persons from foreign countries.
[4345. Repealed.]

AMENDMENTS

1983—Pub. L. 98-94, title X, § 1004(a)(3), Sept. 24, 1983, 97 Stat. 658, substituted "from foreign countries" for "from Canada and American Republics" in

item 4344, and struck out item 4345 "Selection of Filipinos".

§ 4336. Permanent professors; director of admissions

(a) A permanent professor of the Academy, other than the Dean of the Academic Board, who is the head of a department of instruction, or who has served as such a professor for more than six years, has the grade of colonel. However, a permanent professor appointed from the Regular Army has the grade of colonel after the date when he completes six years of service as a professor, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier. All other permanent professors have the grade of lieutenant colonel.

(b) A person appointed as director of admissions of the Academy has the regular grade of lieutenant colonel, and, after he has served six years as director of admissions, has the regular grade of colonel. However, a person appointed from the Regular Army has the regular grade of colonel after the date when he completes six years of service as director of admissions, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier.

(As amended Oct. 19, 1984, Pub. L. 98-525, title V, § 533(d)(1), 98 Stat. 2528.)

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98-525 substituted "on which he would have been promoted had he been selected for promotion from among officers in the promotion zone," for "when a regular officer, junior to him on the promotion list or active-duty list on which his name was carried before his appointment as a professor, is promoted to the regular grade of colonel,".

§ 4342. Cadets: appointment; numbers, territorial distribution

(a) The authorized strength of the Corps of Cadets of the Academy is as follows:

[See main edition for text of (1) to (7)]

(8) One cadet nominated by the Administrator of the Panama Canal Commission from the children of civilian personnel of the United States Government residing in the Republic of Panama who are citizens of the United States.

[See main edition for text of (9)]

(10) One cadet from American Samoa, nominated by the Delegate in Congress from American Samoa.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate a principal candidate and nine alternates for each vacancy that is available to him under this section.

[See main edition for text of (b) to (h)]

(As amended Sept. 24, 1983, Pub. L. 98-94, title X, § 1005(a)(1), (b)(1), 97 Stat. 660.)

AMENDMENTS

1983—Subsec. (a)(8). Pub. L. 98-94, § 1005(b)(1), substituted "One cadet nominated by the Administrator of the Panama Canal Commission from the children of civilian personnel of the United States Government residing in the Republic of Panama who are citizens of the United States" for "One cadet nominated by the Governor of the Panama Canal from the children of civilians residing in the Canal Zone or the children of civilian personnel of the United States Government, or the Panama Canal Company, residing in the Republic of Panama".

Subsec. (a)(10). Pub. L. 98-94, § 1005(a)(1), substituted ", nominated by the Delegate in Congress from American Samoa" for "nominated by the Secretary of the Army upon recommendation of the Governor of Samoa".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4343, 4344 of this title.

§ 4344. Selection of persons from foreign countries

(a)(1) The Secretary of the Army may permit not more than 40 persons at any one time from foreign countries to receive instruction at the Academy. Such persons shall be in addition to the authorized strength of the Corps of the Cadets of the Academy under section 4342 of this title.

(2) The Secretary of the Army, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country. The Secretary of the Army may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.

(b)(1) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a cadet appointed from the United States, and from the same appropriations.

(2) Each foreign country from which a cadet is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1) unless a written waiver of reimbursement is granted by the Secretary of Defense. The Secretary of the Army shall prescribe the rates for reimbursement under this paragraph.

(c)(1) Except as the Secretary of the Army determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a cadet at the Academy appointed from the United States. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a cadet at the Academy appointed from the United States.

(2) A person receiving instruction under this section is not entitled to an appointment in an

armed force of the United States by reason of graduation from the Academy.

(d) A person receiving instruction under this section is not subject to section 4346(d) of this title.

(As amended Sept. 24, 1983, Pub. L. 98-94, title X, § 1004(a)(1), 97 Stat. 657.)

AMENDMENTS

1983—Pub. L. 98-94 substituted "persons from foreign countries" for "persons from Canada and American Republics" in section catchline.

Subsec. (a)(1). Pub. L. 98-94 substituted "The Secretary of the Army may permit not more than 40 persons at any one time from foreign countries to receive instruction at the Academy" for "Upon designation by the President, the Secretary of the Army may permit not more than 20 persons at any one time from Canada and the American Republics, other than the United States, to receive instruction at the Academy" as the first sentence of existing subsec. (a), redesignated that first sentence as par. (1), and in par. (1) as so redesignated added a second sentence providing that such persons shall be in addition to the authorized strength of the Corps of the Cadets of the Academy under section 4342 of this title.

Subsec. (a)(2). Pub. L. 98-94 substituted "The Secretary of the Army, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country" for "However, not more than three persons from any one of those republics or from Canada may receive instruction under this section at any one time" as the second sentence of existing subsec. (a), redesignated that second sentence as par. (2), and in par. (2) as so redesignated added a second sentence providing that the Secretary of the Army may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.

Subsec. (b)(1). Pub. L. 98-94 redesignated first sentence of existing subsec. (b) as par. (1) thereof.

Subsec. (b)(2). Pub. L. 98-94 substituted "Each foreign country from which a cadet is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1) unless a written waiver of reimbursement is granted by the Secretary of Defense" for "However, the mileage allowance payable to that person for travel to the Academy for initial admission is not limited to mileage for travel within the United States" as the second sentence of existing subsec. (b), redesignated that second sentence as par. (2), and in par. (2) as so redesignated added a second sentence providing that the Secretary of the Army shall prescribe the rates for reimbursement under this paragraph.

Subsec. (c)(1). Pub. L. 98-94 redesignated first sentence of existing subsec. (c) as par. (1) thereof and in par. (1) as so redesignated added a second sentence providing that the Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a cadet at the Academy appointed from the United States.

Subsec. (c)(2). Pub. L. 98-94 redesignated second sentence of existing subsec. (c) as par. (2) thereof and in that redesignated sentence substituted "appointment in an armed force of the United States" for "appointment in the United States Army".

Subsec. (d). Pub. L. 98-94 reenacted subsec. (d) without change.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1004(d) of Pub. L. 98-94 provided that:

"Sections 4344(b)(2), 6957(b)(2), and 9344(b)(2) of title 10, United States Code, as added by this section, do not apply to the cost of providing instruction to a person who, before the effective date of this section, entered the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy under section 4344, 4345, 6957, 9344, or 9345 of such title, as in effect on the day before such date. Any such person shall be counted against the maximum of 40 persons who may attend the Academy concerned at any time under any of those sections.

"The amendments made by subsections (a), (b), and (c) [amending sections 4344, 6957, and 9344 of this title and repealing sections 4345 and 9345 of this title] shall take effect one year after the date of the enactment of this Act [Sept. 24, 1983] and shall apply to each person entering the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy after that effective date."

[§ 4345. Repealed. Pub. L. 98-94, title X, § 1004(a)(2), Sept. 24, 1983, 97 Stat. 658]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 242, related to selection of Filipinos for instruction at the Military Academy. See section 4344.

EFFECTIVE DATE OF REPEAL

Repeal effective one year after Sept. 24, 1983, see section 1004(d) of Pub. L. 98-94, set out as an Effective Date of 1983 Amendment note under section 4344 of this title.

§ 4348. Cadets: agreement to serve as officer

(a) Each cadet shall sign an agreement with respect to the cadet's length of service in the armed forces. The agreement shall provide that the cadet agrees to the following:

(1) That the cadet will complete the course of instruction at the Academy.

(2) That upon graduation from the Academy the cadet—

(A) will accept an appointment, if tendered, as a commissioned officer of the Regular Army or the Regular Air Force; and

(B) will serve on active duty for at least five years immediately after such appointment.

(3) That if an appointment described in paragraph (2) is not tendered or if the cadet is permitted to resign as a regular officer before completion of the commissioned service obligation of the cadet, the cadet—

(A) will accept an appointment as a commissioned officer as a Reserve for service in the Army Reserve or the Air Force Reserve; and

(B) will remain in that reserve component until completion of the commissioned service obligation of the cadet.

(b)(1) The Secretary of the Army may transfer to the Army Reserve, and may order to active duty for such period of time as the Secretary prescribes (but not to exceed four years), a cadet who breaches an agreement under subsection (a). The period of time for which a cadet is ordered to active duty under this paragraph may be determined without regard to section 651(a) of this title.

(2) A cadet who is transferred to the Army Reserve under paragraph (1) shall be trans-

ferred in an appropriate enlisted grade or rating, as determined by the Secretary.

(3) For the purposes of paragraph (1), a cadet shall be considered to have breached an agreement under subsection (a) if the cadet is separated from the Academy under circumstances which the Secretary determines constitute a breach by the cadet of the cadet's agreement to complete the course of instruction at the Academy and accept an appointment as a commissioned officer upon graduation from the Academy.

(c) The Secretary of the Army shall prescribe regulations to carry out this section. Those regulations shall include—

(1) standards for determining what constitutes, for the purpose of subsection (b), a breach of an agreement under subsection (a);

(2) procedures for determining whether such a breach has occurred; and

(3) standards for determining the period of time for which a person may be ordered to serve on active duty under subsection (b).

(d) In this section, "commissioned service obligation", with respect to an officer who is a graduate of the Academy, means the period beginning on the date of the officer's appointment as a commissioned officer and ending on the sixth anniversary of such appointment or, at the discretion of the Secretary of Defense, any later date up to the eighth anniversary of such appointment.

(e)(1) This section does not apply to a cadet who is not a citizen or national of the United States.

(2) In the case of a cadet who is a minor and who has parents or a guardian, the cadet may sign the agreement required by subsection (a) only with the consent of a parent or guardian.

(As amended Oct. 19, 1984, Pub. L. 98-525, title V, §§ 541(a), 542(b), 98 Stat. 2529; Nov. 8, 1985, Pub. L. 99-145, title V, § 512(a), 99 Stat. 623.)

AMENDMENTS

1985—Pub. L. 99-145 amended section generally. Prior to amendment, section read as follows:

"(a) Each cadet who is a citizen or national of the United States shall sign an agreement that he will—

"(1) unless sooner separated from the Academy, complete the course of instruction at the Academy;

"(2) accept an appointment and, unless sooner separated from the service, serve as a commissioned officer of the Regular Army or the Regular Air Force for at least the five years immediately after graduation; and

"(3) accept an appointment as a commissioned officer as a Reserve for service in the Army Reserve or the Air Force Reserve and, unless sooner separated from the service, remain therein until at least the sixth anniversary and, at the direction of the Secretary of Defense, up to the eighth anniversary of his graduation, if an appointment in the regular component of that armed force is not tendered to him, or if he is permitted to resign as a commissioned officer of that component before that anniversary.

If the cadet is a minor and has parents or a guardian, he may sign the agreement only with the consent of the parents or guardian.

"(b) A cadet who does not fulfill his agreement under subsection (a) may be transferred by the Secretary of the Army to the Army Reserve in an appropriate enlisted grade and, notwithstanding section 651 of this title, may be ordered to active duty to serve in that grade for such period of time as the Secretary prescribes but not for more than four years."

1984—Subsec. (a). Pub. L. 98-525, § 541(a), struck out ", unless sooner separated," in introductory text before "he will"; inserted in cl. (1) "unless sooner separated from the Academy,"; and inserted ", unless sooner separated from the service," in cls. (2) and (3).

Subsec. (a)(3). Pub. L. 98-525, § 524(b), substituted "at least the sixth anniversary and, at the direction of the Secretary of Defense, up to the eighth anniversary" for "the sixth anniversary".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 512(e) of Pub. L. 99-145 provided that: "The amendments made by subsections (a), (b), and (c) [amending sections 4348, 6959, and 9348 of this title] (other than with respect to the authority of the Secretary of a military department to prescribe regulations)—

"(1) shall take effect with respect to each military department on the date on which regulations prescribed by the Secretary of that military department in accordance with subsection (d) [set out as a note below] take effect; and

"(2) shall apply with respect to each agreement entered into under sections 4348, 6959, and 9348, respectively, of title 10, United States Code, that is entered into on or after the effective date of such regulations and shall apply with respect to each such agreement that was entered into before the effective date of such regulations by an individual who is a cadet or midshipman on such date."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 541(d) of Pub. L. 98-525 provided that: "The amendments made by this section [amending sections 4348(a), 6959(a), and 9348(a) of this title] shall apply with respect to agreements entered into under section 4348, 6959, or 9348 of title 10, United States Code, before, on, or after the date of the enactment of this Act [Oct. 19, 1984]."

REGULATIONS IMPLEMENTING 1985 AMENDMENT

Section 512(d) of Pub. L. 99-145 provided that: "The Secretary of each military department shall prescribe the regulations required by section 4348(c), 6959(c), or 9348(c), as appropriate, of title 10, United States Code (as added by the amendments made by subsections (a), (b), and (c)) not later than the end of the 90-day period beginning on the date of the enactment of this Act [Nov. 8, 1985]."

§ 4356. Use of certain gifts

APPLICABILITY OF SECTION

Pub. L. 97-252, title XI, § 1133, Sept. 8, 1982, 96 Stat. 761, provided that:

"(a) [Repealed and reenacted as section 4356 of this title by Pub. L. 97-295, §§ 1(41)(A), 6(b), Oct. 12, 1982, 96 Stat. 1297, 1315.]

"(b) This section [section 4356 of this title] applies with respect to any gift, devise, or bequest made on or after the date of the enactment of this Act [Sept. 8, 1982] for the purpose described in subsection (a) [section 4356 of this title] and applies to any such gift, devise, or bequest, or devise made before the date of the enactment of this Act with respect to which the Secretary of the Army has approved application of this section rather than section 2601 of title 10, United States Code."

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 433—PROCUREMENT

§ 4541. Gratuitous services of officers of the Army Reserve

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4541	31:666.	May 12, 1917, ch. 12 (3d proviso on p. 72), 40 Stat. 72.

The title of Secretary of War was changed to Secretary of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The words "The Secretary of the Army may accept" are substituted for "Section 665 of this title shall not be construed to prohibit the Secretary of the Army from accepting" to eliminate unnecessary words. The words "the furtherance of" are omitted as surplus. The words "armed forces" are substituted for "military service" for consistency in title 10.

CHAPTER 441—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

Sec.
4657. Sale of ammunition for avalanche-control purposes.

AMENDMENTS

1984—Pub. L. 98-525, title XV, § 1538(a)(2), Oct. 19, 1984, 98 Stat. 2636, added item 4657.

§ 4651. Arms, tentage, and equipment: educational institutions not maintaining units of R.O.T.C.

Under such conditions as he may prescribe, the Secretary of the Army may issue arms, tentage, and equipment that he considers necessary for proper military training, to any educational institution at which no unit of the Reserve Officers' Training Corps is maintained, but which has a course in military training prescribed by the Secretary and which has at least 100 physically fit students over 14 years of age.

(As amended Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1301(b(3)(C), 99 Stat. 736.)

AMENDMENTS

1985—Pub. L. 99-145 struck out "male" before "students".

§ 4657. Sale of ammunition for avalanche-control purposes

Subject to the needs of the Army, the Secretary of the Army may sell ammunition for military weapons which are used for avalanche-control purposes to any State (or entity of a State) or to any other non-Federal entity that has been authorized by a State to use those weapons in that State for avalanche-control purposes. Sales of ammunition under this section shall be on a reimbursable basis and shall be subject to the condition that the ammunition be used only for avalanche-control purposes.

(Added Pub. L. 98-525, title XV, § 1538(a)(1), Oct. 19, 1984, 98 Stat. 2636.)

EFFECTIVE DATE

Section 1538(b) of Pub. L. 98-525 provided that: "Section 4657 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1984."

CHAPTER 445—INQUESTS; DISPOSITION OF EFFECTS OF DECEASED PERSONS; CAPTURED FLAGS

§ 4712. Disposition of effects of deceased persons by summary court-martial

[*See main edition for text of* (a) *to* (c)]

(d) As soon as practicable after the collection of the effects and money of the deceased, the summary court-martial shall send them at the expense of the United States to the living person highest on the following list who can be found by the court:

(1) The surviving spouse or legal representative.

(2) A child of the deceased.

(3) A parent of the deceased.

(4) A brother or sister of the deceased.

(5) The next-of-kin of the deceased.

(6) A beneficiary named in the will of the deceased.

[*See main edition for text of* (e) *to* (g)]

(As amended Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1301(b)(4)(A), 99 Stat. 736.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-145 substituted new pars. (1) to (6) for former pars. (1) to (9) which read:

"(1) Surviving spouse or legal representative.

"(2) Son.

"(3) Daughter.

"(4) Father, if he has not abandoned the support of his family.

"(5) Mother.

"(6) Brother.

"(7) Sister.

"(8) Next of kin.

"(9) Beneficiary named in the will of the deceased."

§ 4713. Disposition of effects of deceased persons by Soldiers' and Airmen's Home

(a) The effects of a deceased person that the Department of the Army receives under section 4712(f) of this title shall be delivered to the United States Soldiers' and Airmen's Home. The Home shall dispose of the effects as follows:

(1) A will or other paper involving property rights shall be promptly delivered to the proper court of record.

(2) If the heirs or legal representative of the deceased cannot sooner be ascertained, the Home shall retain the remaining effects until three years after the death of the deceased, and then, upon establishment of a right thereto to the satisfaction of the Home, it shall deliver them to the living person highest on the following list who can be found:

(A) The surviving spouse or legal representative.

(B) A child of the deceased.

(C) A parent of the deceased.

(D) A brother or sister of the deceased.
(E) The next-of-kin of the deceased.
(F) A beneficiary named in the will of the deceased.

[*See main edition for text of (b) to (f)*]

(As amended Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1301(b)(4)(B), 99 Stat. 736.)

AMENDMENTS

1985—Subsec. (a)(2). Pub. L. 99-145 substituted new subpars. (A) to (F) for former subpars. (A) to (I) which read:
"(A) Surviving spouse or legal representative.
"(B) Son.
"(C) Daughter.
"(D) Father, if he has not abandoned the support of his family.
"(E) Mother.
"(F) Brother.
"(G) Sister.
"(H) Next of kin.
"(I) Beneficiary named in the will of the deceased."

CHAPTER 447—TRANSPORTATION

§ 4746. Civilian personnel in Alaska

Persons residing in Alaska who are and have been employed there by the United States for at least two years, and their families, may be transported on vessels or airplanes operated by Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels or airplanes operated by any military transport agency of the Department of Defense, if—

[*See main edition for text of (1) to (3)*]

(4) in case of travel by air—
(A) the Secretary of Transportation has not certified that commercial air carriers of the United States that can handle the transportation are operating between Alaska and the United States; and
(B) the transportation cannot be reasonably handled by a United States commercial air carrier.

(As amended Oct. 4, 1984, Pub. L. 98-443, § 9(k), 98 Stat. 1708.)

AMENDMENTS

1984—Par. (4)(A). Pub. L. 98-443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board under this section were transferred to the Secretary of Transportation by section 1553(a)(9) of Title 49, Appendix, Transportation, effective Jan. 1, 1985.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 App. section 1553.

CHAPTER 451—MILITARY CLAIMS

CROSS REFERENCES

Suits in admiralty by or against vessels or cargoes of United States, see section 741 et seq. of Title 46, Appendix, Shipping.

§ 4803. Admiralty claims by United States

CROSS REFERENCES

Admiralty and maritime jurisdiction, see Const. Art. 3, § 2, cl. 1; section 1333 of Title 28, Judiciary and Judicial Procedure; and section 740 of Title 46, Appendix, Shipping.

CHAPTER 453—ACCOUNTABILITY AND RESPONSIBILITY

§ 4841. Payment of small amounts to public creditors

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4841	31:493.	Mar. 2, 1907, ch. 251 (proviso on p. 1166), 34 Stat. 1166.

The title of Secretary of War was changed to Secretary of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The word "When" is substituted for "as shall from time to time be" to eliminate unnecessary words. The words "disbursing official" are substituted for "Officers intrusted with the disbursement" for consistency.

§ 4842. Settlement of accounts of line officers

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4842	31:44 (1st sentence).	June 10, 1921, ch. 18, § 304 (1st par. 1st sentence), 42 Stat. 24.
	31:95.	R.S. § 278.

The words "Comptroller General" are substituted for "General Accounting Office" for consistency. The words "audit and" are omitted as surplus. The words "for their services as such" and "by the affidavit of the officer or otherwise" are omitted as surplus. The words "to account for property or make a report or return" are added for clarity. The words "in the hands of the enemy" are omitted as surplus.

Subtitle C—Navy and Marine Corps

PART IV—GENERAL ADMINISTRATION

Chap.		Sec.
663.	Names and Insignia.....	7881

AMENDMENTS

1984—Pub. L. 98-525, title XIV, § 1405(48), title XV, § 1532(a)(2), Oct. 19, 1984, 98 Stat. 2625, 2631, substituted "Responsibility" for "responsibility" in item for chapter 661 and added item for chapter 663.

PART I—ORGANIZATION

CHAPTER 505—SECRETARY, UNDER SECRETARY, AND ASSISTANT SECRETARIES OF THE NAVY

§ 5033. Under Secretary of the Navy: appointment; duties

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 5034. Assistant Secretaries of the Navy: appointment; duties

(a) There are four Assistant Secretaries of the Navy in the Department of the Navy. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

[See main edition for text of (b)]

(As amended Sept. 24, 1983, Pub. L. 98-94, title XII, § 1212(c)(2), 97 Stat. 687.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-94 substituted "four" for "three".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective Oct. 1, 1983, see section 1212(e) of Pub. L. 98-94, set out as a note under section 136 of this title.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 5036. Secretary of the Navy: succession to duties

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, set out as a note under section 3347 of Title 5, Government Organization and Employees.

CHAPTER 513—BUREAUS; OFFICE OF THE JUDGE ADVOCATE GENERAL; OFFICE OF NAVAL RESEARCH

§ 5138. Bureau of Medicine and Surgery: Dental Division; Chief; functions

(a) There is a Dental Division in the Bureau of Medicine and Surgery. An officer of the Dental Corps not below the grade of rear admiral (lower half) shall be detailed as Chief of the Dental Division.

[See main edition for text of (b) to (d)]

(As amended Nov. 8, 1985, Pub. L. 99-145, title V, § 514(b)(1), 99 Stat. 628.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

§ 5149. Office of the Judge Advocate General: Deputy Judge Advocate General; Assistant Judge Advocates General

[See main edition for text of (a)]

(b) An officer of the Judge Advocate General's Corps who has the qualifications prescribed for the Judge Advocate General in section 5148(b) of this title may be detailed as Assistant Judge Advocate General of the Navy. While so serving he is entitled to the rank and grade of rear admiral (lower half), unless entitled to a higher rank or grade under another provision of law. An officer who is retired while serving as Assistant Judge Advocate General of the Navy under this subsection or who, after serving at least twelve months as Assistant Judge Advocate General of the Navy, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the rank and grade of rear admiral (lower half). If he is retired as a rear admiral (lower half), he is entitled to the retired pay of that grade, unless entitled to higher pay under another provision of law.

[See main edition for text of (c) to (e)]

(As amended Nov. 8, 1985, Pub. L. 99-145, title V, § 514(b)(1), 99 Stat. 628.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore" in three places.

PART II—PERSONNEL

CHAPTER 533—DISTRIBUTION IN GRADE

Sec.
5442. Navy: line officers on active duty; rear admirals (lower half) and rear admirals.
5444. Navy: staff corps officers on active duty; rear admirals (lower half) and rear admirals.

AMENDMENTS

1985—Pub. L. 99-145, title V, § 514(b)(6)(B), (7)(B), Nov. 8, 1985, 99 Stat. 629, substituted "rear admirals (lower half)" for "commodores" in items 5442 and 5444.

§ 5442. Navy: line officers on active duty: [1] rear admirals (lower half) and rear admirals

(a) Of the total number of officers serving on active duty in the line of the Navy in the grade of ensign and above (excluding officers in categories specified in section 523(b) of this title), the number of officers who may serve in the grades of rear admiral (lower half) and rear admiral may not, except as provided in subsection (b), exceed a number appropriate to the number set forth in the following table. If the total number of officers serving on active duty in the line of the Navy in the grade of ensign and above (excluding officers in categories specified in section 523(b) of this title) falls between two strengths shown in the first column of the

[1] So in original. The colon probably should be a semicolon.

table, the number for the grades of rear admiral (lower half) and rear admiral is determined by proportionate interpolation between the respective numbers for the two strengths.

Total number of line officers serving on active duty in the grade of ensign and above (excluding officers carried as additional numbers in grade):	Number of rear admirals (lower half) and rear admirals
32,000	215
40,000	222
50,000	228
60,000	237
70,000	244
80,000	252
90,000	259
100,000	262
125,000	291
150,000	305
175,000	323
200,000	342
250,000	379.

(b)(1) The Secretary of the Navy, whenever the needs of the service require, but at least once annually, shall compute the number of officers authorized under subsection (a) for the grades of rear admiral (lower half) and rear admiral. The number so computed for such grades shall be the number of officers on active duty (excluding officers in categories specified in section 523(b) of this title) specified for such grades. If at the time of making computations under this subsection the Secretary determines that the number of officers required to meet the needs of the service in the grades of rear admiral (lower half) and rear admiral is less than the specified number for such grades, the lesser number becomes the specified number for such grades. Any reduction under this subsection may be applied as an increase in the prescribed number for any lower grade.

(2) When making a computation under this subsection, the Secretary shall prescribe a number for the grade of rear admiral. The number prescribed for the grade of rear admiral (lower half) is the number specified in this subsection less the number prescribed for the grade of rear admiral.

(c)(1) Whenever the needs of the service require but at least once annually, the Secretary of the Navy shall specify the total number of officers designated for engineering duty, aeronautical engineering duty, and special duty who may be serving on active duty in the grades of rear admiral (lower half) and rear admiral. Such number may not exceed 13 percent of the number of officers specified in subsection (b) for the grades of rear admiral (lower half) and rear admiral. If at the time of making a specification under this subsection, the Secretary determines that the total number of such officers required to meet the needs of the service in the grades of rear admiral (lower half) and rear admiral is less than the specified number for such grades as specified under this subsection, the lesser number becomes the specified numbers for officers in such grades. Any reduction under this subsection may be applied as an increase in the prescribed number for any lower grade.

(2) When making a specification under this subsection, the Secretary shall prescribe a number for the grade of rear admiral. The number prescribed for the grade of rear admiral (lower half) shall be the number specified in this subsection less the number prescribed for the grade of rear admiral.

[*See main edition for text of (3); (d)*]

(e) For the purpose of this section, each officer is counted in the grade in which he is serving, whether under a permanent or a temporary appointment. However, each officer serving under an appointment in the grade of admiral or vice admiral, and each officer serving in the grade of rear admiral (lower half) or rear admiral who was appointed under section 603 of this title or promoted under section 624 of this title, is counted in the grade he would hold had he not been so appointed or promoted.

(f) The sum of the prescribed numbers for the grade of rear admiral under subsections (b) and (c) may not exceed 50 percent of the sum of the numbers specified under such subsections for the grades of rear admiral (lower half) and rear admiral.

(As amended Nov. 8, 1985, Pub. L. 99-145, title V, § 514(b)(1), (3), (6)(A), 99 Stat. 628.)

AMENDMENTS

1985—Pub. L. 99-145, § 514(b)(6)(A), substituted "rear admirals (lower half)" for "commodores" in section catchline.

Subsec. (a). Pub. L. 99-145, § 514(b)(1), (3), substituted "rear admiral (lower half)" for "commodore" wherever appearing in text and "rear admirals (lower half)" for "commodores" in the table.

Subsecs. (b), (c)(1), (2), (e), (f). Pub. L. 99-145, § 514(b)(1), substituted "rear admiral (lower half)" for "commodore" wherever appearing.

§ 5444. Navy: staff corps officers on active duty; rear admirals (lower half) and rear admirals

(a) The total number of officers serving on active duty in the grades of rear admiral (lower half) and rear admiral in the staff corps of the Navy excluding any flag officer serving as a Chief of Bureau, may not exceed a number appropriate to the total number of officers in all the staff corps serving on active duty, as set forth in the following table. If the total number of officers on active duty in all the staff corps falls between two strengths shown in the first column of the table, the number of rear admirals and rear admirals (lower half) is determined by proportionate interpolation between the numbers of the two strengths.

Total number of officers in all the staff corps on active duty:	Number of rear admirals and rear admirals (lower half)
9,000	44
13,000	53
19,000	57
27,000	61
32,000	64
37,000	67

(b) The Secretary of the Navy, whenever the needs of the service require but at least once annually, shall compute the number of officers authorized under subsection (a) for the grades of rear admiral (lower half) and rear admiral in all the staff corps. The number so computed is the number of officers on active duty prescribed for the grades of rear admiral (lower half) and rear admiral in all the staff corps. If the Secretary determines at the time of making any such computation that the number of officers required to meet the needs of the service in the grades of rear admiral (lower half) and rear admiral for all the staff corps is less than the prescribed number for such grades for all the staff corps, the lesser number becomes the prescribed number for such grades for all the staff corps and the reduction may be applied as an increase in the authorized number for any lower grade of the Navy under section 523 of this title.

(c) Each officer in a staff corps who serves as a chief of bureau and who, before or during that service, is appointed to the grade of rear admiral (lower half) or rear admiral under section 624 of this title shall, upon termination of his appointment as chief of bureau, be carried in excess of the prescribed number until the next vacancy occurs in his grade in his corps.

[*See main edition for text of* (d) *and* (e)]

(f) The Secretary, in his discretion, shall prescribe the number of rear admirals (lower half), and the number of rear admirals, in each staff corps. The total of the prescribed numbers of rear admirals for all the staff corps may not exceed 50 percent of the total number computed under subsection (b).

[*See main edition for text of* (g)]

(As amended Nov. 8, 1985, Pub. L. 99-145, title V, § 514(b)(1)-(3), (7)(A), 99 Stat. 628, 629.)

AMENDMENTS

1985—Pub. L. 99-145, § 514(b)(7)(A), substituted "rear admirals (lower half)" for "commodores" in section catchline.

Subsec. (a). Pub. L. 99-145, § 514(b)(1)-(3), substituted "rear admiral (lower half)" for "commodore" and "rear admirals (lower half)" for "commodores" in text and table.

Subsecs. (b), (c). Pub. L. 99-145, § 514(b)(1), substituted "rear admiral (lower half)" for "commodore" wherever appearing.

Subsec. (f). Pub. L. 99-145, § 514(b)(2), substituted "rear admirals (lower half)" for "commodores".

§ 5457. Naval Reserve: officers in an active status in grades above chief warrant officer, W-4

(a) The authorized strength of the Naval Reserve in officers in an active status in the grades of rear admiral (lower half) and rear admiral, exclusive of those counted under section 5442 of this title, is 48, distributed among the line and the staff corps as follows:

[*See main edition for text of* (1) *to* (7)]

Not more than 50 percent of the officers in an active status authorized under this subsection may serve in the grade of rear admiral.

[*See main edition for text of* (b) *to* (d)]

(As amended Pub. L. 99-145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

CHAPTER 535—GRADE AND RANK OF OFFICERS

§ 5501. Navy: grades above chief warrant officer, W-4

The commissioned grades in the Navy above the grade of chief warrant officer, W-4, are the following:

[*See main edition for text of* (1) *to* (3)]

(4) Rear admiral (lower half).

[*See main edition for text of* (5) *to* (10)]

(As amended Nov. 8, 1985, Pub. L. 99-145, title V, § 514(a)(1), 99 Stat. 628.)

AMENDMENTS

1985—Par. (4). Pub. L. 99-145 substituted "Rear admiral (lower half)" for "Commodore".

CHAPTER 539—ORIGINAL APPOINTMENTS

§ 5600. Naval Reserve and Marine Corps Reserve: service credit upon original appointment

(a)(1) Under regulations prescribed by the Secretary of Defense, for the purpose of determining the grade, seniority in grade, and eligibility for promotion of a person who is originally appointed as a commissioned officer in a permanent grade above chief warrant officer, W-4, in the Naval Reserve or Marine Corps Reserve or who is designated in an officer category in which advanced education or training or special experience is required or will be directly used, such person shall be credited at the time of such appointment or designation with any service as a commissioned officer, other than a commissioned warrant officer, that he performed as a regular officer on active duty or as a reserve officer in an active status in any armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service before such appointment or designation.

[*See main edition for text of* (2); (b) *to* (d)]

(As amended Pub. L. 98-94, title X, § 1007(c)(4), Sept. 24, 1983, 97 Stat. 662.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-94 inserted ", the National Oceanic and Atmospheric Administration, or the Public Health Service" after "in any armed force".

CHAPTER 544—TEMPORARY APPOINTMENTS

§ 5721. Temporary promotions of certain Navy lieutenants

[*See main edition for text of* (a) *to* (e)]

(f) The authority to make appointments under this section terminates on September 30, 1986.

(As amended Pub. L. 98-94, title IV, § 403, Sept. 24, 1983, 97 Stat. 629; Pub. L. 98-525, title V, § 514, Oct. 19, 1984, 98 Stat. 2522.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-525 substituted "September 30, 1986" for "September 30, 1984".

1983—Subsec. (f). Pub. L. 98-94 substituted "September 30, 1984" for "September 30, 1983".

CHAPTER 549—RESERVE PROMOTIONS

§ 5891. Officers who may be promoted under this chapter

[*See main edition for text of* (a) *and* (b)]

(c) A reserve officer who has been recommended for promotion in the approved report of a selection board convened under this chapter, and who is placed on the active-duty list before he is promoted, may be promoted under this chapter, notwithstanding the fact that he is on the active-duty list at the time of promotion.

[*See main edition for text of* (d) *and* (e)]

(As amended Pub. L. 98-525, title V, § 533(e), Oct. 19, 1984, 98 Stat. 2528.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-525 substituted "the active-duty list" for "a lineal list" in two places.

§ 5897. Selection boards: reports; certification required

[*See main edition for text of* (a)]

(b) A board convened under this chapter that recommends officers in any of the following categories for promotion shall certify in its report that, in the opinion of a majority of the members of the board, the officers recommended are selected as best fitted to assume the duties of the next higher grade:

[*See main edition for text of* (1) *to* (4)]

(5) Officers of the Naval Reserve in the Nurse Corps in the grade of lieutenant commander or above.

[*See main edition for text of* (6) *to* (8); (c) *and* (d)]

(As amended Pub. L. 98-525, title XIV, § 1405(47), Oct. 19, 1984, 98 Stat. 2625.)

AMENDMENTS

1984—Subsec. (b)(5). Pub. L. 98-525 substituted a period for a semicolon at end.

CHAPTER 553—SPECIAL ASSIGNMENTS AND DETAILS

§ 5985. Nautical Schools: detail of naval officers as superintendents or instructors

The President may detail officers of the Navy as superintendents or instructors of institutions receiving benefits under section 1304 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295c), when in his opinion it can be done without detriment to the naval service. Officers so detailed shall be recalled from an institution if it is discontinued or if the good of the naval service requires.

(As amended Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1303(a)(21), 99 Stat. 739.)

AMENDMENTS

1985—Pub. L. 99-145 substituted "section 1304 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295c)" for "the Act of March 4, 1911, ch. 265, 36 Stat. 1353, as amended".

CHAPTER 561—MISCELLANEOUS RIGHTS AND BENEFITS

§ 6148. Disability and death benefits: Naval Reserve and Marine Corps Reserve

[*See main edition for text of* (a) *to* (c)]

(d) If a person is entitled to benefits under subsection (a) or (b) and under—

(1) section 6327 of this title; or

(2) section 331 of title 38;

he must elect the provision that is to be applied to him.

[(e) Redesignated (d)]

(As amended Oct. 19, 1984, Pub. L. 98-525, title VI, § 631(b), 98 Stat. 2543; Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1303(a)(22), 99 Stat. 739.)

AMENDMENTS

1985—Subsecs. (d), (e). Pub. L. 99-145 redesignated subsec. (e) as (d).

1984—Subsec. (d). Pub. L. 98-525 repealed subsec. (d) which related to entitlement to appropriate treatment of members of Naval Reserve and Marine Corps Reserve for illnesses or diseases of members in line of duty or while on active duty or performing inactive-duty training until disability cannot be materially improved and transportation and subsistence expenses, treatment being limited to ten weeks except upon approval of board of medical survey or authorization of Surgeon General. See section 1074a of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 applicable only with respect to injuries incurred or aggravated and diseases or illnesses contracted or aggravated after Sept. 30, 1984, see section 631(c) of Pub. L. 98-525, set out as a note under section 1074a of this title.

§ 6151. Higher retired grade and pay for members who serve satisfactorily under temporary appointments

[*See main edition for text of* (a)]

(b) [*See main edition for text of* (1)]

(2) In determining the number of years to be used as a multiplier under this subsection, each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

[*See main edition for text of* (c) *and* (d)]

(e) Retired pay computed under subsection (b) or (c), if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, §§ 922(a)(9), 923(c)(1), 97 Stat. 641, 643.)

AMENDMENTS

1983—Subsec. (b)(2). Pub. L. 98-94, § 923(c)(1), substituted "each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded" for "a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded".

Subsec. (e). Pub. L. 98-94, § 922(a)(9), added subsec. (e).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98-94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

§ 6154. Mileage books: commutation tickets

The Secretary of the Navy may buy such mileage books, commutation tickets, and other similar transportation tickets as he considers necessary, and he may furnish them to persons ordered to perform travel on official business. Payment for those tickets before the travel is performed is not an advance of public money within the meaning of subsections (a) and (b) of section 3324 of title 31.

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(56)(A), 98 Stat. 2626.)

AMENDMENTS

1984—Pub. L. 98-525 substituted "subsections (a) and (b) of section 3324" for "section 3324(a) and (b)".

§ 6160. Pension to persons serving ten years

(a) Every disabled person who has served in the Navy or Marine Corps as an enlisted member or petty officer, or both, for ten or more years, and has not been discharged for misconduct, may apply to the Secretary of the Navy for aid.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 99-145, title XIII, § 1301(c)(1), Nov. 8, 1985, 99 Stat. 736.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 substituted "enlisted member" for "enlisted man".

CHAPTER 565—BANDS

§ 6222. United States Marine Band: composition; director; assistant director

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 sections 207, 424.

CHAPTER 571—VOLUNTARY RETIREMENT

Sec.
6333. Treatment of fractions of dollar amounts in computing retired and retainer pay.

AMENDMENTS

1983—Pub. L. 98-94, title IX, § 922(a)(10)(B), Sept. 24, 1983, 97 Stat. 641, added item 6333.

§ 6328. Treatment of fractions of years of service in computing retired pay

In determining the total number of years of service to be used as a multiplier in computing the retired pay of officers retiring under this chapter, each full month of service that is in addition to the number of full years of service creditable to an officer is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, § 923(c)(2), 97 Stat. 643.)

AMENDMENTS

1983—Pub. L. 98-94 substituted "retiring under this chapter, each full month of service that is in addition to the number of full years of service creditable to an officer is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded" for "retired under this chapter, a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

§ 6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay

[*See main edition for text of* (a) *to* (c)]

(d) For the purposes of subsection (c), each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded. A completed minority enlistment is counted as four years of active service, and an enlistment terminated within three months before the end of the term of enlistment is counted as active service for the full term.

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, § 923(c)(3), 97 Stat. 643.)

AMENDMENTS

1983—Subsec. (d). Pub. L. 98-94 substituted "For the purposes of subsection (c), each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded" for "For the purposes of subsections (b) and (c), a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

RETAINER PAY OF ENLISTED MEMBERS OF REGULAR NAVY, NAVAL RESERVE, REGULAR MARINE CORPS, OR MARINE CORPS RESERVE TRANSFERRED TO FLEET RESERVE OR FLEET MARINE CORPS RESERVE

Pub. L. 98-473, title I, § 101(h) [title VIII, § 8039], Oct. 12, 1984, 98 Stat. 1904, 1930, provided that:

"(a) During the current fiscal year and hereafter, none of the assets of the Department of Defense Military Retirement Fund shall be available to pay the retainer pay of any enlisted member of the Regular Navy, the Naval Reserve, the Regular Marine Corps, or the Marine Corps Reserve who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of title 10, United States Code, on or after December 31, 1977, if the provisions of section 6330(d) of title 10, are utilized in determining such member's eligibility for retirement under section 6330(b) of the title 10: *Provided*, That notwithstanding the foregoing, time creditable as active service for a completed minority enlistment, and an enlistment terminated within three months before the end of the term of enlistment under section 6330(d) of title 10, prior to December 31, 1977, may be utilized in determining eligibility for retirement: *Provided further*, That notwithstanding the foregoing, time may be credited as active service in determining a member's eligibility for retirement under section 6330(b) of title 10 pursuant to the provisions of the first sentence of section 6330(d) of title 10 for those members who had formally requested transfer to the Fleet Reserve or the Fleet Marine Corps Reserve on or before October 1, 1977.

"(b) During the current fiscal year and hereafter, none of the assets of the Department of Defense Military Retirement Fund shall be available to pay that portion of the retainer pay of any enlisted member of the Regular Navy, the Naval Reserve, the Regular Marine Corps, or the Marine Corps Reserve who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of title 10, United States Code, on or after December 31, 1977, which is attributable under the second sentence of section 6330(d) of title 10 to time which, after December 31, 1977, is not actually served by such member."

§ 6333. Treatment of fractions of dollar amounts in computing retired and retainer pay

Retired or retainer pay computed under this chapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(Added Pub. L. 98-94, title IX, § 922(a)(10)(A), Sept. 24, 1983, 97 Stat. 641.)

EFFECTIVE DATE

Section effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as an Effective Date of 1983 Amendment note under section 1401 of this title.

CHAPTER 573—INVOLUNTARY RETIREMENT, SEPARATION, AND FURLOUGH

§ 6383. Regular Navy and Regular Marine Corps; officers designated for limited duty: retirement for length of service or failures of selection for promotion; discharge for failures of selection for promotion; reversion to prior status; retired grade; retired pay

(a) Except as provided in subsection (i), each regular officer of the Navy who is an officer designated for limited duty and who is serving in a grade below the grade of commander and each regular officer of the Marine Corps who is an officer designated for limited duty shall be retired on the last day of the month following the month in which he completes 30 years of active naval service, exclusive of active duty for training in a reserve component.

[*See main edition for text of* (b) *and* (c)]

(d) Except as provided in subsection (i), each regular officer on the active-duty list of the Navy serving in the grade of lieutenant who is an officer designated for limited duty, and each regular officer on the active duty list of the Marine Corps serving in the grade of captain who is an officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time and whose name is not on a list of officers recommended for promotion shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time.

[*See main edition for text of* (e) *to* (h)]

(i) Under such regulations as he may prescribe, whenever the needs of the service require, the Secretary of the Navy may defer the retirement under subsection (a) or (b) or the discharge under subsection (d) of any officer designated for limited duty upon recommendation of a board of officers convened under section 611(b) of this title and with the consent of the officer concerned. An officer whose retirement is deferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond 20 years active commissioned service, if in the grade of lieutenant or captain, beyond 24 years active commissioned service, if in the grade of lieutenant commander or major, or beyond 28 years active commissioned service, if in the grade of lieutenant colonel, or beyond age 62, whichever is earlier.

[*See main edition for text of* (j)]

(k) Retired pay computed under subsection (c), if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, § 922(a)(11), 97 Stat. 642; Oct. 19, 1984, Pub. L. 98-525, title V, § 529(c), 98 Stat. 2526.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-525, § 529(c)(1), substituted "each regular officer of the Navy who is an officer designated for limited duty and who is serving in a grade below the grade of commander and each regular officer of the Marine Corps who is an officer" for "each regular officer of the Navy or Marine Corps".

Subsec. (d). Pub. L. 98-525, § 529(c)(2), substituted "Except as provided in subsection (i), each" for "Each".

Subsec. (i). Pub. L. 98-525, § 529(c)(3), inserted "or the discharge under subsection (d)" after "the retirement under subsection (a) or (b)" and substituted "An officer whose retirement is deferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond 20 years active commissioned service, if in the grade of lieutenant or captain, beyond 24 years active commissioned service, if in the grade of lieutenant commander or major, or beyond 28 years active commissioned service, if in the grade of lieutenant colonel, or beyond age 62, whichever is earlier" for "An officer whose retirement is de-

ferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond 24 years active commissioned service, if in the grade of lieutenant commander or major or 28 years active commissioned service, if in the grade of commander or lieutenant colonel, or beyond age 62, whichever is earlier".

1983—Subsec. (k). Pub. L. 98-94 added subsec. (k).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

§ 6389. Naval Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service

[*See main edition for text of (a) to (e)*]

(f)(1) Each officer of the Naval Reserve in an active status in the permanent grade of rear admiral (lower half) and each officer of the Marine Corps Reserve in an active status in the permanent grade of brigadier general shall, 30 days after he completes 30 years of service computed under subsection (d), or on the fifth anniversary of the date of his appointment to that grade, whichever is later—

[*See main edition for text of (A) and (B)*]

An officer who has been recommended for promotion, and who would otherwise be removed from an active status under this section, shall be retained in that status until he is appointed or refused appointment to the next higher grade.

[*See main edition for text of (2)*]

(3) An officer in the Naval Reserve in an active status serving in the grade of rear admiral (lower half) or rear admiral and an officer in the Marine Corps Reserve in an active status serving in the grade of brigadier general or major general may be considered for early retirement by a continuation board convened under section 6410 of this title.

(g) An officer in an active status in the Naval Reserve in the permanent grade of ensign who is found not qualified for promotion to the grade of lieutenant (junior grade), and an officer in an active status in the Marine Corps Reserve in the permanent grade of second lieutenant who is found not qualified for promotion to the grade of first lieutenant, may (unless he is sooner promoted) be eliminated from an active status.

(As amended Pub. L. 98-525, title V, § 528(c), Oct. 19, 1984, 98 Stat. 2526; Pub. L. 99-145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Subsec. (f)(1), (3). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

1984—Subsec. (g). Pub. L. 98-525 added subsec. (g).

§ 6404. Treatment of fractions of years of service in computing retired pay and separation pay

In determining the total number of years of service to be used as a multiplier in computing retired pay and separation pay on discharge under this chapter, each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, § 923(c)(4), 97 Stat. 643.)

AMENDMENTS

1983—Pub. L. 98-94 substituted "each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded" for "a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

CHAPTER 575—RECALL TO ACTIVE DUTY

Sec.
[6481, 6482. Repealed.]

AMENDMENTS

1984—Pub. L. 98-525, title V, § 533(f)(2), Oct. 19, 1984, 98 Stat. 2528, struck out item 6482 "Retired enlisted members of the Regular Navy and Regular Marine Corps: authority to recall."

[§ 6482. Repealed. Pub. L. 98-525, title V, § 533(f)(1), Oct. 19, 1984, 98 Stat. 2528]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 417, provided that in time of war or national emergency the Secretary of the Navy could order to active duty any retired enlisted member of the Regular Navy or the Regular Marine Corps.

PART III—EDUCATION AND TRAINING

CHAPTER 603—UNITED STATES NAVAL ACADEMY

Sec.
6957. Selection of persons from foreign countries.

AMENDMENTS

1983—Pub. L. 98-94, title X, § 1004(b)(2), Sept. 24, 1983, 97 Stat. 659, substituted "Selection of persons from foreign countries" for "Admission of foreigners for instruction: restrictions, conditions" in item 6957.

§ 6954. Midshipmen: number

(a) There may be at the Naval Academy at any one time midshipmen as follows:

[*See main edition for text of (1) to (7)*]

(8) One nominated by the Administrator of the Panama Canal Commission from the children of civilian personnel of the United States residing in the Republic of Panama who are citizens of the United States.

[*See main edition for text of (9)*]

(10) One from American Samoa, nominated by the Delegate in Congress from American Samoa.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate a principal candidate and nine alternates for each vacancy that is available under this section.

[*See main edition for text of (b) to (f)*]

(As amended Sept. 24, 1983, Pub. L. 98-94, title X, § 1005(a)(2), (b)(2), 97 Stat. 660.)

AMENDMENTS

1983—Subsec. (a)(8). Pub. L. 98-94, § 1005(b)(2), substituted "One nominated by the Administrator of the Panama Canal Commission from the children of civilian personnel of the United States residing in the Republic of Panama who are citizens of the United States" for "One nominated by the Governor of the Panama Canal from the children of civilians residing in the Canal Zone or the children of civilian personnel of the United States Government, or the Panama Canal Company, residing in the Republic of Panama".

Subsec. (a)(10). Pub. L. 98-94, § 1005(a)(2), substituted "One from American Samoa, nominated by the Delegate in Congress from American Samoa" for "One from American Samoa nominated by the Secretary of the Navy upon recommendation of the Governor of American Samoa".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6956, 6957, 6958 of this title.

§ 6957. Selection of persons from foreign countries

(a)(1) The Secretary of the Navy may permit not more than 40 persons at any one time from foreign countries to receive instruction at the Academy. Such persons shall be in addition to the authorized strength of the midshipmen under section 6954 of this title.

(2) The Secretary of the Navy, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country. The Secretary of the Navy may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.

(b)(1) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a midshipman appointed from the United States, and from the same appropriations.

(2) Each foreign country from which a midshipman is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1) unless a written waiver of reimbursement is granted by the Secretary of Defense. The Secretary of the Navy shall prescribe the rates for reimbursement under this paragraph.

(c)(1) Except as the Secretary of the Navy determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a midshipman at the Academy appointed from the United States. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a midshipman at the Academy appointed from the United States.

(2) A person receiving instruction under this section is not entitled to an appointment in an armed force of the United States by reason of graduation from the Academy.

(As amended Sept. 24, 1983, Pub. L. 98-94, title X, § 1004(b)(1), 97 Stat. 658.)

AMENDMENTS

1983—Pub. L. 98-94 substituted "Selection of persons from foreign countries" for "Admission of foreigners for instruction: restrictions; conditions" in section catchline.

Subsec. (a). Pub. L. 98-94 amended subsec. (a) generally. Prior to amendment subsec. (a) read: "No person from a foreign country may be permitted to receive instruction at the Naval Academy except as authorized by this section."

Subsec. (b). Pub. L. 98-94 amended subsec. (b) generally, redesignating former subsec. (c) as par. (1) and in par. (1), as so redesignated, substituted "pay, allowances, and emoluments of a midshipman appointed from the United States, and from the same appropriations" for "same pay and allowances, to be paid from the same appropriations, as midshipmen", and added par. (2). Former subsec. (b), relating to the authority of the Secretary of the Navy to limit the numbers of foreigners studying at the Academy, was struck out.

Subsec. (c). Pub. L. 98-94 amended subsec. (c) generally, designating first sentence of former subsec. (d) as par. (1) and in par. (1), as so designated, substituted "as a midshipman at the Academy appointed from the United States" for "as a midshipman", and added a sentence authorizing the Secretary to prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a midshipman at the Academy appointed from the United States, and designating the second sentence of former subsec. (d) as par. (2) and in par. (2), as so designated, substituted "A person" for "However, a person" and "an armed force of the United States" for "the Navy or the Marine Corps". Former subsec. (c) was redesignated (b)(1).

Subsec. (d). Pub. L. 98-94, as part of the general amendment of this section, omitted subsec. (d) and incorporated its provisions into subsec. (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective one year after Sept. 24, 1983, and applicable to persons entering the Academy after such date, with subsec. (b)(2) of this section, as amended, not to apply to the cost of providing instruction to a person who, before such date, entered the Academy, see section 1004(d) of Pub. L. 98-94, set out as a note under section 4344 of this title.

§ 6959. Midshipmen: agreement for length of service

(a) Each midshipman shall sign an agreement with respect to the midshipman's length of service in the armed forces. The agreement shall provide that the midshipman agrees to the following:

(1) That the midshipman will complete the course of instruction at the Naval Academy.

(2) That upon graduation from the Naval Academy the midshipman—

(A) will accept an appointment, if tendered, as a commissioned officer of the Regular Navy, the Regular Marine Corps, or the Regular Air Force; and

(B) will serve on active duty for at least five years immediately after such appointment.

(3) That if an appointment described in paragraph (2) is not tendered or if the midshipman is permitted to resign as a regular officer before completion of the commissioned service obligation of the midshipman, the midshipman—

(A) will accept an appointment as a commissioned officer in the Naval Reserve or the Marine Corps Reserve or as a Reserve in the Air Force for service in the Air Force Reserve; and

(B) will remain in that reserve component until completion of the commissioned service obligation of the midshipman.

(b)(1) The Secretary of the Navy may transfer to the Naval Reserve or the Marine Corps Reserve, and may order to active duty for such period of time as the Secretary prescribes (but not to exceed four years), a midshipman who breaches an agreement under subsection (a). The period of time for which a midshipman is ordered to active duty under this paragraph may be determined without regard to section 651(a) of this title.

(2) A midshipman who is transferred to the Naval Reserve or Marine Corps Reserve under paragraph (1) shall be transferred in an appropriate enlisted grade or rating, as determined by the Secretary.

(3) For the purposes of paragraph (1), a midshipman shall be considered to have breached an agreement under subsection (a) if the midshipman is separated from the Naval Academy under circumstances which the Secretary determines constitute a breach by the midshipman of the midshipman's agreement to complete the course of instruction at the Naval Academy and accept an appointment as a commissioned officer upon graduation from the Naval Academy.

(c) The Secretary of the Navy shall prescribe regulations to carry out this section. Those regulations shall include—

(1) standards for determining what constitutes, for the purpose of subsection (b), a breach of an agreement under subsection (a);

(2) procedures for determining whether such a breach has occurred; and

(3) standards for determining the period of time for which a person may be ordered to serve on active duty under subsection (b).

(d) In this section, "commissioned service obligation", with respect to an officer who is a graduate of the Academy, means the period beginning on the date of the officer's appointment as a commissioned officer and ending on the sixth anniversary of such appointment or, at the discretion of the Secretary of Defense, any later date up to the eighth anniversary of such appointment.

(e)(1) This section does not apply to a midshipman who is not a citizen or national of the United States.

(2) In the case of a midshipman who is a minor and who has parents or a guardian, the midshipman may sign the agreement required by subsection (a) only with the consent of a parent or guardian.

(As amended Oct. 19, 1984, Pub. L. 98-525, title V, §§ 541(b), 542(c), 98 Stat. 2529; Nov. 8, 1985, Pub. L. 99-145, title V, § 512(b), 99 Stat. 624.)

AMENDMENTS

1985—Pub. L. 99-145 amended section generally. Prior to amendment, section read as follows:

"(a) Each midshipman who is a citizen or national of the United States shall sign an agreement that he will—

"(1) unless sooner separated from the Naval Academy, complete the course of instruction at the Naval Academy;

"(2) accept an appointment and, unless sooner separated from the naval service, serve as a commissioned officer of the Regular Navy, the Regular Marine Corps, or the Regular Air Force for at least five years immediately after graduation; and

"(3) accept an appointment as a commissioned officer in the reserve component of the Navy or the Marine Corps or as a Reserve in the Air Force for service in the Air Force Reserve and, unless sooner separated from the naval service, remain therein until at least the sixth anniversary and, at the direction of the Secretary of Defense, up to the eighth anniversary of his graduation if an appointment in the regular component of that armed force is not tendered to him or if he is permitted to resign as a commissioned officer of that component before that anniversary.

If the midshipman is a minor and has parents or a guardian, he may sign the agreement only with the consent of the parents or guardian.

"(b) A midshipman who does not fulfill his agreement under subsection (a) may be transferred by the Secretary of the Navy to the Naval Reserve or the Marine Corps Reserve in an appropriate enlisted grade or rating, and, notwithstanding section 651 of this title, may be ordered to active duty to serve in that grade or rating for such period of time as the Secretary prescribes but not for more than four years."

1984—Subsec. (a). Pub. L. 98-525, § 541(b), struck out ", unless sooner separated," in introductory text preceding "he will"; inserted in cl. (1) "unless sooner separated from the Naval Academy,"; and inserted ", unless sooner separated from the naval service," in cls. (2) and (3).

Subsec. (a)(3). Pub. L. 98-525, § 542(c), substituted "at least the sixth anniversary and, at the direction of the Secretary of Defense, up to the eighth anniversary" for "the sixth anniversary".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-145 (other than with respect to the authority of the Secretary of the Navy to prescribe regulations) effective on the date on which regulations prescribed by the Secretary take effect and applicable to agreements entered into under this section on or after the effective date of such regulations and also with respect to each such agreement that was entered into before the effective date of such regulations by an individual who is a midshipman on such date, see section 512(e) of Pub. L. 99-145, set out as a note under section 4348 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 541(b) of Pub. L. 98-525 applicable with respect to agreements entered into under this section before, on, or after Oct. 19, 1984, see section 541(d) of Pub. L. 98-525, set out as a note under section 4348 of this title.

REGULATIONS IMPLEMENTING 1985 AMENDMENT

Secretary of the Navy to prescribe regulations required by subsec. (c) of this section as added by Pub. L. 99-145 not later than the end of the 90-day period beginning on Nov. 8, 1985, see section 512(d) of Pub. L. 99-145, set out as a note under section 4348 of this title.

§ 6964. Hazing: definition; prohibition

[See main edition for text of (a) to (d)]

(e) A midshipman who is sentenced to imprisonment for hazing may not be confined with persons who have been convicted of crimes or misdemeanors.

[See main edition for text of (f)]

(As amended Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1301(c)(2), 99 Stat. 736.)

AMENDMENTS

1985—Subsec. (e). Pub. L. 99-145 substituted "persons" for "men".

PART IV—GENERAL ADMINISTRATION

Chap. Sec.
663. Names and Insignia 7881

AMENDMENTS

1984—Pub. L. 98-525, title XV, § 1532(a)(2), Oct. 19, 1984, 98 Stat. 2631, added item for chapter 663.

CHAPTER 631—SECRETARY OF THE NAVY: MISCELLANEOUS POWERS AND DUTIES

Sec.
7204. Schools near naval activities: financial aid.
[7208. Repealed.]

AMENDMENTS

1984—Pub. L. 98-525, title XIV, § 1401(d)(3)(B), (j)(3)(B), Oct. 19, 1984, 98 Stat. 2616, 2620, deleted "; transportation of dependents" at end of item 7204 and struck out item 7208 "Latin American cooperation."

§ 7204. Schools near naval activities: financial aid

(a) The Secretary of the Navy may contribute, out of funds specifically appropriated for the purpose, to the support of schools in any locality where a naval activity is located if he finds that the schools available in the locality are inadequate for the welfare of the dependents of—

(1) members of the naval service;

(2) civilian officers and employees of the Department of the Navy;

(3) members of the Coast Guard when it is operating as a service in the Navy; and

(4) members of the National Oceanic and Atmospheric Administration serving with the Navy;

who are stationed at the activity.

[See main edition for text of (b)]

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1401(j)(3)(A), (B), 98 Stat. 2620; Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1303(a)(23), 99 Stat. 739.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 ran in "contribute, out of" after "Secretary of the Navy may", and realigned margins of cls. (1) to (4) and provision following cl. (4).

1984—Pub. L. 98-525, § 1401(j)(3)(B), struck out "; transportation of dependents" in section catchline.

Subsec. (a). Pub. L. 98-525, § 1401(j)(3)(A), substituted "The Secretary of the Navy may" for "The Secretary of the Navy may—", struck out "(1)" before "contribute out of", thereby eliminating paragraph designation, redesignated cls. (A) to (D) as (1) to (4), respectively, substituted "the activity." for "the activity; and", and struck out par. (2), which provided for transportation between the schools and the activity when the schools are not accessible by regular means of transportation.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as an Effective Date note under section 520b of this title.

[§ 7208. Repealed. Pub. L. 98-525, title XIV, § 1401(d)(3)(A), Oct. 19, 1984, 98 Stat. 2616]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 443, authorized the Secretary of the Navy to pay the travel, subsistence, special compensation, and other expenses of officers and students of Latin American countries that the Secretary considers necessary for Latin American cooperation. See section 1050 of this title.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 1, 1985, see section 1404 of Pub. L. 98-525, set out as an Effective Date note under section 520b of this title.

§ 7214. Apprehension of deserters and prisoners; operation of shore patrols

CROSS REFERENCES

Expenses and rewards for apprehension and delivery of deserters, prisoners, and members absent without leave, see section 956 of this title.

§ 7227. Foreign naval vessels and aircraft: supplies and services

(a) The Secretary of the Navy, under such regulations as he prescribes, may authorize any United States naval vessel or activity to furnish any of the following supplies or services, when in the best interests of the United States, on a reimbursable basis without an advance of funds if similar supplies and services are furnished on a like basis to naval vessels and military aircraft of the United States by the friendly foreign country concerned:

(1) Routine port services in territorial waters of the United States or in waters under United States control, including pilotage, tugs, garbage removal, line-handling, and utilities, to naval vessels of friendly foreign countries.

(2) Routine airport services, including landing and takeoff assistance, use of runways, parking and servicing, to military aircraft of friendly foreign countries.

(3) Miscellaneous supplies, including fuel, provisions, spare parts, and general stores, but not including ammunition, to naval vessels and military aircraft of friendly foreign countries.

(4) Overhauls, repairs, and alterations together with necessary equipment and its installation required in connection therewith, to naval vessels and military aircraft of friendly foreign countries.

(b)(1) Routine port and airport services may be furnished under this section at no cost to the foreign country concerned where such services are provided by United States naval personnel and equipment without direct cost to the Navy.

(2)(A) When furnishing routine port services under this section to naval vessels of an allied country, the Secretary may furnish such services without reimbursement if such services are provided under an agreement that provides for the reciprocal furnishing by such country of routine port services to naval vessels of the United States without reimbursement. If routine port services are furnished under this section by a working-capital fund activity of the Navy established under section 2208 of this title and such activity is not reimbursed directly for the costs incurred by the activity in furnishing those services by reason of this paragraph, the working-capital fund activity shall be reimbursed for such costs out of operating funds currently available to the Navy.

(B) In this paragraph, "allied country" means any of the following:

(i) A country that is a member of the North Atlantic Treaty Organization.

(ii) Australia or New Zealand.

(iii) Any other country designated as an allied country for the purposes of this paragraph by the Secretary of Defense with the concurrence of the Secretary of State.

[*See main edition for text of (c)*]

(As amended Sept. 24, 1983, Pub. L. 98-94, title XII, § 1219(a), 97 Stat. 691; Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(49), 98 Stat. 2625.)

AMENDMENTS

1984—Subsec. (a)(1), (2). Pub. L. 98-525, § 1405(49)(A), (C), in cls. (1) and (2), substituted "Routine" for "routine" and a period for the semicolon at the end.

Subsec. (a)(3). Pub. L. 98-525, § 1405(49)(B), (D), substituted "Miscellaneous" for "miscellaneous" and a period for "; and".

1983—Subsec. (b). Pub. L. 98-94 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1219(b) of Pub. L. 98-94 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1983."

§ 7231. Accounting for expenditures for obtaining information

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7231	31:108.	Aug. 29, 1916, ch. 417 (2d proviso under heading "Pay, Miscellaneous"), 39 Stat. 557.

The words "anywhere in the world" are substituted for "abroad and at home", and the words "decides that an expenditure should not be made public" are substituted for "may think it advisable not to specify", for clarity and consistency.

CHAPTER 633—NAVAL VESSELS

Sec.
7309. Restriction on construction of vessels in foreign shipyards.

AMENDMENTS

1985—Pub. L. 99-145, title XIII, § 1303(a)(24)(B), Nov. 8, 1985, 99 Stat. 740, struck out "naval" before "vessels" in item 7309.

§ 7307. Restriction on disposal

[*See main edition for text of (a)*]

(b)(1) After August 5, 1974, no naval vessel in excess of 3,000 tons or less than 20 years of age may be sold, leased, granted, loaned, bartered, transferred, or otherwise disposed of to another nation unless the disposition thereof has been approved by law enacted after such date, except that any lease or loan of such a vessel under such a law shall be made only in accordance with the provisions of chapter 6 of the Arms Export Control Act (22 U.S.C. 2796 et seq.) or chapter 2 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2311 et seq.).

[*See main edition for text of (2)*]

(As amended Aug. 8, 1985, Pub. L. 99-83, title I, § 122, 99 Stat. 204.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (b)(1), is Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1320, as amended. Chapter 6 of that Act is classified generally to subchapter VI (§ 2796 et seq.) of chapter 39 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

The Foreign Assistance Act of 1961, referred to in subsec. (b)(1), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended. Chapter 2 of part II of that Act is classified generally to part II (§ 2311 et seq.) of subchapter II of chapter 32 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

AMENDMENTS

1985—Subsec. (b)(1). Pub. L. 99-83 added requirement that leases or loans of a vessel be made in accordance with the applicable provisions.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as a note under section 2151-1 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 139b of this title; title 22 section 2793.

§ 7309. Restriction on construction of vessels in foreign shipyards

(a) Except as provided in subsection (b), no naval vessel, and no vessel of any other military department, and no major component of the hull or superstructure of any such vessel, may be constructed in a foreign shipyard.

[*See main edition for text of (b)*]

(As amended Pub. L. 98-473, title I, § 101(h) [title VIII, § 8095], Oct. 12, 1984, 98 Stat. 1904, 1941; Pub. L. 99-145, title XIII, § 1303(a)(24)(A), Nov. 8, 1985, 99 Stat. 740.)

AMENDMENTS

1985—Pub. L. 99-145 struck out "naval" before "vessels" in section catchline.

1984—Subsec. (a). Pub. L. 98-473 inserted "and no vessel of any other military department," and substituted "any such" for "a naval".

CHAPTER 641—NAVAL PETROLEUM RESERVES

§ 7421. Jurisdiction and control

[*See main edition for text of (a)*]

(b) The Secretary has exclusive jurisdiction and control over those lands inside Naval Petroleum Reserves Numbered 1 and 2 that are covered by leases granted under sections 181-184, 185-188, 189-194, 201, 202-209, 211-214, 223, 224-226, 226d, 226e, 227-229a, 241, 251, and 261-263 of title 30, and shall administer those leases.

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(50), 98 Stat. 2625.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-525 substituted "Naval Petroleum Reserves Numbered" for "naval petroleum reserves numbered".

§ 7422. Administration

[*See main edition for text of (a)*]

(b) Except as otherwise provided in this chapter, particularly subsection (c), the naval petroleum reserves shall be used and operated for—

[*See main edition for text of (1) and (2); (c)*]

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(51), 98 Stat. 2625.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-525 struck out "of this section" after "subsection (c)" in provisions preceding par. (1).

§ 7426. Cooperative or unit plans affecting Naval Petroleum Reserve Numbered 1

(a) Subject to the provisions of section 7422(c) of this title, the Secretary may contract for joint, unit, or other cooperative plans of exploration, prospecting, conservation, development, use, and operation of lands owned or controlled by the United States inside Naval Petroleum Reserve Numbered 1 and lands owned or leased by private interests—

[*See main edition for text of (1) and (2); (b) to (e)*]

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(52), 98 Stat. 2625.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-525 inserted in provisions preceding par. (1) "of this title" after "section 7422(c)".

§ 7430. Disposition of products

[*See main edition for text of (a) to (c)*]

(d) Each proposal for sale under this title shall provide that the terms of every sale of the United States share of petroleum from the naval petroleum reserves shall be so structured as to give full and equal opportunity for the acquisition of petroleum by all interested persons, including major and independent oil producers and refiners alike. When the Secretary, in consultation with the Secretary of the Interior, determines that the public interests will be served by the sale of petroleum to small refiners not having their own adequate sources of supply of petroleum, the Secretary is authorized and directed to set aside a portion of the United States share of petroleum produced for sale to such refiners under the provisions of this section for processing or use in such refineries, except that—

[*See main edition for text of (1) to (3)*]

(4) notwithstanding the provisions of subsection (b), the Secretary may, at his discretion if he deems it to be in the public interest, prorate such petroleum among such refiners for sale, without competition, at not less than the prevailing local market price of comparable petroleum.

[*See main edition for text of (e) and (f)*]

(g) [*See main edition for text of (1)*]

(2) No contract or operating agreement may be made, issued, or executed under this chapter until at least 30 days after the Secretary notifies the Attorney General of the proposed contract or operating agreement. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary as to whether such contract or operating agreement may create or maintain a situation inconsistent with the antitrust laws. If, within such 30-day period, the Attorney General advises the Secretary that a contract or operating agreement may create or maintain a situation inconsistent with the antitrust laws, then the Secretary may not make, issue, or execute that contract or operating agreement.

[*See main edition for text of (h) to (k)*]

(l) [*See main edition for text of (1) to (3)*]

(4) Paragraph (1) does not apply to any petroleum set aside for small refiners under subsection (d) or placed in the Strategic Petroleum Reserve under subsection (k).

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(53), 98 Stat. 2625.)

AMENDMENTS

1984—Subsec. (d)(4). Pub. L. 98-525, § 1405(53)(A), struck out "of this section" after "subsection (b)".

Subsec. (g)(2). Pub. L. 98-525, § 1405(53)(B), substituted "30 days" for "thirty days" and "30-day" for "thirty day".

Subsec. (l)(4). Pub. L. 98-525, § 1405(53)(C), struck out "of this section" after "subsection (d)" and "subsection (k)".

§ 7431. Requirements as to consultation and approval

[*See main edition for text of* (a)]

(b)(1) During the period of production authorized by section 7422(c) of this title, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives any new plans or substantial amendments to ongoing plans for the exploration, development, and production of the naval petroleum reserves.

[*See main edition for text of* (2)]

(c) During the period of production authorized by section 7422(c) of this title, the Secretary shall submit annual reports as of the first day of the fiscal year to the Committees on Armed Services of the Senate and the House of Representatives, and such committees shall cause such reports to be printed as a Senate or House document, as appropriate. The Secretary shall include in such reports, with respect to each naval petroleum reserve, an explanation in detail of the following:

(1) The status of the exploration, development, and production programs.

(2) The production that has been achieved, including the disposition of such production and the proceeds realized therefrom.

(3) The status of pipeline construction and procurement and problems related to the availability of transportation facilities.

(4) A summary of future plans for exploration, development, production, disposal, and transportation of the production from the naval petroleum reserves.

(5) Such other information regarding the reserve as the Secretary deems appropriate.

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(52), 98 Stat. 2625; Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1303(a)(25), 99 Stat. 740.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-145 in pars. (1) to (3) substituted "The" for "the" at beginning and periods for the semicolons at end, in par. (4) substituted "A summary" for "a summary" and a period for "; and", and in par. (5) substituted "Such" for "such".

1984—Subsecs. (b)(1), (c). Pub. L. 98-525 inserted "of this title" after "section 7422(c)".

CHAPTER 645—PROCUREMENT OF SUPPLIES AND SERVICES

§ 7522. Contracts for research

[*See main edition for text of* (a)]

(b) Subsections (a) and (b) of section 3324 of title 31 do not apply to advance, progress, or other payments made with respect to a contract under this section.

[*See main edition for text of* (c)]

(As amended Oct. 19, 1984, Pub. L. 98-525, title XIV, § 1405(56)(B), 98 Stat. 2626.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-525 substituted "Subsections (a) and (b) of section 3324 of title 31 do" for "Section 3324(a) and (b) of title 31 does".

CHAPTER 649—QUARTERS, UTILITIES, AND RELATED SERVICES

§ 7572. Quarters: accommodations in place of for members on sea duty

[*See main edition for text of* (a)]

(b)(1) Under such regulations as the Secretary prescribes, a member of a uniformed service on sea duty who is deprived of quarters on board ship because of repairs or because of other conditions that make the member's quarters uninhabitable and for whom it is impracticable to furnish accommodations under subsection (a) may be reimbursed for expenses incurred in obtaining quarters in an amount not more than the total of—

[*See main edition for text of* (A)]

(B) the variable housing allowance that could be paid to a member of the same pay grade under section 403a of title 37 at the location where the member is deprived of quarters on board ship for the period during which the member is deprived of quarters on board ship.

[*See main edition for text of* (2)]

(3) The total amount of reimbursement under this subsection may not exceed $9,000,000 for fiscal year 1981, $6,300,000 for fiscal year 1982, $1,700,000 for fiscal year 1983, $1,300,000 for fiscal year 1984, $1,421,000 for fiscal year 1985, and $1,421,000 for fiscal year 1986.

[*See main edition for text of* (c)]

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, § 912(a), 97 Stat. 640; Oct. 19, 1984, Pub. L. 98-525, title VI, §§ 602(d)(3), 603(a), title XIV, § 1405(54), 98 Stat. 2536, 2537, 2625; Nov. 8, 1985, Pub. L. 99-145, title VI, § 606(a), 99 Stat. 638.)

AMENDMENTS

1985—Subsec. (b)(3). Pub. L. 99-145 added limit of $1,421,000 for fiscal year 1986.

1984—Subsec. (b)(1)(B). Pub. L. 98-525, § 1405(54), substituted "on board" for "onboard".

Pub. L. 98-525, § 602(d)(3), substituted "section 403a" for "section 403".

Subsec. (b)(3). Pub. L. 98-525, § 603(a), added limit of $1,421,000 for fiscal year 1985.

1983—Subsec. (b)(3). Pub. L. 98-94 added limits of $1,700,000, and $1,300,000 for fiscal years 1983 and 1984, respectively.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99-190, § 101(b) [title VIII, § 8102], Dec. 19, 1985, 99 Stat. 1185, 1220, provided that: "The amendments made to section 7572(b)(3) of title 10, United States Code, and to section 3 of Public Law 96-357 (10 U.S.C. 7572 note) by section 606 of the Department of Defense Authorization Act, 1986 [Pub. L. 99-145], shall apply to reimbursement of expenses incurred on or after October 1, 1985, by a member of a uniformed service on sea duty."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 602(d)(3) of Pub. L. 98-525 effective Jan. 1, 1985, with exceptions, see section 602(f) of Pub. L. 98-525, set out as an Effective Date

note under section 403a of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE AND TERMINATION DATE OF 1980 AMENDMENT

Section 3 of Pub. L. 96-357, as amended by Pub. L. 97-60, title II, § 207(a), Oct. 14, 1981, 95 Stat. 1007; Pub. L. 98-94, title IX, § 912(b), Sept. 24, 1983, 97 Stat. 640; Pub. L. 98-525, title VI, § 603(b), Oct. 19, 1984, 98 Stat. 2537; Pub. L. 99-145, title VI, § 606(b), Nov. 8, 1985, 99 Stat. 639, provided in part that the amendment of subsec. (b) of this section by Pub. L. 96-357 shall be effective only for the period beginning Oct. 1, 1980, and ending Sept. 30, 1986.

CHAPTER 651—SHIPS' STORES AND COMMISSARY STORES

Sec.
7601. Sales: members of the naval service and Coast Guard; widows and widowers; civilian employees and other persons.

AMENDMENTS

1985—Pub. L. 99-145, title XIII, § 1301(c)(3)(C), Nov. 8, 1985, 99 Stat. 736, added "the" before "naval service" and "and widowers" after "widows" in item 7601.

§ 7601. Sales: members of the naval service and Coast Guard; widows and widowers; civilian employees and other persons

(a) Such stores as the Secretary of the Navy designates may be procured and sold to members of the naval service, members of the Coast Guard, and widows and widowers of such members.

[See main edition for text of (b)]

(As amended Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1301(c)(3)(A), (B), 99 Stat. 736.)

AMENDMENTS

1985—Pub. L. 99-145, § 1301(c)(3)(B), added "the" before "naval service" and "and widowers" after "widows" in section catchline.

Subsec. (a). Pub. L. 99-145, § 1301(c)(3)(A), added "and widowers" after "widows".

CHAPTER 653—CLAIMS

§ 7622. Admiralty claims against the United States

CROSS REFERENCES

Suits in admiralty—
Against United States for damages caused by or for towage or salvage services, see section 781 et seq. of Title 46, Appendix, Shipping.
By or against vessels or cargoes of United States, see section 741 et seq. of Title 46, Appendix.

§ 7623. Admiralty claims by the United States

CROSS REFERENCES

Suits in admiralty—
Against United States for damages caused by or for towage or salvage services, see section 781 et seq. of Title 46, Appendix, Shipping.
By or against vessels or cargoes of United States, see section 741 et seq. of Title 46, Appendix.

CHAPTER 657—STAY OF JUDICIAL PROCEEDINGS

§ 7721. Scope of chapter

REFERENCES IN TEXT

The Public Vessels Act (46 U.S.C. 781-790), referred to in subsec. (a), is act Mar. 3, 1925, ch. 428, 43 Stat. 1112, as amended, which is classified generally to chapter 22 (§ 781 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see Short Title note set out under section 781 of Title 46, Appendix, and Tables.

CHAPTER 661—ACCOUNTABILITY AND RESPONSIBILITY

§ 7861. Accounts of paymasters of lost or captured naval vessels

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7861	31:44 (1st sentence).	June 10, 1921, ch. 18, § 304 (1st par. 1st sentence), 42 Stat. 24.
	31:104.	R.S. § 284; Feb. 18, 1875, ch. 80, § 1 (4th complete par. on p. 317), 18 Stat. 317.

The word "naval" is substituted for "belonging to the Navy of the United States" to eliminate unnecessary words. The words "Secretary of the Navy" are substituted for "Paymaster General of the Navy" because of section 1 of the Act of March 29, 1894 (ch. 49, 28 Stat. 47), and 10:5061. The words "the account of the paymaster" are substituted for "him" for clarity. The words "such portion of the", "on their books", and "of a public vessel" are omitted as surplus. The words "free of" are substituted for "fully exonerated by such credit from all" to eliminate unnecessary words. The words "so proved to have been captured or lost" are omitted as surplus.

§ 7862. Disbursements by order of commanding officer

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7862	31:44 (1st sentence).	June 10, 1921, ch. 18, § 304 (1st par. 1st sentence), 42 Stat. 24.
	31:106.	R.S. § 285.

The words "disbursing official" are substituted for "disbursing officer" for consistency with other titles of the United States Code. The words "Comptroller General" are substituted for "General Accounting Office" for consistency. The words "of the Navy" are omitted because of the restatement. The words "when presented with" are substituted for "upon" for clarity. The words "by whose order such disbursement or disposal was made" are omitted as surplus.

CHAPTER 663—NAMES AND INSIGNIA

Sec.
7881. Unauthorized use of Marine Corps insignia.

§ 7881. Unauthorized use of Marine Corps insignia

(a) The seal, emblem, and initials of the United States Marine Corps shall be deemed to be insignia of the United States.

(b) No person may, except with the written permission of the Secretary of the Navy, use or imitate the seal, emblem, name, or initials of the United States Marine Corps in connection with any promotion, goods, services, or commercial activity in a manner reasonably tending to suggest that such use is approved, endorsed,

or authorized by the Marine Corps or any other component of the Department of Defense.

(c) Whenever it appears to the Attorney General of the United States that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (b), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court may, at any time before final determination, enter such restraining orders or prohibitions, or take such other action as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.

(Added Pub. L. 98-525, title XV, § 1532(a)(1), Oct. 19, 1984, 98 Stat. 2631.)

SAVINGS PROVISION

Section 1532(b) of Pub. L. 98-525 provided that: "The amendments made by subsection (a) [enacting this chapter] shall not affect rights that vested before the date of the enactment of this Act [Oct. 19, 1984]."

Subtitle D—Air Force

PART I—ORGANIZATION

CHAPTER 803—DEPARTMENT OF THE AIR FORCE

§ 8013. Under Secretary of the Air Force; Assistant Secretaries of the Air Force

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 8017. Secretary of the Air Force: successors to duties

ORDER OF SUCCESSION

For order of succession in event of death, disability, or absence of the Secretary, see Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, set out as a note under section 3347 of Title 5, Government Organization and Employees.

CHAPTER 805—THE AIR STAFF

§ 8031. Composition: assignment and detail of members of Air Force and civilians

[*See main edition for text of* (a) *to* (c)]

[(d) Repealed. Pub. L. 98-525, title V, § 515, Oct. 19, 1984, 98 Stat. 2522.]

(As amended Oct. 19, 1984, Pub. L. 98-525, title V, § 515, 98 Stat. 2522.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-525 struck out subsec. (d) which had provided that no commissioned officer who was assigned or detailed to duty in the executive part of the Department of the Air Force could serve for a tour of duty of more than four years, but that the Secretary could extend such a tour of duty if he made a special finding that the extension was necessary in the public interest, that no officer could be assigned or detailed to duty in the executive part of the Department of the Air Force within two years after relief from that duty, except upon a special finding by the Secretary that the assignment or detail was necessary in the public interest, and that the subsection did not apply in time of war, or of national emergency declared by Congress.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 515 of Pub. L. 98-525 provided in part that the repeal of subsec. (d) of this section is effective Oct. 1, 1984.

PART II—PERSONNEL

CHAPTER 831—STRENGTH

Sec.
8202. Air Force: strength in grade; general officers.

AMENDMENTS

1985—Pub. L. 99-145, title XIII, § 1303(a)(26), Nov. 8, 1985, 99 Stat. 740, added "; general officers" after "grade" in item 8202.

CHAPTER 833—ENLISTMENTS

§ 8251. Definition

WOMEN IN ARMED FORCES

Pub. L. 98-525, title V, § 551(a), Oct. 19, 1984, 98 Stat. 2530, provided that: "The Secretary of the Air Force shall provide that of all persons originally enlisting in the Regular Air Force during the period beginning on October 1, 1986, and ending on September 30, 1988—

"(1) not less than 19 percent of those enlisting during fiscal year 1987 shall be women; and

"(2) not less than 22 percent of those enlisting during fiscal year 1988 shall be women."

CHAPTER 837—APPOINTMENTS AS RESERVE OFFICERS

Sec.
8380. Commissioned officers: promotion of reserve commissioned officers on active duty and not on the active duty list.

AMENDMENTS

1983—Pub. L. 98-94, title X, § 1015(b)(2), Sept. 24, 1983, 97 Stat. 668, substituted "promotion of reserve commissioned officers on active duty and not on the active duty list" for "status while serving on active duty after promotion" in item 8380.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 133, 1005, 1006, 1007 of this title.

§ 8353. Commissioned officers: service credit upon original appointment

(a)(1) For the purpose of this chapter and chapter 863 of this title and under regulations prescribed by the Secretary of Defense, a person receiving an original appointment as a reserve commissioned officer in the Air Force, or receiving a designation in or assignment to an officer category in which advanced education or training or special experience is required or will be directly used, shall be credited at the time of such appointment, designation, or assignment with any service as a commissioned officer, except service as a commissioned warrant officer, that he performed as a regular officer on active duty or as a reserve officer in an active status in any armed force, the Nation-

al Oceanic and Atmospheric Administration, or the Public Health Service before such appointment, designation, or assignment.

[*See main edition for text of (2); (b) to (d)*]

(As amended Pub. L. 98-94, title X, § 1007(c)(5), Sept. 24, 1983, 97 Stat. 662.)

AMENDMENTS

1983—Pub. L. 98-94 substituted "this chapter and chapter 863" for "chapters 837 or 863" and inserted ", the National Oceanic and Atmospheric Administration, or the Public Health Service".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 689, 8358, 8359, 8366, 8396 of this title.

§ 8359. Commissioned officers: original appointment; determination of grade

(a) Except as provided in subsections (b) and (c), the commissioned grade in which a person credited with service under section 8353 of this title is originally appointed as a reserve officer of the Air Force with a designation as a medical officer (based on the service credited under that section) shall be determined as follows:

(1) For persons with less than three years of service—second lieutenant.

(2) For persons with at least three, but less than seven, years of service—first lieutenant.

(3) For persons with at least seven, but less than 14, years of service—captain.

(4) For persons with at least 14, but less than 21, years of service—major.

(5) For persons with at least 21 years of service—lieutenant colonel.

(6) For persons with at least 23 years of service—lieutenant colonel or under regulations prescribed by the Secretary of the Air Force—colonel.

(b) In the case of a person who is originally appointed as a reserve officer of the Air Force with a designation as a medical officer during the period beginning on October 1, 1983, and ending on September 30, 1987, and who is credited with service under section 8353 of this title, the commissioned grade in which that person is appointed (based on the service credited under that section) shall be determined as follows:

(1) For persons with at least four, but less than 14, years of service—captain.

(2) For persons with at least 14, but less than 21, years of service—major.

(3) For persons with at least 21 years of service—lieutenant colonel.

(4) For persons with at least 23 years of service—lieutenant colonel or colonel, as the Secretary of the Air Force determines.

(c) Under regulations prescribed by the Secretary concerned, a person who is originally appointed as a reserve officer of the Air Force and who is a former commissioned officer may be appointed in the reserve grade equivalent to the grade held by that person when discharged or separated and may be credited with time in that grade for promotion purposes equal to the time in grade held by that person when discharged or separated.

(As amended Pub. L. 98-94, title X, § 1014(b), Sept. 24, 1983, 97 Stat. 666; Pub. L. 98-525, title V, § 521(b), Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99-145, title V, § 521(a), Nov. 8, 1985, 99 Stat. 631.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 substituted "September 30, 1987" for "September 30, 1985".

1984—Subsec. (a). Pub. L. 98-525, § 521(b)(1), substituted "subsections (b) and (c)" for "subsection (b)".

Subsec. (c). Pub. L. 98-525, § 521(b)(2), added subsec. (c).

1983—Pub. L. 98-94 designated existing provisions as subsec. (a) and in provisions preceding par. (1) of subsec. (a) substituted, "Except as provided in subsection (b), the commissioned grade in which a person credited with service under section 8353 of this title is originally appointed as a reserve officer of the Air Force with a designation as a medical officer (based on the service credited under that section) shall be determined as follows" for "Based on the service credited under section 8353 of this title, the commissioned grade in which a person credited with service under that section is originally appointed as a reserve officer of the Air Force is", and added subsec. (b).

AIR FORCE RESERVE OFFICERS ORIGINALLY APPOINTED AFTER SEPTEMBER 14, 1981; APPOINTMENT IN RESERVE GRADE EQUIVALENT TO FORMER GRADE

For provisions that, under regulations prescribed by the Secretary of the military department concerned, a reserve officer of the Air Force originally appointed after Sept. 14, 1981, who at the time of that appointment was a former commissioned officer and who was appointed in a reserve grade lower than the grade held by that person when discharged may be appointed in the reserve grade equivalent to the officer's former grade, and that an original reserve appointment in the Air Force of a person who (at the time of the appointment) was a former commissioned officer which (A) was made during the period beginning on Sept. 15, 1981, and ending on Oct. 18, 1984, and (B) was made in a grade formerly held by that person was to be considered to have been a valid appointment at the time made, and any officer who received such an appointment to be entitled to all the rights, privileges, and benefits of the grade to which appointed as of the original date of that appointment, see section 521(c) of Pub. L. 98-525, set out as a note under section 3359 of this title.

§ 8380. Commissioned officers: promotion of reserve commissioned officers on active duty and not on the active duty list

(a) Notwithstanding any other provision of law, a reserve commissioned officer on active duty for duty described in clause (1)(B), (1)(C), or (7) of section 523(b) of this title who is recommended by a selection board for promotion to, or found qualified for Federal recognition in, a higher reserve grade may, in accordance with regulations prescribed by the Secretary of Defense and subject to the limitations of section 524 of this title, be promoted to or extended Federal recognition in such higher reserve grade and may continue to serve on active duty, or be ordered to serve on active duty, in such higher reserve grade.

(b) Notwithstanding any other provision of law, the service in grade for promotion purposes only of any reserve commissioned officer who is promoted to or extended Federal recognition in a higher reserve grade but whose promotion to or recognition in such higher reserve grade was delayed solely because of limitations

imposed in accordance with regulations prescribed by the Secretary of Defense under subsection (a) or contained in section 524 of this title, is the date such officer would have been promoted to or recognized in such higher reserve grade if the limitations did not exist. In computing service in grade for the purposes of determining the date for discharge or transfer to the Retired Reserve under chapter 863 of this title, the date the officer would have been promoted to or recognized in such higher grade had the limitations not existed shall be considered the date of promotion to or recognition in such higher grade.

(c) Regulations prescribed by the Secretary of Defense under subsection (a) shall prohibit the promotion of an officer under the authority of that subsection unless the duty assignment of the officer requires a higher grade than the grade currently held by the officer.

(d) The authority to promote officers under this section shall expire on September 30, 1987.

(As amended Pub. L. 98-94, title X, § 1015(b)(1), Sept. 24, 1983, 97 Stat. 667; Pub. L. 99-145, title V, § 521(b), Nov. 8, 1985, 99 Stat. 631.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-145 substituted "September 30, 1987" for "September 30, 1985".

1983—Pub. L. 98-94 amended section generally substituting "promotion of reserve commissioned officers on active duty and not on the active duty list" for "status while serving on active duty after promotion" in section catchline and substituting new text for prior text that read:

"(a) A reserve commissioned officer on active duty (other than for training) who is promoted to a reserve grade that is higher than the grade in which he is serving may not serve on active duty in the reserve grade to which he is promoted and is not entitled to the rank, pay, or allowances of that higher grade unless he is ordered to serve on active duty in that higher grade or is temporarily promoted to that higher grade.

"(b) A reserve commissioned officer on active duty (other than for training) who is promoted to a reserve grade that is higher than the grade in which he is serving continues to serve on active duty in the grade in which he was serving immediately before that promotion, and he may be appointed in a temporary grade that is equal to the grade in which he was so serving before that promotion. Unless he expressly declines it, an officer who is appointed in a temporary grade under this subsection is considered to have accepted the appointment on the date of the orders announcing it, and he need not take a new oath of office upon being so appointed. However, he may decline the temporary appointment within six months after the date of the orders announcing it. If he has completed the period of active duty (other than for training) that he is required by law or regulation to perform as a member of a reserve component and declines the temporary appointment, he shall be released from active duty. If he has not completed that period of active duty, he shall be retained on active duty in the grade in which he was serving before the promotion and may not be released from active duty on his application until he completes the period of active duty he is so required by law or regulation to perform."

CHAPTER 841—ACTIVE DUTY

§ 8496. Air National Guard of United States: commissioned officers; duty in National Guard Bureau

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 641, 8541 of this title; title 32 section 107; title 37 section 204.

CHAPTER 853—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
[8681 to 8683. Repealed.]

AMENDMENTS

1985—Pub. L. 99-145, title XIII, § 1301(d)(1)(B), Nov. 8, 1985, 99 Stat. 736, struck out item 8683 "Service credit: certain service as a nurse, woman medical specialist, or civilian employee of Army Medical Department to be counted".

[§ 8683. Repealed. Pub. L. 99-145, title XIII, § 1301(d)(1)(A), Nov. 8, 1985, 99 Stat. 736]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 535; Sept. 2, 1958, Pub. L. 85-861, § 1(156), 72 Stat. 1513; Aug. 25, 1959, Pub. L. 86-197, § 1(7), 73 Stat. 426, related to service credit for certain service as a nurse, woman medical specialist, or civilian employee of Army Medical Department.

PERSON PERFORMING ACTIVE SERVICE ON DAY BEFORE REPEAL OF SECTION

Section 1301(d)(1)(C) of Pub. L. 99-145 provided that: "The repeal made by subparagraph (A) [repealing this section] shall not apply in the case of a person who performed active service described in section 8683 of title 10, United States Code, as such section was in effect on the day before the date of the enactment of this Act [Nov. 8, 1985]."

§ 8686. Members of Air National Guard of United States: credit for service as members of Air National Guard

For the purposes of laws providing benefits for members of the Air National Guard of the United States and their dependents and beneficiaries—

[*See main edition for text of (1)*]

(2) full-time National Guard duty performed by a member of the Air National Guard of the United States shall be deemed to be active duty in Federal service as a Reserve of the Air Force, except that for purposes of title 38 such duty shall be considered to be active duty for training; and

[*See main edition for text of (3)*]

(As amended Oct. 19, 1984, Pub. L. 98-525, title IV, § 414(a)(7)(B), 98 Stat. 2519.)

AMENDMENTS

1984—Cl. (2). Pub. L. 98-525 substituted "full-time National Guard duty performed by a member of the Air National Guard of the United States shall be deemed to be active duty in Federal service as a Reserve of the Air Force, except that for purposes of title 38 such duty shall be considered to be active duty for training" for "full-time training or other full-time duty performed by a member of the Air National Guard of the United States in his status as a member of the Air National Guard under sections 316 and 502

through 505 of title 32 for which he is entitled to pay from the United States, or for which he has waived such pay, shall be considered active duty for training in Federal service as a Reserve of the Air Force".

CHAPTER 857—DECORATIONS AND AWARDS

§ 8748. Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations

[See main edition for text]

(Aug. 10, 1956, ch. 1041, 70A Stat. 541; July 6, 1960, Pub. L. 86-593, § 1(5), 74 Stat. 332.)

CODIFICATION

Credits are set out in this supplement to correct a typographical error appearing in the main edition.

§ 8750. Airman's Medal: award; limitations

[See main edition for text]

(Aug. 10, 1956, ch. 1041, 70A Stat. 542; July 6, 1960, Pub. L. 86-593, § 1(6), 87 Stat. 332.)

CODIFICATION

Credits are set out in this supplement to correct a typographical error appearing in the main edition.

CHAPTER 861—SEPARATION FOR VARIOUS REASONS

§ 8819. Reserve officers: discharge for failure of promotion to first lieutenant

[See main edition for text of (a) and (b)]

(c) Except as provided by section 1006 of this title, each second lieutenant of the Air Force Reserve who is on the active-duty list of the Air Force and is found not qualified for promotion to the reserve grade of first lieutenant shall be discharged from his reserve appointment not later than the end of the 18-month period beginning on the date on which he is first found not qualified for promotion to that grade, unless he is promoted to that grade before the end of that period.

(As amended Pub. L. 98-525, title V, § 528(d), Oct. 19, 1984, 98 Stat. 2526.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-525 added subsec. (c).

CHAPTER 863—SEPARATION OR TRANSFER TO RETIRED RESERVE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 133, 1005, 1006, 1007, 8353, 8380 of this title.

§ 8848. Twenty-eight years: reserve first lieutenants, captains, majors, and lieutenant colonels

(a) Each officer in an active status in the reserve grade of first lieutenant, captain, or major, and each officer in an active status in the reserve grade of lieutenant colonel who is not on a recommended list for promotion to the reserve grade of colonel, shall, 30 days after he completes 28 years of service computed under section 8853 of this title—

[See main edition for text of (1) and (2); (b)]

(c) Notwithstanding subsections (a) and (b), the Secretary of the Air Force may authorize the retention in an active status until age 60 of an officer who would otherwise be removed from an active status under this section who—

(1) is employed as a technician under section 709 of title 32 in a position for which membership in the National Guard is required as a condition of employment; or

(2) is employed as a technician of the Air Force Reserve in a position for which membership in the Air Force Reserve is required as a condition of employment.

(As amended Pub. L. 99-145, title V, § 522(b)(1), title XIII, § 1303(a)(27)(A), Nov. 8, 1985, 99 Stat. 632, 740.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145, § 1303(a)(27)(A), substituted "Each" for "After June 30, 1960, each".

Subsec. (c). Pub. L. 99-145, § 522(b)(1), amended subsec. (c) generally, thereby expanding coverage to include reserve officers who are employed as civilian technicians in the Air Force Reserve in positions that require membership in the Air Force Reserve.

§ 8851. Thirty years or five years in grade: reserve colonels and brigadier generals

(a) Except for the adjutant general or assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia each officer in an active status in the reserve grade of lieutenant colonel whose name is on a recommended list for promotion to the reserve grade of colonel, each officer in an active status in the reserve grade of colonel whose name is not on a recommended list for promotion to the reserve grade of brigadier general, and each officer in an active status in the reserve grade of brigadier general whose name is not on a recommended list for promotion to the reserve grade of major general, shall, 30 days after he completes 30 years of service computed under section 8853 of this title or on the fifth anniversary of the date of his appointment in the grade in which he is serving, whichever is later—

[See main edition for text of (1) and (2); (b)]

(c) Notwithstanding subsections (a) and (b), the Secretary of the Air Force may authorize the retention in an active status until age 60 of an officer who would otherwise be removed from an active status under this section who—

(1) is employed as a technician under section 709 of title 32 in a position for which membership in the National Guard is required as a condition of employment; or

(2) is employed as a technician of the Air Force Reserve in a position for which membership in the Air Force Reserve is required as a condition of employment.

(As amended Pub. L. 98-525, title XIV, § 1405(55), Oct. 19, 1984, 98 Stat. 2626; Pub. L. 99-145, title V, § 522(b)(2), title XIII, § 1303(a)(27)(B), Nov. 8, 1985, 99 Stat. 632, 740.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145, § 1303(a)(27)(B), substituted "Except" for "After June 30, 1960, except".

Subsec. (c). Pub. L. 99-145, § 522(b)(2), amended subsec. (c) generally, thereby expanding coverage to include reserve officers who are employed as civilian technicians in the Air Force Reserve in positions that require membership in the Air Force Reserve.

1984—Subsec. (c). Pub. L. 98-525 struck out "of this section" after "subsections (a) and (b)".

§ 8852. Thirty-five years or five years in grade: reserve major generals

(a) Except for the adjutant general or assistant adjutant general of a State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia each officer in an active status in the reserve grade of major general, and each officer in an active status in the reserve grade of brigadier general who is on a recommended list for promotion to the reserve grade of major general, shall, 30 days after he completes 35 years of service computed under section 8853 of this title or on the fifth anniversary of the date of his appointment in the grade in which he is serving, whichever is later—

[*See main edition for text of (1) and (2); (b)*]

(As amended Pub. L. 99-145, title XIII, § 1303(a)(27)(B), Nov. 8, 1985, 99 Stat. 740.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 substituted "Except" for "After June 30, 1960, except".

§ 8853. Computation of years of service

For the purpose of determining whether a reserve commissioned officer may be transferred to the Retired Reserve, or discharged, under this chapter, his years of service are computed by adding—

(1) all service as a commissioned officer of any armed force; and

(2) all service before June 15, 1933, as a commissioned officer in the federally recognized National Guard or in a federally recognized commissioned status in the National Guard, and in the National Guard after June 14, 1933, if his service therein was continuous from the date of his Federal recognition as an officer therein to the date of his appointment in the National Guard of the United States.

No service may be counted more than once.

(As amended Pub. L. 98-94, title X, § 1016(c), Sept. 24, 1983, 97 Stat. 668.)

AMENDMENTS

1983—Pub. L. 98-94 temporarily inserted "and" at the end of cl. (1), substituted a period for "; and" at the end of cl. (2), and struck out cl. (3) which read: "all service credited to him under section 8353 of this title.". See Effective and Termination Dates of 1983 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective for the period beginning Oct. 1, 1983, and ending Sept. 30, 1987, see section 1016(d) of Pub. L. 98-94, as amended, set out as a note under section 3360 of this title.

CHAPTER 867—RETIREMENT FOR LENGTH OF SERVICE

§ 8925. Computation of years of service: voluntary retirement; enlisted members

REFERENCES IN TEXT

Section 8683 of this title, referred to in subsec. (a), was repealed (subject to a savings clause) by Pub. L. 99-145, title XIII, § 1301(d)(1)(A), (C), Nov. 8, 1985, 99 Stat. 736.

§ 8926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers

REFERENCES IN TEXT

Section 8683 of this title, referred to in subsecs. (a)(3), (d), was repealed (subject to a savings clause) by Pub. L. 99-145, title XIII, § 1301(d)(1)(A), (C), Nov. 8, 1985, 99 Stat. 736.

CHAPTER 869—RETIRED GRADE

Sec.

[8963. Repealed.]

AMENDMENTS

1985—Pub. L. 99-145, title XIII, § 1301(d)(2)(B), Nov. 8, 1985, 99 Stat. 736, struck out item 8963 "Higher grade for service during certain periods: regular and reserve commissioned officers".

[§ 8963. Repealed. Pub. L. 99-145, title XIII, § 1301(d)(2)(A), Nov. 8, 1985, 99 Stat. 736]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 555; Sept. 2, 1958, Pub. L. 85-861, § 1(156), (198), 72 Stat. 1513, 1541; Dec. 12, 1980, Pub. L. 96-513, title V, § 504(21), 94 Stat. 2917, related to higher grade for service during certain periods for regular and reserve commissioned officers.

AIR FORCE NURSE OR MEDICAL SPECIALIST ON DAY BEFORE REPEAL OF SECTION

Section 1301(d)(2)(C) of Pub. L. 99-145 provided that: "The repeal made by subparagraph (A) [repealing this section] shall not apply in the case of an Air Force nurse or medical specialist described in section 8963 of title 10, United States Code, as such section was in effect on the day before the date of the enactment of this Act [Nov. 8, 1985]."

§ 8964. Higher grade after 30 years of service: Air Force warrant officers; regular enlisted members

Each warrant officer of the Air Force, and each enlisted member of the Regular Air Force, who is retired before or after this title is enacted is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the grade that is equal to the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the Air Force.

(As amended Oct. 19, 1984, Pub. L. 98-525, title V, § 533(c), 98 Stat. 2528.)

AMENDMENTS

1984—Pub. L. 98-525 substituted "highest grade" for "highest temporary grade".

CHAPTER 871—COMPUTATION OF RETIRED PAY

§ 8991. Computation of retired pay

The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed "For sections", retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or the table in section 1401 of this title, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title.

Formula	For sections	Column 1 For a person who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) after September 7, 1980, take the monthly retired pay base as computed under section 1407(e). For all others, take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
A	8911 8918 8920 8924	Monthly basic pay[2] of member's retired grade.[1]	2½% of years of service credited to him under section 1405 of this title.[3]		Excess over 75% of pay upon which computation is based.
B	8914	Monthly basic pay[2] to which member was entitled on day before he retired.	2½% of years of service credited to him under section 8925.[4]	10% of product of columns 1 and 2 for extraordinary heroism in line of duty.[5]	Excess over 75% of pay upon which computation is based.
C	8917	Monthly basic pay[2] to which member was entitled on day before he retired.	2½% of years of service credited to him under section 8925.[4]		Excess over 75% of pay upon which computation is based.

[1] For the purposes of this section, determine member's retired grade as if section 8962(b) did not apply and, for an officer who has served as Chief of Staff, compute at the highest rates of basic pay applicable to him while he served in that office.
[2] Compute at rates applicable on date of retirement, or if the member has served as chief master sergeant of the Air Force, compute at the highest basic pay applicable to him while he so served, if such basic pay is greater.
[3] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.
[4] The Secretary of the Air Force's determination as to extraordinary heroism is conclusive for all purposes.

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, §§ 922(a)(12), 923(a)(1), (2)(H), 97 Stat. 642, 643.)

AMENDMENTS

1983—Pub. L. 98-94, § 923(a)(1), (2)(H), in footnote 4 to the table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

Pub. L. 98-94, § 922(a)(12), inserted "The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98-94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

§ 8992. Recomputation of retired pay to reflect advancement on retired list

An enlisted member of the Air Force who is advanced on the retired list under section 8964 of this title is entitled to recompute his retired pay under formula A of the following table, and a warrant officer of the Air Force so advanced is entitled to recompute his retired pay under formula B of that table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

Formula	Column 1 For a person who first became a member of uniformed service (as defined in section 1407(a)(2) of this title) after September 7, 1980, take the monthly retired pay base as computed under section 1407(c). For all others, take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
A	Monthly basic pay or base and longevity pay, as the case may be,[1] of grade to which member is advanced on retired list.	2½% of years of service credited to him under section 8925 of this title.[2]		Excess over 75% of pay upon which computation is based.
B	Monthly basic pay or base and longevity pay, as the case may be,[1] of grade to which member is advanced on retired list.	2½% of years of service credited to him under section 1405 of this title.[2]		Excess over 75% of pay upon which computation is based.

[1] Compute at rate applicable on date of retirement.
[2] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, §§ 922(a)(13), 923(a)(1), (2)(I), 97 Stat. 642, 643.)

AMENDMENTS

1983—Pub. L. 98-94, § 923(a)(1), (2)(I), in footnote 2 to the table, substituted "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month" for "Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months".

Pub. L. 98-94, § 922(a)(13), inserted "The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98-94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

CHAPTER 873—CIVILIAN EMPLOYEES

Sec.
[9021 to 9023. Repealed.]

AMENDMENTS

1983—Pub. L. 98-94, title IX, § 932(c)(2), Sept. 24, 1983, 97 Stat. 650, struck out item 9022 "Contract surgeons".

[§ 9022. Repealed. Pub. L. 98-94, title IX, § 932(c)(1), Sept. 24, 1983, 97 Stat. 650]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 558, authorized the Secretary of the Air Force to employ contract surgeons in an emergency. See section 1091 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1983, but with contracts entered into under the authority of this section before Oct. 1, 1983, which are in effect on Oct. 1, 1983, to remain in effect in accordance with the terms of such contracts, see section 932(f) of Pub. L. 98-94, set out as an Effective Date note under section 1091 of this title.

PART III—TRAINING

CHAPTER 901—TRAINING GENERALLY

Sec.
9314. United States Air Force Institute of Technology.

AMENDMENTS

1985—Pub. L. 99-145, title V, § 504(a)(2)(B), Nov. 8, 1985, 99 Stat. 622, struck out ": degrees" after "Technology" in item 9314.

§ 9314. United States Air Force Institute of Technology

(a) When the United States Air Force Institute of Technology is accredited by a nationally recognized accreditation association or authority, the Commander of the Air University may, under such regulations as the Secretary of the Air Force may prescribe, confer appropriate degrees upon persons who meet the requirements for those degrees in the Resident College of that Institute.

(b)(1) The Secretary of the Air Force may employ as many civilian faculty members at the United States Air Force Institute of Technology as is consistent with the needs of the Air Force and with Department of Defense personnel limits.

(2) The Secretary shall prescribe regulations determining—

(A) titles and duties of civilian members of the faculty; and

(B) rates of basic pay of civilian members of the faculty, notwithstanding chapter 53 of title 5, but subject to the limitation set out in section 5308 of title 5.

(As amended Nov. 8, 1985, Pub. L. 99-145, title V, § 504(a)(1), (2)(A), 99 Stat. 622.)

AMENDMENTS

1985—Pub. L. 99-145, § 504(a)(2)(A), struck ": degrees" after "Technology" in section catchline.

Subsecs. (a), (b). Pub. L. 99-145, § 504(a)(1), designated existing provisions as subsec. (a) and added subsec. (b).

CIVILIAN MEMBERS OF FACULTY OF AIR FORCE INSTITUTE OF TECHNOLOGY ON NOVEMBER 8, 1985

Subsec. (b)(2) of this section not applicable to persons who, on Nov. 8, 1985, were civilian members of the faculty of the Air Foce Institute of Technology, were being paid a rate of basic pay under the General

Schedule, and elected under procedures prescribed by the Secretary of the Air Force to continue to be paid under the General Schedule, see section 504(c) of Pub. L. 99-145, set out as a note under section 5102 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

CHAPTER 903—UNITED STATES AIR FORCE ACADEMY

Sec.
9344. Selection of persons from foreign countries.
[9345. Repealed.]

AMENDMENTS

1983—Pub. L. 98-94, title X, § 1004(c)(3), Sept. 24, 1983, 97 Stat. 660, substituted "Selection of persons from foreign countries" for "Selection of persons from Canada and American Republics" in item 9344, and struck out item 9345 "Selection of Filipinos".

§ 9336. Permanent professors; registrar

(a) A permanent professor of the Academy, other than the Dean of the Faculty, who is the head of a department of instruction, or who has served as such a professor for more than six years, has the grade of colonel. However, a permanent professor appointed from the Regular Air Force has the grade of colonel after the date when he completes six years of service as a professor, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier. All other permanent professors have the grade of lieutenant colonel.

(b) A person appointed as registrar of the Academy has the regular grade of lieutenant colonel, and, after he has served six years as registrar, has the regular grade of colonel. However, a person appointed from the Regular Air Force has the regular grade of colonel after the date when he completes six years of service as registrar, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier.

(As amended Oct. 19, 1984, Pub. L. 98-525, title V, § 533(d)(2), 98 Stat. 2528.)

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98-525 substituted "on which he would have been promoted had he been selected for promotion from among officers in the promotion zone," for "when a regular officer, junior to him on the promotion list or active-duty list on which his name was carried before his appointment as a professor, is promoted to the regular grade of colonel,".

§ 9342. Cadets: appointment; numbers, territorial distribution

(a) The authorized strength of Air Force Cadets of the Academy is as follows:

[*See main edition for text of (1) to (7)*]

(8) One cadet nominated by the Administrator of the Panama Canal Commission from the children of civilian personnel of the United States Government residing in the Republic of Panama who are citizens of the United States.

[*See main edition for text of (9)*]

(10) One cadet from American Samoa, nominated by the Delegate in Congress from American Samoa.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate a principal candidate and nine alternates for each vacancy that is available to him under this section.

[*See main edition for text of (b) to (h)*]

(As amended Sept. 24, 1983, Pub. L. 98-94, title X, § 1005(a)(3), (b)(3), 97 Stat. 660, 661.)

AMENDMENTS

1983—Subsec. (a)(8). Pub. L. 98-94, § 1005(b)(3), substituted: "One cadet nominated by the Administrator of the Panama Canal Commission from the children of civilian personnel of the United States Government residing in the Republic of Panama who are citizens of the United States" for "One cadet nominated by the Governor of the Panama Canal from the children of civilians residing in the Canal Zone or the children of civilian personnel of the United States Government, or the Panama Canal Company, residing in the Republic of Panama".

Subsec. (a)(10). Pub. L. 98-94, § 1005(a)(3), substituted "One cadet from American Samoa, nominated by the Delegate in Congress from American Samoa" for "One cadet from American Samoa nominated by the Secretary of the Air Force upon recommendation of the Governor of American Samoa".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9343, 9344 of this title.

§ 9344. Selection of persons from foreign countries

(a)(1) The Secretary of the Air Force may permit not more than 40 persons at any one time from foreign countries to receive instruction at the Academy. Such persons shall be in addition to the authorized strength of the Air Force Cadets of the Academy under section 9342 of this title.

(2) The Secretary of the Air Force, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country. The Secretary of the Air Force may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.

(b)(1) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a cadet appointed from the United States, and from the same appropriations.

(2) Each foreign country from which a cadet is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1) unless a written waiver of reimbursement is granted by the Secretary of Defense. The Sec-

retary of the Air Force shall prescribe the rates for reimbursement under this paragraph.

(c)(1) Except as the Secretary of the Air Force determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a cadet at the Academy appointed from the United States. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a cadet at the Academy appointed from the United States.

(2) A person receiving instruction under this section is not entitled to an appointment in an armed force of the United States by reason of graduation from the Academy.

(d) A person receiving instruction under this section is not subject to section 9346(d) of this title.

(As amended Sept. 24, 1983, Pub. L. 98-94, title X, § 1004(c)(1), 97 Stat. 659.)

AMENDMENTS

1983—Pub. L. 98-94 substituted "foreign countries" for "Canada and American Republics" in section catchline.

Subsec. (a). Pub. L. 98-94 amended subsec. (a) generally, substituting "The Secretary of the Air Force may permit not more than 40 persons at any one time from foreign countries to receive instruction at the Academy" and "Such persons shall be in addition to the authorized strength of the Air Force Cadets of the Academy under section 9342 of this title" for "Upon designation by the President, the Secretary of the Air Force may permit not more than 20 persons at any one time from Canada and the American Republics, other than the United States, to receive instruction at the Academy" and "However, not more than three persons from any one of those republics or from Canada may receive instruction under this section at any one time" as the first two sentences of subsec. (a) and designating those sentences as par. (1), and adding par. (2).

Subsec. (b). Pub. L. 98-94 amended subsec. (b) generally, designating the existing provisions as par. (1) and in par. (1), as so designated, striking out provisions that had directed that the mileage allowance payable to persons for travel to the Academy for initial admission was not limited to mileage for travel within the United States, and adding par. (2).

Subsec. (c). Pub. L. 98-94 amended subsec. (c) generally, designating the first sentence of subsec. (c) as par. (1) and in par. (1), as so designated, adding provisions authorizing the Secretary to prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a cadet at the Academy appointed from the United States, and designating the second sentence of subsec. (c) as par. (2).

Subsec. (d). Pub. L. 98-94, in amending section generally, added subsec. (d).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective one year after Sept. 24, 1983, and applicable to persons entering the Academy after such date, with subsec. (b)(2) of this section, as amended, not to apply to the cost of providing instruction to a person who, before such date, entered the Academy, see section 1004(d) of Pub. L. 98-94, set out as a note under section 4344 of this title.

[§ 9345. Repealed. Pub. L. 98-94, title X, § 1004(c)(2), Sept. 24, 1983, 97 Stat. 660]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 565, related to selection of Filipinos for instruction at the Air Force Academy.

EFFECTIVE DATE OF REPEAL

Repeal effective one year after Sept. 24, 1983, see section 1004(d) of Pub. L. 98-94, set out as an Effective Date of 1983 Amendment note under section 4344 of this title.

§ 9346. Cadets: requirements for admission

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9344 of this title.

§ 9348. Cadets: agreement to serve as officer

(a) Each cadet shall sign an agreement with respect to the cadet's length of service in the armed forces. The agreement shall provide that the cadet agrees to the following:

(1) That the cadet will complete the course of instruction at the Academy.

(2) That upon graduation from the Academy the cadet—

(A) will accept an appointment, if tendered, as a commissioned officer of the Regular Air Force; and

(B) will serve on active duty for at least five years immediately after such appointment.

(3) That if an appointment described in paragraph (2) is not tendered or if the cadet is permitted to resign as a regular officer before completion of the commissioned service obligation of the cadet, the cadet—

(A) will accept an appointment as a commissioned officer as a Reserve in the Air Force for service in the Air Force Reserve; and

(B) will remain in that reserve component until completion of the commissioned service obligation of the cadet.

(b)(1) The Secretary of the Air Force may transfer to the Air Force Reserve, and may order to active duty for such period of time as the Secretary prescribes (but not to exceed four years), a cadet who breaches an agreement under subsection (a). The period of time for which a cadet is ordered to active duty under this paragraph may be determined without regard to section 651(a) of this title.

(2) A cadet who is transferred to the Air Force Reserve under paragraph (1) shall be transferred in an appropriate enlisted grade or rating, as determined by the Secretary.

(3) For the purposes of paragraph (1), a cadet shall be considered to have breached an agreement under subsection (a) if the cadet is separated from the Academy under circumstances which the Secretary determines constitute a breach by the cadet of the cadet's agreement to complete the course of instruction at the Academy and accept an appointment as a commissioned officer upon graduation from the Academy.

(c) The Secretary of the Air Force shall prescribe regulations to carry out this section. Those regulations shall include—

(1) standards for determining what constitutes, for the purpose of subsection (b), a breach of an agreement under subsection (a);

(2) procedures for determining whether such a breach has occurred; and

(3) standards for determining the period of time for which a person may be ordered to serve on active duty under subsection(b).

(d) In this section, "commissioned service obligation", with respect to an officer who is a graduate of the Academy, means the period beginning on the date of the officer's appointment as a commissioned officer and ending on the sixth anniversary of such appointment or, at the discretion of the Secretary of Defense, any later date up to the eighth anniversary of such appointment.

(e)(1) This section does not apply tc a cadet who is not a citizen or national of the United States.

(2) In the case of a cadet who is a minor and who has parents or a guardian, the cadet may sign the agreement required by subsection (a) only with the consent of a parent or guardian.

(As amended Oct. 19, 1984, Pub. L. 98-525, title V, §§ 541(c), 542(d), 98 Stat. 2529; Nov. 8, 1985, Pub. L. 99-145, title V, § 512(c), 99 Stat. 625.)

AMENDMENTS

1985—Pub. L. 99-145 amended section generally. Prior to amendment, section read as follows:

"(a) Each cadet who is a citizen or national of the United States shall sign an agreement that he will—

"(1) unless sooner separated from the Academy, complete the course of instruction at the Academy;

"(2) accept an appointment and, unless sooner separated from the service, serve as a commissioned officer of the Regular Air Force for at least the five years immediately after graduation; and

"(3) accept an appointment as a commissioned officer as a Reserve for service in the Air Force Reserve and, unless sooner separated from the service, remain therein until at least the sixth anniversary and, at the direction of the Secretary of Defense, up to the eighth anniversary of his graduation, if an appointment in the Regular Air Force is not tendered to him, or if he is permitted to resign as a commissioned officer of that component before that anniversary.

If the cadet is a minor and has parents or a guardian, he may sign the agreement only with the consent of the parents or guardian.

"(b) A cadet who does not fulfill his agreement under subsection (a) may be transferred by the Secretary of the Air Force to the Air Force Reserve in an appropriate enlisted grade and, notwithstanding section 651 of this title, may be ordered to active duty to serve in that grade for such period of time as the Secretary prescribes but not for more than four years."

1984—Subsec. (a). Pub. L. 98-525, § 541(c), struck out ", unless sooner separated," in introductory text before "he will"; inserted in cl. (1) "unless sooner separated from the Academy,"; and inserted ", unless sooner separated from the service," in cls. (2) and (3).

Subsec. (a)(3). Pub. L. 98-525, § 542(d), substituted "at least the sixth anniversary and, at the direction of the Secretary of Defense, up to the eighth anniversary" for "the sixth anniversary".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-145 (other than with respect to the authority of the Secretary of the Air Force to prescribe regulations) effective on the date on which regulations prescribed by the Secretary take effect and applicable to agreements entered into under this section on or after the effective date of such regulations and also with respect to each such agreement that was entered into before the effective date of such regulations by an individual who is a cadet on such date, see section 512(e) of Pub. L. 99-145, set out as a note under section 4348 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 541(c) of Pub. L. 98-525 applicable with respect to agreements entered into under this section before, on, or after Oct. 19, 1984, see section 541(d) of Pub. L. 98-525, set out as a note under section 4348 of this title.

REGULATIONS IMPLEMENTING 1985 AMENDMENT

Secretary of the Air Force to prescribe regulations required by subsec. (c) of this section as added by Pub. L. 99-145 not later than the end of the 90-day period beginning on Nov. 8, 1985, see section 512(d) of Pub. L. 99-145, set out as a note under section 4348 of this title.

CHAPTER 909—CIVIL AIR PATROL

Sec.
9442. Assistance by other agencies.

AMENDMENTS

1984—Pub. L. 98-525, title XV, § 1533(b)(2), Oct. 19, 1984, 98 Stat. 2632, added item 9442.

§ 9441. Status: support by Air Force; employment

(a) The Civil Air Patrol is a volunteer civilian auxiliary of the Air Force.

(b) To assist the Civil Air Patrol in the fulfillment of its objectives as set forth in section 2 of the Act of July 1, 1946 (36 U.S.C. 202), the Secretary of the Air Force may, under regulations prescribed by him with the approval of the Secretary of Defense—

[*See main edition for text of (1) to (6)*]

(7) in time of war, or of national emergency declared after May 27, 1954, by Congress or the President, authorize the payment of travel expenses and allowances, in accordance with subchapter I of chapter 57 of title 5, to members of the Civil Air Patrol while carrying out any mission specifically assigned by the Air Force;

(8) authorize the payment of aircraft maintenance expenses relating to operational missions, unit capability testing missions, and training missions;

(9) authorize the payment of expenses of placing into serviceable condition a major item of equipment furnished to the Civil Air Patrol under clause (1);

(10) reimburse the Civil Air Patrol for costs incurred for the purchase of such major items of equipment as the Secretary considers needed by the Civil Air Patrol to carry out its missions; and

(11) furnish articles of the Air Force uniform to Civil Air Patrol cadets without cost to such cadets.

[*See main edition for text of (c)*]

(As amended Oct. 19, 1984, Pub. L. 98-525, title XV, § 1533(a), 98 Stat. 2632; Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1303(a)(28), title XIV, § 1458(a), 99 Stat. 740, 763.)

AMENDMENTS

1985—Subsec. (b)(8). Pub. L. 99-145, § 1303(a)(28), struck out "and" after "missions;".

Subsec. (b)(10). Pub. L. 99-145, § 1458(a), substituted "reimburse the Civil Air Patrol for costs incurred for the purchase" for "authorize the purchase with funds appropriated to the Air Force".

1984—Subsec. (b)(9) to (11). Pub. L. 98-525 added cls. (9) to (11).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1458(b) of Pub. L. 99-145 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1985."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1533(c) of Pub. L. 98-525 provided that: "The amendments made by this section [enacting section 9442 of this title and amending section 9441 of this title] shall take effect on October 1, 1984."

§ 9442. Assistance by other agencies

The Secretary of the Air Force may arrange for the use by the Civil Air Patrol of such facilities and services under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, or the head of any other department or agency of the United States as the Secretary of the Air Force considers to be needed by the Civil Air Patrol to carry out its mission. Any such arrangement shall be made under regulations prescribed by the Secretary of the Air Force with the approval of the Secretary of Defense and shall be subject to the agreement of the other military department or other department or agency of the United States furnishing the facilities or services.

(Added Pub. L. 98-525, title XV, § 1533(b)(1), Oct. 19, 1984, 98 Stat. 2632.)

EFFECTIVE DATE

Section effective Oct. 1, 1984, see section 1533(c) of Pub. L. 98-525, set out as an Effective Date of 1984 Amendment note under section 9441 of this title.

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 931—INDUSTRIAL MOBILIZATION, RESEARCH, AND DEVELOPMENT

SUBCHAPTER II—CIVIL RESERVE AIR FLEET

§ 9512. Contracts to modify aircraft: cargo-convertible features

[*See main edition for text of* (a)]

(b) Each contract made under subsection (a) shall include the terms required by section 9513 of this title and the following terms:

(1) The contractor shall agree that each aircraft covered by the contract that is not already registered under section 501 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1401) shall be registered under that section not later than the completion of the manufacture of the aircraft or the completion of the modification of the aircraft under the contract.

[*See main edition for text of* (2); (c) *to* (e)]

(As amended Pub. L. 98-525, title XIV, § 1405(57), Oct. 19, 1984, 98 Stat. 2626.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-525 substituted "App. 1401" for "1401".

CHAPTER 933—PROCUREMENT

§ 9541. Gratuitous services of officers of the Air Force Reserve

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9541	31:866.	May 12, 1917, ch. 12 (3d proviso on p. 72), 40 Stat. 72.

The words "Secretary of the Air Force" are substituted for "Secretary of War" because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488, 676). For comparable provisions that apply to the Army, see the revision note for 10:4541.

CHAPTER 941—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

§ 9651. Arms, tentage, and equipment: educational institutions not maintaining units of A.F.R.O.T.C.

Under such conditions as he may prescribe, the Secretary of the Air Force may issue arms, tentage, and equipment that he considers necessary for proper military training, to any educational institution at which no unit of the Air Force Reserve Officers' Training Corps is maintained, but which has a course in military training prescribed by the Secretary and which has at least 100 physically fit students over 14 years of age.

(As amended Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1301(d)(3), 99 Stat. 736.)

AMENDMENTS

1985—Pub. L. 99-145 struck out "male" before "students".

CHAPTER 945—INQUESTS; DISPOSITION OF EFFECTS OF DECEASED PERSONS

§ 9712. Disposition of effects of deceased persons by summary court-martial

[*See main edition for text of* (a) *to* (c)]

(d) As soon as practicable after the collection of the effects and money of the deceased, the summary court-martial shall send them at the expense of the United States to the living person highest on the following list who can be found by the court:

(1) The surviving spouse or legal representative.

(2) A child of the deceased.

(3) A parent of the deceased.

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(4) A brother or sister of the deceased.
(5) The next-of-kin of the deceased.
(6) A beneficiary named in the will of the deceased.

[*See main edition for text of (e) to (g)*]

(As amended Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1301(d)(4)(A), 99 Stat. 736.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-145 substituted pars. (1) to (6) for former pars. (1) to (9) which read:
"(1) Surviving spouse or legal representative.
"(2) Son.
"(3) Daughter.
"(4) Father, if he has not abandoned the support of his family.
"(5) Mother.
"(6) Brother.
"(7) Sister.
"(8) Next of kin.
"(9) Beneficiary named in the will of the deceased."

§ 9713. Disposition of effects of deceased persons by Soldiers' and Airmen's Home

(a) The effects of a deceased person that the Department of the Air Force receives under section 9712(f) of this title shall be delivered to the United States Soldiers' and Airmen's Home. The Home shall dispose of the effects as follows:

(1) A will or other paper involving property rights shall be promptly delivered to the proper court of record.

(2) If the heirs or legal representative of the deceased cannot sooner be ascertained, the Home shall retain the remaining effects until three years after the death of the deceased, and then, upon establishment of a right thereto to the satisfaction of the Home, it shall deliver them to the living person highest on the following list who can be found:

(A) The surviving spouse or legal representative.
(B) A child of the deceased.
(C) A parent of the deceased.
(D) A brother or sister of the deceased.
(E) The next-of-kin of the deceased.
(F) A beneficiary named in the will of the deceased.

[*See main edition for text of (b) to (f)*]

(As amended Nov. 8, 1985, Pub. L. 99-145, title XIII, § 1301(d)(4)(B), 99 Stat. 737.)

AMENDMENTS

1985—Subsec. (a)(2). Pub. L. 99-145 substituted cls. (A) to (F) for former cls. (A) to (I) which read:
"(A) Surviving spouse or legal representative.
"(B) Son.
"(C) Daughter.
"(D) Father, if he has not abandoned the support of his family.
"(E) Mother.
"(F) Brother.
"(G) Sister.
"(H) Next of kin.
"(I) Beneficiary named in the will of the deceased."

CHAPTER 947—TRANSPORTATION

§ 9746. Civilian personnel in Alaska

Persons residing in Alaska who are and have been employed there by the United States for at least two years, and their families, may be transported on airplanes operated by Air Force transport agencies or, within bulk space allocations made to the Department of the Air Force, on vessels or airplanes operated by any military transport agency of the Department of Defense, if—

[*See main edition for text of (1) to (3)*]

(4) in case of travel by air—
(A) the Secretary of Transportation has not certified that commercial air carriers of the United States that can handle the transportation are operating between Alaska and the United States; and
(B) the transportation cannot be reasonably handled by a United States commercial air carrier.

(As amended Oct. 4, 1984, Pub. L. 98-443, § 9(k), 98 Stat. 1708.)

AMENDMENTS

1984—Par. (4)(A). Pub. L. 98-443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board under this section were transferred to the Secretary of Transportation by section 1553(a)(9) of Title 49, Appendix, Transportation, effective Jan. 1, 1985.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 App. section 1553.

CHAPTER 951—MILITARY CLAIMS

§ 9803. Admiralty claims by United States

CROSS REFERENCES

Admiralty and maritime jurisdiction, see Const. Art. 3, § 2, cl. 1; section 1333 of Title 28, Judiciary and Judicial Procedure; and section 740 of Title 46, Appendix, Shipping.

CHAPTER 953—ACCOUNTABILITY AND RESPONSIBILITY

§ 9841. Payment of small amounts to public creditors

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9841	31:493.	Mar. 2, 1907, ch. 2511 (proviso on p. 1166), 34 Stat. 1166.

The words "Secretary of the Air Force" are substituted for "Secretary of War" because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947

(ch. 343, 61 Stat. 501, 502), and sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 488, 676). For comparable provisions that apply to the Army, see the revision note for 10:4841.

§ 9842. Settlement of accounts of line officers

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9842	31:44 (1st sentence).	June 10, 1921, ch. 18, § 304 (1st par. 1st sentence), 42 Stat. 24.
	31:95.	R.S. § 278.

The section is made applicable to the Air Force by section 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 502). For comparable provisions that apply to the Army, see the revision note for 10:4842.

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UNITED STATES COURT OF MILITARY APPEALS

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GENERAL

Rule 1. Name

Section 867 of Title 10, United States Code, provides that the name of the Court is the "United States Court of Military Appeals."

Rule 2. Seal

The official seal of the court is as follows: In front of a silver sword, point up, a gold and silver balance supporting a pair of silver scales, encircled by an open wreath of oak leaves, green with gold acorns; all on a grey-blue background and within a dark blue band edged in gold and inscribed "UNITED STATES COURT OF MILITARY APPEALS" in gold letters. (E.O. 10295, September 28, 1951, 16 F.R. 10011; 3 CFR Supp.)

Rule 3. Oath of Judges

Before undertaking the performance of the duties of his office, each Judge appointed to

this Court shall take the oath or affirmation prescribed in Section 453 of Title 28, United States Code.

Rule 4. Jurisdiction

(a) The jurisdiction of the Court is as follows:

(1) *General or flag officers; death sentences.* Cases in which the sentence, as affirmed by a Court of Military Review, affects a general or flag officer, or extends to death. *See* Rule 18(a)(3);

(2) *Certified by a Judge Advocate General.* Cases reviewed by a Court of Military Review, including decisions on application for extraordinary relief filed therein, which a Judge Advocate General forwards by Certificate for Review to the Court. *See* Rule 18(a)(2);

(3) *Petitions by the accused.* Cases reviewed by a Court of Military Review in which, upon petition of the accused and on good cause shown, the Court has granted review. *See* Rule 18(a)(1).

(b) *Extraordinary Writs.* (1) The court may, in its discretion, entertain petitions for extraordinary relief including, but not limited to, writs of mandamus, writs of prohibition, writs of habeas corpus, and writs of error coram nobis. *See* 28 U.S.C. § 1651(a) and Rules 18(b), 27(a) and 28.

(2) The court may also, in its discretion, entertain a writ appeal petition to review a decision of a Court of Military Review on a petition for extraordinary relief. *See* Rules 18(a)(4), 19(e), 27(b) and 28.

(c) *Rules not to affect jurisdiction.* These Rules shall not be construed to extend or to limit the jurisdiction of the United States Court of Military Appeals as established by law.

Rule 5. Scope of Review

The Court acts only with respect to the findings and sentence as approved by reviewing authorities, and as affirmed or set aside as incorrect in law by a Court of Military Review, except insofar as it may take action to grant extraordinary relief in aid of its jurisdiction including the exercise of its supervisory powers over the administration of the Uniform Code of Military Justice. The Court may specify or act on any issue concerning a matter of law which materially affects the rights of the parties.

Rule 6. Quorum

(a) Two judges shall constitute a quorum. The concurrence of two judges shall be required for a final resolution of any matter before the Court, subject to subsections (b) and (c).

(b) A single judge may, provided such action does not finally dispose of a petition or a case pending before the Court, act upon any request for relief; may direct the issuance of an order to show cause; and may order oral argument with respect to any request for relief. *See* Rules 15(f) and 27(a)(4).

(c) If no judge is present, the Clerk may adjourn the Court from day to day. *See* Rule 9(d).

Rule 7. Process

All process of the Court, except mandates, shall be in the name of the United States and shall contain the names and the military rank or civilian office, if any, of the parties.

Rule 8. Parties

(a) The title of any case filed with the Court shall contain the name, military rank and service number of an accused and, where appropriate, the official military or civilian title of any named party who is an agent or officer of the United States acting in such official capacity.

(b) The party petitioning for grant of review of a decision of a Court of Military Review, whether from a decision affecting the findings or sentence or both of a court-martial or from a decision on application for extraordinary relief, will be deemed to be the appellant. Other named parties will be deemed to be appellees.

(c) When a certificate for review is filed by a Judge Advocate General, the party prevailing below on the certified issues will be deemed to be the appellee. The other party will be deemed to be the appellant.

(d) When a mandatory review case is filed, the accused therein will be deemed to be the appellant. The other party will be deemed to be the appellee.

(e) If a petition for grant of review or a certificate for review is filed after an action has been docketed in the same case, the party on whose behalf relief is sought in the second action will be deemed to be the appellant or cross-appellant, depending on whether such party has been deemed to be the appellant or appellee in the first action. The other party in the second action will be deemed to be the appellee or cross-appellee in a similar manner.

(f) The party or parties filing a petition for extraordinary relief with the Court will be deemed to be the petitioner or petitioners, and other parties named in such petition will be deemed to be the respondents. When an accused has not been named as a party to an action involving a petition for extraordinary relief, such accused shall be identified by the petitioner and shall be designated as the real party in interest.

CLERK'S OFFICE

Rule 9. Clerk

(a) *Location of office.* The Clerk's office shall be located in the courthouse at 450 E Street, Northwest, Washington, D.C. 20442.

(b) *Oath of office.* Before entering upon the execution of his office, the Clerk shall take the oath or affirmation prescribed in Section 951 of Title 28, United States Code.

(c) *Custodian of records.* The Clerk shall serve as custodian of the records of the Court, and shall not permit any documents relative to a case to be taken from the courthouse except by order of a judge of the Court. However, after final action on a case in which documents containing classified information have been filed with the Court under Rule 24(d), the Clerk shall, as Court Security Officer, consult with

the originating armed service to determine the appropriate disposition of such documents. *See* Rule 12.

(d) *Disposition of procedural matters.* Notwithstanding the provisions of Rule 6, the Clerk, on behalf of the Court, may entertain and act on any motion seeking an enlargement of time not to exceed 20 days, leave to withdraw as counsel, or permission to file citations, pleadings, or other papers relative to a matter pending before the Court, provided such motion is not opposed and such action does not substantially affect the rights of the parties or the ultimate decision in the case. The order of the Clerk shall be deemed the order of the Court.

(e) *Hours.* The Clerk's office shall be open for the filing of pleadings and other papers from 9:00 a.m. to 5:00 p.m. every day except Saturdays, Sundays, and legal holidays, or as otherwise ordered by the Court. *See* Rule 36(a).

Rule 10. Docket

(a) *Maintenance of docket.* The Clerk shall maintain:

(1) a regular docket for cases subject to mandatory review, petitions to review convictions or sentences affirmed by a Court of Military Review, and certificates for review of final decisions in a Court of Military Review;

(2) a miscellaneous docket for petitions for extraordinary relief, writ appeal petitions and certificates for review of decisions on application for extraordinary relief in a Court of Military Review; and

(3) a special docket of the matters arising under Rule 15 concerning complaints of unprofessional conduct against a member of the Bar of this Court.

The receipt of all pleadings or other papers filed, and any action by the Court relative to a case, will be entered in the appropriate docket. Entries in each docket will show the date, the nature of each pleading or other paper filed, and the substance of any action by the Court. From time to time, the Clerk shall, under the general direction of the Court, determine the appropriate manner for keeping and preserving the dockets.

(b) *Docket number.* In a mandatory review case, a docket number will be assigned upon receipt of the record from the Judge Advocate General. In all other cases, a docket number will be assigned upon receipt of the initial pleading. All pleadings or other papers subsequently filed in the case will bear the assigned docket number.

(c) *Notice of docketing.* The Clerk shall notify the appropriate Judge Advocate General and all parties of the receipt and docketing of a case and the docket number assigned. In the case of a petition for extraordinary relief, the Clerk shall also notify all named respondents of the petition's receipt and docketing.

(d) *Entry of final decision.* The Clerk shall prepare, sign, and enter the final decision following receipt of the opinion of the Court. If a final decision is rendered without opinion, the Clerk shall prepare, sign, and enter the final order following the instructions of the Court. The Clerk shall, on the date a final decision is entered, distribute to all parties and the Judge Advocate General a copy of the opinion, if any, or of the final order if no opinion was written, and notice of the date of entry thereof.

Rule 11. Calendar

(a) The Clerk shall prepare a calendar, consisting of the cases that have become or will be available for hearing, which shall be arranged in the first instance in the chronological order in which petitions for grant of review have been granted or certified questions and mandatory appeals have been filed with the Court. The arrangement of cases on the calendar shall be subject to modification in light of the availability of pleadings, extensions of time to file briefs, and orders to advance or specially set cases for hearing.

(b) The Clerk shall periodically publish hearing lists in advance of each Court session for the convenience of counsel and the information of the public.

(c) The Clerk shall advise counsel when they are required to be present in Court. *See* Rule 40(b)(1).

(d) Cases may be advanced or postponed by order of the Court, upon motion duly made showing good cause therefor, or on the Court's own motion. *See* Rule 40(b).

(e) Two or more cases involving the same question may, on the Court's own order or by special permission, be heard together as one case or on such terms as may be prescribed.

Rule 12. Cases Involving Classified Information

(a) *Court Security Officer.* The Clerk shall serve as the Court Security Officer for the purposes of providing for the protection of classified information, and may designate such assistants as are appropriate for such purposes.

(b) *Classified documents.* Documents containing classified information will be stored and safeguarded by the Court Security Officer in accordance with the Department of Defense Information Security Program Regulation (DOD Regulation 5200.1-R) or the Security Procedures Established by the Chief Justice of the United States pursuant to Pub. L. 96-456, 94 Stat. 2025, as appropriate. *See* Rules 9(c) and 24(d).

(c) *Security clearances.* Security clearances for personnel on the staff of the Court will be obtained by the Court Security Officer in accordance with the Department of Defense Information Security Program Regulation.

ATTORNEYS

Rule 13. Qualifications to Practice

(a) No attorney shall practice before this Court unless the attorney has been admitted to the bar of this Court or is appearing *pro hac vice* by leave of the Court. *See* Rule 38(b).

(b) It shall be a requisite to the admission of attorneys to the Bar of this Court that they be a member of the Bar of a Federal court or of the highest court of a State, Territory, Commonwealth, or Possession, and that their pri-

vate and professional character shall appear to be good.

(c) Each applicant shall file with the Clerk an application for admission on the form prescribed by the Court, together with a certificate from the presiding judge, clerk, or other appropriate officer of a court specified in (b) above, or from any other appropriate official from the Bar of such court, that the applicant is a member of the Bar in good standing and that such applicant's private and professional character appear to be good. The certificate of good standing must be an original and must be dated within one year of the date of the application.

(d) If the documents submitted demonstrate that the applicant possesses the necessary qualifications, the Clerk shall so notify the applicant and he or she may be admitted without appearing in Court by subscribing a written oath or affirmation. However, if the applicant so elects, the admission may be on oral motion by a member of the Bar of this Court in open court. Upon admission, the Clerk shall issue a wallet-size admission card to the attorney. In addition, if the attorney desires a large certificate of admission suitable for framing, a fee of $10 will be required and may accompany the application papers.

(e) Each applicant shall take or subscribe the following oath or affirmation:

> "I * * *, do solemnly swear (or affirm) that I will support the Constitution of the United States, and that I will conduct myself, as an attorney and counsellor of this Court, uprightly and according to law. So help me God."

(f) Admissions will be granted on motion of the Court or upon oral motion by a person admitted to practice before the Court. Special admissions, may be held by order of the Court.

Rule 14. Honorary Membership

Honorary membership in the Bar of the Court may be granted from time to time to distinguished members of the legal profession of other nations who are knowledgeable in the fields of military justice or the law of war. A candidate for honorary membership will be presented at the Bar in person after the nomination has previously been approved by the Court. A certificate of honorary membership in the Bar will be presented to the person so honored.

Rule 15. Disciplinary Action

(a) The Code of Professional Responsibility of the American Bar Association is hereby adopted as the rules of conduct for members of the Bar of this Court. After notice, investigation, and hearing as provided in this rule, the Court may take any disciplinary action it deems appropriate for failure to comply with the Disciplinary Rules of the Code of Professional Responsibility.

(b) For purposes of this rule, the Court shall appoint an Investigations Committee consisting of five members of the Bar of this Court who shall be appointed for a period of three years. The Investigations Committee shall consider such complaints as may be referred to it for investigation, including the taking of evidence, and shall submit a report of such investigation to the Court.

(c) Upon receipt and docketing of a written complaint under oath of unprofessional conduct against a member of its Bar, the Court will cause a copy thereof to be served by certified mail, return receipt requested, on the attorney thus accused. The Clerk will, in addition, acknowledge by letter, to the person filing such complaint, the receipt thereof. The accused attorney will answer the complaint by filing a formal pleading responsive to each allegation of misconduct within 30 days of receipt of the complaint, but extensions of time may be granted by order of the Court on the accused attorney's application. A complaint will be docketed only if the Court makes a preliminary determination that it is not frivolous

(d) On consideration of the complaint and answer, and if it believes a substantial basis exists for the complaint, the Court will refer the matter to its Investigations Committee for consideration under subsection (b). Otherwise, the Court will dismiss the complaint. Any such investigation will be held privately, unless the accused attorney requests that it be opened to the public.

(e) On receiving the report of the Investigations Committee, the Court may dismiss the complaint or order the matter set down for hearing, giving due notice to the accused attorney. At the hearing, the accused attorney will be given opportunity to present such matters relevant to the complaint as he or she deems appropriate and to examine any witnesses against such attorney. All documents received in connection with a complaint under this rule shall be furnished to the accused attorney. A majority vote of the Court is necessary to find an attorney guilty of unprofessional conduct and to fix any penalty.

(f) When it is shown to the Court that any member of its Bar has been disbarred or suspended from practice by any court, such member will be forthwith called upon to show cause within 30 days why similar action should not be taken by this Court. Upon the filing of the member's answer to an order to show cause, or upon the expiration of 30 days if no answer is filed, the Court will enter an appropriate order; but no order of disbarment or suspension will be entered except with the concurrence of a majority of the judges participating.

(g) Penalties for unprofessional conduct may extend to reprimand, suspension, or disbarment.

(h) Except for an order of reprimand, suspension or disbarment, no papers, pleadings or other information relative to a complaint in a disciplinary proceeding will be published or released to the public without prior approval of the Court. The docket of matters arising under this rule shall not be available to the public.

Rule 16. Entry of Appearance and Withdrawal by Counsel

(a) Counsel shall enter an appearance in writing before participating in the representation of a party to an action before the Court; howev-

er, the filing of any pleading or other paper relative to a case which contains the signature of counsel shall constitute such an entry of appearance. *See* Rules 13(a) and 38.

(b) Leave to withdraw by any counsel who has entered an appearance under subsection (a) must be requested by motion in accordance with Rule 30. A motion by an appellate defense counsel must indicate the reasons for the withdrawal and the provisions which have been made for continued representation of the accused. A copy of a motion filed by an appellate defense counsel shall be delivered or mailed to the accused by the moving counsel.

Rule 17. Assignment of Counsel

Upon receipt of a notice of the docketing of a case issued under Rule 10(c), the appropriate Judge Advocate General shall designate appellate military counsel to represent the parties, unless such counsel have previously been designated. In a case involving a petition for extraordinary relief wherein an accused has been denominated as the real party in interest by a filing party or has been so designated by the Court, the Judge Advocate General shall also designate appellate military counsel to represent such accused.

APPEALS

Rule 18. Methods of Appeal

(a) The Court will entertain the following appeals:

(1) *Cases under Article 67(b)(3).* Cases under Article 67(b)(3), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 867(b)(3), may be appealed by the filing of a petition for grant of review by an appellant or by counsel on behalf of an appellant substantially in the form provided in Rule 20(a) or (b).

(2) *Cases under Article 67(b)(2).* Cases under Article 67(b)(2), UCMJ, 10 U.S.C. § 867(b)(2), will be forwarded by a Judge Advocate General by a certificate for review substantially in the form provided in Rule 22(a).

(3) *Cases under Article 67(b)(1).* Cases under Article 67(b)(1), UCMJ, 10 U.S.C. § 867(b)(1), will be forwarded by a Judge Advocate General by the filing of the record with the Court, together with the form prescribed by Rule 23(a).

(4) *Cases under Rule 4(b)(2).* Decisions by a Court of Military Review on petitions for extraordinary relief may be appealed by filing a writ appeal petition and accompanying brief in accordance with Rules 24, 27(b), and 28.

(b) In addition, the Court may, in its discretion, entertain petitions for extraordinary relief including, but not limited to, writs of mandamus, writs of prohibition, writs of habeas corpus, and writs of error coram nobis. *See* Rules 4(b)(1), 27(a) and 28.

Rule 19. Time Limits

(a) *Petition for grant of review.* (1) A petition for grant of review shall be filed no later than 60 days from the earlier of:

(A) the date on which the appellant is notified of the decision of the Court of Military Review; or

(B) the date on which a copy of the decision of the Court of Military Review, after being served on appellate counsel of record for the appellant (if any), is deposited in the United States mails for delivery by first-class certified mail to the appellant at an address provided by the appellant or, if no such address has been provided by the appellant, at the latest address listed for the appellant in his official service record. Under circumstances where certified mail is not available, registered mail may be used. *See* Article 67(c), UCMJ, 10 U.S.C. § 867(c).

(2) A certificate of notification shall be placed in the appellant's record of trial setting forth the manner and date that the appellant was notified of the decision of the Court of Military Review or the date that a copy of such decision was mailed to the appellant after service of a copy of such decision on appellate defense counsel of record.

(3) For purposes of this rule, a petition for grant of review will be deemed to have been filed on the date when the petition has been mailed or delivered by an appellant or by counsel on behalf of an appellant directly to the Court.

(4) Any petition for grant of review received from an appellant or counsel on behalf of an appellant shall, upon receipt, be accepted and docketed by the Clerk. If it appears that such petition is not in accord with Article 67, UCMJ, 10 U.S.C. § 867, or with the Court's rules, the United States may move to dismiss such petition.

(5) A supplement to the petition establishing good cause in accordance with Rule 21 shall be filed no later than 30 days after the issuance by the Clerk of a notice of docketing of a petition for grant of review. *See* Rule 10(c). An appellee's answer to the supplement to the petition for grant of review may be filed no later than 30 days after the filing of such supplement. *See* Rule 21(e). A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.

(6) The Court shall act promptly on a petition for grant of review. *See* Article 67(c), UCMJ, 10 U.S.C. § 867(c).

(7) Where a petition has been granted, an appellant's brief shall be filed in accordance with Rule 24 no later than 30 days after the date of the order granting the petition. An appellee's answer shall be filed no later than 30 days after the filing of an appellant's brief. A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.

(b) *Certificate for review.* A certificate for review shall be filed with the Court by the Judge Advocate General no later than 30 days after the date of the decision of the Court of Military Review. *See* Rule 22. An appellant's brief shall be filed in accordance with Rule 24 no later than 30 days after the issuance by the Clerk of a notice of docketing of the certificate for review. An appellee's answer shall be filed no later than 30 days after the filing of an appellant's brief. A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.

(c) *Mandatory review case.* The record in a mandatory review case shall be filed with the Court by the Judge Advocate General, together with the form prescribed by Rule 23(a), upon the expiration of the time for filing a petition for reconsideration of the decision of the Court of Military Review or, in the event of the filing of such petition, upon the final disposition thereof. A brief setting forth assigned errors shall be filed by the appellant in accordance with Rule 24 no later than 60 days after the issuance by the Clerk of a notice of docketing of the case. An appellee's answer shall be filed no later than 60 days after the filing of the appellant's brief. A reply may be filed by the appellant no later than 20 days after the filing of the appellee's answer.

(d) *Petition for extraordinary relief.* A petition for extraordinary relief under Rule 4(b)(1) shall be filed, with a supporting brief and any available record, as soon as possible but, in any event, no later than 20 days after the petitioner learns of the action complained of. However, a petition for a writ of habeas corpus may be filed at any time. *See* Rules 27(a) and 28.

(e) *Writ appeal petition.* A writ appeal petition under Rule 4(b)(2) for review of a decision by a Court of Military Review acting on a petition for extraordinary relief shall be filed, together with any available record, no later than 20 days after the date the decision of the Court of Military Review is served on the appellant or appellant's counsel. Unless it is filed *in propria persona*, such writ appeal petition shall be accompanied by a supporting brief. An appellee's answer shall be filed no later than 10 days after the filing of an appellant's brief. A reply may be filed by the appellant no later than 5 days after the filing of the appellee's answer. *See* Rules 27(b) and 28.

(f) *Petition for new trial.* When a petition for new trial has been filed with the Court in a case pending before the Court, a brief in support thereof, unless expressly incorporated in the petition, shall be filed no later than 30 days after the issuance by the Clerk of a notice of the filing of the petition. An appellee's answer shall be filed no later than 30 days after the filing of an appellant's brief. A reply may be filed no later than 10 days after the filing of the appellee's answer. *See* Rule 29.

Rule 20. Form of Petition for Grant of Review

(a) *Form to be used by an appellant.* A petition for grant of review under Rule 18(a)(1) filed personally by an appellant will be substantially in the following form:

IN THE UNITED STATES COURT OF MILITARY APPEALS

UNITED STATES, Appellee v. (Full typed name, rank & service of appellant) (Service no. ——), Appellant	PETITION FOR GRANT OF REVIEW CMR. Dkt. No. —— USCMA Dkt. No. — [For Court use only]

TO THE JUDGES OF THE UNITED STATES COURT OF MILITARY APPEALS:

1. I hereby petition the Court for review of my conviction.

2. I understand that, unless I specifically request the contrary, a military lawyer will be designated by the Judge Advocate General to represent me free of charge before the U.S. Court of Military Appeals.

SIGNED: _____
(Put your signature here)

DATED: _____
(Put mailing date here)

MAIL TO: U.S. COURT OF MILITARY APPEALS
450 E Street, N.W.
Washington, D.C. 20442

(b) *Form to be used by an appellant's counsel.* A petition for grant of review under Rule 18(a)(1) filed by counsel on behalf of an appellant will be substantially in the following form:

IN THE UNITED STATES COURT OF MILITARY APPEALS

UNITED STATES, Appellee v. (Full typed name, rank & service of appellant) (Service no. ——), Appellant	PETITION FOR GRANT OF REVIEW CMR. Dkt. No. —— USCMA Dkt. No. — [For Court use only]

TO THE JUDGES OF THE UNITED STATES COURT OF MILITARY APPEALS:

The undersigned counsel, on behalf of (*insert appellant's full name here*), hereby petitions the United States Court of Military Appeals for a grant of review of the decision of the Court of Military Review, pursuant to the provisions of Article 67(b)(3), UCMJ.

_____
(Signature of counsel)

_____
(Typed name of counsel)

_____
(Address of counsel)

_____
(Telephone no. of counsel)

(c) An appellant or counsel on behalf of an appellant shall file a petition for grant of review in the manner and within the time limits set forth in Rule 19(a).

(d) When a petition for grant of review is filed with the Court, the clerk will cause a copy thereof to be delivered to the Judge Advocate General of the appellant's service, to the appellant's counsel, if named in the petition, and to government counsel. Upon receipt of a copy of the petition from the Clerk, the Judge Advocate General shall designate counsel to represent the parties unless such parties are already represented by counsel. *See* Rule 17.

(e) No later than 30 days after the date of issuance by the Clerk under Rule 10(c) of a notice of docketing a petition for grant of review, counsel for the appellant will file a supplement to the petition in accordance with Rule 21.

Rule 21. Supplement to Petition for Grant of Review

(a) Review on petition for grant of review requires a showing of good cause. Good cause must be shown by the appellant in the supplement to the petition, which shall state with particularity the error(s) claimed to be materially prejudicial to the substantial rights of the

appellant. *See* Article 59(a), UCMJ, 10 U.S.C. § 859(a).

(b) The supplement to the petition shall contain:

(1) A statement of the errors assigned for review by the Court;

(2) A statement of the case setting forth a concise chronology, including the results of the trial, the actions of the intermediate reviewing authorities and the Court of Military Review, and any other pertinent information regarding the proceedings;

(3) A statement of facts of the case material to the errors assigned, including specific page references to each relevant portion of the record of trial;

(4) A direct and concise argument showing why there is good cause to grant the petition, demonstrating with particularity why the errors assigned are materially prejudicial to the substantial rights of the appellant, and

(5) A certificate of filing and service in accordance with Rule 39(c).

(c) An appellee's answer to the supplement to the petition for grant of review may be filed no later than 30 days after the filing of such supplement. *See* Rule 21(e). A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.

(d) The Court may, in its discretion, examine the record in any case for the purpose of determining whether there appears to be plain error not assigned by the appellant. The Court may then specify and grant review of any such errors as well as any assigned errors which merit review.

(e) Where no specific errors are assigned in the supplement to the petition, the Court will proceed to review the petition without awaiting an answer thereto. *See* Rule 19(a)(5).

(f) An appellant or counsel for an appellant may move to withdraw his petition at any time. *See* Rule 30.

Rule 22. Certificate for Review

(a) A certificate for review under Rule 18(a)(2) will be substantially in the following form:

IN THE UNITED STATES COURT OF MILITARY APPEALS

UNITED STATES, (Appellee) (Appellant) v. (Full typed name, rank & service of accused) (Service no. ——), (Appellant) (Appellee)	CERTIFICATE FOR REVIEW CMR. Dkt. No. —— USCMA Dkt. No. — [For Court use only]

TO THE JUDGES OF THE UNITED STATES COURT OF MILITARY APPEALS:

1. Pursuant to Article 67(b)(2) of the Uniform Code of Military Justice, the record of trial and decision of the United States ——— Court of Military Review in the above-entitled case, are forwarded for review.

2. The accused has been found guilty by a (*type of court-martial*) of a violation of Article(s) ——— of the Uniform Code of Military Justice and has been sentenced to (*include entire adjudged sentence*) on the (*insert trial date*). The trial took place at (*location*). The convening authority approved the following findings and sentence: ———. The officer exercising general court-martial jurisdiction (where applicable) took the following action: ———. The Court of Military Review (*state action taken*). [Substitute different case history facts as appropriate when the Court of Military Review decision involves an application for extraordinary relief.]

3. It is requested that action be taken with respect to the following issues:

———
The Judge Advocate General

Received a copy of the foregoing Certificate for Review this ——— day of ———, 19——.

———
Appellate Government Counsel

———
Address and telephone no.

———
Appellate Defense Counsel

———
Address and telephone no.

(b) A certificate for review shall be filed no later than 30 days after the date of the decision of the Court of Military Review. A brief in support of the certified issues shall be filed by the appellant in accordance with Rule 24 no later than 30 days after the issuance by the Clerk of a notice of docketing of the certificate for review. Such brief shall not incorporate by reference that filed before the Court of Military Review, the convening authority, or the military judge. An appellee's answer shall be filed no later than 30 days after the filing of an appellant's brief. A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.

Rule 23. Mandatory Review Case

(a) The record in a mandatory review case under Rule 18(a)(3) will be filed, together with the following form:

IN THE UNITED STATES COURT OF MILITARY APPEALS

UNITED STATES, Appellee v. (Full typed name, rank & service of appellant) (Service no. ——), Appellant	MANDATORY REVIEW CASE CMR. Dkt. No. — USCMA Dkt. No. — [For Court use only]

TO THE JUDGES OF THE UNITED STATES COURT OF MILITARY APPEALS:

1. The appellant, (having an approved sentence to death) (being a [general] [flag] officer), is entitled to mandatory review under Article 67(b)(1) of Uniform Code of Military Justice, 10 U.S.C. § 867(b)(1).

2. The appellant was notified of the decision of the Court of Military Review on (*insert notification date*).

———
The Judge Advocate General

Received a copy of the foregoing this _____ day of _____, 19____.

_____
Appellate Government Counsel

_____
Address and telephone no.

_____
Appellate Defense Counsel

_____
Address and telephone no.

(b) In a mandatory review case, a brief setting forth assigned errors shall be filed by the appellant in accordance with Rule 24 no later than 60 days after the issuance by the Clerk of a notice of docketing of the case. Such brief shall not incorporate by reference that filed before a Court of Military Review, the convening authority, or the military judge. An appellee's answer shall be filed no later than 60 days after the filing of the assignment of errors and supporting brief. A reply may be filed by the appellant no later than 20 days after the filing of the appellee's answer.

BRIEFS

Rule 24. Form and Content, Page Limitations, Style, and Classified Information

(a) *Form and content.* All briefs will be legible and will be substantially as follows:

IN THE UNITED STATES COURT OF MILITARY APPEALS

UNITED STATES, (Appellee) (Appellant) (Respondent) v. _____ (Full typed name, rank, service & service no. of accused) (Appellant) (Appellee) (Petitioner)	BRIEF ON BEHALF OF (APPELLANT, APPELLEE, ETC.) CMR. Dkt. No. ____ USCMA Dkt. No. __

Index of Brief

[*See* Rule 24(c)(2)]

Table of Cases, Statutes, and Other Authorities

Statement of the Case

[Set forth a concise chronology including the results of the accused's trial, action by the convening authority, the officer exercising general court-martial jurisdiction (if any), and the Court of Military Review as well as any other pertinent information regarding the proceedings.]

Statement of Facts

[Set forth a concise statement of the facts of the case material to the issue or issues presented, including specific page references to each relevant portion of the record of trial. Answers may adopt appellant's or petitioner's statement of facts if there is no dispute, may state additional facts, or, if there is a dispute, may restate the facts as they appear from appellee's or respondent's viewpoint. The repetition of uncontroverted matters is not desired.]

Issue(s) Presented

[Set forth each issue granted review by the Court, raised in the certificate for review or in the mandatory review case, or presented in the petition for extraordinary relief, writ appeal petition, or petition for new trial. Issues presented will be set forth in upper case letters, and each will be followed by separate arguments pertaining to that issue.]

Argument

[Discuss briefly the point of law presented, citing and quoting such authorities as are deemed pertinent.]

Conclusion

[State briefly the relief sought as to each issue presented, for example, reversal of the Court of Military Review decision and dismissal of the charges, grant of a new trial, the extraordinary relief sought, etc. No particular form of language is required, so long as the brief concludes with a clear prayer for specific court action.]

Appendix

[The brief of the appellant or petitioner shall include an appendix containing a copy of the Court of Military Review decision, unpublished opinions cited in the brief, and relevant extracts of rules and regulations. The appellee or respondent shall similarly file an appendix containing a copy of any additional unpublished opinions and relevant extracts of rules and regulations cited in the answer.]

_____ _____
(Signature of counsel)

_____
(Typed name of counsel)

_____
(Address of counsel)

_____
(Telephone no. of counsel)

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [mailed] [delivered] to the Court and [mailed] [delivered] to (*enter name of each counsel of record*) on _____. (Date)

_____
(Typed name and signature)

_____
(Address and telephone no.)

(b) *Page limitations.* Unless otherwise authorized by order of the Court or by motion of a party granted by the Court (*see* Rule 30), the page limitations for briefs filed with the Court, not including appendices, shall be as follows:

(1) Briefs of appellants/petitioners shall not exceed 50 pages;

(2) Answers of appellees/respondents shall not exceed 50 pages;

(3) Replies of appellants/petitioners shall not exceed 15 pages;

(c) *Style.* (1) Except for records of trial and as otherwise provided by Rule 27(a)(6), all pleadings or other papers relative to a case shall be typewritten and double spaced on white paper,

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8.5 by 11 inches in size, securely fastened at the top. Copies of typewritten pleadings and papers may include those produced by any process capable of producing a clearly legible black image on white paper but shall not include ordinary carbon copies. If papers are filed in any other form, the Clerk shall require the substitution of new copies, but such substitution will not affect the filing date of the papers or pleadings involved. *See* Rule 37.

(2) All pleadings presented to the Court shall, unless they are less than 10 pages in length, be preceded by a subject index of the matter contained therein, with page references, and a table of cases (alphabetically arranged), textbooks and statutes cited, with references to the pages where cited.

(3) Citations shall conform with the *Uniform System of Citation.*

(4) All references to the record of trial shall include page numbers or exhibit designations, as appropriate.

(d) *Classified information.* Classified information will be included in documents filed with the Court only when necessary to a proper consideration of the issues involved. The original or one complete copy of a document containing the classified information shall be filed with the Court. The party filing such document shall give written notice to the Clerk and to all other parties prior to the time of such filing that such document contains classified information. In addition, there shall be filed in accordance with Rule 37 an original and four copies of each such document from which the classified information has been deleted or omitted in such manner that the pages which contained the deleted or omitted classified information are clearly identified.

Rule 25. When Briefs are Required

Unless otherwise ordered by the Court, briefs shall be filed in all mandatory review cases and in support of all granted petitions, certificates for review, petitions for extraordinary relief, writ appeal petitions, and petitions for new trial. The appellee's or respondent's answer and appellant's or petitioner's reply in any of the foregoing instances shall also be in the format specified in Rule 24. The answer and reply to the supplement to a petition for grant of review shall be in accordance with Rule 21(c).

Rule 26. *Amicus Curiae* Briefs

(a) A brief of an *amicus curiae* may be filed (1) by an appellate government or defense division of an armed service other than that in which the case has arisen, (2) by invitation of the Court, or (3) by motion for leave to file granted by the Court.

(b) Unless otherwise ordered by the Court, a brief of an *amicus curiae* under subsection (a)(1) of this rule shall be filed no later than 10 days after the filing of the answer by the appellee or respondent.

(c) Neither the hearing nor the disposition of a case will be delayed pending action on a motion for leave to file an *amicus curiae* brief or a motion of an *amicus curiae* to participate in a hearing, or to await the filing of a brief of an *amicus curiae* under this rule.

(d) A brief of an *amicus curiae* shall not exceed 30 pages, excluding appendices.

EXTRAORDINARY RELIEF

Rule 27. Petition for Extraordinary Relief, Writ Appeal Petition, Answer, and Reply

(a) *Petition for extraordinary relief.* (1) A petition for extraordinary relief, together with any available record, shall be filed within the time prescribed by Rule 19(d), shall be accompanied by proof of service on all named respondents, and shall contain:

(A) A previous history of the case including whether prior actions or requests for the same relief have been filed or are pending in this or any other forum and the disposition or status thereof;

(B) A concise statement of the facts necessary to understand the issue presented;

(C) A statement of the issue;

(D) The specific relief sought;

(E) The jurisdictional basis for the relief sought and the reasons why the relief sought cannot be obtained during the ordinary course of trial or appellate review or through administrative procedures; and

(F) Reasons for granting the writ.

(2) *Service on Judge Advocate General.* The Clerk shall forward a copy of the petition to The Judge Advocate General of the service in which the case arose.

(3) *Brief, answer and reply.* Each petition for extraordinary relief shall be accompanied by a brief in support of the petition substantially in the form specified in Rule 24, unless it is filed *in propria persona.* The Court may issue an order to show cause, in which event the respondent(s) shall file an Answer. The petitioner may file a reply to the answer. *See* Rule 28(b)(1) and (c)(1).

(4) *Initial Action by the Court.* The Court may, as the circumstances require, dismiss or deny the petition, order the respondent(s) to show cause and file an answer within a time specified, or take any other action deemed appropriate, including referring the matter to a special master, who may be a military judge or other person, to make further investigation, to take evidence, and to make such recommendations to the Court as are deemed appropriate. *See United States v. DuBay,* 17 U.S.C.M.A. 147(1967).

(5) *Hearing and final action.* The court may set the matter for hearing. However, on the basis of the pleadings alone, the Court may grant or deny the relief sought or issue such other order in the case as the circumstances may require.

(6) *Electronic message petitions.* The court will docket petitions for extraordinary relief submitted by means of an electronic message.

(A) The message will contain the verbatim text of the petition, will conclude with the full name and address of petitioner's counsel, and will state when counsel placed the written petition and brief required by subsections (a)(1) and (a)(3) in the mail addressed to the Court and to all named respondents in accordance with Rules 36 and 39.

(B) As the Court does not possess the capability for direct receipt of electronic messages, each such message will be transmitted to the Chief of the Appellate Defense Division or Appellate Government Division, as appropriate, within the Office of the Judge Advocate General of petitioner's service, with copies to all named respondents. Upon receipt of the message in the appropriate appellate division office, clearly legible copies will be reproduced and filed in accordance with Rule 37 by an appellate counsel appointed within such office.

(b) *Writ appeal petition, answer and reply.* A writ appeal petition for review of a decision by a Court of Military Review acting on a petition for extraordinary relief shall be filed by an appellant, together with any available record, within the time prescribed by Rule 19(e), shall be accompanied by proof of service on the appellee, and shall contain the specific information required by subsection (a)(1) above. In addition, unless it is filed *in propria persona*, such petition shall be accompanied by a supporting brief substantially in the form specified in Rule 24. If such petition is filed *in propria persona*, appellate military counsel designated by the Judge Advocate General in accordance with Rule 17 will file a supporting brief no later than 20 days after the issuance by the Clerk of a notice of docketing of the petition. The appellee shall file an answer no later than 10 days after the filing of the appellant's brief. A reply may be filed by the appellant no later than 5 days after the filing of the appellee's answer. *See* Rule 28(b)(2) and (c)(2). Upon the filing of pleadings by the parties, the Court may grant or deny the writ appeal petition or take such other action as the circumstances may require.

Rule 28. Form of Petition for Extraordinary Relief, Writ Appeal Petition, Answer, and Reply

(a) *Petition/writ appeal petition.* A Petition for extraordinary relief or a writ appeal petition for review of a Court of Military Review decision on application for extraordinary relief will be accompanied by any available record and will be substantially in the following form:

IN THE UNITED STATES COURT OF MILITARY APPEALS

_____ (Petitioner) (Appellant) v. _____ (Respondent) (Appellee)	[PETITION FOR EXTRAORDINARY RELIEF IN THE NATURE OF (Type of writ sought)] *or* [WRIT APPEAL PETITION FOR REVIEW OF COURT OF MILITARY REVIEW DECISION ON APPLICATION FOR EXTRAORDINARY RELIEF] USCMA Misc. Dkt. No.___ [For Court use only]

Preamble

The (petitioner) (appellant) hereby prays for an order directing the (respondent) (appellee) to:

[Briefly state the relief sought.]

I

History of the Case

[See Rule 27(a)(1)(A)]

II

Statement of Facts

[See Rule 27(a)(1)(B)]

III

Statement of Issue

[Do not include citations of authority or discussion of principles. Set forth no more than the full question of law involved.]

IV

The Relief Sought

[State with particularity the relief which the petitioner or appellant seeks to have the Court order.]

V

Jurisdictional Statement

[See Rule 27(a)(1)(E)]

VI

Reasons for Granting the Writ

[Where applicable, indicate why the Court of Military Review erred in its decision]

_____
Signature of [petitioner] [appellant] [counsel]

_____
Address & phone number of [petitioner] [appellant] [counsel]

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [mailed] [delivered] to the Court and [mailed] [delivered] to the [respondent] [appellee] on _____. (Date)

_____
(Typed name and signature)

_____
(Address and telephone no.)

(b) *Answer.* (1) The respondent's Answer to an order to show cause, if ordered by the Court after consideration of a petition for extraordinary relief, shall be in substantially the same form as that of the petition, except that the answer may incorporate the petitioner's statement of facts, add supplementary facts, or contest the statement. To the extent that the petitioner's statement of facts is not contested by the respondent, it shall be taken by the respondent as representing an accurate declaration of the basis on which relief is sought. The answer to the order to show cause will be filed no later than 10 days after service on the respondent of the order requiring such answer, unless a different time for filing the answer is specified in the Court's order.

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(2) The appellee's answer to a writ appeal petition shall be filed no later than 10 days after the filing of the appellant's writ appeal petition and supporting brief.

(c) *Reply.* (1) A reply may be filed by the petitioner no later than 5 days after the filing of a respondent's answer to an order to show cause.

(2) A reply may be filed by an appellant, in the case of a writ appeal petition, no later than 5 days after the filing of an appellee's answer.

PETITIONS FOR NEW TRIAL

Rule 29. Filing, Notice, and Briefs

(a) *Filing.* A petition for new trial will be filed with the Judge Advocate General of the service concerned, who, if the case is pending before this court, will transmit it, together with four copies, to the Clerk's office for filing with the Court.

(b) *Notice.* Upon receipt of a petition for new trial transmitted by the Judge Advocate General, the Clerk will notify all counsel of record of such fact.

(c) *Briefs.* A brief in support of a petition for new trial, unless expressly incorporated in the petition, will be filed substantially in the form specified in Rule 24 no later than 30 days after the issuance by the Clerk of a notice of the filing of the petition. An appellee's answer shall be filed no later than 30 days after the filing of an appellant's brief. A reply may be filed no later than 10 days after the filing of the appellee's answer.

(d) *Special master.* The Court may refer a petition for new trial to a special master, who may be a military judge or other person, to make further investigation, to take evidence, and to make such recommendations to the Court as are deemed appropriate. *See United States v. DuBay*, 17 U.S.C.M.A. 147 (1967).

MOTIONS

Rule 30. Motions

(a) All motions will be filed in writing and will state with particularity the relief sought, the factual or legal grounds for requesting such relief, and will include a certificate of filing and service in accordance with Rule 39(c). A copy will be served on opposing counsel and others who have entered an appearance in the proceedings.

(b) Any answer to a motion will be filed no later than 5 days after the filing of the motion.

(c) Motions will be separately filed before the Court and shall not be incorporated in any other pleading.

(d) Once a notice of hearing has been given to counsel for the parties, motions other than those to file recent supplemental citations of authority without additional argument may not be filed within 5 working days prior to the date on which such hearing is scheduled except by leave of the Court and for good cause shown.

(e) Oral motions presented by counsel by leave of the Court during a hearing shall be forthwith reduced to writing by the moving counsel and filed with the Court within 3 days after such hearing.

(f) Notwithstanding any other provision of these rules, the Court may immediately act on any motion without awaiting an answer from the opposing side, if it appears that the relief sought ought to be granted. Any party adversely affected by such action may request reconsideration, vacation, or modification of such action.

RECONSIDERATION

Rule 31. Petition for Reconsideration

(a) A petition for reconsideration, may be filed no later than 10 days after the date of any order, decision, or opinion by the Court.

(b) An answer may be filed by opposing counsel no later than 5 days after the filing of the petition.

(c) The concurrence of two judges who participated in the original decision shall be required for the allowance of a petition for reconsideration.

(d) Consecutive petitions for reconsideration, and any such petition that is out of time, will not be filed unless accompanied by a motion for leave to file the same, in accordance with Rule 30, and unless such motion is granted by the Court.

Rule 32. Form of Petition for Reconsideration

A petition for reconsideration, will be filed in substantially the following form:

IN THE UNITED STATES COURT OF MILITARY APPEALS

_____, (Appellee) (Appellant) (Respondent) (Petitioner) v. _____, (Appellant) (Appellee) (Petitioner) (Respondent)	PETITION FOR RECONSIDERATION CMR Dkt. No.___ USCMA Dkt. No.___

TO THE JUDGES OF THE UNITED STATES COURT OF MILITARY APPEALS:

The Court is requested to reconsider its (opinion) (order) (decision) in this case for the following reason(s):

[The petition shall state with particularity the points of law or fact which, in the opinion of the party seeking reconsideration, the Court has overlooked or misapprehended and shall contain such argument in support of the petition as the party desires to present. Petitions are not to contain merely a restatement of arguments already presented.]

_____
(Counsel's typed name and signature)

_____
(Counsel's address and telephone no.)

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [mailed] [delivered] to the Court and [mailed] [delivered] to the [appellant] [appellee] [petitioner] [respondent] on _____. (Date)

_____
(Typed name and signature)

_____
(Address and telephone no.)

PRACTICE BEFORE THE COURT

Rule 33. Suspension of Rules

For good cause shown, the Court may suspend any of these rules in a particular case, on application of a party or on its own motion, and may order proceedings in accordance with its direction.

Rule 34. Computation of Time

(a) *General.* In computing any period of time prescribed or allowed by these Rules, order of the Court, or any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday. When the period of time prescribed or allowed is less than 7 days, intervening Saturdays, Sundays, and legal holidays, will be excluded in the computation.

(b) *Additional time when service by mail.* Whenever a party has the right or is required to do some act within a prescribed period after the issuance of an order or the filing of a notice, pleading, or other paper relative to a case when service thereof is made upon him by mail, 5 days will be added to the prescribed period if the party upon whom the service is made is within the limits of the contiguous 48 States and the District of Columbia, and 15 days will be added if the party is located outside these limits, including the States of Alaska and Hawaii. This provision for additional time shall not apply, however, to the time limitations prescribed in Rule 19(a)(1) for the filing of a petition for grant of review.

Rule 35. Filing of Record

The record shall be filed by the Judge Advocate General as soon as practicable after the docketing of any action pursuant to Rule 4. *See* Rule 27(a)(1) and (b).

Rule 36. Filing of Pleadings

(a) All pleadings or other papers relative to a case will be submitted to the Clerk's office, 450 E Street, Northwest, Washington, D.C. 20442. Pleadings transmitted by mail or other means for filing in the Clerk's office will be deemed to have been filed when received by the Court or when deposited in the United States mails addressed to the Court, whichever occurs first. *See* Rule 27(a)(6).

(b) If any pleading or paper is not filed or offered for filing in compliance with these rules or an order of the Court, the Court may issue an order to show cause, dismiss the proceeding, or return the proferred pleading or paper on its own motion or the motion of a party.

Rule 37. Copies

An original and four legible copies of all pleadings or other papers relative to a case will be filed. *See* Rule 24(d) concerning documents which contain classified information.

Rule 38. Signatures

(a) *General.* Except for documents filed in *propria persona* and those provided for in subsection (b), all original pleadings or other papers filed in a case will bear the signature of at least one counsel who is a member of this Court's Bar and who is participating in the case. The name, address, telephone number, and rank, if any, of the person signing, together with the capacity in which such counsel signs the paper will be included. This signature will constitute a certificate that the statements made in the pleading or paper are true and correct to the best of the counsel's knowledge, information, or belief, and that the pleading or paper is filed in good faith and not for the purpose of unnecessary delay.

(b) *Exception.* If the counsel signing a pleading or paper presented to the Clerk's office for filing is not a member of the Bar of this Court, the pleading or paper shall nonetheless be received as if such counsel were a member. However, within 30 days of the filing of a pleading, such counsel shall, as a prerequisite to continuing in the case as counsel of record, apply for admission to the Bar of this Court or move to appear *pro hac vice* under Rule 13.

Rule 39. Service of Pleadings

(a) *In general.* At or before the filing of any pleading or other paper relative to a case in the Clerk's office, service of a copy of the same will be made on all counsel of record, including *amicus curiae* counsel, in person or by mail.

(b) *Certificate for review.* In the case of a certificate for review, service of a copy thereof will be made on appellate defense counsel and appellate government counsel as prescribed in Rule 22(a).

(c) *Form of certificate of filing and service.* A certificate of filing and service will be included in any pleading or other paper substantially in the following form:

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was [delivered] [mailed] to the Court and was [delivered] [mailed] to (*enter name of each counsel of record*) on _____. (Date)

_____
(Typed name and signature)

_____
(Address and telephone no.)

HEARINGS

Rule 40. Hearings

(a) *Motions, petitions for grant of review, petitions for extraordinary relief, writ appeal petitions, petitions for new trial, and petitions for reconsideration.* Except when ordered by the Court, hearings will not be permitted on motions, petitions for grant of review, petitions for extraordinary relief, writ appeal petitions, petitions for new trial, or petitions for reconsideration.

(b) *When and how heard.* After the case is calendared as provided in Rule 11 and all required

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briefs have been filed, a hearing may be ordered by the Court.

(1) *Notice of hearing.* The Clerk will give at least 20 days notice in writing to counsel for the parties of the time and place for the hearing, unless ordered otherwise by the Court. Upon receipt of such notice, counsel will notify the Clerk's office of the identity of the counsel who will present oral argument.

(2) *Presentation.* Unless directed otherwise by the Clerk, counsel for the appellant or petitioner will open and close the argument. When the subject of a hearing is a motion, counsel for the moving party will be entitled to open and close. When both parties seek review in this Court, the accused shall be deemed the appellant for the purpose of this rule. Argument by counsel for an *amicus curiae* will be allowed on motion filed under Rule 30.

(3) *Time allowed.* Each side will normally be allotted 30 minutes to present oral argument.

Rule 41. Photographing, Televising, or Broadcasting of Hearings

(a) The photographing, broadcasting, or televising of any session of the Court or other activity relating thereto is prohibited within the confines of the courthouse unless authorized by the Court.

(b) Any violation of this rule will be deemed a contempt of this Court and, after due notice and hearing, may be punished accordingly. *See* 18 U.S.C. § 401.

OPINIONS

Rule 42. Filing, Reproduction, and Distribution

All opinions of the Court will be filed with the Clerk for preservation. The reproduction, printing, and distribution of all opinions will be under the supervision of the Clerk.

Rule 43. Issuance of Mandates

(a) Mandates implementing opinions of the Court will issue as a matter of course after the expiration of the time for filing a petition for reconsideration under Rule 31(a). In the event such a petition for reconsideration is filed, the mandate shall not issue until the Court takes action on the petition. In any case, the Court may order the mandate to issue forthwith.

(b) The effective date of any order shall be the date of that order, and no mandate will issue. The Clerk will furnish copies of all such orders to counsel of record and to the Judge Advocate General of the service in which the case arose.

JUDICIAL CONFERENCE

Rule 44. Judicial Conference

(a) *Purpose.* There shall be held annually, at such time and place as shall be designated by the Court, a conference for the purpose of considering the state of business of the Court and advising on ways and means of improving the administration of military justice. The conference shall be called "the Judicial Conference of the United States Court of Military Appeals," and may be held in conjunction with the Homer Ferguson Conference or otherwise.

(b) *Composition.* In addition to the Judges, the following shall be invited to participate in the Conference:

(1) The Senior Judges of the Court;

(2) The Judge Advocates General;

(3) The Director, Judge Advocate Division, U.S. Marine Corps;

(4) The Chief Counsel, U.S. Coast Guard;

(5) The General Counsel, Department of Defnese;

(6) The General Counsels, Committees on Armed Services, United States Senate and House of Representatives;

(7) The Chiefs, Military Justice Divisions, of each Armed Force;

(8) The Chiefs, Appellate Defense and Appellate Government Divisions, of each Armed Force;

(9) The Chief Judge of each Court of Military Review;

(10) The Chief of the Trial Judiciary of each Armed Force, or his designee;

(11) The Clerk of the Court;

(12) The Central Legal Staff Director of the Court;

(13) The Chairman, Rules Advisory Committee;

(14) The deans of one or more approved law schools, or their designees; and

(15) Members of the Bar of the Court invited by the Court.

REVISION OF RULES

Rule 45. Rules Advisory Committee

(a) *Establishment of committee; membership.* A Rules Advisory Committee is hereby created for this Court. The Committee shall consist of not less than 9 members of the Bar of this Court and shall be selected by the Court, in such a way as to represent a broad cross-section of the legal profession. Representatives from government, the law schools, and public interest groups shall, when practicable, be included on the Committee, as shall private practitioners. The Clerk of the Court shall be a member of the Committee and shall serve as its Reporter.

(b) *Duties of committee.* The Rules Advisory Committee appointed by this Court shall have an advisory role concerning practice and procedure before the Court. The Committee shall, among other things, (1) provide a forum for continuous study of the operating procedures and published rules of the Court; (2) serve as a conduit between the Bar, the public, and the Court regarding the Rules of the Court, procedural matters, and suggestions for changes; (3) draft, consider and recommend rules and amendments to the Court for adoption; and (4) render reports from time to time, on its own initiative and on request, to the Court on the activities and recommendations of the Committee. The Committee shall prepare appropriate explanatory materials with respect to any rule change or other recommendation it submits to the Court.

(c) *Terms of members; chairman.* With the exception of the Clerk of the Court, the members of the Committee shall serve three-year terms, which will be staggered in such a way as to enable the Court to appoint or reappoint one-third of the Committee each year. The Court shall appoint one of the members of the Committee to serve as chairman.

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COURTS OF MILITARY REVIEW

RULES OF PRACTICE AND PROCEDURE

(Effective February 3, 1981, as amended to January 1, 1986)

Rule

1. Name and seal.
2. Jurisdiction.
3. Scope of review.
4. Quorum.
5. Place for filing papers.
6. Signing of papers.
7. Computation of time.
8. Qualification of counsel.
9. Conduct of counsel.
10. Request for appellate defense counsel.
11. Assignment of counsel.
12. Retention of civilian counsel.
13. Notice of appearance of counsel.
14. Waiver or withdrawal of appellate review.
15. Assignments of error and briefs.
16. Oral arguments.
17. En banc proceedings.
18. Orders and decisions of the Court.
19. Reconsideration.
20. Petitions for extraordinary relief, answer, and reply.
21. Appeals by the United States.
22. Petitions for new trial.
23. Motions.
24. Continuances and interlocutory matters.
25. Suspension of rules.
26. Internal rules.
27. Recording, photographing, broadcasting, or telecasting of hearings.

Attachments

1. Formats for Direction for Review.
2. Format for Assignment of Errors and Brief on Behalf of Accused (Rule 1).

This regulation publishes the rules of practice and procedure for courts of military review, pursuant to the Uniform Code of Military Justice, Article 66(f) (10 U.S.C. 866). When the title "The Judge Advocate General" is used in a rule, it includes the General Counsel of the Department of Transportation when the Coast Guard is not operating as a service in the Navy. This regulation applies to the Judge Advocates General of the Departments of the Air Force, the Army, and the Navy and the General Counsel of the Department of Transportation.

Rule 1. Name and seal

(a) The titles of the Courts of Military Review of the respective services are:

(1) "United States Army Court of Military Review."

(2) "United States Navy-Marine Court of Military Review."

(3) "United States Air Force Court of Military Review."

(4) "United States Coast Guard Court of Military Review."

(b) Each Court is authorized a seal in the discretion of the Judge Advocate General concerned. The design of such seal shall include the title of the Court.

(As amended Oct. 27, 1983.)

Rule 2. Jurisdiction

(a) The jurisdiction of the Court is as follows:

(1) Review Under Article 66. All cases of trial by court-martial in which the sentence as approved extends to:

(A) death; or

(B) dismissal of a commissioned officer, cadet or midshipman, dishonorable or bad conduct discharge, or confinement for 1 year or longer; and the accused has not waived or withdrawn appellate review.

(2) Review upon Direction of the Judge Advocate General Under Article 69. All cases of trial by general court-martial in which there has been a finding of guilty and a sentence:

(A) for which Article 66 does not otherwise provide appellate review, and

(B) which the Judge Advocate General forwards to the Court for review, and

(C) in which the accused has not waived or withdrawn appellate review.

(3) Review Under Article 62. All cases of trial by court-martial in which a punitive discharge may be adjudged and a military judge presides, and in which the Government appeals an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification or excludes evidence that is substantial proof of a fact material to the proceedings.

(4) Review Under Article 73. All petitions for a new trial in cases of trial by court-martial which are referred to the Court by the Judge Advocate General.

(b) Extraordinary Writs. The Court may, in its discretion, entertain petitions for extraordinary relief including, but not limited to, writs of mandamus, writs of prohibition, writs of habeas corpus, and writs of error coram nobis.

(c) Effect of Rules on Jurisdiction. Nothing in these Rules shall be construed to extend or limit the jurisdiction of the Courts of Military Review as established by law.

Rule 3. Scope of review

In cases referred to it for review pursuant to Article 66, the Court may act only with respect to the findings and sentence as approved by the convening authority. In determining an appeal under Article 62, the Court may act only with respect to matters of law. The Court may, in addition, review such other matters and take such other action as it determines to be proper under substantive law.

Rule 4. Quorum

(a) *In Panel.* When sitting in panel, a majority of the judges assigned to that panel constitutes a quorum for the purpose of hearing or determining any matter referred to the panel. The determination of any matter referred to the panel shall be according to the opinion of a majority of the judges participating in the decision. However, any judge present for duty may issue all necessary orders concerning any proceedings pending on [in] panel and any judge present for duty, or a Clerk of Court or Commissioner to whom the Court has delegated authority, may act on uncontested motions, provided such action does not finally dispose of a petition, appeal, or case before the Court.

(b) *En Banc.* When sitting as a whole, a majority of the judges of the Court constitutes a quorum for the purpose of hearing and determining any matter before the Court. The determination of any matter before the Court shall be according to the opinion of a majority of the judges participating in the decision. In the absence of a quorum, any judge present for duty may issue all necessary orders concerning any proceedings pending in the Court preparatory to hearing or decision thereof.

Rule 5. Place for filing papers

When the filing of a notice of appearance, brief, or other paper in the office of a Judge Advocate General is required by these rules, such papers shall be filed in the office of the Judge Advocate General of the appropriate armed force. If transmitted by mail or other means, they are not filed until received in such office.

Rule 6. Signing of papers

All formal papers shall be signed and shall show, typewritten or printed, the signer's name, address, military grade (if any), and the capacity in which the paper is signed. Such signature constitutes a certification that the statements made therein are true and correct to the best of the knowledge, information, and belief of the persons signing the paper and that the paper is filed in good faith and not for purposes of unnecessary delay.

Rule 7. Computation of time

In computing any period of time prescribed or allowed by these rules, by order of the Court, or by any applicable statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period run until the end of the next day which is neither a Saturday, Sunday, nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

Rule 8. Qualification of counsel

(a) *All Counsel.* Counsel in any case before the Court shall be a member in good standing of the bar of a Federal Court, the highest court of a State or another recognized bar.

(b) *Military Counsel.* Assigned appellate defense and appellate government counsel shall, in addition, be qualified in accordance with Articles 27(b)(1) and 70(a), Uniform Code of Military Justice.

(c) *Admission.* Each Court may license counsel to appear before it. Otherwise, upon entering an appearance, counsel shall be deemed admitted *pro hac vice*, subject to filing a certificate setting forth required qualifications if directed by the Court.

(d) *Suspension.* No counsel may appear in any proceeding before the Court while suspended from practice by the Judge Advocate General of the service concerned.

Rule 9. Conduct of counsel

The conduct of counsel appearing before the Court shall be in accordance with rules of conduct prescribed pursuant to Rule for Courts-Martial 109 by the Judge Advocate General of the service concerned. In addition, the Court may exercise its inherent power to regulate counsel appearing before it, including the power to remove on an ad hoc basis counsel misbehaving before or in relation to their appearance before the Court. Conduct deemed by the Court to warrant consideration of suspension or other professional discipline shall be reported by the Court to the Judge Advocate General concerned.

Rule 10. Request for appellate defense counsel

An accused may be represented before the Court by appellate counsel detailed pursuant to Article 70(a) or by civilian counsel provided by the accused, or both. An accused who does not waive appellate review pursuant to Rule for Courts-Martial 1110 shall, within 10 days after service of a copy of the convening authority's action under Rule for Courts-Martial 1107(h) forward to the convening authority or the Judge Advocate General

(a) A request for representation by military appellate defense counsel, or

(b) Notice that civilian counsel has been retained or that action has been taken to retain civilian counsel (must include name and address of civilian counsel), or

(c) Both a request for representation by military appellate defense counsel under Rule 10(a) and notice regarding civilian counsel under Rule 10(b), or

(d) A waiver of representation by counsel.

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Rule 11. Assignment of counsel

(a) When a record of trial is referred to the Court—

(1) if the accused has requested representation by appellate defense counsel, pursuant to Article 70(c)(1), counsel detailed pursuant to Article 70(a) will be assigned to represent the accused;

(2) if the accused gives notice that he or she has retained or has taken action to retain civilian counsel, appellate defense counsel shall be assigned to represent the interests of the accused pending appearance of civilian counsel. Assigned defense counsel will continue to assist after appearance by civilian counsel unless excused by the accused;

(3) if the accused has neither requested appellate counsel nor given notice of action to retain civilian counsel, but has not waived representation by counsel, apellate defense counsel will be assigned to represent the accused, subject to excusal by the accused or by direction of the Court.

(b) In any case—

(1) the Court may request counsel when counsel have not been assigned;

(2) pursuant to Article 70(c)(2), appellate defense counsel will represent the accused when the United States is represented by counsel before the Court.

Rule 12. Retention of civilian counsel

When civilian counsel represents an accused before the Court, the Court will notify counsel when the record of trial is received. If both civilian and assigned appellate defense counsel represent the accused, the Court will regard civilian counsel as primary counsel unless notified otherwise. Ordinarily, civilian counsel will use the accused's copy of the record. Civilian counsel may reproduce, at no expense to the Government, appellate defense counsel's copy of the record.

Rule 13. Notice of appearance of counsel

Military and civilian appellate counsel shall file a written notice of appearance with the Court. The filing of any pleading relative to a case which contains the signature of counsel constitutes notice of appearance of such counsel.

Rule 14. Waiver or withdrawal of appellate review

Withdrawals from appellate review, and waivers of appellate review filed after expiration of the period prescribed by Rule for Courts-Martial 1110(f)(1), will be referred to the Court for consideration. At its discretion, the Court may require the filing of a motion for withdrawal, issue a show cause order, or grant the withdrawal without further action, as may be appropriate. The Court will return the record of trial, in a case withdrawn from appellate review, to the Judge Advocate General for action pursuant to Rule for Courts-Martial 1112.

Rule 15. Assignments of error and briefs

(a) *General Provisions.* Appellate counsel for the accused may file an assignment of error if any are to be alleged, setting forth separately each error asserted. The assignment of errors should be included in a brief for the accused (attachment 2). An original of all assignments of error and briefs, and as many additional copies as shall be prescribed by each service, shall be submitted. Briefs and assignments of errors shall be typewritten, double-spaced on white paper, and securely fastened at the top. All references to matters contained in the record shall show record page numbers and any exhibit designations. A brief on behalf of the government shall be of like character as that prescribed for the accused.

(b) *Number of Briefs.* Appellate counsel shall be limited to the filing of one brief for each side unless the Court otherwise permits or directs.

(c) *Time for Filing.* Any brief for an accused shall be filed within 30 days after appellate counsel has been notified of the receipt of the record in the Office of the Judge Advocate General. If the Judge Advocate General has directed appellate government counsel to represent the United States, such counsel shall file an answer on behalf of the government within 30 days after any brief and assignment of errors has been filed on behalf of an accused. If no brief is filed on behalf of an accused, a brief on behalf of the government may be filed within 30 days after expiration of the time allowed for the filing of a brief on behalf of the accused.

Rule 16. Oral arguments

Oral arguments may be heard in the discretion of the Court upon motion by either party or when otherwise ordered by the Court. The motion of a party for oral argument shall be made when that party's pleading is filed or within 5 days after the filing of any response thereto permitted under these rules.

Rule 17. En banc proceedings

(a) A majority of the judges present for duty may order that any appeal or other proceeding be considered or reconsidered, except as indicated in section (c) below, by the Court sitting as a whole. Such consideration or reconsideration ordinarily will not be ordered except (1) when consideration by the full Court is necessary to secure or maintain uniformity of decision, or (2) when the proceedings involve a question of exceptional importance, or (3) when a sentence being reviewed pursuant to Article 66 extends to death.

(b) A party may suggest the appropriateness of consideration or reconsideration by the Court as a whole. If a party desires to suggest in cases being reviewed pursuant to Article 66, that a matter be considered initially by the Court as a whole, the suggestion must be filed with the Court within 5 days after the government files its answer to the assignment of errors, or the accused files a reply if permitted to do so under Rule 15(b). In other proceedings the suggestion must be filed with the party's initial petition or other initial pleading, or within 5 days after the response thereto is filed. A suggestion for reconsideration by the Court

as a whole must be made within the time prescribed by Rule 19 for filing a motion for reconsideration. No response to the suggestion may be filed unless the Court shall so order.

(c) The suggestion of a party for consideration or reconsideration by the Court as a whole shall be transmitted to each judge of the Court who is present for duty, but a vote need not be taken to determine whether the cause shall be considered or reconsidered by the Court as a whole unless a judge requests a vote on such a suggestion made by a party. En banc reconsideration of an en banc decision will not be held unless one member of the original majority concurs in a vote for reconsideration.

Rule 18. Orders and decisions of the court

The Court shall give notice of its orders and decisions pursuant to Rule for Courts-Martial 1203. The Court shall immediately serve such orders or decisions, when rendered, on appellate defense counsel, government counsel and The Judge Advocate General, or designee, as appropriate.

Rule 19. Reconsideration

(a) The Court may, in its discretion and on its own motion, enter an order to reconsider its decision in any case not later than 30 days after service of such decision on the accused's appellate defense counsel or on the accused, if the accused is not represented by appellate counsel provided a petition for grant of review or certificate for review has not been filed with the United States Court of Military Appeals, or a record of trial for review under Article 67(b) has not been received by that Court. Copies of such order will be served on appellate defense counsel and appellate government counsel. No briefs or arguments shall be received unless the order so directs.

(b) Provided a petition for grant of review or certificate for review has not been filed with the United States Court of Military Appeals, or a record of trial for review under Article 67(b) has not been received by the United States Court of Military Appeals, the Court may, in its discretion, reconsider its decision in any case upon motion filed either:

(1) By appellate defense counsel within 20 days after receipt by counsel, or by the accused if the accused is not represented by counsel, of a decision or order, or

(2) By appellate government counsel within 20 days after the decision or order is received by counsel.

(c) A motion for reconsideration shall briefly and directly state the grounds for reconsideration, including a statement of facts showing jurisdiction in the Court. A reply to the motion for reconsideration will be received by the Court only if filed within 5 days of receipt of a copy of the motion. Oral arguments shall not be heard on a motion for reconsideration unless ordered by the Court. The original of the motion filed with the Court shall indicate the date of receipt of a copy of the same by opposing counsel.

(d) The time limitations prescribed by this rule shall not be extended under the authority of Rule 24 or Rule 25 beyond the expiration of the time for filing a petition for review by the United States Court of Military Appeals, except that the time for filing briefs by either party may be extended for good cause.

Rule 20. Petitions for extraordinary relief, answer, and reply

(a) *Petition for Extraordinary Relief.* A petition for extraordinary relief in the number of copies required by the Court shall be accompanied by proof of service on each party respondent and will contain:

(1) A previous history of the case including whether prior actions have been filed or are pending for the same relief in this or any other court and the disposition or status of such actions;

(2) A concise and objective statement of all facts relevant to the issue presented and of any pertinent opinion, order or ruling;

(3) A copy of any pertinent parts of the record and all exhibits related to the petition if reasonably available and transmittable at or near the time the petition is filed;

(4) A statement of the issue;

(5) The specific relief sought;

(6) Reasons for granting the writ;

(7) The jurisdictional basis for relief sought and the reasons why the relief sought cannot be obtained during the ordinary course of appellate review;

(8) If desired, a request for appointment of appellate counsel.

(b) *Format.* The title of the petition shall include the name, military grade and service number of each named party and, where appropriate, the official military or civilian title of any named party acting in an official capacity as an officer or agent of the United States. When an accused has not been named as a party, the accused shall be identified by name, military grade and service number by the petitioner and shall be designated as the real party in interest.

(c) *Electronic Message Petitions.* The Court will docket petitions for extraordinary relief submitted by means of an electronic message. The message will conclude with the full name and address of petitioner's counsel, if any, and will state when the written petition and brief, when required, were placed in the mail addressed to the Court and to all named respondents.

(d) *Notice to the Judge Advocate General.* Immediately upon receipt of any petition, the Clerk shall forward a copy of the petition to the appropriate Judge Advocate General or designee.

(e) *Briefs.* Each petition for extraordinary relief must be accompanied by a brief in support of the petition unless it is filed *in propria persona.* The Court may issue a show cause order in whcih event the respondent shall file an answer within 10 days of the receipt of the show cause order. The petitioner may file a reply to the answer within 5 days of recipt of the answer.

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(f) *Initial Action by the Court.* The Court may dismiss or deny the petition, order the respondent to show cause and file an answer within the time specified, or take whatever other action it deems appropriate.

(g) *Oral Argument and Final Action.* The Court may set the matter for oral argument. However, on the basis of the pleadings alone, the Court may grant or deny the relief sought or make such other order in the case as the circumstances may require. This includes referring the matter to a special master, who need not be a military judge, to further investigate; to take evidence; and to make such recommendations as the Court deems appropriate.

Rule 21. Appeals by the United States

(a) *Restricted Filing.* Only a representative of the government designated by the Judge Advocate General of the respective service may file an appeal by the United States under Article 62.

(b) *Counsel.* Counsel must be qualified and appointed, and give notice of appearance in accordance with these rules and those of the Judge Advocate General concerned.

(c) *Form of Appeal.* The appeal must include those documents specified by Rule for Courts-Martial 908 and by applicable regulations of the Secretary concerned. A certificate of the Notice of Appeal described in Rule for Courts-Martial 908(b)(3) must be included. The certificate of service must reflect the date and time of the military judge's ruling or order from which the appeal is taken, and the time and date of service upon the military judge.

(d) *Time for Filing.* All procedural Rules of the Court shall apply except as noted herein:

(1) The representative of the government designated by the Judge Advocate General shall promptly decide whether to file the appeal with the Court of Military Review. Except for good cause shown, the government shall file such an appeal no later than 30 days after the military judge's ruling or order. The United States shall prepare a brief in the manner prescribed by Rule 15, and shall file it with the appeal no later than 30 days after the military judge's ruling or order.

(2) Appellee shall prepare an answer in the manner prescribed by Rule 15 and shall file such answer within 20 days after any filing of the government brief.

(e) The government shall diligently prosecute all appeals by the United States and the Court will give such appeals priority over all other proceedings where practicable.

Rule 22. Petitions for new trial

(a) *General Provisions.* The Court shall, as soon as practicable after receipt from the Judge Advocate General of a petition for a new trial in a case pending before the Court, notify appellate counsel of such receipt.

(b) *Additional Investigation.* The Court on considering a petition for a new trial may, when it deems appropriate, refer the matter to the Judge Advocate General who shall cause further investigation to be made and to report the results thereof to the Court.

(c) *Answer.* Appellate Government counsel shall file an answer to a petition for new trial within 10 days after being notified of the receipt thereof by the Court.

(d) *Briefs.* Any brief in support of a petition for new trial shall be filed within 10 days of appellate Government counsel's answer. If appellate Government counsel fails to file an answer, accused may file a brief within 10 days after the expiration of the time allowed for the filing of appellate Government counsel's answer. Appellate Government counsel's brief shall be filed within 10 days of the filing of accused's brief. If accused fails to file a brief, appellate Government Counsel may file a brief within 10 days after the expiration of the time allowed for filing of accused's brief.

(e) *Oral Argument.* Except when ordered by the Court, oral argument shall not be permitted on a petition for a new trial.

Rule 23. Motions

(a) *Content.* All motions, unless made during the course of a hearing, shall state with particularity the relief sought and the grounds therefor. Motions, pleadings, and other papers desired to be filed with the Court may be combined in the same document, with the heading indicating, for example, "MOTION TO FILE (SUPPLEMENTAL ASSIGNMENT OF ERRORS) (CERTIFICATE OF CORRECTION) (SUPPLEMENTAL PLEADING)", or "ASSIGNMENT OF ERRORS AND MOTION TO FILE ATTACHED REPORT OF MEDICAL BOARD".

(b) *Opposition.* Any opposition to a motion shall be filed within 5 days after receipt by the opposing party of service of the motion.

(c) *Leave to File.* Any pleading not required by these rules shall be accompanied by a motion for leave to file such pleading.

(d) *Oral Argument.* Except when ordered by the Court, oral argument shall not be permitted on motions.

Rule 24. Continuances and interlocutory matters

Except as otherwise provided in Rule 19(d), the Court, in its discretion, may extend any time limits prescribed and may dispose of any interlocutory or other appropriate matter not specifically covered by these rules, in such manner as may appear to be required for a full, fair, and expeditious consideration of the case. See Rule 4.

Rule 25. Suspension of rules

For good cause shown, the Court acting as a whole or in panel may suspend the requirements or provisions of any of these rules in a particular case on petition of a party or on its own motion and may order proceedings in accordance with its direction.

Rule 26. Internal rules

The Chief Judge of the Court has the authority to prescribe internal rules for the Court.

Rule 27. Recording, photographing, broadcasting, or telecasting of hearings

The recording, photographing, broadcasting, or televising of any session of the Court or other activity relating thereto is prohibited unless specifically authorized by the Court sitting as a whole.

ATTACHMENT 1

FORMAT FOR DIRECTION FOR REVIEW

IN THE UNITED STATES ARMY* COURT OF MILITARY REVIEW

UNITED STATES *v.* Private (E-1) JOHN RICHARD DOE, SSN 000-00-0000, Company, 300th Infantry Division, APO New York 09000.	DIRECTION FOR REVIEW Case No. _____ Tried at _____, on _____ before a G.C.M. appointed by _____.

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES ARMY* COURT OF MILITARY REVIEW

1. Pursuant to the Uniform Code of Military Justice, Article 69, and the Rules of Practice and Procedure for Courts of Military Review, Rule 2b, the record of trial in the above-entitled case is forwarded for review pursuant to the Uniform Code of Military Justice, Article 66.

2. The accused was found guilty of a violation of the Uniform Code of Military Justice, Article(s) _____, was sentenced to _____ on ___ ___ at _____ by ___. The convening authority (approved the sentence) (approved only so much of the sentence as provided for _____) and the case was received in the United States Army* Judiciary on _____.

3. In review pursuant to Uniform Code of Military Justice, Article 66, it is requested that attention be given to the following issues:

A. WHETHER THE SPECIFICATION OF CHARGE I FAILS TO STATE AN OFFENSE UNDER THE UNIFORM CODE OF MILITARY JUSTICE IN THAT IT DOES NOT ALLEGE THAT ACCUSED'S ABSENCE WAS WITHOUT AUTHORITY.

B. WHETHER THE MILITARY JUDGE FAILED TO TAILOR HIS INSTRUCTIONS ON SENTENCE TO THE MATTERS PRESENTED IN EXTENUATION AND MITIGATION.

JOHN H. BROWN
Major General, USA
The Judge Advocate General

Received a copy of the foregoing Direction for Review this ___ day of _____ 19___.

ROBERT JONES
Colonel, JAGC
Chief, Government Appellate Division

HARRY ARNOLD
Colonel, JAGC
Chief, Defense Appellate Division

JOHN C. SMITH, Esq.
1 Ace Street
Union, New Jersey 07083

* Use Navy-Marine Corps, Air Force, or Coast Guard as the case may be.

ATTACHMENT 2

FORMAT FOR ASSIGNMENT OF ERRORS AND BRIEF ON BEHALF OF ACCUSED (RULE 16)

IN THE UNITED STATES ARMY[1] COURT OF MILITARY REVIEW

UNITED STATES *v.* Private (E-1) JOHN RICHARD DOE, SSN 000-00-0000, U.S. Army, Replacement Detachment, 300th Administration Company, 300th Infantry Division, Fort Gordon, Georgia 31093	ASSIGNMENT OF ERRORS AND BRIEF ON BEHALF OF ACCUSED Case No. _____ Tried at _____, on _____ before a G.C.M. appointed by _____.

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES ARMY[1] COURT OF MILITARY REVIEW

On _____, the accused was tried by general court-martial. The charges and specifications upon which he was arraigned, his pleas, and the court-martial's findings were as follows:

Chg	Art UCMJ	Specs	Summary of Offenses	Pleas	Findings
I	86	1	AWOL (28 Jan ___ -28 Feb ___)	G	G
		2	AWOL (3 Mar ___ -3 Apr ___)	G	G
II	121	.....	Larceny of $100.00, property of U.S. Government	NG	G

He was sentenced to dishonorable discharge, forfeiture of all pay and allowances, confinement at hard labor for 2 years, and reduction to the lowest enlisted grade. The convening authority approved only so much of the sentence as provides for bad conduct discharge, forfeiture of $50.00 pay per month for 6 months, and reduction to the lowest enlisted grade.

Statement of Facts

Those facts necessary to a disposition of the assigned errors are set forth in the argument, *infra.*[2]

Errors and Argument

I

SPECIFICATION 1 OF CHARGE I FAILS TO STATE AN OFFENSE UNDER THE UNIFORM CODE OF MILITARY JUSTICE

The allegation of absence in Specification 1 of Charge I fails to indicate that the absence was "without proper authority." The United States Court of Military Appeals has held that such an omission is fatal to the legal sufficiency of the specification. *United States v. Schultz,* 16 U.S.C.M.A. 488, 37 C.M.R. 108 (1967); *United States v. Fout,* 3 U.S.C.M.A. 565, 13 C.M.R. 121 (1953).

WHEREFORE, the findings as to Specification 1 of Charge I should be set aside and the sentence reassessed on the basis of the remaining charges and specifications.

II

THE MILITARY JUDGE FAILED TO TAILOR HIS INSTRUCTIONS ON SENTENCE TO THE MATTERS PRESENTED IN MITIGATION AND EXTENUATION

There was extensive evidence presented on behalf of accused to establish his proper exemplary conduct in civilian and military life. (R. 108-133). The military judge limited his instructions on sentence to the maximum authorized punishment and the voting procedure.

In *United States v. Wheeler*, 17 U.S.C.M.A. 274, 38 C.M.R. 72 (1967), the failure of the military judge to tailor the instructions on sentence to the evidence presented in mitigation and extenuation was held to require a rehearing on sentence.

WHEREFORE, the sentence should be set aside and a rehearing authorized thereon.

Sentence Appropriateness

Accused is an 18-year old first time offender (Post-trial Review, p. 3) and has sincerely urged his restoration to duty. (R. 100). His immediate superiors have expressed their willingness to have accused return to his organization. (R. 110).

WHEREFORE, only so much of the sentence as provides for forfeiture of $50.00 pay per month for 6 months, confinement at hard labor for 6 months, and reduction to the lowest enlisted grade should be approved by this Honorable Court.

Date:_____

JOHN C. SMITH, Esq.
1 Act Street
Union, New Jersey 07083

ALBERT JONES
Captain, JAGC
Appellate Defense Counsel

HARRY ARNOLD
Colonel, JAGC
Appellate Defense Counsel

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed or delivered to appellate Government counsel on the _____ day of _____, 19__.

_____
NAME

_____
ADDRESS

[1]Use Navy-Marine Corps, Air Force, or Coast Guard as the case may be.

[2]Where a statement of facts generally applies to all of the assigned errors, it may be set forth here.

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TITLE 11—BANKRUPTCY

This title was enacted by Pub. L. 95-598, title I, § 101, Nov. 6, 1978, 92 Stat. 2549

EFFECTIVE DATE

Pub. L. 95-598, title IV, § 402, Nov. 6, 1978, 92 Stat. 2682, as amended by Pub. L. 98-249, § 1(a), Mar. 31, 1984, 98 Stat. 116; Pub. L. 98-271, § 1(a), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98-299, § 1(a), May 25, 1984, 98 Stat. 214; Pub. L. 98-325, § 1(a), June 20, 1984, 98 Stat. 268; Pub. L. 98-353, title I, §§ 113, 121(a), July 10, 1984, 98 Stat. 343, 345; Pub. L. 98-454, title X, § 1001, Oct. 5, 1984, 98 Stat. 1745, provided that:

[*See main edition for text of* (a)]

"(b) Except as provided in subsections (c) and (d) of this section, the amendments made by title II [sections 201 to 252] of this Act shall not be effective.

[*See main edition for text of* (c) *and* (d)]

"(e) [Repealed. Pub. L. 98-454, title X, § 1001, Oct. 5, 1984, 98 Stat. 1745]"

[Amendment of section 402(b) of Pub. L. 95-598, set out above, by section 113 of Pub. L. 98-353 effective June 27, 1984, see section 122(c) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.]

SAVINGS PROVISION

Pub. L. 95-598, title IV, § 403, Nov. 6, 1978, 92 Stat. 2683, as amended by Pub. L. 98-353, title III, § 382, July 10, 1984, 98 Stat. 364, provided that:

[*See main edition for text of* (a) *to* (d)]

"(e) Notwithstanding subsection (a) of this section—

"(1) a fee may not be charged under section 40c(2)(a) of the Bankruptcy Act [former 11 U.S.C. 68(c)(2)(a)] in a case pending under such Act after September 30, 1979, to the extent that such fee exceeds $200,000;

"(2) a fee may not be charged under section 40c(2)(b) of the Bankruptcy Act in a case in which the plan is confirmed after September 30, 1978, or in which the final determination as to the amount of such fee is made after September 30, 1979, notwithstanding an earlier confirmation date, to the extent that such fee exceeds $100,000;

"(3) after September 30, 1979, all moneys collected for payment into the referees' salary and expense fund in cases filed under the Bankruptcy Act shall be collected and paid into the general fund of the Treasury; and

"(4) any balance in the referees' salary and expense fund in the Treasury on October 1, 1979, shall be transferred to the general fund of the Treasury and the referees' salary and expense fund account shall be closed."

Pub. L. 98-353, title III, § 381, July 10, 1984, 98 Stat. 364, provided that: "This subtitle [(§§ 381, 382) amending section 403(e) of Pub. L. 95-598, set out above] may be cited as the 'Referees Salary and Expense Fund Act of 1984'."

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 7 sections 12, 24; title 8 section 1154; title 10 section 2005; title 12 section 1150; title 15 sections 77c, 77ccc, 78eee, 78fff, 78fff-1, 78fff-2, 78fff-4, 78*lll*, 79k, 80a-2, 80a-6, 80a-25, 80b-2, 1681c, 1870; title 17 section 201; title 18 sections 151, 152, 154, 155, 1961, 2516, 3284; title 19 section 1485; title 26 sections 108, 337, 351, 368, 382, 422, 422A, 542, 1017, 1361, 1398, 1399, 3302, 6012, 6036, 6103, 6161, 6212, 6213, 6326, 6503, 6512, 6532, 6658, 6871, 6872, 7432, 7484, 7508; title 28 sections 156, 157, 526, 586, 1334, 1408, 1409, 1411, 1412, 1930, 2075; title 29 sections 152, 402, 1362, 1368, 1391, 1402, 1405, 1413; title 30 section 934; title 31 section 3713; title 33 section 511; title 37 section 301b, 302, 302b, 308e, 308f, 308g, 308h, 308i, 315; title 38 section 4144; title 40 section 316; title 41 section 41; title 42 sections 254o, 294f, 656, 1473, 2000e, 3602, 6924, 6991b, 6991c; title 43 section 617p; title 45 sections 701, 791, 912, 1007; title 48 sections 1424-4, 1614, 1694; title 49 section 11304; title 49 App. section 1602.

CHAPTER 1—GENERAL PROVISIONS

§ 101. Definitions

In this title—

[*See main edition for text of* (1)]

(2) "affiliate" means—

[*See main edition for text of* (A) *to* (C)]

(D) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement;

[*See main edition for text of* (3) *to* (7)]

(8) "corporation"—

[*See main edition for text of* (A)]

(B) does not include limited partnership;

(9) "creditor" means—

[*See main edition for text of* (A)]

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

[*See main edition for text of* (C); (10) *to* (13)]

(14) "entity" includes person, estate, trust, and governmental unit;

[*See main edition for text of* (15) *to* (18)]

(19) "financial institution" means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, or trust company and, when any such person is acting as agent or custodian for a customer in connection with a securities contract, as de-

fined in section 741(7) of this title, such customer;

(20) "foreign proceeding" means proceeding, whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor's domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization;

(21) "foreign representative" means duly selected trustee, administrator, or other representative of an estate in a foreign proceeding;

(22) "forward contract" means a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into;

(23) "forward contract merchant" means a person whose business consists in whole or in part of entering into forward contracts as or with merchants in commodities;

(24) "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state, department, agency, or instrumentality of the United States, a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government;

(25) "indenture" means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against the debtor, a claim secured by a lien on any of the debtor's property, or an equity security of the debtor;

(26) "indenture trustee" means trustee under an indenture;

(27) "individual with regular income" means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker;

(28) "insider" includes—

(A) if the debtor is an individual—

(i) relative of the debtor or of a general partner of the debtor;

(ii) partnership in which the debtor is a general partner;

(iii) general partner of the debtor; or

(iv) corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation—

(i) director of the debtor;

(ii) officer of the debtor;

(iii) person in control of the debtor;

(iv) partnership in which the debtor is a general partner;

(v) general partner of the debtor; or

(vi) relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership—

(i) general partner in the debtor;

(ii) relative of a general partner in, general partner of, or person in control of the debtor;

(iii) partnership in which the debtor is a general partner;

(iv) general partner of the debtor; or

(v) person in control of the debtor;

(D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;

(E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and

(F) managing agent of the debtor;

(29) "insolvent" means—

(A) with reference to an entity other than a partnership, financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of—

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title; and

(B) with reference to a partnership, financial condition such that the sum of such partnership's debts is greater than the aggregate of, at a fair valuation—

(i) all of such partnership's property, exclusive of property of the kind specified in subparagraph (A)(i) of this paragraph; and

(ii) the sum of the excess of the value of each general partner's nonpartnership property, exclusive of property of the kind specified in subparagraph (A) of this paragraph, over such partner's nonpartnership debts;

(30) "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding;

(31) "lien" means charge against or interest in property to secure payment of a debt or performance of an obligation;

(32) "municipality" means political subdivision or public agency or instrumentality of a State;

(33) "person" includes individual, partnership, and corporation, but does not include governmental unit, *Provided, however,* That any governmental unit that acquires an asset from a person as a result of operation of a loan guarantee agreement, or as receiver or liquidating agent of a person, will be considered a person for purposes of section 1102 of this title.[1]

(34) "petition" means petition filed under section 301, 302, 303, or 304 of this title, as the case may be, commencing a case under this title;

(35) "purchaser" means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee;

(36) "railroad" means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier;

[1] So in original. The period probably should be a semicolon.

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(37) "relative" means individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree;

(38) "repo participant" means an entity that, on any day during the period beginning 90 days before the date of the filing of the petition, has an outstanding repurchase agreement with the debtor;

(39) "repurchase agreement" (which definition also applies to a reverse repurchase agreement) means an agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds;

(40) "securities clearing agency" means person that is registered as a clearing agency under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) or whose business is confined to the performance of functions of a clearing agency with respect to exempted securities, as defined in section 3(a)(12) of such Act (15 U.S.C. 78c(12)) for the purposes of such section 17A;

(41) "security"—

(A) includes—

(i) note;

(ii) stock;

(iii) treasury stock;

(iv) bond;

(v) debenture;

(vi) collateral trust certificate;

(vii) pre-organization certificate or subscription;

(viii) transferable share;

(ix) voting-trust certificate;

(x) certificate of deposit;

(xi) certificate of deposit for security;

(xii) investment contract or certificate of interest or participation in a profit-sharing agreement or in an oil, gas, or mineral royalty or lease, if such contract or interest is required to be the subject of a registration statement filed with the Securities and Exchange Commission under the provisions of the Securities Act of 1933 (15 U.S.C. 77a et seq.), or is exempt under section 3(b) of such Act (15 U.S.C. 77c(b)) from the requirement to file such a statement;

(xiii) interest of a limited partner in a limited partnership;

(xiv) other claim or interest commonly known as "security"; and

(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a secuity; [1] but

(B) does not include—

(i) currency, check, draft, bill of exchange, or bank letter of credit;

(ii) leverage transaction, as defined in section 761(13) of this title;

(iii) commodity futures contract or forward contract;

(iv) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;

(v) option to purchase or sell a commodity;

(vi) contract or certificate of a kind specified in subparagraph (A)(xii) of this paragraph that is not required to be the subject of a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) from the requirement to file such a statement; or

(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered;

(42) "security agreement" means agreement that creates or provides for a security interest;

(43) "security interest" means lien created by an agreement;

(44) "State" includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title;

(45) "statutory lien" means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute;

(46) "stockbroker" means person—

(A) with respect to which there is a customer, as defined in section 741(2) of this title; and

(B) that is engaged in the business of effecting transactions in securities—

(i) for the account of others; or

(ii) with members of the general public, from or for such person's own account;

(47) "timeshare plan" means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for

[1] So in original. Probably should be "security;".

consecutive years, and which extends for a period of more than three years. A "timeshare interest" is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan.[3]

(48) "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption; and

(49) "United States", when used in a geographical sense, includes all locations where the judicial jurisdictio. of the United States extends, including territories and possessions of the United States; [4]

(As amended Pub. L. 98-353, title III, §§ 391, 401, 421, July 10, 1984, 98 Stat. 364, 366, 367.)

REFERENCES IN TEXT

The Securities Act of 1933 (15 U.S.C. 77a et seq.), referred to in par. (41)(A)(xii), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

AMENDMENTS

1984—Par. (2)(D). Pub. L. 98-353, § 421(a), struck out "or all" after "business".

Par. (5)(B). Pub. L. 98-353, § 421(b), substituted a semicolon for the colon at end of subpar. (B).

Par. (9)(B). Pub. L. 98-353, § 421(c), added reference to section 348(d).

Par. (14). Pub. L. 98-353, § 421(d), added "and" after "trust,".

Pars. (19) to (21). Pub. L. 98-353, § 421(j)(3), (4), added par. (19) and redesignated former pars. (19), (20), and (21) as (20), (21), and (24), respectively.

Pars. (22), (23). Pub. L. 98-353, § 421(j)(2), (5), added pars. (22) and (23) and redesignated former pars. (22) and (23) as (25) and (26), respectively.

Pars. (24) to (26). Pub. L. 98-353, § 421(j)(2), redesignated former pars. (21) to (23) as (24) to (26), respectively. Former pars. (24) to (26) redesignated (27) to (29), respectively.

Par. (27). Pub. L. 98-353, § 421(e), (j)(2), redesignated former par. (24) as (27) and substituted "stockbroker" for "stock broker". Former par. (27) redesignated (30).

Par. (28). Pub. L. 98-353, § 421(j)(2), redesignated former par. (25) as (28). Former par. (28) redesignated (31).

Par. (29). Pub. L. 98-353, § 421(f), (j)(2), redesignated former par. (26) as (29) and, in subpar. (B)(ii), substituted "nonpartnership" and "(A)" for "separate" and "(A)(ii)", respectively, wherever appearing. Former par. (29) redesignated (32).

Pars. (30) to (32). Pub. L. 98-353, § 421(j)(2), redesignated former pars. (27) to (29) as (30) to (32), respectively. Former pars. (30) to (32) redesignated (33) to (35), respectively.

Par. (33). Pub. L. 98-353, § 421(g), (j)(2), redesignated former par. (30) as (33) and amended the definition of "person" generally, thereby adding proviso relating to consideration of certain governmental units as persons for purposes of section 1102 of this title. Former par. (33) redesignated (36).

Par. (34). Pub. L. 98-353, § 421(j)(2), redesignated former par. (31) as (34). Former par. (34) redesignated (37).

Pars. (35), (36). Pub. L. 98-353, § 421(j)(2), redesignated former pars. (32) and (33) as (35) and (36), respectively. Former pars. (35) and (36), as added by Pub. L. 98-353, § 391(2), redesignated (38) and (39), respectively.

Pub. L. 98-353, § 391, added pars. (35) and (36), and redesignated former pars. (35) and (36) as (37) and (38) which were again redesignated as (40) and (41), respectively.

Par. (37). Pub. L. 98-353, § 421(j)(2), redesignated former par. (34) as (37). Former par. (37) redesignated successively as (39) and again as (42).

Par. (38). Pub. L. 98-353, §§ 391(2), 421(j)(2), added par. (35) and redesignated such par. (35) as (38). Former par. (38) redesignated successively as (40) and again as (43).

Par. (39). Pub. L. 98-353, §§ 391(2), 421(j)(2), added par. (36) and redesignated such par. (36) as (39). Former par. (39) redesignated successively as (41) and again as (45).

Par. (40). Pub. L. 98-353, §§ 391(1), 421(j)(2), redesignated successively former par. (35) as (37) and again as (40). Former par. (40) redesignated successively as (42) and again as (46).

Par. (41). Pub. L. 98-353, §§ 391(1), 401(1), 421(h), (j)(2), redesignated successively former par. (36) as (38) and again as (41), and, in subpar. (B)(vi), substituted "certificate of a kind specified in subparagraph (A)(xii)" for "certificate specified in clause (xii) of subparagraph (A)" and substituted "required to be the subject of a registration statement" for "the subject of such registration statement". Former par. (41) redesignated successively as (43), again as (44), and again as (48).

Par. (42). Pub. L. 98-353, §§ 391(1), 421(j)(2), redesignated successively former par. (37) as (39) and again as (42).

Par. (43). Pub. L. 98-353, §§ 391(1), 421(j)(2), redesignated successively former par. (38) as (40) and again as (43).

Pub. L. 98-353, § 401, redesignated former par. (43), originally par. (41), as (44), and added another par. (43) which was redesignated (47).

Par. (44). Pub. L. 98-353, § 421(j)(6), added par. (44). Former par. (44) originally was par. (41) and was redesignated successively as (43), again as (44), and again as (48).

Pars. (45), (46). Pub. L. 98-353, §§ 391(1), 421(j)(1), redesignated successively former pars. (39) and (40) as (41) and (42), and again as (45) and (46), respectively.

Par. (47). Pub. L. 98-353, §§ 401(2), 421(j)(1), added par. (43) and redesignated such par. (43) as (47).

Par. (48). Pub. L. 98-353, §§ 391(1), 401(1), 421(i), (j)(1), redesignated successively former par. (41) as (43), again as (44), and again as (48), and substituted "and foreclosure of the debtor's equity of redemption; and" for the period at the end.

Par. (49). Pub. L. 98-353, § 421(j)(7), added par. (49).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 552, formerly § 553, of title III (§§ 301-553) of Pub. L. 98-353, as renumbered by Pub. L. 98-551, § 1(2), Oct. 19, 1984, 98 Stat. 2704, provided that:

"(a) Except as otherwise provided in this section the amendments made by this title [see Tables for classification] shall become effective to cases filed 90 days after the date of enactment of this Act [July 10, 1984].

"(b) The amendments made by section 429(b) [amending section 303 of this title] shall become effective upon the date of enactment of this Act.

"(c) The amendments made by subtitle J [enacting section 1113 of this title], shall become effective as provided in section 541(c) [set out as an Effective Date note under section 1113 of this title]."

[3] So in original. The period should be a semicolon.

[4] So in original. The semicolon should be a period.

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SEPARABILITY OF PROVISIONS

Section 551 of title III (§§ 301-553) of Pub. L. 98-353 provided that: "If any provision of this title or any amendment made by this title [see Tables for classification], or the application thereof to any person or circumstance is held invalid, the provisions of every other part, and their application shall not be affected thereby."

§ 102. Rules of construction

In this title—

[See main edition for text of (1) to (7)]

(8) a definition, contained in a section of this title that refers to another section of this title, does not, for the purpose of such reference, affect the meaning of a term used in such other section.

(As amended Pub. L. 98-353, title III, § 422, July 10, 1984, 98 Stat. 369.)

AMENDMENTS

1984—Par. (8). Pub. L. 98-353 substituted "contained" for "continued".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 103. Applicability of chapters

[See main edition for text of (a) and (b)]

(c) Subchapter III of chapter 7 of this title applies only in a case under such chapter concerning a stockbroker.

[See main edition for text of (d) to (h)]

(As amended Pub. L. 98-353, title III, § 423, July 10, 1984, 98 Stat. 369.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-353 substituted "stockbroker" for "stockholder".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(As amended Pub. L. 98-353, title I, § 118, July 10, 1984, 98 Stat. 344.)

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98-353, § 118(1), struck out "bankruptcy" before "court".

Subsec. (c). Pub. L. 98-353, § 118(2), added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective July 10, 1984, see section 122(a) of Pub. L. 98-353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

§ 108. Extension of time

(a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) two years after the order for relief.

(b) Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 60 days after the order for relief.

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, or 1301 of this title, as the case may be, with respect to such claim.

(As amended Pub. L. 98-353, title III, § 424, July 10, 1984, 98 Stat. 369.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 424(b), added in provisions preceding par. (1) "nonbankruptcy" after "applicable" and "entered in a".

Subsec. (a)(1). Pub. L. 98-353, § 424(a), substituted "or" for "and" after the semicolon.

Subsec. (b). Pub. L. 98-353, § 424(b), added in provisions preceding par. (1) "nonbankruptcy" after "applicable" and "entered in a".

Subsec. (b)(1). Pub. L. 98-353, § 424(a), substituted "or" for "and" after the semicolon.

Subsec. (c). Pub. L. 98-353, § 424(b), added in provisions preceding par. (1) "nonbankruptcy" after "applicable" and "entered in a".

Subsec. (c)(1). Pub. L. 98-353, § 424(a), substituted "or" for "and" after the semicolon.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 109. Who may be a debtor

(a) Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.

[*See main edition for text of* (b)]

(c) An entity may be a debtor under chapter 9 of this title if and only if such entity—

[*See main edition for text of* (1) *to* (4)]

(5) [*See main edition for text of* (A) *to* (C)]

(D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title.

(d) Only a person that may be a debtor under chapter 7 of this title, except a stockbroker or a commodity broker, and a railroad may be a debtor under chapter 11 of this title.

[*See main edition for text of* (e)]

(f) Notwithstanding any other provision of this section, no individual may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—

(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

(As amended Pub. L. 98-353, title III, §§ 301, 425, July 10, 1984, 98 Stat. 352, 369.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 425(a), struck out "in the United States," after "only a person that resides".

Subsec. (c)(5)(D). Pub. L. 98-353, § 425(b), substituted "transfer that is avoidable under section 547 of this title" for "preference".

Subsec. (d). Pub. L. 98-353, § 425(c), substituted "stockbroker" for "stockholder".

Subsec. (f). Pub. L. 98-353, § 301, added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 349, 921 of this title.

CHAPTER 3—CASE ADMINISTRATION

SUBCHAPTER I—COMMENCEMENT OF A CASE

§ 301. Voluntary cases

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 362, 522, 541, 901, 921 of this title.

§ 302. Joint cases

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 362, 522, 541 of this title.

§ 303. Involuntary cases

[*See main edition for text of* (a)]

(b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject on [1] a bona fide dispute, or an indenture trustee representing such a holder, if such claims aggregate at least $5,000 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

[*See main edition for text of* (2) *to* (4); (c) *to* (g)]

(h) If the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed. Otherwise, after trial, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed, only if—

(1) the debtor is generally not paying such debtor's debts as such debts become due unless such debts that are the subject of a bona fide dispute; or

[*See main edition for text of* (2); (i)]

(j) Only after notice to all creditors and a hearing may the court dismiss a petition filed under this section—

(1) on the motion of a petitioner;

(2) on consent of all petitioners and the debtor; or

(3) for want of prosecution.

[*See main edition for text of* (k)]

(As amended Pub. L. 98-353, title III, §§ 426, 427, July 10, 1984, 98 Stat. 369.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353, § 426(a), added "against a person" after "involuntary case".

[1] So in original. Probably should be "of".

Subsec. (b)(1). Pub. L. 98-353, § 426(b)(1), added "or the subject on a bona fide dispute,".

Subsec. (h)(1). Pub. L. 98-353, § 426(b)(2), added "unless such debts that are the subject of a bona fide dispute".

Subsec. (j)(2). Pub. L. 98-353, § 427, substituted "debtor" for "debtors".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by sections 426(a) and 427 of Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, and amendment by section 426(b) of Pub. L. 98-353 effective July 10, 1984, see section 552(a), (b) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 306, 362, 503, 504, 522, 541, 549, 15103 of this title; title 28 sections 1411, 1480.

§ 304. Cases ancillary to foreign proceedings

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 305, 306 of this title; title 28 section 1410.

SUBCHAPTER II—OFFICERS

§ 321. Eligibility to serve as trustee

[See main edition for text of (a)]

(b) A person that has served as an examiner in the case may not serve as trustee in the case.

(As amended Pub. L. 98-353, title III, § 428, July 10, 1984, 98 Stat. 369.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353 substituted "the case" for "a case" after "an examiner in".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 322. Qualification of trustee

[See main edition for text of (a)]

(b) The court shall determine—

(1) the amount of a bond required to be filed under subsection (a) of this section; and

[See main edition for text of (2); (c) and (d)]

(As amended Pub. L. 98-353, title III, § 429, July 10, 1984, 98 Stat. 369.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-353 added "required to be".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 326. Limitation on compensation of trustee

(a) In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed fifteen percent on the first $1,000 or less, six percent on any amount in excess of $1,000 but not in excess of $3,000, and three percent on any amount in excess of $3,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

[See main edition for text of (b) and (c)]

(d) The court may deny allowance of compensation for services or reimbursement of expenses of the trustee if the trustee failed to make diligent inquiry into facts that would permit denial of allowance under section 328(c) of this title or, with knowledge of such facts, employed a professional person under section 327 of this title.

(As amended Pub. L. 98-353, title III, § 430(a), (b), July 10, 1984, 98 Stat. 369.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 430(a), substituted "and three percent on any amount in excess of $3000" for "three percent on any amount in excess of $3,000 but not in excess of $20,000, two percent on any amount in excess of $20,000 but not in excess of $50,000, and one percent on any amount in excess of $50,000".

Subsec. (d). Pub. L. 98-353, § 430(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "The court may deny allowance of compensation for services and reimbursement of expenses of the trustee if the trustee—

"(1) failed to make diligent inquiry into facts that would permit denial of allowance under section 328(c) of this title; or

"(2) with knowledge of such facts, employed a professional person under section 327 of this title."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 330, 557, 15103 of this title.

§ 327. Employment of professional persons

[See main edition for text of (a) and (b)]

(c) In a case under chapter 7 or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor, in which case the court shall disapprove such employment if there is an actual conflict of interest.

[See main edition for text of (d) to (f)]

(As amended Pub. L. 98-353, title III, § 430(c), July 10, 1984, 98 Stat. 370.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-353 substituted "In a case under chapter 7 or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by an-

other creditor, in which case the court shall disapprove such employment if there is an actual conflict of interest." for "In a case under chapter 7 or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, but may not, while employed by the trustee, represent, in connection with the case, a creditor."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 328. Limitation on compensation of professional persons

(a) The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 98-353, title III, § 431, July 10, 1984, 98 Stat. 370.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 substituted "not capable of being anticipated" for "unanticipatable".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 329. Debtor's transactions with attorneys

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—

(1) the estate, if the property transferred—

[*See main edition for text of* (A) *and* (B), (2)]

(As amended Pub. L. 98-353, title III, § 432, July 10, 1984, 98 Stat. 370.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 432(a), substituted "or" for "and" after "in contemplation of".

Subsec. (b)(1). Pub. L. 98-353, § 432(b), substituted "estate" for "trustee".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 330, 541 of this title.

§ 330. Compensation of officers

(a) After notice and a hearing, and subject to sections 326, 328, and 329 of this title, the court may award to a trustee, to an examiner, to a professional person employed under section 327 or 1103 of this title, or to the debtor's attorney—

(1) reasonable compensation for actual, necessary services rendered by such trustee, examiner, professional person, or attorney, as the case may be, and by any paraprofessional persons employed by such trustee, professional person, or attorney, as the case may be, based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a case under this title; and

(2) reimbursement for actual, necessary expenses.

(b) There shall be paid from the filing fee in a case under chapter 7 of this title $45 to the trustee serving in such case, after such trustee's services are rendered.

(c) Unless the court orders otherwise, in a case under chapter 13 of this title the compensation paid to the trustee serving in the case shall not be less than $5 per month from any distribution under the plan during the administration of the plan.

(As amended Pub. L. 98-353, title III, §§ 433, 434, July 10, 1984, 98 Stat. 370.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 433(1), struck out "to any parties in interest and to the United States trustee" after "After notice".

Subsec. (a)(1). Pub. L. 98-353, § 433(2), substituted "nature, the extent, and the value of such services, the time spent on such services" for "time, the nature, the extent, and the value of such services".

Subsec. (b). Pub. L. 98-353, § 434(a), substituted "$45" for "$20".

Subsec. (c). Pub. L. 98-353, § 434(b), added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

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SUBCHAPTER III—ADMINISTRATION

§ 342. Notice

(a) There shall be given such notice as is appropriate, including notice to any holder of a community claim, of an order for relief in a case under this title.

(b) Prior to the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give written notice to such individual that indicates each chapter of this title under which such individual may proceed.

(As amended Pub. L. 98-353, title III, §§ 302, 435, July 10, 1984, 98 Stat. 352, 370.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 435, amended subsec. (a) generally, adding requirement respecting notice to any holder of a community claim.

Pub. L. 98-353, § 302(1), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 98-353, § 302(2), added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 343. Examination of the debtor

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, or any trustee or examiner in the case may examine the debtor.

(As amended Pub. L. 98-353, title III, § 436, July 10, 1984, 98 Stat. 370.)

AMENDMENTS

1984—Pub. L. 98-353 substituted "examine" for "examiner".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 344. Self-incrimination; immunity

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 521, 901 of this title.

§ 345. Money of estates

[*See main edition for text of* (a) *and* (b)]

(c) An entity with which such moneys are deposited or invested is authorized to deposit or invest such moneys as may be required under this section.

(As amended Pub. L. 98-353, title III, § 437, July 10, 1984, 98 Stat. 370.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-353 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 346. Special tax provisions

[*See main edition for text of* (a) *and* (b)]

(c) [*See main edition for text of* (1)]

(2) In such a case, except as provided in section 728 of this title, the trustee shall make any tax return otherwise required by State or local law to be filed by or on behalf of such corporation or partnership in the same manner and form as such corporation or partnership, as the case may be, is required to make such return.

[*See main edition for text of* (d) *to* (j)]

(As amended Pub. L. 98-353, title III, § 438, July 10, 1984, 98 Stat. 370.)

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98-353 substituted "corporation" for "operation".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 348. Effect of conversion

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 101 of this title.

§ 349. Effect of dismissal

(a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(f) of this title.

[*See main edition for text of* (b)]

(As amended Pub. L. 98-353, title III, § 303, July 10, 1984, 98 Stat. 352.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 added "; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(f) of this title".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 350. Closing and reopening cases

[*See main edition for text of* (a)]

(b) A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.

(As amended Pub. L. 98-353, title III, § 439, July 10, 1984, 98 Stat. 370.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353 substituted "A" for "a".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SUBCHAPTER IV—ADMINISTRATIVE POWERS

§ 361. Adequate protection

When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by—

(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;

[See main edition for text of (2) and (3)]

(As amended Pub. L. 98-353, title III, § 440, July 10, 1984, 98 Stat. 370.)

AMENDMENTS

1984—Par. (1). Pub. L. 98-353 added "a cash payment or" after "make".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

[See main edition for text of (4) to (8)]

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), does not operate as a stay—

[See main edition for text of (1) and (2)]

(3) under subsection (a) of this section, of any act to perfect an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

[See main edition for text of (4) and (5)]

(6) under subsection (a) of this section, of the setoff by a commodity broker, forward contract merchant, stockbroker financial institution,,[1] or securities clearing agency of any mutual debt and claim under or in connection with commodity contracts, as defined in section 761(4) of this title, forward contracts, or securities contracts, as defined in section 741(7) of this title, that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, arising out of commodity contracts, forward contracts, or securities contracts against cash, securities, or other property held by or due from such commodity broker, forward contract merchant, stockbroker financial institution,,[1] or securities clearing agency to margin, guarantee, secure, or settle commodity contracts, forward contracts, or securities contracts;

(7) under subsection (a) of this section, of the setoff by a repo participant, of any mutual debt and claim under or in connection with repurchase agreements that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, arising out of repurchase agreements against cash, securities, or other property held by or due from such repo participant to margin, guarantee, secure or settle repurchase agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) [2] under subsection (a) of this section, of the issuance to the debtor by a governmental unit of a notice of tax deficiency; or [3]

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[1] So in original. The first comma should probably precede "financial".

[2] So in original. Amendment by Pub. L. 98-353 resulted in two pars. designated (9).

[3] So in original. Amendment by Pub. L. 98-353 inserted "or" at end of first par. (9) and placed a period instead of "; or" at end of second par. (9).

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(9) [2] under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property.[3]

(10) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument.

(c) Except as provided in subsections (d), (e), and (f) of this section—

[*See main edition for text of (1)*]

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

[*See main edition for text of (C)*]

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

[*See main edition for text of (A) and (B)*]

(e) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be commenced not later than thirty days after the conclusion of such preliminary hearing.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

[*See main edition for text of (g)*]

(h) An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(As amended Pub. L. 98-353, title III, §§ 304, 363(b), 392, 441, July 10, 1984, 98 Stat. 352, 363, 365, 371.)

REFERENCES IN TEXT

The National Housing Act, referred in subsec. (b)(8), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-353, § 441(a)(1), added "action or" after "other".

Subsec. (a)(3). Pub. L. 98-353, § 441(a)(2), added "or to exercise control over property of the estate".

Subsec. (b)(3). Pub. L. 98-353, § 441(b)(1), added "or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title".

Subsec. (b)(6). Pub. L. 98-353, § 441(b)(2), added "or due from" after "held by" and "financial institution," after "stockbroker" in two places, and substituted "secure, or settle commodity contracts" for "or secure commodity contracts".

Subsec. (b)(7) to (9). Pub. L. 98-353, § 441(b)(3), (4), in par. (8) as redesignated by Pub. L. 98-353, § 392, substituted "the" for "said" and struck out "or" the last place it appeared which probably meant the "or" after "units;" that was struck out by Pub. L. 98-353, § 363(b)(1); and, in par. (9), relating to notices of deficiencies, as redesignated by Pub. L. 98-353, § 392, substituted a semicolon for the period.

Pub. L. 98-353, § 392, added par. (7) and redesignated former pars. (7) and (8) as (8) and (9), respectively.

Pub. L. 98-353, § 363(b), struck out "or" at end of par. (7), substituted "; or" for the period at end of par. (8), and added par. (9) relating to leases of nonresidential property.

Subsec. (b)(10). Pub. L. 98-353, § 441(b)(5), added par. (10).

Subsec. (c)(2)(B). Pub. L. 98-353, § 441(c), substituted "or" for "and".

Subsec. (d)(2). Pub. L. 98-353, § 441(d), added "under subsection (a) of this section" after "property".

Subsec. (e). Pub. L. 98-353, § 441(e), added "the conclusion of" after "pending" and substituted "The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be commenced not later than thirty days after the conclusion of such preliminary hearing." for "If the hearing under this subsection is a preliminary hearing—

"(1) the court shall order such stay so continued if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the final hearing under subsection (d) of this section; and

"(2) such final hearing shall be commenced within thirty days after such preliminary hearing."

Subsec. (f). Pub. L. 98-353, § 441(f), substituted "Upon request of a party in interest, the court, with or" for "The court,".

Subsec. (h). Pub. L. 98-353, § 304, added subsec. (h).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section

552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 108, 109, 361, 363, 365, 505, 507, 542, 553, 557, 742, 901, 922, 1110, 1168 of this title; title 28 section 1334.

§ 363. Use, sale, or lease of property

(a) In this section, "cash collateral" means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.

(2) If notification is required under subsection (a) of section 7A of the Clayton Act (15 U.S.C. 18a) in the case of a transaction under this subsection, then—

(A) notwithstanding subsection (a) of such section, such notification shall be given by the trustee; and

(B) notwithstanding subsection (b) of such section, the required waiting period shall end on the tenth day after the date of the receipt of such notification, unless the court, after notice and hearing, orders otherwise.

[*See main edition for text of* (c) *and* (d)]

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

[*See main edition for text of* (1) *and* (2)]

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

[*See main edition for text of* (4) *and* (5); (g)]

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if—

[*See main edition for text of* (1) *to* (4); (i)]

(j) After a sale of property to which subsection (g) or (h) of this section applies, the trustee shall distribute to the debtor's spouse or the co-owners of such property, as the case may be, and to the estate, the proceeds of such sale, less the costs and expenses, not including any compensation of the trustee, of such sale, according to the interests of such spouse or co-owners, and of the estate.

(k) At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

(*l*) Subject to the provisions of section 365, trustee may use, sell, or lease property under subsection (b) or (c) of this section, or a plan under chapter 11 or 13 of this title may provide for the use, sale, or lease of property, notwithstanding any provision in a contract, a lease, or applicable law that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title concerning the debtor, or on the appointment of or the taking possession by a trustee in a case under this title or a custodian, and that effects, or gives an option to effect, a forfeiture, modification, or termination of the debtor's interest in such property.

[*See main edition for text of* (m)]

(n) The trustee may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount. In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection.

(o) In any hearing under this section—

(1) the trustee has the burden of proof on the issue of adequate protection; and

(2) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.

(As amended Pub. L. 98-353, title III, § 442, July 10, 1984, 98 Stat. 371.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 442(a), added "whenever acquired" after "equivalents" and "and includes the proceeds, products, offspring, rents, or profits of property subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title" after "interest".

Subsec. (b). Pub. L. 98-353, § 442(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 98-353, § 442(c), added ", with or without a hearing," after "court" and struck out "In any hearing under this section, the trustee has the burden of proof on the issue of adequate protection".

Subsec. (f)(3). Pub. L. 98-353, § 442(d), substituted "all liens on such property" for "such interest".

Subsec. (h). Pub. L. 98-353, § 442(e), substituted "at the time of" for "immediately before".

Subsec. (j). Pub. L. 98-353, § 442(f), substituted "compensation" for "compenation".

Subsec. (k). Pub. L. 98-353, § 442(g), substituted "unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder" for "if the holder".

Subsec. (*l*). Pub. L. 98-353, § 442(h), substituted "Subject to the provisions of section 365, the trustee" for "The trustee", "condition" for "conditions", "or the taking" for "a taking", and "interest" for "interests".

Subsec. (n). Pub. L. 98-353, § 442(i), substituted "avoid" for "void", "avoiding" for "voiding", and "In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection" for "The court may grant judgment in favor of the estate and against any such party that entered into such agreement in willful disregard of this subsection for punitive damages in addition to any recovery under the preceding sentence".

Subsec. (*o*). Pub. L. 98-353, § 442(j), added subsec. (*o*).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 303, 361, 507, 541, 542, 552, 553, 557, 1110, 1111, 1129, 1168, 1303, 1304 of this title.

§ 365. Executory contracts and unexpired leases

(a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

(2) Paragraph (1) of this subsection does not apply to a default that is a breach of a provision relating to—

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title; or

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

(3) For the purposes of paragraph (1) of this subsection and paragraph (2)(B) of subsection (f), adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance—

(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

(B) that any percentage rent due under such lease will not decline substantially;

(C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center; and

(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

(4) Notwithstanding any other provision of this section, if there has been a default in an unexpired lease of the debtor, other than a default of a kind specified in paragraph (2) of this subsection, the trustee may not require a lessor to provide services or supplies incidental to such lease before assumption of such lease unless the lessor is compensated under the terms of such lease for any services and supplies provided under such lease before assumption of such lease.

(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

(1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession or an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

(B) such party does not consent to such assumption or assignment; or

(2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor; or

(3) such lease of nonresidential real property has been terminated under applicable nonbankruptcy law prior to the order for relief.

(d)(1) In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for

cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

(2) In a case under chapter 9, 11, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor at any time before the confirmation of a plan but the court, on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.

(3) The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

(4) Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.

[*See main edition for text of* (e) *to* (g)]

(h)(1) If the trustee rejects an unexpired lease of real property of the debtor under which the debtor is the lessor, or a timeshare interest under a timeshare plan under which the debtor is the timeshare interest seller, the lessee or timeshare interest purchaser under such lease or timeshare plan may treat such lease or timeshare plan as terminated by such rejection, where the disaffirmance by the trustee amounts to such a breach as would entitle the lessee or timeshare interest purchaser to treat such lease as terminated by virtue of its own terms, applicable nonbankruptcy law, or other agreements the lessee or timeshare interest purchaser has made with other parties; or, in the alternative, the lessee or timeshare interest purchaser may remain in possession of the leasehold or timeshare interest under any lease or timeshare plan the term of which has commenced for the balance of such term and for any renewal or extension of such term that is enforceable by such lessee or timeshare interest purchaser under applicable nonbankruptcy law.

(2) If such lessee or timeshare interest purchaser remains in possession as provided in paragraph (1) of this subsection, such lessee or timeshare interest purchaser may offset against the rent reserved under such lease or moneys due for such timeshare interest for the balance of the term after the date of the rejection of such lease or timeshare interest, and any such renewal or extension thereof, any damages occurring after such date caused by the nonperformance of any obligation of the debtor under such lease or timeshare plan after such date, but such lessee or timeshare interest purchaser does not have any rights against the estate on account of any damages arising after such date from such rejection, other than such offset.

(i)(1) If the trustee rejects an executory contract of the debtor for the sale of real property or for the sale of a timeshare interest under a timeshare plan, under which the purchaser is in possession, such purchaser may treat such contract as terminated, or, in the alternative, may remain in possession of such real property or timeshare interest.

[*See main edition for text of* (2); (j) *and* (k)]

(*l*) If an unexpired lease under which the debtor is the lessee is assigned pursuant to this section, the lessor of the property may require a deposit or other security for the performance of the debtor's obligations under the lease substantially the same as would have been required by the landlord upon the initial leasing to a similar tenant.

(m) For purposes of this section 365 and sections 541(b)(2) and 362(b)(9), leases of real property shall include any rental agreement to use real property.

(As amended Pub. L. 98-353, title III, §§ 362, 402-404, July 10, 1984, 98 Stat. 361, 367.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 362(a), amended subsec. (a) generally, making minor changes.

Subsec. (b). Pub. L. 98-353, § 362(a), amended subsec. (b) generally, adding in par. (3) reference to par. (2)(B) of subsec. (f) of this section, in par. (3)(A) adding provisions relating to financial condition and operating performance in the case of an assignment, and in par. (3)(C) substituting "that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center" for "that assumption or assignment of such lease will not breach substantially any provision, such as a radius, location, use, or exclusivity provision, in any other lease, financing agreement, or master agreement relating to such shopping center".

Subsec. (c). Pub. L. 98-353, § 362(a), amended subsec. (c) generally, substituting in par. (1)(A) "applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession or an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties" for "applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to the trustee or an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties" and adding par. (3).

Subsec. (d). Pub. L. 98-353, § 362(a), amended subsec. (d) generally, adding in par. (1) reference to residen-

tial real property or personal property of the debtor, adding in par. (2) reference to residential real property or personal property of the debtor, and adding pars. (3) and (4).

Subsec. (h)(1). Pub. L. 98-353, § 402, amended par. (1) generally. Prior to amendment, par. (1) read as follows: "If the trustee rejects an unexpired lease of real property of the debtor under which the debtor is the lessor, the lessee under such lease may treat the lease as terminated by such rejection, or, in the alternative, may remain in possession for the balance of the term of such lease and any renewal or extension of such term that is enforceable by such lessee under applicable nonbankruptcy law."

Subsec. (h)(2). Pub. L. 98-353, § 403, amended par. (2) generally. Prior to amendment, par. (2) read as follows: "If such lessee remains in possession, such lessee may offset against the rent reserved under such lease for the balance of the term after the date of the rejection of such lease, and any such renewal or extension, any damages occurring after such date caused by the nonperformance of any obligation of the debtor after such date, but such lessee does not have any rights against the estate on account of any damages arising after such date from such rejection, other than such offset."

Subsec. (i)(1). Pub. L. 98-353, § 404, amended par. (1) generally, adding provisions relating to timeshare interests under timeshare plans.

Subsecs. (*l*), (m). Pub. L. 98-353, § 362(b), added subsecs. (*l*) and (m).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SHORT TITLE OF 1984 AMENDMENT

Section 361 of subtitle C (§§ 361-363) of title III of Pub. L. 98-353 provided that: "This subtitle [amending sections 362, 365, and 541 of this title] may be cited as the 'Leasehold Management Bankruptcy Amendments Act of 1983'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 348, 363, 502, 553, 555, 556, 557, 559, 744, 901, 1110, 1123, 1124, 1167, 1168, 1169, 1322 of this title.

§ 366. Utility service

(a) Except as provided in subsection (b) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-353, title III, § 443, July 10, 1984, 98 Stat. 373.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 added "of the commencement of a case under this title or" after "basis".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE

SUBCHAPTER III—THE ESTATE

Sec.
557. Expedited determination of interests in and disposition of grain.[1]
558. Defenses of the estate.
559. Contractual right to liquidate a repurchase agreement.

AMENDMENTS

1984—Pub. L. 98-353, title III, §§ 352(b), 396(b), 470(b), July 10, 1984, 98 Stat. 361, 366, 380, added items 557, 558, and 559.

SUBCHAPTER I—CREDITORS AND CLAIMS

§ 501. Filing of proofs of claims or interests

[*See main edition for text of* (*a*) *to* (*c*)]

(d) A claim of a kind specified in section 502(e)(2), 502(f), 502(g), 502(h) or 502(i) of this title may be filed under subsection (a), (b), or (c) of this section the same as if such claim were a claim against the debtor and had arisen before the date of the filing of the petition.

(As amended Pub. L. 98-353, title III, § 444, July 10, 1984, 98 Stat. 373.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-353 added "502(e)(2),".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 502, 506, 726, 727, 901, 925, 944, 1111, 1141 of this title.

§ 502. Allowance of claims or interests

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;

(2) such claim is for unmatured interest;

(3) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;

[1] So in original. Does not conform to section catchline.

(4) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;

(5) such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) of this title;

(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—

(i) the date of the filing of the petition; and

(ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus

(B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;

(7) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds—

(A) the compensation provided by such contract, without acceleration, for one year following the earlier of—

(i) the date of the filing of the petition; or

(ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus

(B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates; or

(8) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor.

(c) There shall be estimated for purpose of allowance under this section—

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance.

[*See main edition for text of* (d)]

(e)(1) Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that—

(A) such creditor's claim against the estate is disallowed;

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution; or

(C) such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title.

[*See main edition for text of* (2); (f) *and* (g)]

(h) A claim arising from the recovery of property under section 522, 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(i) A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(8)[1] of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(j) A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.

(As amended Pub. L. 98-353, title III, § 445, July 10, 1984, 98 Stat. 373.)

REFERENCES IN TEXT

Section 507(a)(8) of this title, referred to in subsec. (i), was redesignated section 507(a)(7) of this title by Pub. L. 98-353, title III, § 350(2), July 10, 1984, 98 Stat. 358.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 445(a), added "general" before "partner".

Subsec. (b). Pub. L. 98-353, § 445(b)(1), (2), in provisions preceding par. (1), added "(e)(2)," after "subsections" and "in lawful currency of the United States" after "claim".

Subsec. (b)(1). Pub. L. 98-353, § 445(b)(3), substituted "and" for ", and unenforceable against".

Subsec. (b)(3). Pub. L. 98-353, § 445(b)(5), added "the" after "exceeds".

Pub. L. 98-353, § 445(b)(4), struck out par. (3) "such claim may be offset under section 553 of this title against a debt owing to the debtor;", and redesignated par. (4) as (3).

Subsec. (b)(4). Pub. L. 98-353, § 445(b)(4), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (b)(5). Pub. L. 98-353, § 445(b)(6), substituted "such claim" for "the claim" and struck out the comma after "petition".

[1] See References in Text note below.

Pub. L. 98-353, § 445(b)(4), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (b)(6). Pub. L. 98-353, § 445(b)(4), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (b)(7). Pub. L. 98-353, § 445(b)(7)(A), added "the claim of an employee" before "for damages".

Pub. L. 98-353, § 445(b)(4), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (b)(7)(A)(i). Pub. L. 98-353, § 445(b)(7)(B), substituted "or" for "and".

Subsec. (b)(7)(B). Pub. L. 98-353, § 445(b)(7)(C), (D), substituted "any" for "the" and inserted a comma after "such contract".

Subsec. (b)(8), (9). Pub. L. 98-353, § 445(b)(4), redesignated par. (9) as (8). Former par. (8) redesignated (7).

Subsec. (c)(1). Pub. L. 98-353, § 445(c)(1), added "the" before "fixing" and substituted "administration" for "closing".

Subsec. (c)(2). Pub. L. 98-353, § 445(c)(2), added "right to payment arising from a" after "any" and struck out "if such breach gives rise to a right to payment" after "breach of performance".

Subsec. (e)(1). Pub. L. 98-353, § 445(d)(1), (2), in provisions preceding subpar. (A) substituted ", (b), and (c)" for "and (b)" and substituted "or has secured" for ", or has secured,".

Subsec. (e)(1)(B). Pub. L. 98-353, § 445(d)(3), added "or disallowance" after "allowance".

Subsec. (e)(1)(C). Pub. L. 98-353, § 445(d)(4), substituted "asserts a right of subrogation to the rights of such creditor" for "requests subrogation" and struck out "to the rights of such creditor" after "of this title".

Subsec. (h). Pub. L. 98-353, § 445(e), substituted "522" for "522(f)".

Subsec. (j). Pub. L. 98-353, § 445(f), amended subsec. (j) generally, adding provisions relating to reconsideration of a disallowed claim, and provisions relating to reconsideration of a claim under this subsection.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 346, 501, 503, 506, 507, 509, 510, 522, 544, 553, 723, 727, 901, 944, 1111, 1126, 1141, 1305, 1328 of this title.

§ 503. Allowance of administrative expenses

[*See main edition for text of (a)*]

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case;

(B) any tax—

(i) incurred by the estate, except a tax of a kind specified in section 507(a)(6) [2] of this title; or

[*See main edition for text of (ii)*]

(C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph;

(2) compensation and reimbursement awarded under section 330(a) of this title;

(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by—

[*See main edition for text of (A) and (B)*]

(C) a creditor in connection with the prosecution of a criminal offense relating to the case or to the business or property of the debtor;

[*See main edition for text of (D) and (E), (4)*]

(5) reasonable compensation for services rendered by an indenture trustee in making a substantial contribution in a case under chapter 9 or 11 of this title, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title;

(6) the fees and mileage payable under chapter 119 of title 28; and [3]

(As amended Pub. L. 98-353, title III, § 446, July 10, 1984, 98 Stat. 374.)

REFERENCES IN TEXT

Section 507(a)(6) of this title, referred to in subsec. (b)(1)(B)(i), was redesignated section 507(a)(7) of this title by Pub. L. 98-353, title III, § 350(2), July 10, 1984, 98 Stat. 358.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353, § 446(1), struck out the comma after "be allowed" in provisions preceding par. (1).

Subsec. (b)(1)(C). Pub. L. 98-353, § 446(2), struck out the comma after "credit".

Subsec. (b)(2). Pub. L. 98-353, § 446(3), added "(a)" after "330".

Subsec. (b)(3). Pub. L. 98-353, § 446(4), added a comma after "paragraph (4) of this subsection".

Subsec. (b)(3)(C). Pub. L. 98-353, § 446(5), struck out the comma after "case".

Subsec. (b)(5). Pub. L. 98-353, § 446(6), struck out "and" after "title;".

Subsec. (b)(6). Pub. L. 98-353, § 446(7), substituted "; and" for the period at the end.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 346, 348, 361, 364, 365, 504, 507, 557, 726, 901, 1326 of this title; title 26 section 1398.

§ 505. Determination of tax liability

(a) [*See main edition for text of (1)*]

(2) The court may not so determine—

[*See main edition for text of (A)*]

[2] See References in Text note below.

[3] So in original. Probably should be a period.

(B) any right of the estate to a tax refund, before the earlier of—

(i) 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed; or

[*See main edition for text of (ii); (b) and (c)*]

(As amended Pub. L. 98-353, title III, § 447, July 10, 1984, 98 Stat. 374.)

AMENDMENTS

1984—Subsec. (a)(2)(B)(i). Pub. L. 98-353 substituted "or" for "and".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 506. Determination of secured status

[*See main edition for text of (a)*]

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

[*See main edition for text of (c)*]

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

(1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

(As amended Pub. L. 98-353, title III, § 448, July 10, 1984, 98 Stat. 374.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353, § 448(a), added "for" after "provided".

Subsec. (d)(1). Pub. L. 98-353, § 448(b), substituted "such claim was disallowed only under section 502(b)(5) or 502(e) of this title" for "a party in interest has not requested that the court determine and allow or disallow such claim under section 502 of this title".

Subsec. (d)(2). Pub. L. 98-353, § 448(b), substituted "such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title" for "such claim was disallowed only under section 502(e) of this title".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 507. Priorities

(a) The following expenses and claims have priority in the following order:

[*See main edition for text of (1) and (2)*]

(3) Third, allowed unsecured claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay—

[*See main edition for text of (A) and (B)*]

(4) Fourth, allowed unsecured claims for contributions to an employee benefit plan—

[*See main edition for text of (A)*]

(B) for each such plan, to the extent of—

(i) the number of employees covered by each such plan multiplied by $2,000; less

[*See main edition for text of (ii)*]

(5) Fifth, allowed unsecured claims of persons—

(A) engaged in the production or raising of grain, as defined in section 557(b)(1) of this title, against a debtor who owns or operates a grain storage facility, as defined in section 557(b)(2) of this title, for grain or the proceeds of grain, or

(B) engaged as a United States fisherman against a debtor who has acquired fish or fish produce from a fisherman through a sale or conversion, and who is engaged in operating a fish produce storage or processing facility—

but only to the extent of $2,000 for each such individual.

(6) Sixth, allowed unsecured claims of individuals, to the extent of $900 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

(7) Seventh, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A) a tax on or measured by income or gross receipts—

(i) for a taxable year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

(ii) assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of the filing of the petition; or

(iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case;

(B) a property tax assessed before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;

(C) a tax required to be collected or withheld and for which the debtor is liable in whatever capacity;

(D) an employment tax on a wage, salary, or commission of a kind specified in paragraph (3) of this subsection earned from the debtor before the date of the filing of the petition, whether or not actually paid before such date, for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;

(E) an excise tax on—

(i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or

(ii) if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition;

(F) a customs duty arising out of the importation of merchandise—

(i) entered for consumption within one year before the date of the filing of the petition;

(ii) covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; or

(iii) entered for consumption within four years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisement or classification of such merchandise was not available to the appropriate customs officer before such date; or

(G) a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss.

[*See main edition for text of* (b)]

(c) For the purpose of subsection (a) of this section, a claim of a governmental unit arising from an erroneous refund or credit of a tax has the same priority as a claim for the tax to which such refund or credit relates.

(d) An entity that is subrogated to the rights of a holder of a claim of a kind specified in subsection (a)(3), (a)(4), (a)(5), or (a)(6) [1] of this section is not subrogated to the right of the holder of such claim to priority under such subsection.

(As amended Pub. L. 98-353, title III, §§ 350, 449, July 10, 1984, 98 Stat. 358, 374.)

REFERENCES IN TEXT

Subsections (a)(5) and (a)(6) of this section, referred to in subsec. (d), was redesignated subsections (a)(6) and (a)(7) of this section by Pub. L. 98-353, title III, § 350(1), (2), July 10, 1984, 98 Stat. 358.

[1] See References in Text note below.

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98-353, § 449(a)(1), added a comma after "severance".

Subsec. (a)(4). Pub. L. 98-353, § 449(a)(2), substituted "an employee benefit plan" for "employee benefit plans" in provisions preceding subpar. (A).

Subsec. (a)(4)(B)(i). Pub. L. 98-353, § 449(a)(3), added "each" after "covered by".

Subsec. (a)(5). Pub. L. 98-353, § 350(3), added par. (5). Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 98-353, § 350(1), redesignated former par. (5) as (6) and, as so redesignated, substituted "Sixth" for "Fifth". Former par. (6) redesignated (7).

Subsec. (a)(7). Pub. L. 98-353, §§ 350(2), 449(a)(4), redesignated former par. (6) as (7) and, as so redesignated, substituted "Seventh" for "Sixth" and added "only" after "units,".

Subsec. (c). Pub. L. 98-353, § 449(b), substituted "has the same priority" for "shall be treated the same".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 509. Claims of codebtors

(a) Except as provided in subsection (b) or (c) of this section, an entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment.

(b) Such entity is not subrogated to the rights of such creditor to the extent that—

(1) a claim of such entity for reimbursement or contribution on account of such payment of such creditor's claim is—

[*See main edition for text of* (A) *to* (C), (2)]

(c) The court shall subordinate to the claim of a creditor and for the benefit of such creditor an allowed claim, by way of subrogation under this section, or for reimbursement or contribution, of an entity that is liable with the debtor on, or that has secured, such creditor's claim, until such creditor's claim is paid in full, either through payments under this title or otherwise.

(As amended Pub. L. 98-353, title III, § 450, July 10, 1984, 98 Stat. 375.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 450(a), substituted "subsection (b) or" for "subsections (b) and", and added "against the debtor" after "a creditor".

Subsec. (b)(1). Pub. L. 98-353, § 450(b), substituted "of such" for "of a" after "account".

Subsec. (c). Pub. L. 98-353, § 450(c), substituted "this section" for "section 509 of this title".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 510. Subordination

[*See main edition for text of* (a)]

(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-353, title III, § 451, July 10, 1984, 98 Stat. 375.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Any claim for recission of a purchase or sale of a security of the debtor or of an affiliate or for damages arising from the purchase or sale of such a security shall be subordinated for purposes of distribution to all claims and interests that are senior or equal to the claim or interest represented by such security."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SUBCHAPTER II—DEBTOR'S DUTIES AND BENEFITS

§ 521. Debtor's duties

The debtor shall—

(1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs;

(2) if an individual debtor's schedule of assets and liabilities includes consumer debts which are secured by property of the estate—

(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, the debtor shall file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property;

(B) within forty-five days after the filing of a notice of intent under this section, or within such additional time as the court, for cause, within such forty-five day period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; and

(C) nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title;

(3) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title; and

(5) appear at the hearing required under section 524(d) of this title.

(As amended Pub. L. 98-353, title III, §§ 305, 452, July 10, 1984, 98 Stat. 352, 375.)

AMENDMENTS

1984—Par. (1). Pub. L. 98-353, § 305(2), added "a schedule of current income and current expenditures," after "liabilities,".

Pars. (2) to (5). Pub. L. 98-353, §§ 305(1), (3), 452, added par. (2), redesignated former par. (2) as (3), redesignated former par. (3) as (4) and inserted ", whether or not immunity is granted under section 344 of this title", and redesignated former par. (4) as (5).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 554, 704, 1106, 1111 of this title.

§ 522. Exemptions

(a) In this section—

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Bankruptcy Rules, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is—

[*See main edition for text of* (1) *and* (2)]

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502

of this title as if such debt had arisen, before the commencement of the case, except—

(1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title; or

(2) a debt secured by a lien that is—

(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

(ii) not void under section 506(d) of this title; or

(B) a tax lien, notice of which is properly filed.

(d) The following property may be exempted under subsection (b)(1) of this section:

[See main edition for text of (1) and (2)]

(3) The debtor's interest, not to exceed $200 in value in any particular item or $4,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

[See main edition for text of (4)]

(5) The debtor's aggregate interest in any property, not to exceed in value $400 plus up to $3,750 of any unused amount of the exemption provided under paragraph (1) of this subsection.

[See main edition for text of (6) to (11)]

(e) A waiver of an exemption executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

[See main edition for text of (f) to (l)]

(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.

(As amended Pub. L. 98-353, title III, §§ 306, 453, July 10, 1984, 98 Stat. 353, 375.)

REFERENCES IN TEXT

The Bankruptcy Rules, referred to in subsec. (b), are set out in the Appendix to this title.

Section 409 of the Internal Revenue Code of 1954 (26 U.S.C. 409), referred to in subsec. (d)(10)(E)(iii) which related to retirement bonds, was repealed by Pub. L. 98-369, div. A, title IV, § 491(b), July 18, 1984, 98 Stat. 848, and section 409A of the Internal Revenue Code of 1954 (26 U.S.C. 409A), which related to qualifications for tax credit employee stock ownership plans, was redesignated section 409.

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-353, § 453(a), added "or, with respect to property that becomes property of an estate after such date, as of the date such property becomes property of the estate".

Subsec. (b). Pub. L. 98-353, § 306(a), added provision that in joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Bankruptcy Rules, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection, but that if the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed.

Subsec. (c). Pub. L. 98-353, § 453(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, except—

"(1) a debt of a kind specified in section 523(a)(1) or section 523(a)(5) of this title; or

"(2) a lien that is—

"(A) not avoided under section 544, 545, 547, 548, 549, or 724(a) of this title;

"(B) not voided under section 506(d) of this title; or

"(C)(i) a tax lien, notice of which is properly filed; and

"(ii) avoided under section 545(2) of this title."

Subsec. (d)(3). Pub. L. 98-353, § 306(b), added "or $4,000 in aggregate value."

Subsec. (d)(5). Pub. L. 98-353, § 306(c), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "The debtor's aggregate interest, not to exceed in value $400 plus any unused amount of the exemption provided under paragraph (1) of this subsection, in any property."

Subsec. (e). Pub. L. 98-353, § 453(c), substituted "an exemption" for "exemptions".

Subsec. (m). Pub. L. 98-353, § 306(d), substituted "Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case" for "This section shall apply separately with respect to each debtor in a joint case".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 349, 502, 542, 551, 552, 722, 1123 of this title; title 26 sections 1017, 1398; title 29 section 1405.

§ 523. Exceptions to discharge

(a) A discharge under section 727, 1141, or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(6) [15] of this title, whether or not a claim for such tax was filed or allowed;

[See main edition for text of (B) and (C)]

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

[15] See References in Text note below.

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

(C) for purposes of subparagraph (A) of this paragraph, consumer debts owed to a single creditor and aggregating more than $500 for "luxury goods or services" incurred by an individual debtor on or within forty days before the order for relief under this title, or cash advances aggregating more than $1,000 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within twenty days before the order for relief under this title, are presumed to be nondischargeable; "luxury goods or services" do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor; an extension of consumer credit under an open end credit plan is to be defined for purposes of this subparagraph as it is defined in the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.);

[*See main edition for text of (3) and (4)*]

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree, or other order of a court of record or property settlement agreement, but not to the extent that—

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 402(a)(26) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

[*See main edition for text of (B), (6) and (7)*]

(8) for an educational loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or a nonprofit institution, unless—

(A) such loan first became due before five years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or

(B) excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;

(9) [16] to any entity, to the extent that such debt arises from a judgment or consent decree entered in a court of record against the debtor wherein liability was incurred by such debtor as a result of the debtor's operation of a motor vehicle while legally intoxicated under the laws or regulations of any jurisdiction within the United States or its territories wherein such motor vehicle was operated and within which such liability was incurred; or

(9) [16] that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act.

[*See main edition for text of (b)*]

(c) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owned, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(As amended Pub. L. 98-353, title III, §§ 307, 371, 454, July 10, 1984, 98 Stat. 353, 364, 375.)

REFERENCES IN TEXT

Section 507(a)(6) of this title, referred to in subsec. (a)(1)(A), was redesignated section 507(a)(7) of this title by Pub. L. 98-353, title III, § 350(2), July 10, 1984, 98 Stat. 358.

The Consumer Credit Protection Act, referred to in subsec. (a)(2)(C), is Pub. L. 90-321, May 29, 1968, 82 Stat. 146, as amended, which is classified principally to chapter 41 (§ 1601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-353, § 454(a)(1), in provisions preceding subpar. (A), struck out "obtaining" after "for", and substituted "refinancing of credit, to the extent obtained" for "refinance of credit,".

Subsec. (a)(2)(A). Pub. L. 98-353, § 307(a)(1), struck out "or" at the end.

Subsec. (a)(2)(B). Pub. L. 98-353, § 307(a)(2), added "or" at the end.

[16] So in original. Amendment by Pub. L. 98-353 resulted in two pars. designated (9).

Subsec. (a)(2)(B)(iii). Pub. L. 98-353, § 454(a)(1)(A), struck out "obtaining" before "such".

Subsec. (a)(2)(C). Pub. L. 98-353, § 307(a)(3), added subpar. (C).

Subsec. (a)(5). Pub. L. 98-353, § 454(b)(1), added in provisions preceding subpar. (A) "or other order of a court of record" after "divorce decree,".

Subsec. (a)(5)(A). Pub. L. 98-353, § 454(b)(2), added ", or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State".

Subsec. (a)(8). Pub. L. 98-353, §§ 371(1), 454(a)(2), struck out "of higher education" after "a nonprofit institution of" and struck out "or" at the end.

Subsec. (a)(9). Pub. L. 98-353, § 371(2), added the par. (9) relating to debts incurred by persons driving while intoxicated.

Subsec. (c). Pub. L. 98-353, § 454(c), added "of a kind" after "debt".

Subsec. (d). Pub. L. 98-353, § 307(b), substituted "the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust" for "the court shall grant judgment against such creditor and in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding to determine dischargeability, unless such granting of judgment would be clearly inequitable".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 524. Effect of discharge

(a) A discharge in a case under this title—

[See main edition for text of (1)]

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523 or 1328(c)(1) of this title, or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

[See main edition for text of (b)]

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—

(1) such agreement was made before the granting of the discharge under section 727, 1141, or 1328 of this title;

(2) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that such agreement—

(A) represents a fully informed and voluntary agreement by the debtor; and

(B) does not impose an undue hardship on the debtor or a dependent of the debtor;

(4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of recission [18] to the holder of such claim;

(5) the provisions of subsection (d) of this section have been complied with; and

(6)(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as—

(i) not imposing an undue hardship on the debtor or a dependent of the debtor; and

(ii) in the best interest of the debtor.

(B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727, 1141, or 1328 of this title, the court shall hold a hearing at which the debtor shall appear in person. At such hearing, the court shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section, then at such hearing the court shall—

[See main edition for text of (1)]

(2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(6) of this subsection,[19] if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor.

[See main edition for text of (e)]

(f) Nothing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying any debt.

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[18] So in original. Probably should be "rescission".

[19] So in original. Probably should be "section".

(As amended Pub. L. 98-353, title III, §§ 308, 455, July 10, 1984, 98 Stat. 354, 376.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-353, §§ 308(a), 455, struck out "or from property of the debtor," before "whether or not discharge", and substituted "an act" for "any act".

Subsec. (a)(3). Pub. L. 98-353, § 455, substituted "an act" for "any act".

Subsec. (c)(2). Pub. L. 98-353, § 308(b)(1), (3), added par. (2). Former par. (2), which related to situations where the debtor had not rescinded the agreement within 30 days after the agreement became enforceable, was struck out.

Subsec. (c)(3), (4). Pub. L. 98-352, § 308(b)(3), added pars. (3) and (4). Former pars. (3) and (4) redesignated (5) and (6), respectively.

Subsec. (c)(5). Pub. L. 98-353, § 308(b)(2), redesignated former par. (3) as (5).

Subsec. (c)(6). Pub. L. 98-353, § 308(b)(2), (4), redesignated former par. (4) as (6) and generally amended par. (6), as so redesignated, thereby striking out provisions relating to court approval of such agreements as are entered into in good faith and are in settlement of litigation under section 523 of this title or provide for redemption under section 722 of this title.

Subsec. (d)(2). Pub. L. 98-353, § 308(c), substituted "subsection (c)(6)" for "subsection (c)(4)".

Subsec. (f). Pub. L. 98-353, § 308(d), added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 525. Protection against discriminatory treatment

(a) Except as provided in the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a-499s), the Packers and Stockyards Act, 1921 (7 U.S.C. 181-229), and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(b) No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title, a debtor or bankrupt under the Bankruptcy Act, or an individual associated with such debtor or bankrupt, solely because such debtor or bankrupt—

(1) is or has been a debtor under this title or a debtor or bankrupt under the Bankruptcy Act;

(2) has been insolvent before the commencement of a case under this title or during the case but before the grant or denial of a discharge; or

(3) has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act.

(As amended Pub. L. 98-353, title III, § 309, July 10, 1984, 98 Stat. 354.)

REFERENCES IN TEXT

The Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a-499s), referred to in subsec. (a), is act June 10, 1930, ch. 436, 46 Stat. 531, as amended, which is classified generally to chapter 20A (§ 499a et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 499r of Title 7 and Tables.

The Packers and Stockyards Act, 1921 (7 U.S.C. 181-229), referred to in subsec. (a), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, as amended, which is classified generally to chapter 9 (§ 181 et seq.) of Title 7. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

The Bankruptcy Act, referred to in subsecs. (a) and (b), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11.

AMENDMENTS

1984—Pub. L. 98-353 designated existing provisions as subsec. (a), added "the" before "Perishable", and added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SUBCHAPTER III—THE ESTATE

§ 541. Property of the estate

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

[*See main edition for text of (1) and (2)*]

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

[*See main edition for text of (A) to (C)*]

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

(b) Property of the estate does not include—

(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor; or

(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case.

(c)(1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law—

(A) that restricts or conditions transfer of such interest by the debtor; or

(B) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

(d) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

[(e) Repealed. Pub. L. 98-353, title III, § 456(d), July 10, 1984, 98 Stat. 376]

(As amended Pub. L. 98-353, title III, §§ 363(a), 456, July 10, 1984, 98 Stat. 363, 376.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 456(a)(1), (2), struck out "under" after "under" and added "and by whomever held" after "located".

Subsec. (a)(3). Pub. L. 98-353, § 456(a)(3), added "329(b), 363(n),".

Subsec. (a)(5). Pub. L. 98-353, § 456(a)(4), substituted "Any" for "An".

Subsec. (a)(6). Pub. L. 98-353, § 456(a)(5), substituted "or profits" for "and profits".

Subsec. (b). Pub. L. 98-353, § 363(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Property of the estate does not include any power that the debtor may only exercise solely for the benefit of an entity other than the debtor."

Subsec. (c)(1). Pub. L. 98-353, § 456(b)(1), added "in an agreement, transfer, instrument, or applicable nonbankruptcy law".

Subsec. (c)(1)(B). Pub. L. 98-353, § 456(b)(2), substituted "taking" for "the taking", and added "before such commencement" after "custodian".

Subsec. (d). Pub. L. 98-353, § 456(c), added "(1) or (2)" after "(a)".

Subsec. (e). Pub. L. 98-353, § 456(d), struck out subsec. (e) which provided "The estate shall have the benefit of any defense available to the debtor as against an entity other than the estate, including statutes of limitation, statutes of frauds, usury, and other personal defenses. A waiver of any such defense by the debtor after the commencement of the case does not bind the estate."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 365, 522, 524, 726, 728, 1306 of this title; title 28 section 1409.

§ 542. Turnover of property to the estate

[*See main edition for text of (a) to (d)*]

(e) Subject to any applicable privilege, after notice and a hearing, the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to to[1] turn over or disclose such recorded information to the trustee.

(As amended Pub. L. 98-353, title III, § 457, July 10, 1984, 98 Stat. 376.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-353 added "to turn over or" before "disclose".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 543. Turnover of property by a custodian

(a) A custodian with knowledge of the commencement of a case under this title concerning the debtor may not make any disbursement from, or take any action in the administration of, property of the debtor, proceeds, product, offspring, rents, or profits of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.

(b) A custodian shall—

(1) deliver to the trustee any property of the debtor held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the case; and

[1] So in original.

(2) file an accounting of any property of the debtor, or proceeds, product, offspring, rents, or profits of such property, that, at any time, came into the possession, custody, or control of such custodian.

(c) The court, after notice and a hearing, shall—

(1) protect all entities to which a custodian has become obligated with respect to such property or proceeds, product, offspring, rents, or profits of such property;

(2) provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian; and

(3) surcharge such custodian, other than an assignee for the benefit of the debtor's creditors that was appointed or took possession more than 120 days before the date of the filing of the petition, for any improper or excessive disbursement, other than a disbursement that has been made in accordance with applicable law or that has been approved, after notice and a hearing, by a court of competent jurisdiction before the commencement of the case under this title.

(d) After notice and hearing, the bankruptcy court—

(1) may excuse compliance with subsection (a), (b), or (c) of this section, if the interests of creditors and, if the debtor is not insolvent, of equity security holders would be better served by permitting a custodian to continue in possession, custody, or control of such property, and

(2) shall excuse compliance with subsections (a) and (b)(1) of this section if the custodian is an assignee for the benefit of the debtor's creditors that was appointed or took possession more than 120 days before the date of the filing of the petition, unless compliance with such subsections is necessary to prevent fraud or injustice.

(As amended Pub. L. 98-353, title III, § 458, July 10, 1984, 98 Stat. 376.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 458(a), added ", product, offspring, rents, or profits" after "proceeds".

Subsec. (b)(1). Pub. L. 98-353, § 458(b)(1), added "held by or" after "debtor", and ", product, offspring, rents, or profits" after "proceeds".

Subsec. (b)(2). Pub. L. 98-353, § 458(b)(2), added ", product, offspring, rents, or profits" after "proceeds".

Subsec. (c)(1). Pub. L. 98-353, § 458(c)(1), added "or proceeds, product, offspring, rents, or profits of such property" after "property".

Subsec. (c)(3). Pub. L. 98-353, § 458(c)(2), added "that has been" before "approved".

Subsec. (d). Pub. L. 98-353, § 458(d), designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 544. Trustee as lien creditor and as successor to certain creditors and purchasers

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by—

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or

(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

[*See main edition for text of* (b)]

(As amended Pub. L. 98-353, title III, § 459, July 10, 1984, 98 Stat. 377.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-353, § 459(1), added "such" after "obtained".

Subsec. (a)(2). Pub. L. 98-353, § 459(2), substituted "; or" for "; and".

Subsec. (a)(3). Pub. L. 98-353, § 459(3), added ", other than fixtures," after "property", and "and has perfected such transfer" after "purchaser" the second place it appeared.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 303, 349, 502, 522, 546, 548, 550, 551, 552, 749, 764, 901, 926 of this title; title 28 section 1409.

§ 545. Statutory liens

The trustee may avoid the fixing of a statutory lien on property of the debtor to the extent that such lien—

(1) first becomes effective against the debtor—

(A) when a case under this title concerning the debtor is commenced;

(B) when an insolvency proceeding other than under this title concerning the debtor is commenced;

(C) when a custodian is appointed or authorized to take or takes possession;

[*See main edition for text of* (D) *to* (F)]

(2) is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases

such property at the time of the commencement of the case, whether or not such a purchaser exists;

[See main edition for text of (3) and (4)]

(As amended Pub. L. 98-353, title III, § 460, July 10, 1984, 98 Stat. 377.)

AMENDMENTS

1984—Par. (1)(A). Pub. L. 98-353, § 460(1), struck out "is" after "is".

Par. (1)(C). Pub. L. 98-353, § 460(2), substituted "appointed or authorized to take" for "apponted".

Par. (2). Pub. L. 98-353, § 460(3), substituted "at the time of the commencement of the case" for "on the date of the filing of the petition" in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 546. Limitations on avoiding powers

(a) An action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after the earlier of—

(1) two years after the appointment of a trustee under section 702, 1104, 1163, or 1302 of this title; or

(2) the time the case is closed or dismissed.

(b) The rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of such perfection. If such law requires seizure of such property or commencement of an action to accomplish such perfection, and such property has not been seized or such action has not been commenced before the date of the filing of the petition, such interest in such property shall be perfected by notice within the time fixed by such law for such seizure or commencement.

(c) Except as provided in subsection (d) of this section, the rights and powers of a trustee under sections 544(a), 545, 547, and 549 of this title are subject to any statutory or common-law right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, but—

(1) such a seller may not reclaim any such goods unless such seller demands in writing reclamation of such goods before ten days after receipt of such goods by the debtor; and

(2) the court may deny reclamation to a seller with such a right of reclamation that has made such a demand only if the court—

(A) grants the claim of such a seller priority as a claim of a kind specified in section 503(b) of this title; or

(B) secures such claim by a lien.

(d) In the case of a seller who is a producer of grain sold to a grain storage facility, owned or operated by the debtor, in the ordinary course of such seller's business (as such terms are defined in section 557 of this title) or in the case of a United States fisherman who has caught fish sold to a fish processing facility owned or operated by the debtor in the ordinary course of such fisherman's business, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 of this title are subject to any statutory or common law right of such producer or fisherman to reclaim such grain or fish if the debtor has received such grain or fish while insolvent, but—

(1) such producer or fisherman may not reclaim any grain or fish unless such producer or fisherman demands, in writing, reclamation of such grain or fish before ten days after receipt thereof by the debtor; and

(2) the court may deny reclamation to such a producer or fisherman with a right of reclamation that has made such a demand only if the court secures such claim by a lien.

(e) Notwithstanding sections 544, 545, 547, 548(a)(2), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, made by or to a commodity broker, forward contract merchant, stockbroker [1] financial institution, or securities clearing agency, that is made before the commencement of the case, except under section 548(a)(1) of this title.

(f) Notwithstanding sections 544, 545, 547, 548(a)(2), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, made by or to a repo participant, in connection with a repurchase agreement and that is made before the commencement of the case, except under section 548(a)(1) of this title.

(As amended Pub. L. 98-353, title III, §§ 351, 393, 461, July 10, 1984, 98 Stat. 358, 365, 377.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-353, § 461(a), substituted "; or" for "; and".

Subsec. (b). Pub. L. 98-353, § 461(b), substituted "a trustee under sections 544, 545, and" for "the trustee under sections 544, 545, or".

Subsec. (c). Pub. L. 98-353, §§ 351(1), 461(c)(1)-(4), substituted "Except as provided in subsection (d) of this section, the" for "The", substituted "a trustee" for "the trustee", struck out "right" before "or common-law", added "of goods that has sold goods to the debtor" after "seller", and struck out "of goods to the debtor" after "business,".

Subsec. (c)(2). Pub. L. 98-353, § 461(c)(5)(A), added "the" after "if" in provisions preceding subpar. (A).

Subsec. (c)(2)(A). Pub. L. 98-353, § 461(c)(5)(B), substituted "a claim of a kind specified in section 503(b) of this title" for "an administrative expense".

Subsec. (d). Pub. L. 98-353, § 351(3), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98-353, §§ 351(2), 461(d), redesignated former subsec. (d) as (e) and added "financial institution" after "stockbroker".

Subsec. (f). Pub. L. 98-353, § 393, added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section

[1] So in original. Probably should be followed by a comma.

552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 547. Preferences

(a) In this section—

[*See main edition for text of (1)*]

(2) "new value" means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation;

(3) "receivable" means right to payment, whether or not such right has been earned by performance; and

(4) a debt for a tax is incurred on the day when such tax is last payable without penalty, including any extension.

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property—

[*See main edition for text of (1) to (3)*]

(4) made—

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider;

[*See main edition for text of (5)*]

(c) The trustee may not avoid under this section a transfer—

[*See main edition for text of (1)*]

(2) to the extent that such transfer was—

(A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;

(B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and

(C) made according to ordinary business terms;

(3) that creates a security interest in property acquired by the debtor—

[*See main edition for text of (A)*]

(B) that is perfected on or before 10 days after the debtor receives possession of such property;

[*See main edition for text of (4)*]

(5) that creates a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of—

(A)(i) with respect to a transfer to which subsection (b)(4)(A) of this section applies, 90 days before the date of the filing of the petition; or

(ii) with respect to a transfer to which subsection (b)(4)(B) of this section applies, one year before the date of the filing of the petition; or

(B) the date on which new value was first given under the security agreement creating such security interest;

(6) that is the fixing of a statutory lien that is not avoidable under section 545 of this title; or

(7) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $600.

(d) The trustee may avoid a transfer of an interest in property of the debtor transferred to or for the benefit of a surety to secure reimbursement of such a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the trustee under subsection (b) of this section. The liability of such surety under such bond or obligation shall be discharged to the extent of the value of such property recovered by the trustee or the amount paid to the trustee.

(e) [*See main edition for text of (1)*]

(2) For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made—

[*See main edition for text of (A) and (B)*]

(C) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of—

(i) the commencement of the case; or

[*See main edition for text of (ii), (3); (f)*]

(g) For the purposes of this section, the trustee has the burden of proving the avoidability of a transfer under subsection (b) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the nonavoidability of a transfer under subsection (c) of this section.

(As amended Pub. L. 98-353, title III, §§ 310, 462, July 10, 1984, 98 Stat. 355, 377.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-353, § 462(a)(1), added "including proceeds of such property," after "law,".

Subsec. (a)(4). Pub. L. 98-353, § 462(a)(2), struck out ", without penalty" after "any extension", and added "without penalty" after "payable".

Subsec. (b). Pub. L. 98-353, § 462(b)(1), substituted "of an interest of the debtor in property" for "of property of the debtor" in the provisions preceding par. (1).

Subsec. (b)(4)(B). Pub. L. 98-353, § 462(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "between 90 days and one year before the date of the filing of the petition, if such creditor, at the time of such transfer—

"(i) was an insider; and

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"(ii) had reasonable cause to believe the debtor was insolvent at the time of such transfer; and".

Subsec. (c)(2)(A). Pub. L. 98-353, § 462(d)(1), added "by the debtor" after "incurred".

Subsec. (c)(2)(B) to (D). Pub. L. 98-353, § 462(c), struck out subpar. (B) "made not later than 45 days after such debt was incurred;" and redesignated subpars. (C) and (D) as (B) and (C), respectively.

Subsec. (c)(3). Pub. L. 98-353, § 462(d)(2), substituted "that creates" for "of".

Subsec. (c)(3)(B). Pub. L. 98-353, § 462(d)(3), added "on or" after "perfected", and substituted "the debtor receives possession of such property" for "such security interest attaches".

Subsec. (c)(5). Pub. L. 98-353, § 462(d)(4), substituted "that creates" for "of", and "all security interests" for "all security interest".

Subsec. (c)(5)(A)(ii). Pub. L. 98-353, § 462(d)(5), substituted "or" for "and".

Subsec. (c)(7). Pub. L. 98-353, § 310(3), added par. (7).

Subsec. (d). Pub. L. 98-353, § 462(e), substituted "The" for "A" before "trustee may avoid", added "an interest in" after "transfer of", added "to or for the benefit of a surety" after "transferred", and added "such" after "reimbursement of".

Subsec. (e)(2)(C)(i). Pub. L. 98-353, § 462(f), substituted "or" for "and".

Subsec. (g). Pub. L. 98-353, § 462(g), added subsec. (g).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 303, 349, 362, 502, 522, 546, 548, 550, 551, 552, 749, 764, 901, 926 of this title.

§ 548. Fraudulent transfers and obligations

(a) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

(1) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(2)(A) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(B)(i) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(ii) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or

[See main edition for text of (iii); (b)]

(c) Except to the extent that a transfer or obligation voidable under this section is voidable under section 544, 545, or 547 of this title, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

(d)(1) For the purposes of this section, a transfer is made when such transfer is so perfected that a bona fide purchaser from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer is made immediately before the date of the filing of the petition.

(2) In this section—

(A) "value" means property, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor;

(B) a commodity broker, forward contract merchant, stockbroker financial institution,,[3] or securities clearing agency that receives a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, takes for value to the extent of such payment; and

(C) a repo participant that receives a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, in connection with a repurchase agreement, takes for value to the extent of such payment.

(As amended Pub. L. 98-353, title III, §§ 394, 463, July 10, 1984, 98 Stat. 365, 378.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 463(a)(1), substituted "if the debtor voluntarily or involuntarily" for "if the debtor" in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98-353, § 463(a)(2), substituted "was made" for "occurred".

Subsec. (a)(2)(B)(ii). Pub. L. 98-353, § 463(a)(3), added "or a transaction" after "engaged in business".

Subsec. (c). Pub. L. 98-353, § 463(b), added "or may retain" after "lien on" and struck out ", may retain any lien transferred," before "or may enforce any obligation incurred".

Subsec. (d)(1). Pub. L. 98-353, § 463(c)(1), substituted "is so" for "becomes so far", "applicable law permits such transfer to be" for "such transfer could have been", and "is made" for "occurs".

Subsec. (d)(2)(B). Pub. L. 98-353, § 463(c)(2), added "financial institution," after "stockbroker".

Subsec. (d)(2)(C). Pub. L. 98-353, § 394(2), added subpar. (C).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

[3] So in original. The first comma should probably precede "financial".

§ 549. Postpetition transactions

(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate—

(1) that occurs after the commencement of the case; and

(2)(A) that is authorized only under section 303(f) or 542(c) of this title; or

[*See main edition for text of (B); (b)*]

(c) The trustee may not avoid under subsection (a) of this section a transfer of real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to the interest of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

(d) An action or proceeding under this section may not be commenced after the earlier of—

(1) two years after the date of the transfer sought to be avoided; or

(2) the time the case is closed or dismissed.

(As amended Pub. L. 98-353, title III, § 464, July 10, 1984, 98 Stat. 379.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 464(a)(1), (2), substituted "(b) or (c)" for "(b) and (c)" in the provisions preceding par. (1) and inserted "only" between "authorized" and "under" in par. (2)(A). In the original of Pub. L. 98-353, subsec. (a)(2) of section 464 thereof ended with a period but was followed by pars. (3), (4), and (5). Such pars. (3), (4), and (5) purported to amend subsec. (a) of this section in ways not susceptible of execution. In a predecessor bill [S. 445], these pars. (3), (4), and (5) formed a part of a subsec. (b) of section 361 thereof which amended subsec. (b) of this section. Such subsec. (b) of section 361 of S. 445 was not carried into Pub. L. 98-353, § 464.

Subsec. (c). Pub. L. 98-353, § 464(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The trustee may not avoid under subsection (a) of this section a transfer, to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value or to a purchaser at a judicial sale, of real property located other than in the county in which the case is commenced, unless a copy of the petition was filed in the office where conveyances of real property in such county are recorded before such transfer was so far perfected that a bona fide purchaser of such property against whom applicable law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of such good faith or judicial sale purchaser. A good faith purchaser, without knowledge of the commencement of the case and for less than present fair equivalent value, of real property located other than in the county in which the case is commenced, under a transfer that the trustee may avoid under this section, has a lien on the property transferred to the extent of any present value given, unless a copy of the petition was so filed before such transfer was so perfected."

Subsec. (d)(1). Pub. L. 98-353, § 464(d), substituted "or" for "and".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 550. Liability of transferee of avoided transfer

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—

[*See main edition for text of (1) and (2); (b) and (c)*]

(d)(1) A good faith transferee from whom the trustee may recover under subsection (a) of this section has a lien on the property recovered to secure the lesser of—

(A) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and

(B) any increase in the value of such property as a result of such improvement, of the property transferred.

(2) In this subsection, "improvement" includes—

[*See main edition for text of (A) to (C)*]

(D) payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and

(E) preservation of such property.

(e) An action or proceeding under this section may not be commenced after the earlier of—

(1) one year after the avoidance of the transfer on account of which recovery under this section is sought; or

(2) the time the case is closed or dismissed.

(As amended Pub. L. 98-353, title III, § 465, July 10, 1984, 98 Stat. 379.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 465(a), substituted "549, 553(b), or 724(a) of this title" for "549, or 724(a) of this title".

Subsec. (d)(1)(A). Pub. L. 98-353, § 465(b)(1), added "or accruing to" after "by".

Subsec. (d)(1)(B). Pub. L. 98-353, § 465(b)(2), substituted "the value of such property" for "value".

Subsec. (d)(2)(D). Pub. L. 98-353, § 465(b)(3), substituted "payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and" for "payment of any debt secured by a lien on such property."

Subsec. (d)(2)(E), (F). Pub. L. 98-353, § 465(b)(3), (4), struck out subpar. (E) "discharge of any lien against such property that is superior or equal to the rights of the trustee; and" and redesignated subpar. (F) as (E).

Subsec. (e)(1). Pub. L. 98-353, § 465(c), substituted "or" for "and".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 552. Postpetition effect of security interest

[See main edition for text of (a)]

(b) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, product, offspring, rents, or profits of such property, then such security interest extends to such proceeds, product, offspring, rents, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

(As amended Pub. L. 98-353, title III, § 466, July 10, 1984, 98 Stat. 380.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353 added "522," after "506(c),", substituted "an entity entered" for "a secured party enter" and substituted "except to any extent" for "except to the extent".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 363, 901 of this title; title 26 section 1398.

§ 553. Setoff

(a) Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that—

(1) the claim of such creditor against the debtor is disallowed other than under section 502(b)(3) of this title; [1]

[See main edition for text of (2) and (3)]

(b)(1) Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7),, [2] 365(h)(2), or 365(i)(2) of this title, if a creditor offsets a mutual debt owing to the debtor against a claim against the debtor on or within 90 days before the date of the filing of the petition, then the trustee may recover from such creditor the amount so offset to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

[See main edition for text of (A) and (B), (2); (c)]

(As amended Pub. L. 98-353, title III, §§ 395, 467, July 10, 1984, 98 Stat. 365, 380.)

REFERENCES IN TEXT

Section 502(b) of this title, referred to in subsec. (a)(1), was amended by Pub. L. 98-353, title III, § 445(b)(4), July 10, 1984, 98 Stat. 373, by repealing par. (3) and redesignating pars. (4) to (9) as (3) to (8), respectively.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-353 added ", 362(b)(7)," after "362(b)(6)", and substituted ", 365(h)(2), or 365(i)(2)" for "or 365(h)(1)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 349, 502, 506, 522, 541, 542, 546, 550, 901 of this title; title 15 section 78eee.

§ 554. Abandonment of property of the estate

(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

(d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

(As amended Pub. L. 98-353, title III, § 468, July 10, 1984, 98 Stat. 380.)

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98-353, § 468(a), added "and benefit" after "value".

Subsec. (c). Pub. L. 98-353, § 468(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Unless the court orders otherwise, any property that is scheduled under section 521(1) of this title and that is not administered before a case is closed under section 350 of this title is deemed abandoned."

Subsec. (d). Pub. L. 98-353, § 468(c), struck out "section (a) or (b) of" after "not abandoned under".

[1] See References in Text note below.
[2] So in original.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 557, 722 of this title.

§ 555. Contractual right to liquidate a securities contract

The exercise of a contractual right of a stockbroker, financial institution, or securities clearing agency to cause the liquidation of a securities contract, as defined in section 741(7), because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title unless such order is authorized under the provisions of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) or any statute administered by the Securities and Exchange Commission. As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency.

(As amended Pub. L. 98-353, title III, § 469, July 10, 1984, 98 Stat. 380.)

AMENDMENTS

1984—Pub. L. 98-353 added ", financial institution," after "stockbroker".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 557. Expedited determination of interests in, and abandonment or other disposition of grain assets

(a) This section applies only in a case concerning a debtor that owns or operates a grain storage facility and only with respect to grain and the proceeds of grain. This section does not affect the application of any other section of this title to property other than grain and proceeds of grain.

(b) In this section—

(1) "grain" means wheat, corn, flaxseed, grain sorghum, barley, oats, rye, soybeans, other dry edible beans, or rice;

(2) "grain storage facility" means a site or physical structure regularly used to store grain for producers, or to store grain acquired from producers for resale; and

(3) "producer" means an entity which engages in the growing of grain.

(c)(1) Notwithstanding sections 362, 363, 365, and 554 of this title, on the court's own motion the court may, and on the request of the trustee or an entity that claims an interest in grain or the proceeds of grain the court shall, expedite the procedures for the determination of interests in and the disposition of grain and the proceeds of grain, by shortening to the greatest extent feasible such time periods as are otherwise applicable for such procedures and by establishing, by order, a timetable having a duration of not to exceed 120 days for the completion of the applicable procedure specified in subsection (d) of this section. Such time periods and such timetable may be modified by the court, for cause, in accordance with subsection (f) of this section.

(2) The court shall determine the extent to which such time periods shall be shortened, based upon—

(A) any need of an entity claiming an interest in such grain or the proceeds of grain for a prompt determination of such interest;

(B) any need of such entity for a prompt disposition of such grain;

(C) the market for such grain;

(D) the conditions under which such grain is stored;

(E) the costs of continued storage or disposition of such grain;

(F) the orderly administration of the estate;

(G) the appropriate opportunity for an entity to assert an interest in such grain; and

(H) such other considerations as are relevant to the need to expedite such procedures in the case.

(d) The procedures that may be expedited under subsection (c) of this section include—

(1) the filing of and response to—

(A) a claim of ownership;

(B) a proof of claim;

(C) a request for abandonment;

(D) a request for relief from the stay of action against property under section 362(a) of this title;

(E) a request for determination of secured status;

(F) a request for determination of whether such grain or the proceeds of grain—

(i) is property of the estate;

(ii) must be turned over to the estate; or

(iii) may be used, sold, or leased; and

(G) any other request for determination of an interest in such grain or the proceeds of grain;

(2) the disposition of such grain or the proceeds of grain, before or after determination of interests in such grain or the proceeds of grain, by way of—

(A) sale of such grain;

(B) abandonment;

(C) distribution; or

(D) such other method as is equitable in the case;

(3) subject to sections 701, 702, 703, 1104, and 1302 of this title, the appointment of a trustee or examiner and the retention and compensation of any professional person required to assist with respect to matters relevant to the determination of interests in or disposition of such grain or the proceeds of grain; and

(4) the determination of any dispute concerning a matter specified in paragraph (1), (2), or (3) of this subsection.

(e)(1) Any governmental unit that has regulatory jurisdiction over the operation or liquidation of the debtor or the debtor's business shall be given notice of any request made or order entered under subsection (c) of this section.

(2) Any such governmental unit may raise, and may appear and be heard on, any issue relating to grain or the proceeds of grain in a case in which a request is made, or an order is entered, under subsection (c) of this section.

(3) The trustee shall consult with such governmental unit before taking any action relating to the disposition of grain in the possession, custody, or control of the debtor or the estate.

(f) The court may extend the period for final disposition of grain or the proceeds of grain under this section beyond 120 days if the court finds that—

(1) the interests of justice so require in light of the complexity of the case; and

(2) the interests of those claimants entitled to distribution of grain or the proceeds of grain will not be materially injured by such additional delay.

(g) Unless an order establishing an expedited procedure under subsection (c) of this section, or determining any interest in or approving any disposition of grain or the proceeds of grain, is stayed pending appeal—

(1) the reversal or modification of such order on appeal does not effect the validity of any procedure, determination, or disposition that occurs before such reversal or modification, whether or not any entity knew of the pendency of the appeal; and

(2) neither the court nor the trustee may delay, due to the appeal of such order, any proceeding in the case in which such order is issued.

(h)(1) The trustee may recover from grain and the proceeds of grain the reasonable and necessary costs and expenses allowable under section 503(b) of this title attributable to preserving or disposing of grain or the proceeds of grain, but may not recover from such grain or the proceeds of grain any other costs or expenses.

(2) Notwithstanding section 326(a) of this title, the dollar amounts of money specified in such section include the value, as of the date of disposition, of any grain that the trustee distributes in kind.

(i) In all cases where the quantity of a specific type of grain held by a debtor operating a grain storage facility exceeds ten thousand bushels, such grain shall be sold by the trustee and the assets thereof distributed in accordance with the provisions of this section.

(Added Pub. L. 98-353, title III, § 352(a), July 10, 1984, 98 Stat. 359.)

EFFECTIVE DATE

Section effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as an Effective Date of 1984 Amendment note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 507, 546, 901 of this title.

§ 558. Defenses of the estate

The estate shall have the benefit of any defense available to the debtor as against any entity other than the estate, including statutes of limitation, statutes of frauds, usury, and other personal defenses. A waiver of any such defense by the debtor after the commencement of the case does not bind the estate.

(Added Pub. L. 98-353, title III, § 470(a), July 10, 1984, 98 Stat. 380.)

EFFECTIVE DATE

Section effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as an Effective Date of 1984 Amendment note under section 101 of this title.

§ 559. Contractual right to liquidate a repurchase agreement

The exercise of a contractual right of a repo participant to cause the liquidation of a repurchase agreement because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title, unless, where the debtor is a stockbroker or securities clearing agency, such order is authorized under the provisions of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) or any statute administered by the Securities and Exchange Commission. In the event that a repo participant liquidates one or more repurchase agreements with a debtor and under the terms of one or more such agreements has agreed to deliver assets subject to repurchase agreements to the debtor, any excess of the market prices received on liquidation of such assets (or if any such assets are not disposed of on the date of liquidation of such repurchase agreements, at the prices available at the time of liquidation of such repurchase agreements from a generally recognized source or the most recent closing bid quotation from such a source) over the sum of the stated repurchase prices and all expenses in connection with the liquidation of such repurchase agreements shall be deemed property of the estate, subject to the available rights of setoff. As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw, applicable to each party to the repurchase agreement, of a national securities exchange, a national securities association, or a securities clearing agency, and a right, whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice.

(Added Pub. L. 98-353, title III, § 396(a), July 10, 1984, 98 Stat. 366.)

REFERENCES IN TEXT

The Securities Investor Protection Act of 1970, referred to in text, is Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636, as amended, which is classified generally to chapter 2B-1 (§ 78aaa et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

EFFECTIVE DATE

Section effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as an Effective Date of 1984 Amendment note under section 101 of this title.

CHAPTER 7—LIQUIDATION

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

Sec.
703. Successor trustee.

AMENDMENTS

1984—Pub. L. 98-353, title III, § 471, July 10, 1984, 98 Stat. 380, substituted "Successor" for "Succesor" in item 703.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 103, 109, 303, 321, 326, 327, 330, 346, 347, 362, 365, 502, 508, 521, 524, 547, 1106, 1112, 1129, 1141, 1173, 1174, 1301, 1306, 1307, 1325, 1328, 15103, 15303, 15701 of this title; title 7 section 24; title 15 section 78fff-1; title 26 sections 108, 1398, 6012; title 28 sections 586, 1930; title 29 section 1362.

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

§ 701. Interim trustee

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 303, 322, 348, 557, 703, 15103, 15703 of this title.

§ 702. Election of trustee

[*See main edition for text of (a)*]

(b) At the meeting of creditors held under section 341 of this title, creditors may elect one person to serve as trustee in the case if election of a trustee is requested by creditors that may vote under subsection (a) of this section, and that hold at least 20 percent in amount of the claims specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section.

(c) A candidate for trustee is elected trustee if—

(1) creditors holding at least 20 percent in amount of the claims of a kind specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section vote; and

(2) such candidate receives the votes of creditors holding a majority in amount of claims specified in subsection (a)(1) of this section that are held by creditors that vote for a trustee.

(d) If a trustee is not elected under this section, then the interim trustee shall serve as trustee in the case.

(As amended Pub. L. 98-353, title III, § 472, July 10, 1984, 98 Stat. 380.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353, § 472(a), inserted "held" after "meeting of creditors".

Subsec. (c)(1). Pub. L. 98-353, § 472(b)(1), inserted "of a kind" after "claims".

Subsec. (c)(2). Pub. L. 98-353, § 472(b)(2), substituted "for a trustee" for "for trustee".

Subsec. (d). Pub. L. 98-353, § 472(c), substituted "this section" for "subsection (c) of this section".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 322, 546, 557, 701, 703, 705 of this title.

§ 703. Successor trustee

[*See main edition for text of (a)*]

(b) Pending election of a trustee under subsection (a) of this section, if necessary to preserve or prevent loss to the estate, the court may appoint an interim trustee in the manner and subject to the provisions of section 701 of this title.

[*See main edition for text of (c)*]

(As amended Pub. L. 98-353, title III, § 473, July 10, 1984, 98 Stat. 381.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353 substituted "and subject to the provisions of section 701 of this title" for "specified in section 701(a) of this title. Sections 701(b) and 701(c) of this title apply to such interim trustee".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 322, 557, 15103, 15703 of this title.

§ 704. Duties of trustee

The trustee shall—

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;

(2) be accountable for all property received;

(3) ensure that the debtor shall perform his intention as specified in section 521(2)(B) of this title;

(4) investigate the financial affairs of the debtor;

(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;

(6) if advisable, oppose the discharge of the debtor;

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;

(8) if the business of the debtor is authorized to be operated, file with the court and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, period-

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ic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the court requires; and

(9) make a final report and file a final account of the administration of the estate with the court.

(As amended Pub. L. 98-353, title III, §§ 311(a), 474, July 10, 1984, 98 Stat. 355, 381.)

AMENDMENTS

1984—Par. (1). Pub. L. 98-353, § 474, substituted "close such estate" for "close up such estate".

Pars. (3) to (9). Pub. L. 98-353, § 311(a), added par. (3) and redesignated former pars. (3) to (8) as (4) to (9), respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 707. Dismissal

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—

(1) unreasonable delay by the debtor that is prejudicial to creditors; or

(2) nonpayment of any fees or charges required under chapter 123 of title 28.

(b) After notice and a hearing, the court, on its own motion and not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor.

(As amended Pub. L. 98-353, title III, §§ 312, 475, July 10, 1984, 98 Stat. 355, 381.)

AMENDMENTS

1984—Pub. L. 98-353 designated existing provisions as subsec. (a) and in pars. (1) and (2) substituted "or" for "and", and added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

RULES PROMULGATED BY SUPREME COURT

United States Supreme Court to prescribe general rules implementing the practice and procedure to be followed under subsec. (b) of this section, with section 2075 of Title 28, Judiciary and Judicial Procedure, to apply with respect to such general rules, see section 320 of Pub. L. 98-353, set out as a note under section 2075 of Title 28.

SUBCHAPTER II—COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

§ 723. Rights of partnership trustee against general partners

(a) If there is a deficiency of property of the estate to pay in full all claims which are allowed in a case under this chapter concerning a partnership and with respect to which a general partner of the partnership is personally liable, the trustee shall have a claim against such general partner for the full amount of the deficiency.

[See main edition for text of (b)]

(c) Notwithstanding section 728(c) of this title, the trustee has a claim against the estate of each general partner in such partnership that is a debtor in a case under this title for the full amount of all claims of creditors allowed in the case concerning such partnership. Notwithstanding section 502 of this title, there shall not be allowed in such partner's case a claim against such partner on which both such partner and such partnership are liable, except to any extent that such claim is secured only by property of such partner and not by property of such partnership. The claim of the trustee under this subsection is entitled to distribution in such partner's case under section 726(a) of this title the same as any other claim of a kind specified in such section.

[See main edition for text of (d)]

(As amended Pub. L. 98-353, title III, § 476, July 10, 1984, 98 Stat. 381.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 476, substituted provisions that the trustee shall have a claim for the full amount of the deficiency against a general partner who is personally liable with respect to claims concerning partnerships which are allowed in a case under this chapter, for provisions that each general partner in the partnership would be liable to the trustee for the full amount of such deficiency.

Subsec. (c). Pub. L. 98-353, § 476(b), substituted "such partner's case" for "such case" in two places, "by property of such partnership" for "be property of such partnership", and "a kind specified in such section" for "the kind specified in such section".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 724. Treatment of certain liens

[See main edition for text of (a)]

(b) Property in which the estate has an interest and that is subject to a lien that is not avoidable under this title and that secures an allowed claim for a tax, or proceeds of such property, shall be distributed—

(1) first, to any holder of an allowed claim secured by a lien on such property that is not avoidable under this title and that is senior to such tax lien;

(2) second, to any holder of a claim of a kind specified in section 507(a)(1), 507(a)(2), 507(a)(3), 507(a)(4), or 507(a)(5) [1] of this title,

[1] See References in Text note below.

to the extent of the amount of such allowed tax claim that is secured by such tax lien;

(3) third, to the holder of such tax lien, to any extent that such holder's allowed tax claim that is secured by such tax lien exceeds any amount distributed under paragraph (2) of this subsection;

[*See main edition for text of (4) to (6)*]

(c) If more than one holder of a claim is entitled to distribution under a particular paragraph of subsection (b) of this section, distribution to such holders under such paragraph shall be in the same order as distribution to such holders would have been other than under this section.

(d) A statutory lien the priority of which is determined in the same manner as the priority of a tax lien under section 6323 of the Internal Revenue Code of 1954 (26 U.S.C. 6323) shall be treated under subsection (b) of this section the same as if such lien were a tax lien.

(As amended Pub. L. 98-353, title III, § 477, July 10, 1984, 98 Stat. 381.)

REFERENCES IN TEXT

Section 507(a)(5) of this title, referred to in subsec. (b)(2), was redesignated section 507(a)(6) of this title by Pub. L. 98-353, title III, § 350(2), July 10, 1984, 98 Stat. 358.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353, § 477(a)(1), substituted "a tax" for "taxes" in provisions preceding par. (1).

Subsec. (b)(2). Pub. L. 98-353, § 477(a)(2), substituted "any holder of a claim of a kind specified" for "claims specified", "section 507(a)(1)" for "sections 507(a)(1)", and "or 507(a)(5) of this title" for "and 507(a)(5) of this title".

Subsec. (b)(3). Pub. L. 98-353, § 477(a)(3), substituted "allowed tax claim" for "allowed claim".

Subsec. (c). Pub. L. 98-353, § 477(b), substituted "holder of a claim is entitled" for "creditor is entitled" and "holders" for "creditors" in two places.

Subsec. (d). Pub. L. 98-353, § 477(c), substituted "the priority of which" for "whose priority" and "the same as if such lien were a tax lien" for "the same as a tax lien".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 725. Disposition of certain property

After the commencement of a case under this chapter, but before final distribution of property of the estate under section 726 of this title, the trustee, after notice and a hearing, shall dispose of any property in which an entity other than the estate has an interest, such as a lien, and that has not been disposed of under another section of this title.

(As amended Pub. L. 98-353, title III, § 478, July 10, 1984, 98 Stat. 381.)

AMENDMENTS

1984—Pub. L. 98-353 substituted "distribution of property of the estate" for "distribution".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 726. Distribution of property of the estate

[*See main edition for text of (a)*]

(b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), or (6) of section 507(a) [2] of this title, or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind specified in each such particular paragraph, except that in a case that has been converted to this chapter under section 1112 or 1307 of this title, a claim allowed under section 503(b) of this title incurred under this chapter after such conversion has priority over a claim allowed under section 503(b) of this title incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title.

(c) Notwithstanding subsections (a) and (b) of this section, if there is property of the kind specified in section 541(a)(2) of this title, or proceeds of such property, in the estate, such property or proceeds shall be segregated from other property of the estate, and such property or proceeds and other property of the estate shall be distributed as follows:

(1) Claims allowed under section 503 of this title shall be paid either from property of the kind specified in section 541(a)(2) of this title, or from other property of the estate, as the interest of justice requires.

(2) Allowed claims, other than claims allowed under section 503 of this title, shall be paid in the order specified in subsection (a) of this section, and, with respect to claims of a kind specified in a particular paragraph of section 507 of this title or subsection (a) of this section, in the following order and manner:

[*See main edition for text of (A) to (D)*]

(As amended Pub. L. 98-353, title III, § 479, July 10, 1984, 98 Stat. 381.)

REFERENCES IN TEXT

Section 507(a) of this title, referred to in subsec. (b), was amended by Pub. L. 98-353, title III, § 350, July 10, 1984, 98 Stat. 358, by redesignating pars. (5) and (6) as (6) and (7), respectively, and adding a new par. (5).

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353, § 479(a), substituted "each such particular paragraph" for "a particular paragraph", "a claim allowed under section 503(b) of this title" for "administrative expenses" in two places, and "has priority over" for "have priority over".

Subsec. (c)(1). Pub. L. 98-353, § 479(b)(1), substituted "Claims allowed under section 503 of this title" for "Administrative expenses".

Subsec. (c)(2). Pub. L. 98-353, § 479(b)(2), substituted "Allowed claims, other than claims allowed under sec-

[2] See References in Text note below.

tion 503 of this title," for "Claims other than for administrative expenses".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 727. Discharge

(a) The court shall grant the debtor a discharge, unless—

[See main edition for text of (1) to (5)]

(6) the debtor has refused, in the case—

[See main edition for text of (A) and (B)]

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;

(7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider;

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition;

[See main edition for text of (9) and (10); (b)]

(c)(1) The trustee or a creditor may object to the granting of a discharge under subsection (a) of this section.

[See main edition for text of (2); (d)]

(e) The trustee or a creditor may request a revocation of a discharge—

(1) under subsection (d)(1) of this section, within one year after such discharge was granted; or

(2) under subsection (d)(2) or (d)(3) of this section, before the later of—

(A) one year after the granting of such discharge; or

(B) the date the case is closed.

(As amended Pub. L. 98-353, title III, § 480, July 10, 1984, 98 Stat. 382.)

REFERENCES IN TEXT

The Bankruptcy Act, referred to in subsec. (a)(7), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11.

AMENDMENTS

1984—Subsec. (a)(6)(C). Pub. L. 98-353, § 480(a)(1), substituted "properly" for "property".

Subsec. (a)(7). Pub. L. 98-353, § 480(a)(2), inserted ", under this title or under the Bankruptcy Act," after "another case".

Subsec. (a)(8). Pub. L. 98-353, § 480(a)(3), substituted "371," for "371".

Subsec. (c)(1). Pub. L. 98-353, § 480(b), substituted "to the granting of a discharge" for "to discharge".

Subsec. (e)(2)(A). Pub. L. 98-353, § 480(c), substituted "or" for "and".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 728. Special tax provisions

[See main edition for text of (a) and (b)]

(c) If there are pending a case under this chapter concerning a partnership and a case under this chapter concerning a partner in such partnership, a governmental unit's claim for any unpaid liability of such partner for a State or local tax on or measured by income, to the extent that such liability arose from the inclusion in such partner's taxable income of earnings of such partnership that were not withdrawn by such partner, is a claim only against such partnership.

(d) Notwithstanding section 541 of this title, if there are pending a case under this chapter concerning a partnership and a case under this chapter concerning a partner in such partnership, then any State or local tax refund or reduction of tax of such partner that would have otherwise been property of the estate of such partner under section 541 of this title—

[See main edition for text of (1)]

(2) is otherwise property of the estate of such partner.

(As amended Pub. L. 98-353, title III, § 481, July 10, 1984, 98 Stat. 382.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-353, § 481(a), substituted "taxable income" for "taxable income,".

Subsec. (d)(2). Pub. L. 98-353, § 481(b), substituted "is otherwise property of the estate of such partner" for "is property of the estate of such partner otherwise".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SUBCHAPTER III—STOCKBROKER LIQUIDATION

§ 741. Definitions for this subchapter

In this subchapter—

(1) "Commission" means Securities and Exchange Commission;

(2) "customer" includes—

(A) entity with whom a person deals as principal or agent and that has a claim against such person on account of a security received, acquired, or held by such person in the ordinary course of such person's business as a stockbroker, from or for the securities account or accounts of such entity—

[See main edition for text of (i) to (vi)]

(B) entity that has a claim against a person arising out of—

(i) a sale or conversion of a security received, acquired, or held as specified in subparagraph (A) of this paragraph; or

(ii) a deposit of cash, a security, or other property with such person for the purpose of purchasing or selling a security;

[*See main edition for text of (3)*]

(4) "customer property" means cash, security, or other property, and proceeds of such cash, security, or property, received, acquired, or held by or for the account of the debtor, from or for the securities account of a customer—

(A) including—

(i) property that was unlawfully converted from and that is the lawful property of the estate;

[*See main edition for text of (ii) to (iv), (B); (5)*]

(6) "net equity" means, with respect to all accounts of a customer that such customer has in the same capacity—

(A)(i) aggregate dollar balance that would remain in such accounts after the liquidation, by sale or purchase, at the time of the filing of the petition, of all securities positions in all such accounts, except any customer name securities of such customer; minus

[*See main edition for text of (ii), (B)*]

(7) "securities contract" means contract for the purchase, sale, or loan of a security, including an option for the purchase or sale of a security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any option entered into on a national securities exchange relating to foreign currencies, or the guarantee of any settlement of cash or securities by or to a securities clearing agency;

(8) "settlement payment" means a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, or any other similar payment commonly used in the securities trade; and

(9) "SIPC" means Securities Investor Protection Corporation.

(As amended Pub. L. 98-353, title III, § 482, July 10, 1984, 98 Stat. 382.)

AMENDMENTS

1984—Par. (2)(A). Pub. L. 98-353, § 482(1), substituted "with whom a person deals" for "with whom the debtor deals", "that has a claim" for "that holds a claim", "against such person" for "against the debtor", "held by such person" for "held by the debtor", and "such person's business as a stockbroker," for "business as a stockbroker".

Par. (2)(B). Pub. L. 98-353, § 482(2)(A), (B), substituted "has a claim" for "holds a claim" and "against a person" for "against the debtor" in provisions preceding cl. (i).

Par. (2)(B)(ii). Pub. L. 98-353, § 482(2)(C), substituted "such person" for "the debtor".

Par. (4)(A)(i). Pub. L. 98-353, § 482(3), substituted "from and that is the lawful" for "and that is".

Par. (6)(A)(i). Pub. L. 98-353, § 482(4), inserted a comma after "petition", and "any" after "except".

Par. (7). Pub. L. 98-353, § 482(5), amended par. (7) generally, adding provisions relating to options for the purchase or sale of certificates of deposit, or a group or index of securities (including any interest therein or based on the value thereof), or any option entered into on a national securities exchange relating to foreign currencies.

Par. (8). Pub. L. 98-353, § 482(6), added "a final settlement payment,".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 745. Treatment of accounts

(a) Accounts held by the debtor for a particular customer in separate capacities shall be treated as accounts of separate customers.

[*See main edition for text of (b) and (c)*]

(As amended Pub. L. 98-353, title III, § 483, July 10, 1984, 98 Stat. 383.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 inserted "the debtor for" after "by".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 752. Customer property

(a) The trustee shall distribute customer property ratably to customers on the basis and to the extent of such customers' allowed net equity claims and in priority to all other claims, except claims of the kind specified in section 507(a)(1) of this title that are attributable to the administration of such customer property.

(b)(1) The trustee shall distribute customer property in excess of that distributed under subsection (a) of this section in accordance with section 726 of this title.

(2) Except as provided in section 510 of this title, if a customer is not paid the full amount of such customer's allowed net equity claim from customer property, the unpaid portion of such claim is a claim entitled to distribution under section 726 of this title.

[*See main edition for text of (c)*]

(As amended Pub. L. 98-353, title III, § 484, July 10, 1984, 98 Stat. 383.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 484(a), substituted "customers' allowed" for "customers allowed", "except claims of the kind" for "except claims", and "such customer property" for "customer property".

Subsec. (b)(2). Pub. L. 98-353, § 484(b), substituted "section 726" for "section 726(a)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section

552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SUBCHAPTER IV—COMMODITY BROKER LIQUIDATION

§ 761. Definitions for this subchapter

In this subchapter—

[See main edition for text of (1) to (9)]

(10) "customer property" means cash, a security, or other property, or proceeds of such cash, security, or property, received, acquired, or held by or for the account of the debtor, from or for the account of a customer—

(A) including—

[See main edition for text of (i) to (vii)]

(viii) property that was unlawfully converted from and that is the lawful property of the estate; and

[See main edition for text of (ix), (B); (11) to (17)]

(As amended Pub. L. 98-353, title III, § 485, July 10, 1984, 98 Stat. 383.)

AMENDMENTS

1984—Par. (10)(A)(viii). Pub. L. 98-353 substituted "from and that is the lawful property" for "and that is property".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 763. Treatment of accounts

(a) Accounts held by the debtor for a particular customer in separate capacities shall be treated as accounts of separate customers.

[See main edition for text of (b) and (c)]

(As amended Pub. L. 98-353, title III, § 486, July 10, 1984, 98 Stat. 383.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 substituted "by the debtor for" for "by" and "treated as" for "deemed to be".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 764. Voidable transfers

(a) Except as otherwise provided in this section, any transfer by the debtor of property that, but for such transfer, would have been customer property, may be avoided by the trustee, and such property shall be treated as customer property, if and to the extent that the trustee avoids such transfer under section 544, 545, 547, 548, 549, or 724(a) of this title. For the purpose of such sections, the property so transferred shall be deemed to have been property of the debtor, and, if such transfer was made to a customer or for a customer's benefit, such customer shall be deemed, for the purposes of this section, to have been a creditor.

[See main edition for text of (b)]

(As amended Pub. L. 98-353, title III, § 487, July 10, 1984, 98 Stat. 383.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 substituted "any transfer by the debtor" for "any transfer".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 765. Customer instructions

(a) The notice required by section 342 of this title to customers shall instruct each customer—

[See main edition for text of (1) and (2); (b)]

(As amended Pub. L. 98-353, title III, § 488, July 10, 1984, 98 Stat. 383.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 substituted "notice required by" for "notice under".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 766. Treatment of customer property

[See main edition for text of (a) to (i)]

(j)(1) The trustee shall distribute customer property in excess of that distributed under subsection (h) or (i) of this section in accordance with section 726 of this title.

(2) Except as provided in section 510 of this title, if a customer is not paid the full amount of such customer's allowed net equity claim from customer property, the unpaid portion of such claim is a claim entitled to distribution under section 726 of this title.

(As amended Pub. L. 98-353, title III, § 489, July 10, 1984, 98 Stat. 383.)

AMENDMENTS

1984—Subsec. (j)(2). Pub. L. 98-353 substituted "section 726" for "section 726(a)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

CHAPTER 9—ADJUSTMENT OF DEBTS OF A MUNICIPALITY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 101, 103, 109, 347, 362, 365, 502, 503 of this title; title 28 section 1930.

SUBCHAPTER I—GENERAL PROVISIONS

§ 901. Applicability of other sections of this title

(a) Sections 301, 344, 347(b), 349, 350(b), 361, 362, 364(c), 364(d), 364(e), 364(f), 365, 366, 501, 502, 503, 504, 506, 507(a)(1), 509, 510, 524(a)(1), 524(a)(2), 544, 545, 546, 547, 548, 549(a), 549(c), 549(d), 550, 551, 552, 553, 557, 1102, 1103, 1109, 1111(b), 1122, 1123(a)(1), 1123(a)(2), 1123(a)(3), 1123(a)(4), 1123(a)(5), 1123(b), 1124, 1125, 1126(a), 1126(b), 1126(c), 1126(e), 1126(f), 1126(g), 1127(d), 1128, 1129(a)(2), 1129(a)(3), 1129(a)(8), 1129(a)(10), 1129(b)(1), 1129(b)(2)(A), 1129(b)(2)(B), 1142(b), 1143, 1144, and 1145 of this title apply in a case under this chapter.

[*See main edition for text of (b) and (c)*]

(As amended Pub. L. 98-353, title III, §§ 353, 490, July 10, 1984, 98 Stat. 361, 383.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 added "557," after "553," and substituted "1111(b)," for "1111(b)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 902. Definitions for this chapter

In this chapter—

[*See main edition for text of (1)*]

(2) "special tax payer" means record owner or holder of legal or equitable title to real property against which a special assessment or special tax has been levied the proceeds of which are the sole source of payment of an obligation issued by the debtor to defray the cost of an improvement relating to such real property;

[*See main edition for text of (3) and (4)*]

(As amended Pub. L. 98-353, title III, § 491, July 10, 1984, 98 Stat. 383.)

AMENDMENTS

1984—Par. (2). Pub. L. 98-353 substituted "legal or equitable title to real property against which a special assessment or special tax has been levied" for "title, legal or equitable, to real property against which has been levied a special assessment or special tax".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 903. Reservation of State power to control municipalities

This chapter does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but—

(1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and

(2) a judgment entered under such a law may not bind a creditor that does not consent to such composition.

(As amended Pub. L. 98-353, title III, § 492, July 10, 1984, 98 Stat. 383.)

AMENDMENTS

1984—Par. (2). Pub. L. 98-353 struck out "to" before "that does not consent".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SUBCHAPTER II—ADMINISTRATION

AMENDMENTS

1984—Pub. L. 98-353, title III, § 493, July 10, 1984, 98 Stat. 383, substituted "SUBCHAPTER" for "SUBCHAPER".

§ 921. Petition and proceedings relating to petition

(a) Notwithstanding sections 109(d) and 301 of this title, a case under this chapter concerning an unincorporated tax or special assessment district that does not have such district's own officials is commenced by the filing under section 301 of this title of a petition under this chapter by such district's governing authority or the board or body having authority to levy taxes or assessments to meet the obligations of such district.

[*See main edition for text of (b)*]

(c) After any objection to the petition, the court, after notice and a hearing, may dismiss the petition if the debtor did not file the petition in good faith or if the petition does not meet the requirements of this title.

(d) If the petition is not dismissed under subsection (c) of this section, the court shall order relief under this chapter.

(e) The court may not, on account of an appeal from an order for relief, delay any proceeding under this chapter in the case in which the appeal is being taken; nor shall any court order a stay of such proceeding pending such appeal. The reversal on appeal of a finding of jurisdiction does not affect the validity of any debt incurred that is authorized by the court under section 364(c) or 364(d) of this title.

(As amended Pub. L. 98-353, title III, § 494, July 10, 1984, 98 Stat. 383.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 494(c), substituted "109(d)" for "109(c)".

Subsec. (c). Pub. L. 98-353, § 494(a), substituted "any" for "an", and "petition if the debtor did not file the petition in good faith" for "petition, if the debtor did not file the petition in good faith,".

Subsec. (d). Pub. L. 98-353, § 494(b), (d), redesignated subsec. (e) as (d) and substituted "subsection (c)" for "subsection (d)". No former subsec. (d) had been enacted.

Subsecs. (e), (f). Pub. L. 98-353, § 494(b), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 922. Automatic stay of enforcement of claims against the debtor

(a) A petition filed under this chapter operates as a stay, in addition to the stay provided by section 362 of this title, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against an officer or inhabitant of the debtor that seeks to enforce a claim against the debtor; and

[See main edition for text of (2); (b)]

(As amended Pub. L. 98-353, title III, § 495, July 10, 1984, 98 Stat. 384.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-353 substituted "a judicial" for "judicial", and "action or proceeding" for "proceeding".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 927. Dismissal

[See main edition for text of (a)]

(b) The court shall dismiss a case under this chapter if confirmation of a plan under this chapter is refused.

(As amended Pub. L. 98-353, title III, § 496, July 10, 1984, 98 Stat. 384.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353 substituted "confirmation of a plan under this chapter" for "confirmation".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SUBCHAPTER III—THE PLAN

§ 943. Confirmation

(a) A special tax payer may object to confirmation of a plan.

(b) The court shall confirm the plan if—

[See main edition for text of (1) to (3)]

(4) the debtor is not prohibited by law from taking any action necessary to carry out the plan;

(5) except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that on the effective date of the plan each holder of a claim of a kind specified in section 507(a)(1) of this title will receive on account of such claim cash equal to the allowed amount of such claim; and

(6) the plan is in the best interests of creditors and is feasible.

(As amended Pub. L. 98-353, title III, § 497, July 10, 1984, 98 Stat. 384.)

AMENDMENTS

1984—Subsec. (b)(4). Pub. L. 98-353, § 497(1), struck out "to be taken" after "necessary".

Subsec. (b)(5). Pub. L. 98-353, § 497(2), substituted provisions requiring the plan to provide payment of cash in an amount equal to the allowed amount of a claim except to the extent that the holder of a particular claim has agreed to different treatment of such claim, for provisions which required the plan to provide for payment of property of a value equal to the allowed amount of such claim except to the extent that the holder of a particular claim has waived such payment on such claim.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 945. Continuing jurisdiction and closing of the case

(a) The court may retain jurisdiction over the case for such period of time as is necessary for the successful implementation of the plan.

[See main edition for text of (b)]

(As amended Pub. L. 98-353, title III, § 498, July 10, 1984, 98 Stat. 384.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 substituted "implementation" for "execution".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

CHAPTER 11—REORGANIZATION

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

Sec.
1113. Rejection of collective bargaining agreements.

SUBCHAPTER III—POSTCONFIRMATION MATTERS

1142. Implementation of plan.

AMENDMENTS

1984—Pub. L. 98-353, title III, §§ 514(b), 541(b), July 10, 1984, 98 Stat. 387, 391, added item 1113 and substituted "Implementation" for "Execution" in item 1142.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 103, 109, 303, 326, 327, 329, 346, 347, 362, 363, 365, 502, 503, 706, 1301, 1306, 1307, 15103, 151102 of this title; title 26 sections 108, 1398, 6012; title 28 sections 157, 586, 1930; title 29 section 1342.

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

§ 1102. Creditors' and equity security holders' committees

[*See main edition for text of (a)*]

(b)(1) A committee of creditors appointed under subsection (a) of this section shall ordinarily consist of the persons, willing to serve, that hold the seven largest claims against the debtor of the kinds represented on such committee, or of the members of a committee organized by creditors before the commencement of the case under this chapter, if such committee was fairly chosen and is representative of the different kinds of claims to be represented.

[*See main edition for text of (2); (c)*]

(As amended Pub. L. 98-353, title III, § 499, July 10, 1984, 98 Stat. 384.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-353 substituted "commencement of the case" for "order for relief".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 328, 348, 503, 901, 1103, 15103 of this title.

§ 1103. Powers and duties of committees

[*See main edition for text of (a)*]

(b) An attorney or accountant employed to represent a committee appointed under section 1102 of this title may not, while employed by such committee, represent any other entity having an adverse interest in connection with the case. Representation of one or more creditors of the same class as represented by the committee shall not per se constitute the representation of an adverse interest.

(c) A committee appointed under section 1102 of this title may—

[*See main edition for text of (1) and (2)*]

(3) participate in the formulation of a plan, advise those represented by such committee of such committee's determinations as to any plan formulated, and collect and file with the court acceptances or rejections of a plan;

(4) request the appointment of a trustee or examiner under section 1104 of this title; and

[*See main edition for text of (5); (d)*]

(As amended Pub. L. 98-353, title III, §§ 324, 500, July 10, 1984, 98 Stat. 358, 384.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353, §§ 324, 500(a), substituted "An attorney or accountant" for "A person", substituted "entity having an adverse interest" for "entity", and added provision that representation of one or more creditors of the same class as represented by the committee shall not per se constitute the representation of an adverse interest.

Subsec. (c)(3). Pub. L. 98-353, § 500(b)(1), substituted "determinations" for "recommendations", and "acceptances or rejections" for "acceptances".

Subsec. (c)(4). Pub. L. 98-353, § 500(b)(2), struck out "if a trustee or examiner, as the case may be, has not previously been appointed under this chapter in the case" after "section 1104 of this title".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1104. Appointment of trustee or examiner

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 303, 322, 546, 557, 1103, 1106, 1161, 15103 of this title.

§ 1105. Termination of trustee's appointment

At any time before confirmation of a plan, on request of a party in interest, and after notice and a hearing, the court may terminate the trustee's appointment and restore the debtor to possession and management of the property of the estate and of the operation of the debtor's business.

(As amended Pub. L. 98-353, title III, § 501, July 10, 1984, 98 Stat. 384.)

AMENDMENTS

1984—Pub. L. 98-353 substituted "estate and of the" for "estate, and".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1106. Duties of trustee and examiner

(a) A trustee shall—

(1) perform the duties of a trustee specified in sections 704(2), 704(5), 704(7), 704(8), and 704(9) of this title;

[*See main edition for text of (2) to (7)*]

(b) An examiner appointed under section 1104(c) of this title shall perform the duties specified in paragraphs (3) and (4) of subsection (a) of this section, and, except to the extent that the court orders otherwise, any other duties of the trustee that the court orders the debtor in possession not to perform.

(As amended Pub. L. 98-353, title III, §§ 311(b)(1), 502, July 10, 1984, 98 Stat. 355, 384.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-353, § 311(b)(1), substituted "704(5), 704(7), 704(8), and 704(9)" for "704(4), 704(6), 704(7) and 704(8)".

Subsec. (b). Pub. L. 98-353, § 502, inserted ", except to the extent that the court orders otherwise,".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1107. Rights, powers, and duties of debtor in possession

(a) Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter.

[*See main edition for text of (b)*]

(As amended Pub. L. 98-353, title III, § 503, July 10, 1984, 98 Stat. 384.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 substituted "on a trustee serving in a case" for "on a trustee".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1108. Authorization to operate business

Unless the court, on request of a party in interest and after notice and a hearing, orders otherwise, the trustee may operate the debtor's business.

(As amended Pub. L. 98-353, title III, § 504, July 10, 1984, 98 Stat. 384.)

AMENDMENTS

1984—Pub. L. 98-353 inserted ", on request of a party in interest and after notice and a hearing,".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1110. Aircraft equipment and vessels

(a) The right of a secured party with a purchase-money equipment security interest in, or of a lessor or conditional vendor of, whether as trustee or otherwise, aircraft, aircraft engines, propellers, appliances, or spare parts, as defined in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301),[1] or vessels of the United States, as defined in subsection B(4) of the Ship Mortgage Act, 1920 (46 U.S.C. 911(4)),[2] that are subject to a purchase-money equipment security interest granted by, leased to, or conditionally sold to, a debtor that is an air carrier operating under a certificate of convenience and necessity issued by the Civil Aeronautics Board, or a water carrier that holds a certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, as the case may be, to take possession of such equipment in compliance with the provisions of a purchase-money equipment security agreement, lease, or conditional sale contract, as the case may be, is not affected by section 362 or 363 of this title or by any power of the court to enjoin such taking of possession, unless—

[*See main edition for text of (1) and (2); (b), credits*]

CODIFICATION

Part of subsec. (a) is set out in this supplement to reflect the transfer of subsection B(4) of the Ship Mortgage Act, 1920, referred to in text, to Title 46, Appendix, Shipping.

TERMINATION OF CIVIL AERONAUTICS BOARD AND TRANSFER OF CERTAIN FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board were terminated or transferred by section 1551 of Title 49, Appendix, Transportation, effective in part on Dec. 31, 1981, in part on Jan. 1, 1983, and in part on Jan. 1, 1985.

§ 1112. Conversion or dismissal

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

(1) the debtor is not a debtor in possession;

(2) the case originally was commenced as an involuntary case under this chapter; or

(3) the case was converted to a case under this chapter other than on the debtor's request.

(b) Except as provided in subsection (c) of this section, on request of a party in interest, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including—

[*See main edition for text of (1) to (4)*]

(5) denial of confirmation of every proposed plan and denial of a request made for additional time for filing another plan or a modification of a plan;

[*See main edition for text of (6) and (7)*]

(8) material default by the debtor with respect to a confirmed plan; or

[*See main edition for text of (9); (c) to (e)*]

(As amended Pub. L. 98-353, title III, § 505, July 10, 1984, 98 Stat. 384.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-353, § 505(a)(1), substituted "originally was commenced as an involuntary case" for "is an involuntary case originally commenced".

Subsec. (a)(3). Pub. L. 98-353, § 505(a)(2), substituted "other than on" for "on other than".

Subsec. (b)(5). Pub. L. 98-353, § 505(b)(1), added "a request made for" before "additional".

Subsec. (b)(8). Pub. L. 98-353, § 505(b)(2), substituted "or" for "and".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section

[1] Now (49 App. U.S.C. 1301).

[2] Now (46 App. U.S.C. 911(4)).

552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1113. Rejection of collective bargaining agreements

(a) The debtor in possession, or the trustee if one has been appointed under the provisions of this chapter, other than a trustee in a case covered by subchapter IV of this chapter and by title I of the Railway Labor Act, may assume or reject a collective bargaining agreement only in accordance with the provisions of this section.

(b)(1) Subsequent to filing a petition and prior to filing an application seeking rejection of a collective bargaining agreement, the debtor in possession or trustee (hereinafter in this section "trustee" shall include a debtor in possession), shall—

(A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

(B) provide, subject to subsection (d)(3), the representative of the employees with such relevant information as is necessary to evaluate the proposal.

(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.

(c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that—

(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);

(2) the authorized representative of the employees has refused to accept such proposal without good cause; and

(3) the balance of the equities clearly favors rejection of such agreement.

(d)(1) Upon the filing of an application for rejection the court shall schedule a hearing to be held not later than fourteen days after the date of the filing of such application. All interested parties may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ten days before the date of such hearing. The court may extend the time for the commencement of such hearing for a period not exceeding seven days where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and representative agree.

(2) The court shall rule on such application for rejection within thirty days after the date of the commencement of the hearing. In the interests of justice, the court may extend such time for ruling for such additional period as the trustee and the employees' representative may agree to. If the court does not rule on such application within thirty days after the date of the commencement of the hearing, or within such additional time as the trustee and the employees' representative may agree to, the trustee may terminate or alter any provisions of the collective bargaining agreement pending the ruling of the court on such application.

(3) The court may enter such protective orders, consistent with the need of the authorized representative of the employee to evaluate the trustee's proposal and the application for rejection, as may be necessary to prevent disclosure of information provided to such representative where such disclosure could compromise the position of the debtor with respect to its competitors in the industry in which it is engaged.

(e) If during a period when the collective bargaining agreement continues in effect, and if essential to the continuation of the debtor's business, or in order to avoid irreparable damage to the estate, the court, after notice and a hearing, may authorize the trustee to implement interim changes in the terms, conditions, wages, benefits, or work rules provided by a collective bargaining agreement. Any hearing under this paragraph shall be scheduled in accordance with the needs of the trustee. The implementation of such interim changes shall not render the application for rejection moot.

(f) No provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section.

(Added Pub. L. 98-353, title III, § 541(a), July 10, 1984, 98 Stat. 390.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (a), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended. Title I of the Railway Labor Act is classified principally to subchapter I (§ 151 et seq.) of chapter 8 of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

EFFECTIVE DATE

Section 541(c) of Pub. L. 98-353 provided that: "The amendments made by this section [enacting this section] shall become effective upon the date of enactment of this Act [July 10, 1984]; provided that this section shall not apply to cases filed under title 11 of the United States Code which were commenced prior to the date of enactment of this section."

SUBCHAPTER II—THE PLAN

§ 1121. Who may file a plan

[*See main edition for text of* (a) *and* (b)]

(c) Any party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if and only if—

[*See main edition for text of* (1) *and* (2)]

(3) the debtor has not filed a plan that has been accepted, before 180 days after the date

of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.

(d) On request of a party in interest made within the respective periods specified in subsection (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

(As amended Pub. L. 98-353, title III, § 506, July 10, 1984, 98 Stat. 385.)

AMENDMENTS

1984—Subsec. (c)(3). Pub. L. 98-353, § 506(a), substituted "of claims or interests that is" for "the claims or interests of which are".

Subsec. (d). Pub. L. 98-353, § 506(b), added "made within the respective periods specified in subsection (c) of this section".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1123. Contents of plan

(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—

(1) designate, subject to section 1122 of this title, classes of claims, other than claims of a kind specified in section 507(a)(1), 507(a)(2), or 507(a)(7) of this title and classes of interests;

(2) specify any class of claims or interests that is not impaired under the plan;

(3) specify the treatment of any class of claims or interests that is impaired under the plan;

[*See main edition for text of* (4)]

(5) provide adequate means for the plan's implementation, such as—

[*See main edition for text of* (A) *to* (F)]

(G) curing or waiving of any default;

[*See main edition for text of* (H) *to* (J), (6) *and* (7)]

(b) Subject to subsection (a) of this section, a plan may—

(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;

(2) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

[*See main edition for text of* (3) *to* (5); (c)]

(As amended Pub. L. 98-353, title III, § 507, July 10, 1984, 98 Stat. 385.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 507(a)(1), in provisions preceding par. (1) substituted "Notwithstanding any otherwise applicable nonbankruptcy law, a" for "A".

Subsec. (a)(1). Pub. L. 98-353, § 507(a)(2), added a comma after "classes of claims" and substituted "507(a)(7) of this title," for "507(a)(6) of this title".

Subsec. (a)(3). Pub. L. 98-353, § 507(a)(3), struck out "shall" before "specify the treatment".

Subsec. (a)(5). Pub. L. 98-353, § 507(a)(4), substituted "implementation" for "execution".

Subsec. (a)(5)(G). Pub. L. 98-353, § 507(a)(5), added "of" after "waiving".

Subsec. (b)(2). Pub. L. 98-353, § 507(b), substituted "rejection, or assignment" for "or rejection", and "under such section" for "under section 365 of this title".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1124. Impairment of claims or interests

Except as provided in section 1123(a)(4) of this title, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan—

(1) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest;

(2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default—

(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of this title;

[*See main edition for text of* (B) *to* (D)]

(3) provides that, on the effective date of the plan, the holder of such claim or interest receives, on account of such claim or interest, cash equal to—

(A) with respect to a claim, the allowed amount of such claim; or

(B) with respect to an interest, if applicable, the greater of—

(i) any fixed liquidation preference to which the terms of any security representing such interest entitle the holder of such interest; or

(ii) any fixed price at which the debtor, under the terms of such security, may redeem such security from such holder.

(As amended Pub. L. 98-353, title III, § 508, July 10, 1984, 98 Stat. 385.)

AMENDMENTS

1984—Par. (2)(A). Pub. L. 98-353, § 508(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "cures any such default, other than a default of a kind specified in section 365(b)(2) of this title, that occurred before or after the commencement of the case under this title."

Par. (3)(B)(i). Pub. L. 98-353, § 508(2), substituted "or" for "and".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1125. Postpetition disclosure and solicitation

(a) In this section—

(1) "adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan; and

(2) "investor typical of holders of claims or interests of the relevant class" means investor having—

(A) a claim or interest of the relevant class;

(B) such a relationship with the debtor as the holders of other claims or interests of such class generally have; and

(C) such ability to obtain such information from sources other than the disclosure required by this section as holders of claims or interests in such class generally have.

[*See main edition for text of* (b) *and* (c)]

(d) Whether a disclosure statement required under subsection (b) of this section contains adequate information is not governed by any otherwise applicable nonbankruptcy law, rule, or regulation, but an agency or official whose duty is to administer or enforce such a law, rule, or regulation may be heard on the issue of whether a disclosure statement contains adequate information. Such an agency or official may not appeal from, or otherwise seek review of, an order approving a disclosure statement.

(e) A person that solicits acceptance or rejection of a plan, in good faith and in compliance with the applicable provisions of this title, or that participates, in good faith and in compliance with the applicable provisions of this title, in the offer, issuance, sale, or purchase of a security, offered or sold under the plan, of the debtor, of an affiliate participating in a joint plan with the debtor, or of a newly organized successor to the debtor under the plan, is not liable, on account of such solicitation or participation, for violation of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan or the offer, issuance, sale, or purchase of securities.

(As amended Pub. L. 98-353, title III, § 509, July 10, 1984, 98 Stat. 385.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-353, § 509(a)(1), added ", but adequate information need not include such information about any other possible or proposed plan".

Subsec. (a)(2)(B). Pub. L. 98-353, § 509(a)(2), added "the" after "with".

Subsec. (a)(2)(C). Pub. L. 98-353, § 509(a)(3), added "of" after "holders".

Subsec. (d). Pub. L. 98-353, § 509(b), added "required under subsection (b) of this section" and ", or otherwise seek review of,".

Subsec. (e). Pub. L. 98-353, § 509(c), added "acceptance or rejection of a plan" after "solicits", and "solicitation of acceptance or rejection of a plan or" after "governing".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1126. Acceptance of plan

[*See main edition for text of* (a)]

(b) For the purposes of subsections (c) and (d) of this section, a holder of a claim or interest that has accepted or rejected the plan before the commencement of the case under this title is deemed to have accepted or rejected such plan, as the case may be, if—

[*See main edition for text of* (1)]

(2) if there is not any such law, rule, or regulation, such acceptance or rejection was solicited after disclosure to such holder of adequate information, as defined in section 1125(a) of this title.

[*See main edition for text of* (c)]

(d) A class of interests has accepted a plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

[*See main edition for text of* (e)]

(f) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.

(g) Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

(As amended Pub. L. 98-353, title III, § 510, July 10, 1984, 98 Stat. 386.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-353, § 510(a), substituted "1125(a)" for "1125(a)(1)".

Subsec. (d). Pub. L. 98-353, § 510(b), added a comma after "such interests".

Subsec. (f). Pub. L. 98-353, § 510(c), substituted ", and each holder of a claim or interest of such class, are conclusively presumed" for "is deemed", "solicitation" for "solicititation", and "interests" for "interest".

Subsec. (g). Pub. L. 98-353, § 510(d), substituted "receive or retain any property" for "any payment or compensation".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section

552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1127. Modification of plan

(a) The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.

(b) The proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. Such plan as modified under this subsection becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified, under section 1129 of this title.

[*See main edition for text of* (c) *and* (d)]

(As amended Pub. L. 98-353, title III, § 511, July 10, 1984, 98 Stat. 386.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 511(a), added "of a plan" after "After the proponent", and "of such plan" after "modification".

Subsec. (b). Pub. L. 98-353, § 511(b), substituted "circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified, under section 1129 of this title" for "the court, after notice and a hearing, confirms such plan, as modified, under section 1129 of this title, and circumstances warrant such modification".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1129. Confirmation of plan

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) The plan complies with the applicable provisions of this title.

(2) The proponent of the plan complies with the applicable provisions of this title.

(3) The plan has been proposed in good faith and not by any means forbidden by law.

(4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable; [1]

(5)(A) [*See main edition for text of* (i)]

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

(6) Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

(7) With respect to of [2] each impaired class of claims or interests—

[*See main edition for text of* (A)]

(B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

(8) With respect to each class of claims or interests—

[*See main edition for text of* (A) *and* (B)]

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

[*See main edition for text of* (A)]

(B) with respect to a class of claims of a kind specified in section 507(a)(3), 507(a)(4), or 507(a)(5) [3] of this title, each holder of a claim of such class will receive—

[*See main edition for text of* (i) *and* (ii)]

(C) with respect to a claim of a kind specified in section 507(a)(6) [3] of this title, the holder of such claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the plan, equal to the allowed amount of such claim.

(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

[*See main edition for text of* (11)]

(b) [*See main edition for text of* (1)]

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with

[1] So in original. The semicolon probably should be a period.

[2] So in original.

[3] See References in Text note below.

respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

(i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

[*See main edition for text of (II)*]

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

(B) With respect to a class of unsecured claims—

[*See main edition for text of (i)*]

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property.

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

[*See main edition for text of (ii); (c)*]

(d) Notwithstanding any other provision of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933 (15 U.S.C. 77e). In any hearing under this subsection, the governmental unit has the burden of proof on the issue of avoidance.

(As amended Pub. L. 98-353, title III, § 512, July 10, 1984, 98 Stat. 386.)

REFERENCES IN TEXT

Section 507(a)(5) and (6) of this title, referred to in subsec. (a)(9)(B), (C), was redesignated section 507(a)(6) and (7), respectively, of this title by Pub. L. 98-353, title III, § 350(2), July 10, 1984, 98 Stat. 358.

AMENDMENTS

1984—Subsec. (a)(1), (2). Pub. L. 98-353, § 512(a)(1), (2), substituted "title" for "chapter".

Subsec. (a)(4). Pub. L. 98-353, § 512(a)(3), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "(A) Any payment made or promised by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in, or in connection with, the case, or in connection with the plan and incident to the case, has been disclosed to the court; and (B)(i) any such payment made before confirmation of the plan is reasonable; or (ii) if such payment is to be fixed after confirmation of the plan, such payment is subject to the approval of the court as reasonable."

Subsec. (a)(5)(A)(ii). Pub. L. 98-353, § 512(a)(4), substituted "; and" for the period at the end.

Subsec. (a)(5)(B). Pub. L. 98-353, § 512(a)(5), substituted "the" for "The".

Subsec. (a)(6). Pub. L. 98-353, § 512(a)(6), added "governmental" after "Any".

Subsec. (a)(7). Pub. L. 98-353, § 512(a)(7)(A), substituted "of each impaired class of claims or interests" for "each class".

Subsec. (a)(7)(B). Pub. L. 98-353, § 512(a)(7)(B), substituted "holder's" for "creditor's".

Subsec. (a)(8). Pub. L. 98-353, § 512(a)(8), added "of claims or interests" after "each class".

Subsec. (a)(10). Pub. L. 98-353, § 512(a)(9), substituted "If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider" for "At least one class of claims has accepted the plan, determined without including any acceptance of the plan by any insider holding a claim of such class".

Subsec. (b)(2)(A)(i)(I), (ii). Pub. L. 98-353, § 512(b)(1), substituted "liens" for "lien" wherever appearing.

Subsec. (b)(2)(B)(ii). Pub. L. 98-353, § 512(b)(2), added "under the plan" after "retain".

Subsec. (b)(2)(C)(i). Pub. L. 98-353, § 512(b)(3), substituted "interest" for "claim", and "or the value" for "and the value".

Subsec. (d). Pub. L. 98-353, § 512(c), added "the application of" and provisions requiring that in any hearing under this subsection, the governmental unit has the burden of proof on the issue of avoidance.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SUBCHAPTER III—POSTCONFIRMATION MATTERS

§ 1141. Effect of confirmation

(a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

[*See main edition for text of (b)*]

(c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.

[*See main edition for text of (d)*]

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(As amended Pub. L. 98-353, title III, § 513, July 10, 1984, 98 Stat. 387.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 513(a), substituted "any creditor, equity security holder, or general partner in" for "any creditor or equity security holder of, or general partner in,".

Subsec. (c). Pub. L. 98-353, § 513(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "After confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, of equity security holders, and of general partners in the debtor, except as otherwise provided in the plan or in the order confirming the plan."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1142. Implementation of plan

(a) Notwithstanding any otherwise applicable nonbankruptcy law, rule, or regulation relating to financial condition, the debtor and any entity organized or to be organized for the purpose of carrying out the plan shall carry out the plan and shall comply with any orders of the court.

(b) The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

(As amended Pub. L. 98-353, title III, § 514(a), (c), (d), July 10, 1984, 98 Stat. 387.)

AMENDMENTS

1984—Pub. L. 98-353, § 514(a), substituted "Implementation" for "Execution" in section catchline.

Subsec. (a). Pub. L. 98-353, § 514(c), struck out the comma after "shall carry out the plan".

Subsec. (b). Pub. L. 98-353, § 514(d), added "a" after "by".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1144. Revocation of an order of confirmation

On request of a party in interest at any time before 180 days after the date of the entry of the order of confirmation, and after notice and a hearing, the court may revoke such order if and only if such order was procured by fraud. An order under this section revoking an order of confirmation shall—

[*See main edition for text of* (1) *and* (2)]

(As amended Pub. L. 98-353, title III, § 515, July 10, 1984, 98 Stat. 387.)

AMENDMENTS

1984—Pub. L. 98-353 added "if and only" after "revoke such order".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1145. Exemption from securities laws

(a) Except with respect to an entity that is an underwriter as defined in subsection (b) of this section, section 5 of the Securities Act of 1933 (15 U.S.C. 77e) and any State or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security does not apply to—

[*See main edition for text of* (1) *and* (2)]

(3) the offer or sale, other than under a plan, of a security of an issuer other than the debtor or an affiliate, if—

(A) such security was owned by the debtor on the date of the filing of the petition;

(B) the issuer of such security is—

(i) required to file reports under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(ii) in compliance with the disclosure and reporting provision of such applicable section; and

[*See main edition for text of* (C)]

(4) a transaction by a stockbroker in a security that is executed after a transaction of a kind specified in paragraph (1) or (2) of this subsection in such security and before the expiration of 40 days after the first date on which such security was bona fide offered to the public by the issuer or by or through an underwriter, if such stockbroker provides, at the time of or before such transaction by such stockbroker, a disclosure statement approved under section 1125 of this title, and, if the court orders, information supplementing such disclosure statement.

(b)(1) Except as provided in paragraph (2) of this subsection and except with respect to ordinary trading transactions of an entity that is not an issuer, an entity is an underwriter under section 2(11) of the Securities Act of 1933 (15 U.S.C. 77b(11)), if such entity—

[*See main edition for text of* (A) *and* (B)]

(C) offers to buy securities offered or sold under the plan from the holders of such securities, if such offer to buy is—

[*See main edition for text of* (i) *and* (ii), (D)]

(2) An entity is not an underwriter under section 2(11) of the Securities Act of 1933 or under paragraph (1) of this subsection with respect to an agreement that provides only for—

(A)(i) the matching or combining of fractional interests in securities offered or sold under the plan into whole interests; or

(ii) the purchase or sale of such fractional interests from or to entities receiving such fractional interests under the plan; or

[*See main edition for text of (B), (3); (c)*]

(d) The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) does not apply to a note issued under the plan that matures not later than one year after the effective date of the plan.

(As amended Pub. L. 98-353, title III, § 516, July 10, 1984, 98 Stat. 387.)

AMENDMENTS

1984—Subsec. (a)(3)(B)(i). Pub. L. 98-353, § 516(a)(1), added "or 15(d)" after "13", and "or 78o(d)" after "78m".

Subsec. (a)(3)(B)(ii). Pub. L. 98-353, § 516(a)(2), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "in compliance with all applicable requirements for the continuance of trading in such security on the date of such offer or sale; and".

Subsec. (a)(4). Pub. L. 98-353, § 516(a)(3), substituted "stockbroker" for "stockholder" in two places.

Subsec. (b)(1). Pub. L. 98-353, § 516(b)(1), added "and except with respect to orulnary trading transactions of an entity that is not an issuer".

Subsec. (b)(1)(C). Pub. L. 98-353, § 516(b)(2), substituted "from" for "for".

Subsec. (b)(2)(A)(i). Pub. L. 98-353, § 516(b)(3), substituted "or combining" for "combination".

Subsec. (b)(2)(A)(ii). Pub. L. 98-353 § 516(b)(4), substituted "from or to" for "among".

Subsec. (d). Pub. L. 98-353, § 516(c), struck out "commercial" before "note".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1146. Special tax provisions

[*See main edition for text of (a) and (b)*]

(c) The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax.

(d) The court may authorize the proponent of a plan to request a determination, limited to questions of law, by a State or local governmental unit charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of—

(1) the date on which such governmental unit responds to the request under this subsection; or

(2) 270 days after such request.

(As amended Pub. L. 98-353, title III, § 517, July 10, 1984, 98 Stat. 388.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-353, § 517(a), struck out "State or local" before "law imposing a stamp tax".

Subsec. (d)(1). Pub. L. 98-353, § 517(b), substituted "or" for "and".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SUBCHAPTER IV—RAILROAD REORGANIZATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 103, 1113 of this title; title 45 sections 915, 1015, 1017.

§ 1166. Effect of subtitle IV of title 49 and of Federal, State, or local regulations

[*See main edition for text*]

(As amended Pub. L. 98-353, title III, § 518, July 10, 1984, 98 Stat. 388.)

AMENDMENTS

1984—Pub. L. 98-353 substituted "subtitle IV of title 49" for "the Interstate Commerce Act (49 U.S.C. 1 et seq.)", which substitution had previously been made by Pub. L. 97-449.

§ 1168. Rolling stock equipment

[*See main edition for text of (a)*]

(b) The trustee and the secured party, lessor, or conditional vendor, as the case may be, whose right to take possession is protected under subsection (a) of this section, may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1) of this section.

(As amended Pub. L. 98-353, title III, § 519, July 10, 1984, 98 Stat. 388.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353 added a comma after "approval".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1169. Effect of rejection of lease of railroad line

[*See main edition for text*]

(As amended Pub. L. 98-353, title III, § 520, July 10, 1984, 98 Stat. 388.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-353 substituted "subtitle IV of title 49" for "the Interstate Commerce Act (49 U.S.C. 1 et seq.)", which substitution had previously been made by Pub. L. 97-449.

§ 1170. Abandonment of railroad line

(a) The court, after notice and a hearing, may authorize the abandonment of all or a portion of a railroad line if such abandonment is—

[*See main edition for text of (1) and (2); (b)*]

(c) After the court receives the report of the Commission, or the expiration of the time fixed under subsection (b) of this section, whichever occurs first, the court may authorize such abandonment, after notice to the Commission, the Secretary of Transportation, the trustee, any party in interest that has requested notice, any

affected shipper or community, and any other entity prescribed by the court, and a hearing.

(d)(1) Enforcement of an order authorizing such abandonment shall be stayed until the time for taking an appeal has expired, or, if an appeal is timely taken, until such order has become final.

(2) If an order authorizing such abandonment is appealed, the court, on request of a party in interest, may authorize suspension of service on a line or a portion of a line pending the determination of such appeal, after notice to the Commission, the Secretary of Transportation, the trustee, any party in interest that has requested notice, any affected shipper or community, and any other entity prescribed by the court, and a hearing. An appellant may not obtain a stay of the enforcement of an order authorizing such suspension by the giving of a supersedeas bond or otherwise, during the pendency of such appeal.

[*See main edition for text of* (e)]

(As amended Pub. L. 98-353, title III, § 521, July 10, 1984, 98 Stat. 388.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 521(a), added "of all or a portion" after "the abandonment".

Subsec. (c). Pub. L. 98-353, § 521(b), added a comma after "abandonment".

Subsec. (d)(2). Pub. L. 98-353, § 521(c), substituted "such abandonment" for "the abandonment of a railroad line", and "suspension" for "termination" in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1171. Priority claims

[*See main edition for text of* (a)]

(b) Any unsecured claim against the debtor that would have been entitled to priority if a receiver in equity of the property of the debtor had been appointed by a Federal court on the date of the order for relief under this title shall be entitled to the same priority in the case under this chapter.

(As amended Pub. L. 98-353, title III, § 522, July 10, 1984, 98 Stat. 388.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353 substituted "the same" for "such".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1173. Confirmation of plan

(a) The court shall confirm a plan if—

[*See main edition for text of* (1) *to* (3)]

(4) the plan is consistent with the public interest.

[*See main edition for text of* (b)]

(As amended Pub. L. 98-353, title III, § 523, July 10, 1984, 98 Stat. 388.)

AMENDMENTS

1984—Subsec. (a)(4). Pub. L. 98-353 substituted "consistent" for "compatible".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

CHAPTER 13—ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 101, 103, 109, 321, 326, 329, 330, 346, 347, 362, 363, 365, 502, 706, 1106, 1112, 15103, 15326, 151302 of this title; title 15 section 1673; title 28 sections 157, 586, 1930.

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

§ 1301. Stay of action against codebtor

[*See main edition for text of* (a) *and* (b)]

(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that—

[*See main edition for text of* (1) *and* (2)]

(3) such creditor's interest would be irreparably harmed by continuation of such stay.

(d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.

(As amended Pub. L. 98-353, title III, §§ 313, 524, July 10, 1984, 98 Stat. 355, 388.)

AMENDMENTS

1984—Subsec. (c)(3). Pub. L. 98-353, § 524, added "continuation of" after "by".

Subsec. (d). Pub. L. 98-353, § 313, added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1302. Trustee

[*See main edition for text of* (a)]

(b) The trustee shall—

(1) perform the duties specified in sections 704(2), 704(3), 704(4), 704(5), 704(6), 704(7), and 704(9) of this title;

(2) appear and be heard at any hearing that concerns—

(A) the value of property subject to a lien;
(B) confirmation of a plan; or
(C) modification of the plan after confirmation;

(3) dispose of, under regulations issued by the Director of the Administrative Office of the United States Courts, moneys received or to be received in a case under chapter XIII of the Bankruptcy Act; and [1]

(4) advise, other than on legal matters, and assist the debtor in performance under the plan; and

(5) ensure that the debtor commences making timely payments under section 1326 of this title.

[*See main edition for text of* (c) *and* (d)]

(e)(1) A court that has appointed an individual under subsection (d) of this section to serve as standing trustee in cases under this chapter shall set for such individual—

(A) a maximum annual compensation, not to exceed the lowest annual rate of basic pay in effect for grade GS-16 of the General Schedule prescribed under section 5332 of title 5; and

[*See main edition for text of* (B)]

(2) Such individual shall collect such percentage fee from all payments under plans in the cases under this chapter for which such individual serves as standing trustee. Such individual shall pay annually to the Treasury—

(A) any amount by which the actual compensation received by such individual exceeds five percent of all such payments made under plans in cases under this chapter for which such individual serves as standing trustee; and

[*See main edition for text of* (B)]

(As amended Pub. L. 98-353, title III, §§ 314, 525, July 10, 1984, 98 Stat. 356, 388.)

REFERENCES IN TEXT

Chapter XIII of the Bankruptcy Act, referred to in subsec. (b)(3), is chapter XIII of act July 1, 1898, ch. 541, as added June 22, 1938, ch. 575, § 1, 52 Stat. 930, which was classified to chapter 13 (§ 1001 et seq.) of former Title 11.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-353, § 314(1), substituted "704(7), and 704(9) of this title" for "and 704(8) of this title".

Subsec. (b)(2). Pub. L. 98-353, § 314(2), struck out "and" at the end.

Subsec. (b)(3) to (5). Pub. L. 98-353, § 525(a), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Pub. L. 98-353, § 314(3), (4), substituted "; and" for the period at end of par. (3) and added par. (4).

Subsec. (e)(1). Pub. L. 98-353, § 525(b)(1), which directed the amendment of par. (4) by substituting "set for such individual" for "fix" was executed to par. (1) as the probable intent of Congress.

Subsec. (e)(1)(A). Pub. L. 98-353, § 525(b)(2), struck out "for such individual" after "a maximum annual compensation".

[1] So in original, "and" probably should be deleted.

Subsec. (e)(2)(A). Pub. L. 98-353, § 525(b)(3), substituted "received by" for "of", and "of all such payments made" for "upon all payments".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 322, 326, 546, 557, 1326, 15103, 15326 of this title.

§ 1304. Debtor engaged in business

[*See main edition for text of* (a)]

(b) Unless the court orders otherwise, a debtor engaged in business may operate the business of the debtor and, subject to any limitations on a trustee under sections 363(c) and 364 of this title and to such limitations or conditions as the court prescribes, shall have, exclusive of the trustee, the rights and powers of the trustee under such sections.

(c) A debtor engaged in business shall perform the duties of the trustee specified in section 704(8) of this title.

(As amended Pub. L. 98-353, title III, §§ 311(b)(2), 526, July 10, 1984, 98 Stat. 355, 389.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353, § 526, struck out the comma after "of the debtor".

Subsec. (c). Pub. L. 98-353, § 311(b)(2), substituted "section 704(8)" for "section 704(7)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1307. Conversion or dismissal

[*See main edition for text of* (a)]

(b) On request of the debtor at any time, if the case has not been converted under section 706 or 1112 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

(c) Except as provided in subsection (e) of this section, on request of a party in interest and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

[*See main edition for text of* (1) *to* (3)]

(4) failure to commence making timely payments under section 1326 of this title;

(5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;

(6) material default by the debtor with respect to a term of a confirmed plan;

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(7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title; or

(8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan.

[See main edition for text of (d) to (f)]

(As amended Pub. L. 98-353, title III, §§ 315, 527, July 10, 1984, 98 Stat. 356, 389.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353, § 527(a), added a comma after "time".

Subsec. (c)(4). Pub. L. 98-353, § 315(2), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 98-353, §§ 315(1), 527(b)(1), redesignated former par. (4) as (5) and added "a request made for" before "additional". Former par. (5) redesignated (6).

Subsec. (c)(6). Pub. L. 98-353, § 315(1), redesignated former par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 98-353, §§ 315(1), 527(b)(2), redesignated former par. (6) as (7) and substituted "or" for "and". Former par. (7) redesignated (8).

Subsec. (c)(8). Pub. L. 98-353, §§ 315(1), 527(b)(3), redesignated former par. (7) as (8) and added "other than completion of payments under the plan" after "in the plan".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SUBCHAPTER II—THE PLAN

§ 1322. Contents of plan

(a) The plan shall—

(1) provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; and

(3) if the plan classifies claims, provide the same treatment for each claim within a particular class.

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

(3) provide for the curing or waiving of any default;

(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

[See main edition for text of (5) and (6)]

(7) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(8) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;

[See main edition for text of (9) and (10); (c)]

(As amended Pub. L. 98-353, title III, §§ 316, 528, July 10, 1984, 98 Stat. 356, 389.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-353, § 528(a), added a comma after "payments".

Subsec. (b)(1). Pub. L. 98-353, § 316, added "; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims".

Subsec. (b)(2). Pub. L. 98-353, § 528(b)(1), added ", or leave unaffected the rights of the holders of any class of claims".

Subsec. (b)(4). Pub. L. 98-353, § 528(b)(2), added "other" after "claim or any".

Subsec. (b)(7). Pub. L. 98-353, § 528(b)(3), added "subject to section 365 of this title," before "provide", substituted ", rejection, or assignment" for "or rejection", and substituted "under such section" for "under section 365 of this title".

Subsec. (b)(8). Pub. L. 98-353, § 528(b)(4), struck out "any" before "part of a claim".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1324. Confirmation hearing

After notice, the court shall hold a hearing on confirmation of the plan. A party in interest may object to the confirmation of the plan.

(As amended Pub. L. 98-353, title III, § 529, July 10, 1984, 98 Stat. 389.)

AMENDMENTS

1984—Pub. L. 98-353 struck out "the" before "confirmation of the plan".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1325. Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) The plan complies with the provisions of this chapter and with the other applicable provisions of this title;

[See main edition for text of (2) to (6)]

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended—

(A) for the maintenance or support of the debtor or a dependent of the debtor; or

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

(c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.

(As amended Pub. L. 98-353, title III, §§ 317, 530, July 10, 1984, 98 Stat. 356, 389.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 317(1), substituted "Except as provided in subsection (b), the" for "The".

Subsec. (a)(1). Pub. L. 98-353, § 530, added "the" before "other".

Subsecs. (b), (c). Pub. L. 98-353, § 317(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1326. Payments

(a)(1) Unless the court orders otherwise, the debtor shall commence making the payments proposed by a plan within 30 days after the plan is filed.

(2) A payment made under this subsection shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan. If a plan is not confirmed, the trustee shall return any such payments to the debtor, after deducting any unpaid claim allowed under section 503(b) of this title.

(b) Before or at the time of each payment to creditors under the plan, there shall be paid—

(1) any unpaid claim of the kind specified in section 507(a)(1) of this title; and

(2) if a standing trustee appointed under section 1302(d) of this title is serving in the case, the percentage fee fixed for such standing trustee under section 1302(e) of this title.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

(As amended Pub. L. 98-353, title III, §§ 318(a), 531, July 10, 1984, 98 Stat. 357, 389.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 318(a)(2), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 98-353, § 318(a)(1), redesignated subsec. (a) as (b). Former subsec. (b) redesignated (c).

Subsec. (b)(2). Pub. L. 98-353, § 531, added "of this title" after "1302(d)".

Subsec. (c). Pub. L. 98-353, § 318(a)(1), redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 347, 1302, 1307, 15103 of this title.

§ 1328. Discharge

[*See main edition for text of (a) to (d)*]

(e) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if—

(1) such discharge was obtained by the debtor through fraud; and

(2) the requesting party did not know of such fraud until after such discharge was granted.

(As amended Pub. L. 98-353, title III, § 532, July 10, 1984, 98 Stat. 389.)

AMENDMENTS

1984—Subsec. (e)(1). Pub. L. 98-353, § 532(1), added "by the debtor" after "obtained".

Subsec. (e)(2). Pub. L. 98-353, § 532(2), substituted "the requesting party did not know of such fraud until" for "knowledge of such fraud came to the requesting party".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1329. Modification of plan after confirmation

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—

[*See main edition for text of (1) and (2)*]

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan.

[*See main edition for text of (b) and (c)*]

(As amended Pub. L. 98-353, title III, §§ 319, 533, July 10, 1984, 98 Stat. 357, 389.)

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AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, §§ 319, 533(1), (2), added "of the plan" after "confirmation", substituted "such plan" for "a plan", and added provisions respecting requests by the debtor, the trustee, or the holder of an allowed unsecured claim for modification.

Subsec. (a)(3). Pub. L. 98-353, § 533(3), substituted "plan to" for "plan, to".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

CHAPTER 15—UNITED STATES TRUSTEES

REPEAL OF CHAPTER

Pub. L. 95-598, title IV, § 408(c), Nov. 6, 1978, 92 Stat. 2687, as amended Pub. L. 98-166, title II, § 200, Nov. 28, 1983, 97 Stat. 1081; Pub. L. 98-353, title III, § 323, July 10, 1984, 98 Stat. 358, provided that, effective Sept. 30, 1986, this chapter will be repealed. See section 408(c) of Pub. L. 95-598 set out as a note preceding section 581 of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER I—GENERAL PROVISIONS

§ 15103. Applicability of subchapters and sections

[See main edition for text of (a) to (e)]

(f) Sections 303(g), 322(b), 324, 326(b), 343, 345(b), 701(a), 703(b), 703(c), 704(9), 727(c), 727(d), 727(e), 1102(a), 1104, 1105, 1163, 1302(a), 1302(d), 1302(e), and 1326(b) of this title do not apply in a case under this title.

(As amended Pub. L. 98-353, title III, §§ 311(b)(3), 318(b), July 10, 1984, 98 Stat. 355, 357.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-353 substituted "704(9)" for "704(8)" and "1326(b)" for "1326(a)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SUBCHAPTER XIII — ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME

§ 151302. Trustee

(a) If the United States trustee has appointed an individual under section 586(b) of title 28 to serve as standing trustee in cases under chapter 13 of this title and if such individual qualifies under section 322 of this title, then such individual shall serve as trustee in the case. The United States trustee shall serve, or shall appoint a disinterested person to serve, as trustee in the case otherwise.

(b) The trustee shall—

(1) perform the duties specified in sections 704(2), 704(3), 704(4), 704(5), 704(6),, [1] 704(7), and 704(9) of this title;

[See main edition for text of (2) and (3)]

(As amended Pub. L. 98-353, title III, §§ 311(b)(4), 534, July 10, 1984, 98 Stat. 355, 390.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 534, added ", or shall appoint a disinterested person to serve,".

Subsec. (b)(1). Pub. L. 98-353, § 311(b)(4), which directed the amendment of section 151301(b)(1) of this title by substituting ", 704(7), and 704(9)" for "and 704(8)" was executed to section 151302(b)(1) as the probable intent of Congress.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

[1] So in original.

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TITLE 11—APPENDIX

BANKRUPTCY RULES AND OFFICIAL FORMS

(Effective August 1, 1983, as amended to January 1, 1986)

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BANKRUPTCY RULES

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BANKRUPTCY RULES

EFFECTIVE DATE; APPLICATION; SUPERSEDURE OF PRIOR RULES; TRANSMISSION TO CONGRESS

Sections 2 to 4 of the Order of the Supreme Court, dated Apr. 25, 1983, provided:

"2. That the aforementioned Bankruptcy Rules shall take effect on August 1, 1983, and shall be applicable to proceedings then pending, except to the extent that in the opinion of the court their application in a pending proceeding would not be feasible or would work injustice, in which event the former procedure applies.

"3. That the Bankruptcy Rules, heretofore prescribed by this Court, be, and they hereby are, superseded by the new rules, effective August 1, 1983.

"4. That the Chief Justice be, and he hereby is, authorized to transmit these new Bankruptcy Rules to the Congress in accordance with the provisions of Section 2075 of Title 28, United States Code."

Rule 1001. Scope of Rules and Forms; Short Title

The Bankruptcy Rules and Forms govern procedure in United States Bankruptcy Courts in cases under chapters 7, 9, 11 and 13 of title 11 of the United States Code. The rules shall be cited as the Bankruptcy Rules and the forms as the Official Bankruptcy Forms. These rules shall be construed to secure the expeditious and economical administration of every case under the Code and the just, speedy, and inexpensive determination of every proceeding therein.

NOTES OF ADVISORY COMMITTEE ON RULES

Section 247 of Public Law 95-598, 92 Stat. 2549 amended 28 U.S.C. § 2075 by omitting the last sentence. The effect of the amendment is to require that procedural rules promulgated pursuant to 28 U.S.C. § 2075 be consistent with the bankruptcy statute, both titles 11 and 28 U.S.C. Thus, although Rule 1001 sets forth the scope of the bankruptcy rules and forms, any procedural matters contained in title 11 or 28 U.S.C. with respect to cases filed under 11 U.S.C. would control. See 1 Collier, *Bankruptcy* ¶ 3.04 [2][c] (15th ed. 1980).

28 U.S.C. § 151 establishes a United States Bankruptcy Court in each district as an adjunct to the district court. This provision does not, however, become effective until April 1, 1984. Public Law 95-598, § 402(b). From October 1, 1979 through March 31, 1984, the courts of bankruptcy as defined in § 1(10) of the Bankruptcy Act, and created in § 2a of that Act continue to be the courts of bankruptcy. Public Law 95-598, § 404(a). From their effective date these rules and forms are to be applicable in cases filed under chapters 7, 9, 11 and 13 of title 11 regardless of whether the court is established by the Bankruptcy Act or by 28 U.S.C. § 151. Rule 9001 contains a broad and general definition of "bankruptcy court," "court" and "United States Bankruptcy Court" for this purpose.

"Bankruptcy Code" or "Code" as used in these rules means title 11 of the United States Code, the codification of the bankruptcy law. Public Law 95-598, § 101. See Rule 9001.

"Bankruptcy Act" as used in the notes to these rules means the Bankruptcy Act of 1898 as amended which was repealed by § 401(a) of Public Law 95-598.

These rules apply to all cases filed under the Code except as otherwise specifically stated.

The final sentence of the rule is derived from former Bankruptcy Rule 903. The objective of "expeditious and economical administration" of cases under the Code has frequently been recognized by the courts to be "a chief purpose of the bankruptcy laws." See *Katchen v. Landy*, 382 U.S. 323, 328 (1966); *Bailey v. Glover*, 88 U.S. (21 Wall.) 342, 346-47 (1874); *Ex parte Christy*, 44 U.S. (3 How.) 292, 312-14, 320-22 (1845). The rule also incorporates the wholesome mandate of the last sentence of Rule 1 of the Federal Rules of Civil Procedure. 2 Moore, *Federal Practice* ¶ 1.13 (2d ed. 1980); 4 Wright & Miller, *Federal Practice and Procedure-Civil* § 1029 (1969).

PART I—COMMENCEMENT OF CASE; PROCEEDINGS RELATING TO PETITION AND ORDER FOR RELIEF

Rule 1002. Voluntary Petition

(a) Commencement

A debtor's petition commencing a voluntary case shall be filed with the bankruptcy court and shall conform substantially to Official Form No. 1.

(b) Number of Copies

(1) *Chapter 7 Liquidation and Chapter 13 Adjustment of Debts of an Individual With Regular Income.* An original and one copy of a petition requesting relief under chapter 7 or chapter 13 of the Code shall be filed, but additional copies may be required by local rule. If a stockbroker's petition for relief under subchapter III of chapter 7 is filed, an additional copy shall be filed and transmitted by the clerk to the Securities Investor Protection Corporation. If a commodity broker's petition for relief under subchapter IV of chapter 7 is filed, an additional copy shall be filed and transmitted by the clerk to the Commodity Futures Trading Commission.

(2) *Chapter 9 Adjustment of Debts of a Municipality and Chapter 11 Reorganization.* An original and five copies of a petition requesting relief under chapter 9 or chapter 11 of the Code shall be filed, but additional copies may be required by local rule. The clerk shall transmit one copy to the District Director of Internal Revenue for the district in which the case is filed, one copy of a chapter 9 petition to the Secretary of State of the state in which the debtor is located, two copies of a chapter 9 petition to the Securities and Exchange Commission and, if the debtor is a corporation, two copies of a chapter 11 petition to the Securities and Exchange Commission. If the petition requests relief for the reorganization of a railroad under subchapter IV of chapter 11 of the Code, two additional copies of the petition shall be filed, and the clerk shall transmit one copy to the Interstate Commerce Commission and one copy to the Secretary of Transportation.

NOTES OF ADVISORY COMMITTEE ON RULES

Under §§ 301-303 of the Code, a voluntary or involuntary case is commenced by filing a petition with the bankruptcy court. The voluntary petition may request relief under chapter 7, 9, 11, or 13 whereas an involuntary petition may be filed only under chapter 7 or 11. Section 109 of the Code specifies the types of debtors for whom the different forms of relief are available and § 303(a) indicates the persons against whom involuntary petitions may be filed.

The rule in subdivision (a) is in harmony with the Code in that it requires the filing to be with the bankruptcy court.

The number of copies of the petition to be filed is specified in this rule but a local rule may require additional copies. This rule provides for filing sufficient copies for the court's files and for the trustee in a chapter 7 or 13 case.

Official Form No. 1 may be used to seek relief voluntarily under any of the chapters. Only the original need be signed and verified, but the copies must be conformed to the original. See Rules 1008 and 9011(c). As provided in § 362(a) of the Code, the filing of a petition acts as a stay of certain acts and proceedings against the debtor, property of the debtor, and property of the estate.

Rule 1003. Involuntary Petition; Case Ancillary to Foreign Proceeding

(a) Commencement

A petition commencing an involuntary case shall be filed with the bankruptcy court and shall conform substantially to Official Form No. 11.

(b) Number of Copies

The number and distribution of copies shall be as specified in Rule 1002.

(c) Transferor or Transferee of Claim

A transferor or transferee of a claim shall annex to the original and each copy of the petition a copy of all documents evidencing the transfer, whether transferred unconditionally, for security, or otherwise, and a signed statement that the claim was not transferred for the purpose of commencing the case and setting forth the consideration for and terms of the transfer. A person who has transferred or acquired a claim for the purpose of commencing a case for liquidation under chapter 7 or for reorganization under chapter 11 shall not be a qualified petitioner.

(d) Joinder of Petitioners After Filing

If the answer to an involuntary petition filed by fewer than three creditors avers the existence of 12 or more creditors, the debtor shall file with the answer a list of all creditors with their addresses, a brief statement of the nature of their claims, and the amounts thereof. If it appears that there are 12 or more creditors as provided in § 303(b) of the Code, the court shall afford a reasonable opportunity for other creditors to join in the petition before a hearing is held thereon.

(e) Case Ancillary to Foreign Proceeding

(1) *Petition; Number of Copies.* An original and one copy of a petition commencing a case ancillary to a foreign proceeding shall be filed with the bankruptcy court.

(2) *Service of Petition and Summons.* On the filing of a petition pursuant to the preceding paragraph, the clerk shall forthwith issue a summons for service on all parties against whom relief is sought pursuant to § 304(b) of the Code and on such other parties as the court may direct. Rule 1010 applies to the manner of service of the summons and petition.

(3) *Responsive Pleadings and Motions.* Rule 1011 (a), (b), (c) and (e) applies to responsive pleadings and motions.

(4) *Contested Petition.* Rule 1018 applies when a petition filed under this rule is contested.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). Official Form No. 11 (Involuntary Case: Creditors' Petition), is prescribed for use by petitioning creditors to have a debtor's assets liquidated under chapter 7 of the Code or the business reorganized under chapter 11. It contains the required allegations as specified in § 303(b) of the Code. Official Form 12 is prescribed for use by fewer than all the general partners to obtain relief for the partnership as governed by § 303(b)(3) of the Code and Rule 1004(b).

Although the number of copies to be filed is specified in Rule 1002, a local rule may require additional copies.

Only the original need be signed and verified, but the copies must be conformed to the original. See Rules 1008 and 9011(c). The petition must be filed with the bankruptcy court. This provision implements § 303(b) which provides that an involuntary case is commenced by filing the petition with the court.

As provided in § 362 of the Code, the filing of the petition acts as a stay of certain acts and proceedings against the debtor, the debtor's property and property of the estate.

Subdivision (c) retains the explicitness of former Bankruptcy Rule 104(d) that a transfer of a claim for the purpose of commencing a case under the Code is a ground for disqualification of a party to the transfer as a petitioner.

Section 303(b) "is not intended to overrule Bankruptcy Rule 104(d), which places certain restrictions on the transfer of claims for the purpose of commencing an involuntary case." House Report No. 95-595, 95th Cong., 1st Sess. (1977) 322; Senate Report No. 95-989, 95th Cong., 2d Sess. (1978) 33.

The subdivision requires disclosure of any transfer of the petitioner's claim as well as a transfer to the petitioner and applies to transfers for security as well as unconditional transfers. *Cf. In re 69th & Crandon Bldg. Corp.*, 97 F.2d 392, 395 (7th Cir.), cert. denied, 305 U.S. 629 (1938), recognizing the right of a creditor to sign a bankruptcy petition notwithstanding a prior assignment of his claim for the purpose of security. This rule does not, however, qualify the requirement of § 303(b)(1) that a petitioning creditor must have a claim not contingent as to liability.

Subdivision (d). Section 303(c) of the Code permits a creditor to join in the petition at any time before the case is dismissed or relief is ordered. While this rule does not require the court to give all creditors notice of the petition, the list of creditors filed by the debtor affords a petitioner the information needed to enable him to give notice for the purpose of obtaining the co-petitioners required to make the petition sufficient. After a reasonable opportunity has been afforded other creditors to join in an involuntary petition, the hearing on the petition should be held without further delay.

Subdivision (e). This subdivision implements § 304. A petition for relief under § 304 may only be filed by a foreign representative who is defined in § 101(20) generally as a representative of an estate in a foreign proceeding. The term "foreign proceeding" is defined in § 101(19).

Section 304(b) permits a petition filed thereunder to be contested by a party in interest. Subdivision (e)(2) therefore requires that the summons and petition be served on any person against whom the relief permitted by § 304(b) is sought as well as on any other party the court may direct.

The rules applicable to the procedure when an involuntary petition is filed are made applicable generally when a case ancillary to a foreign proceeding is commenced. These rules include Rule 1010 with respect to issuance and service of a summons, Rule 1011 concerning responsive pleadings and motions, and Rule 1018 which makes various rules in Part VII applicable in proceedings on contested petitions.

The venue for a case ancillary to a foreign proceeding is provided in 28 U.S.C. § 1474.

Rule 1004. Partnership Petition

(a) Voluntary Petition

A voluntary petition may be filed on behalf of the partnership by one or more general partners if all general partners consent to the petition.

(b) Involuntary Petition; Notice and Summons

After filing of an involuntary petition under § 303(b)(3) of the Code, (1) the petitioning partners or other petitioners shall cause forthwith a copy of the petition to be sent to or served on each general partner who is not a petitioner; and (2) the clerk shall issue forthwith a summons for service on each general partner who is not a petitioner. Rule 1010 applies to the form and service of the summons.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is adapted from former Bankruptcy Rule 105 and complements §§ 301 and 303(b)(3) of the Code.

Subdivision (a) specifies that while all general partners must consent to the filing of a voluntary petition, it is not necessary that they all execute the petition. It may be executed and filed on behalf of the partnership by fewer than all.

Subdivision (b) implements § 303(b)(3) of the Code which provides that an involuntary petition may be filed by fewer than all the general partners or, when all the general partners are debtors, by a general partner, trustee of the partner or creditors of the partnership. Rule 1010, which governs service of a petition and summons in an involuntary case, specifies the time and mode of service on the partnership. When a petition is filed against a partnership under § 303(b)(3), this rule requires an additional service on the nonfiling general partners. It is the purpose of this subdivision to protect the interests of the nonpetitioning partners and the partnership.

Rule 1005. Caption of Petition

The caption of a petition commencing a case under the Code shall contain the name of the court, the title of the case, and the docket number. The title of the case shall include the name, social security number and employer's tax identification number of the debtor and all other names used by the debtor within six years before filing the petition. If the petition is not filed by the debtor, it shall include all names known to petitioners used by the debtor.

NOTES OF ADVISORY COMMITTEE ON RULES

The title of the case should include all names used by the debtor, such as trade names, former married names and maiden name. See also Official Form No. 1 and the Advisory Committee Note to that Form. Additional names of the debtor are also required to appear in the caption of each notice to creditors. See Rule 2002(m).

Rule 1006. Filing Fee

(a) General Requirement

Every petition shall be accompanied by the prescribed filing fee except as provided in subdivision (b) of this rule.

(b) Payment of Filing Fee in Installments

(1) *Application for Permission to Pay Filing Fee in Installments.* A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor's signed application stating that he is unable to pay the filing fee except in installments. The application shall state the proposed terms of the installment payments and that the applicant has neither paid any money nor transferred any property to an attorney for services in connection with the case.

(2) *Action on Application.* Prior to the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates thereof. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition.

(3) *Postponement of Attorney's Fees.* The filing fee must be paid in full before the debtor may pay an attorney for services in connection with the case.

NOTES OF ADVISORY COMMITTEE ON RULES

28 U.S.C. § 1930 specifies the filing fees for petitions under chapters 7, 9, 11 and 13 of the Code. It also permits the payment in installments by individual debtors.

Subdivision (b) is adapted from former Bankruptcy Rule 107. The administrative cost of installments in excess of four is disproportionate to the benefits conferred. Prolonging the period beyond 180 days after the commencement of the case causes undesirable delays in administration. Paragraph (2) accordingly continues the imposition of a maximum of four on the number of installments and retains the maximum period of installment payments allowable on an original application at 120 days. Only in extraordinary cases should it be necessary to give an applicant an extension beyond the four months. The requirement of paragraph (3) that filing fees be paid in full before the debtor may pay an attorney for services in connection with the case codifies the rule declared in *In re Latham*, 271 Fed. 538 (N.D.N.Y. 1921), and *In re Durr*, 232 Fed. 415 (N.D. Cal. 1916).

Rule 1007. Lists, Schedules and Statements; Time Limits

(a) List of Creditors and Equity Security Holders

(1) *Voluntary Case.* In a voluntary case, the debtor shall file with the petition a list containing the name and address of each creditor unless the petition is accompanied by a schedule of liabilities or a Chapter 13 Statement.

(2) *Involuntary Case.* In an involuntary case, the debtor shall file within 15 days after entry of the order for relief, a list containing the name and address of each creditor unless a schedule of liabilities has been filed.

(3) *Equity Security Holders.* In a chapter 11 reorganization case, a list of the debtor's equity security holders of each class showing the number and kind of interests registered in the name of each holder, and the last known address or place of business of each holder, shall be filed by the debtor within 15 days after entry of the order for relief unless the court orders otherwise.

(4) *Extension of Time.* Any extension of time for the filing of the lists required by this subdivision may be granted only on motion for cause shown and on notice to any trustee, committee appointed under the Code, or other party as the court may direct.

(b) Schedules and Statements Required

The debtor in a chapter 7 liquidation case or chapter 11 reorganization case shall file with the court schedules of assets and liabilities, a statement of financial affairs, and a statement of executory contracts, prepared as prescribed by Official Forms No. 6 and either No. 7 or No. 8, whichever is appropriate, unless the court orders otherwise. The debtor in a chapter 13 individual's debt adjustment case shall file with the court a Chapter 13 Statement conforming to Official Form No. 10 and, if the debtor is engaged in business, a statement of financial affairs prepared as prescribed by Official Form No. 8.

(c) Time Limits

The schedule and statements, if not previously filed in a pending case, shall be filed with the petition in a voluntary case, or if the petition is

accompanied by a list of all the debtor's creditors and their addresses, within 15 days thereafter, except as otherwise provided in subdivisions (d), (e) and (h) of this rule. In an involuntary case the schedules and statements shall be filed by the debtor within 15 days after entry of the order for relief. In a case converted from chapter 11 or chapter 13 to a chapter 7 case, the list of all the debtor's creditors, a schedule of assets and liabilities, a statement of financial affairs and a statement of executory contracts shall be filed by the debtor or other person directed by the court, within 15 days after the entry of the order of conversion. Any extension of time for the filing of the schedules and statements may be granted only on motion for cause shown and on notice to any committee, trustee, examiner or other party as the court may direct.

(d) List of 20 Largest Creditors in Chapter 9 Municipality Case or Chapter 11 Reorganization Case

In addition to the list required by subdivision (a) of this rule, a debtor in a chapter 9 municipality case or a debtor in a voluntary chapter 11 reorganization case shall file with the petition a list containing the name, address and claim of the creditors that hold the 20 largest unsecured claims, excluding insiders, as prescribed by Official Form No. 9. In an involuntary chapter 11 reorganization case, such list shall be filed by the debtor within 2 days after entry of the order for relief under § 303(h) of the Code.

(e) List in Chapter 9 Municipality Cases

The list required by subdivision (a) of this rule shall be filed by the debtor in a chapter 9 municipality case within such time as the court shall fix. If a proposed plan requires a revision of assessments so that the proportion of special assessments or special taxes to be assessed against some real property will be different from the proportion in effect at the date the petition is filed, the debtor shall also file with the court a list showing the name and address of each known holder of title, legal or equitable, to real property adversely affected. On motion for cause shown, the court may modify the requirements of this subdivision and subdivision (a) of this rule.

(f) Number of Copies

The number of copies of the schedules, statements and lists shall correspond to the number of copies of the petition required by Rules 1002 and 1003.

(g) Partnership and Partners

The general partners of a debtor partnership shall prepare and file the schedules of the assets and liabilities, statement of financial affairs, and statement of executory contracts of the partnership. The court may order any general partner to file a statement of personal assets and liabilities with the court within such time as the court may fix.

(h) Interests Acquired or Arising After Petition

Within ten days after the information comes to the debtor's knowledge or within such further time as the court may allow, the debtor in a chapter 7 liquidation case, chapter 11 reorganization case, or chapter 13 individual debt adjustment case shall file a supplemental schedule with respect to any property that the debtor acquires or becomes entitled to acquire within 180 days after the date of the filing of the petition (1) by bequest, devise or inheritance; (2) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or (3) as a beneficiary of a life insurance policy or of a death benefit plan. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. The duty to file a supplemental schedule in accordance with this subdivision continues notwithstanding the closing of the case before the duty is or can be performed, except that the schedule need not be filed in a chapter 11 or chapter 13 case with respect to property acquired after entry of the order confirming the plan.

(i) Disclosure of List of Security Holders

After notice and hearing and for cause shown, the court may direct an entity other than the debtor or trustee to disclose any list of security holders of the debtor in its possession or under its control, indicating the name, address and security held by any of them. The entity possessing this list may be required either to produce the list or a true copy thereof, or permit inspection or copying, or otherwise disclose the information contained on the list.

(j) Impounding of Lists

On motion of a party in interest and for cause shown the court may direct the impounding of the lists filed under this rule, and may refuse to permit inspection by any entity. The court may permit inspection or use of the lists, however, by any party in interest on terms prescribed by the court.

(k) Preparation of List, Schedules, or Statements on Default of Debtor

If a list, schedule, or statement is not prepared and filed as required by this rule, the court may order the trustee, a petitioning creditor, committee, or other party to prepare and file any of these papers within a time fixed by the court. The court may approve reimbursement of the cost incurred in complying with such an order as an administrative expense.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of former Rules 108, 8-106, 10-108 and 11-11. As specified in the rule, it is applicable in all types of cases filed under the Code.

Subdivision (a) requires at least a list of creditors with their names and addresses to be filed with the petition. This list is needed for notice of the meeting of creditors (Rule 2002) and notice of the order for relief (§ 342 of the Code). The list will also serve to meet the requirements of § 521(1) of the Code. Subdivision (a) recognizes that it may be impossible to file the schedules required by § 521(1) and subdivision (b) of the rule at the time the petition is filed but in order for the case to proceed expeditiously and efficiently it is necessary that the clerk have the names and addresses of creditors. It should be noted that subdivision (d) of the rule requires a special list of the 20 largest unse-

cured creditors in chapter 9 and 11 cases. That list is for the purpose of selecting a committee of unsecured creditors.

Subdivision (b) is derived from former Rule 11-11 and conforms with § 521. This subdivision indicates the forms to be used. The court may dispense with the filing of schedules and the statement of affairs pursuant to § 521.

Subdivisions (c) *and* (f) specify the time periods for filing the papers required by the rule as well as the number of copies. The provisions dealing with an involuntary case are derived from former Bankruptcy Rule 108. Under the Code, a chapter 11 case may be commenced by an involuntary petition (§ 303(a)), whereas under the Act, a Chapter XI case could have been commenced only by a voluntary petition. A motion for an extension of time to file the schedules and statements is required to be made on notice to parties, as the court may direct, including a creditors' committee if one has been appointed under § 1102 of the Code and a trustee or examiner if one has been appointed pursuant to § 1104 of the Code. Although written notice is preferable, it is not required by the rule; in proper circumstances the notice may be by telephone or otherwise.

Subdivision (d) is new and requires that a list of the 20 largest unsecured creditors, excluding insiders as defined in § 101(25) of the Code, be filed with the petition. The court, pursuant to § 1102 of the Code, is required to appoint a committee of unsecured creditors as soon as practicable after the order for relief. That committee generally is to consist of the seven largest unsecured creditors who are willing to serve. The list should, as indicated on Official Form No. 9, specify the nature and amount of the claim. It is important for the court to be aware of the different types of claims existing in the case and this form should supply such information.

Subdivision (e) applies only in chapter 9 municipality cases. It gives greater discretion to the court to determine the time for filing a list of creditors and any other matter related to the list. A list of creditors must at some point be filed since one is required by § 924 of the Code. When the plan affects special assessments, the definitions in § 902(2) and (3) for "special tax payer" and "special tax payer affected by the plan" become relevant.

Subdivision (g) is derived from former Rules 108(c) and 11-11. Nondebtor general partners are liable to the partnership's trustee for any deficiency in the partnership's estate to pay creditors in full as provided by § 723 of the Code. Subdivision (g) authorizes the court to require a partner to file a statement of personal assets and liabilities to provide the trustee with the relevant information.

Subdivision (h) is derived from former Bankruptcy Rule 108(e) for chapter 7, 11 and 13 purposes. It implements the provisions in and language of § 541(a)(5) of the Code.

Subdivisions (i) *and* (j) are adapted from §§ 165 and 166 of the Act and former Rule 10-108(b) and (c) without change in substance. The term "party in interest" is not defined in the Code or the rules, but reference may be made to § 1109(b) of the Code. In the context of this subdivision, the term would include the debtor, the trustee, any indenture trustee, creditor, equity security holder or committee appointed pursuant to § 1102 of the Code.

Subdivision (k) is derived from former Rules 108(d) and 10-108(a).

Rule 1008. Verification of Petitions and Accompanying Papers

All petitions, lists, schedules, statements of financial affairs, statements of executory contracts, Chapter 13 Statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule retains the requirement under the Bankruptcy Act and rules that petitions and accompanying papers must be verified. Only the original need be signed and verified, but the copies must be conformed to the original. See Rule 9011(c).

The verification may be replaced by an unsworn declaration as provided in 28 U.S.C. § 1746. See also, Official Form No. 1 and Advisory Committee Note.

Rule 1009. Amendments of Voluntary Petitions, Lists, Schedules and Statements of Financial Affairs

A voluntary petition, list, schedule, statement of financial affairs, statement of executory contracts, or Chapter 13 Statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby. On motion of a party in interest, the court may order any voluntary petition, list, schedule, statement of financial affairs, statement of executory contracts, or Chapter 13 Statement to be amended and the clerk shall give notice of the amendment to entities designated by the court. The amendment shall be filed in the same number as required of the original.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule continues the permissive approach adopted by former Bankruptcy Rule 110 to amendments of voluntary petitions and accompanying papers. Notice of any amendment is required to be given to the trustee. This is particularly important with respect to any amendment of the schedule of property affecting the debtor's claim of exemptions. Notice of any amendment of the schedule of liabilities is to be given to any creditor whose claim is changed or newly listed.

The rule does not continue the provision permitting the court to order an amendment on its own initiative. Absent a request in some form by a party in interest, the court should not be involved in administrative matters affecting the estate.

If a list or schedule is amended to include an additional creditor, the effect on the dischargeability of the creditor's claim is governed by the provisions of § 523(a)(3) of the Code.

Rule 1010. Service of Involuntary Petition and Summons

On the filing of an involuntary petition, the clerk shall issue forthwith a summons for service on the debtor. The summons shall conform to Official Form No. 13 and a copy shall be served with a copy of the petition in the manner provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order the summons and petition to be served by mailing copies to the debtor's last known address, and by at least one publication in the manner and form directed by the court. The summons and petition may be served on the debtor anywhere. Rule 7004(f) and Rule 4(g) and (h) F.R.Civ.P. apply when service is made or attempted under this rule.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule provides the procedure for service of the involuntary petition and summons. It does not deal with service of a summons and complaint instituting an adversary proceeding pursuant to Part VII.

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While this rule is similar to former Bankruptcy Rule 111, it substitutes the clerk of the bankruptcy court for the clerk of the district court as the person who is to issue the summons.

The modes of service prescribed by the rule are personal or by mail, when service can be effected in one of these ways in the United States. Such service is to be made in the manner prescribed in adversary proceedings by Rule 7004(a) and (b). If service must be made in a foreign country, the mode of service is one of that set forth in Rule 4(i) F.R.Civ.P.

When the methods set out in Rule 7004(a) and (b) cannot be utilized, service by publication coupled with mailing to the last known address is authorized. *Cf.* Rule 7004(c). The court determines the form and manner of publication as provided in Rule 9007. The publication need not set out the petition or the order directing service by publication. In order to apprise the debtor fairly, however, the publication should include all the information required to be in the summons by Official Form No. 13 and a notice indicating how service is being effected and how a copy of the petition may be obtained.

There are no territorial limits on the service authorized by this rule, which continues the practice under the former rules and Act. There must, however, be a basis for jurisdiction pursuant to § 109(a) of the Code for the court to order relief. Venue provisions are set forth in 28 U.S.C. § 1472.

Subdivision (f) of Rule 7004 and subdivisions (g) and (h) of Rule 4 F.R.Civ.P. govern time and proof of service and amendment of process or of proof of service.

Rule 1004 provides for transmission to nonpetitioning partners of a petition filed against the partnership by fewer than all the general partners.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 1011. Responsive Pleading or Motion in Involuntary Cases

(a) Who May Contest Petition

The debtor named in an involuntary petition may contest the petition. In the case of a petition against a partnership under Rule 1004(b), a nonpetitioning general partner, or alleged general partner, may contest the petition.

(b) Defenses and Objections; When Presented

Defenses and objections to the petition shall be presented in the manner prescribed by Rule 12 F.R.Civ.P. and shall be filed and served within 20 days after service of summons, except that if service is made by publication on a debtor or partner not residing or found within the state in which the bankruptcy court sits, the court shall prescribe the time for filing and serving the response.

(c) Effect of Motion

Service of a motion under Rule 12(b) F.R.Civ.P. shall extend the time for filing and serving a responsive pleading as permitted by Rule 12(a) F.R.Civ.P.

(d) Claims Against Petitioners

A claim against a petitioning creditor may not be asserted in the answer except for the purpose of defeating the petition.

(e) Other Pleadings

No other pleadings shall be permitted, except that the court may order a reply to an answer and prescribe the time for filing and service.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from former Bankruptcy Rule 112. A petition filed by fewer than all the general partners under Rule 1004(b) to have an order for relief entered with respect to the partnership is referred to as a petition against the partnership because of the adversary character of the proceeding it commences. *Cf.* § 303(b)(3) of the Code; 2 Collier *Bankruptcy* ¶ 303.05[5][a] (15th ed. 1981); 2 *id.* ¶¶ 18.33[2], 18.46 (14th ed. 1966). One who denies an allegation of membership in the firm is nevertheless recognized as a party entitled to contest a petition filed against a partnership under subdivision (b) of Rule 1004 in view of the possible consequences to him of an order for relief against the entity alleged to include him as a member. See § 723 of the Code; *Francis v. McNeal*, 228 U.S. 695 (1913); *Manson v. Williams*, 213 U.S. 453 (1909); *Carter v. Whisler*, 275 Fed. 743, 746-747 (8th Cir. 1921). The rule preserves the features of the former Act and Rule 112 and the Code permitting no response by creditors to an involuntary petition or petition against a partnership under Rule 1004(b).

Subdivision (b): Rule 12 F.R.Civ.P. has been looked to by the courts as prescribing the mode of making a defense or objection to a petition in bankruptcy. See *Fada of New York, Inc. v. Organization Service Co., Inc.*, 125 F.2d 120. (2d Cir. 1942); *In the Matter of McDougald*, 17 F.R.D. 2, 5 (W.D. Ark. 1955); *In the Matter of Miller*, 6 Fed. Rules Serv. 12f.26, Case No. 1 (N.D. Ohio 1942); *Tatum v. Acadian Production Corp. of La.*, 35 F. Supp. 40, 50 (E.D. La. 1940); 2 Collier, *supra* ¶ 303.07 (15th ed. 1981); 2 *id.* at 134-40 (14th ed. 1966). As pointed out in the Note accompanying former Bankruptcy Rule 915 an objection that a debtor is neither entitled to the benefits of the Code nor amenable to an involuntary petition goes to jurisdiction of the subject matter and may be made at any time consistent with Rule 12(h)(3) F.R.Civ.P. Nothing in this rule recognizes standing in a creditor or any other person not authorized to contest a petition to raise an objection that a person eligible to file a voluntary petition cannot be the subject of an order for relief on an involuntary petition. See Seligson & King, *Jurisdiction and Venue in Bankruptcy*, 36 Ref.J. 36, 38-40 (1962).

As Collier has pointed out with respect to the Bankruptcy Act, "the mechanics of the provisions in § 18a and b relating to time for appearance and pleading are unnecessarily confusing. . . . It would seem, though, to be more straightforward to provide, as does Federal Rule 12(a), that the time to respond runs from the date of service rather than the date of issuance of process." 2 Collier, *supra* at 119. The time normally allowed for the service and filing of an answer or motion under Rule 1011 runs from the date of the issuance of the summons. Compare Rule 7012. Service of the summons and petition will ordinarily be made by mail under Rule 1010 and must be made within 10 days of the issuance of the summons under Rule 7004(e), which governs the time of service. When service is made by publication, the court should fix the time for service and filing of the response in the light of all the circumstances so as to afford a fair opportunity to the debtor to enter a defense or objection without unduly delaying the hearing on the petition. *Cf.* Rule 12(a) F.R.Civ.P.

Subdivision (c): Under subdivision (c), the timely service of a motion permitted by Rule 12(b), (e), (f), or (h) F.R.Civ.P. alters the time within which an answer must be filed. If the court denies a motion or postpones its disposition until trial on the merits, the answer must be served within 10 days after notice of the court's action. If the court grants a motion for a more definite statement, the answer may be served any time within 10 days after the service of the more definite statement.

Many of the rules governing adversary proceedings apply to proceedings on a contested petition unless the

court otherwise directs as provided in Rule 1018. The specific provisions of this Rule 1011 or 7005, however, govern the filing of an answer or motion responsive to a petition. The rules of Part VII are adaptations of the corresponding Federal Rules of Civil Procedure, and the effect of Rule 1018 is thus to make the provisions of Civil Rules 5, 8, 9, 15, and 56, *inter alia*, generally applicable to the making of defenses and objections to the petition. Rule 1018 follows prior law and practice in this respect. See 2 Collier, *Bankruptcy* ¶¶ 18.39-18.41 (14th ed. 1966).

Subdivision (d). This subdivision adopts the position taken in many cases that an affirmative judgment against a petitioning creditor cannot be sought by a counterclaim filed in an answer to an involuntary petition. See, *e.g., Georgia Jewelers, Inc. v. Bulova Watch Co.*, 302 F.2d 362, 369-70 (5th Cir. 1962); *Associated Electronic Supply Co. of Omaha v. C.B.S. Electronic Sales Corp.*, 288 F.2d 683, 684-85 (8th Cir. 1961). The subdivision follows *Harris v. Capehart-Farnsworth Corp.*, 225 F.2d 268 (8th Cir. 1955), in permitting the debtor to challenge the standing of a petitioner by filing a counterclaim against him. It does not foreclose the court from rejecting a counterclaim that cannot be determined without unduly delaying the decision upon the petition. See *In the Matter of Bichel Optical Laboratories, Inc.*, 299 F. Supp. 545 (D. Minn. 1969).

Subdivision (e). This subdivision makes it clear that no reply needs to be made to an answer, including one asserting a counterclaim, unless the court orders otherwise.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subds. (b) and (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 1012. Examination of Debtor, Including Discovery, on Issue of Nonpayment of Debts in Involuntary Cases

(a) Discovery

When a petition commencing an involuntary case under § 303 of the Code alleges that the debtor is generally not paying its debts as they become due, and the debtor denies the allegation, discovery may be in accordance with Rules 26-37, F.R.Civ.P.

(b) Sanctions

If the debtor fails to appear, produce records, or submit to examination or deposition, the court may enter an order for relief or other appropriate order, in addition to the sanctions available under Rule 37 F.R.Civ.P.

(c) Other Procedures

The examination or discovery provided in this rule does not preclude the procedures available under Rule 2004.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is adapted from former Bankruptcy Rule 114. Since the provisions in § 303 of the Code apply equally to chapter 7 and 11 cases, the rule applies in both types of cases.

Former Rule 114 was derived from § 3d of the Bankruptcy Act but added the three sanctions in Rule 37, F.R.Civ.P. Former Rule 114 thus differed from the holdings in *In re Richards Discount Jewelers, Inc.*, 303 F. Supp. 517, 518 (S.D.N.Y. 1969), and *In the Matter of Shulund*, 210 F. Supp. 195, 199-200 (D. Mont. 1962), that § 3d of the Act was inconsistent with Rule 37 and prescribed the only consequence for failure of the bankrupt to appear with his papers and submit to an examination on the issue of insolvency or inability to pay debts.

Rule 2004 deals with examination of the debtor. The last sentence of Rule 1012 is continued in part from former Rule 114 which eliminates doubts as to the availability to petitioning creditors of an examination of the debtor and others in accordance with the practice that developed under § 21 of the Act. See 1 Collier, *Bankruptcy* ¶ 3.208[2] (14th ed. 1961); 2 *id.* ¶ 18.41[7] (1966); 2 *id.* ¶ 21.08 (1964); 2 *id.* ¶¶ 105.04, 343.01-.12, 344.01 *et seq.* (15th ed. 1981); 3 *id.* ¶ 521.13. The discovery procedures of Rules 26-37, F.R.Civ.P., available in proceedings on a contested involuntary petition pursuant to Rule 1018 are explicitly made applicable to the issue of nonpayment of debts by Rule 1012.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subds. (a) and (b), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 1013. Hearing and Disposition of Petition in Involuntary Cases

(a) Contested Petition

The court shall determine the issues of a contested petition at the earliest practicable time and forthwith enter an order for relief, dismiss the petition, or enter other appropriate orders.

(b) Default

If no pleading or other defense to a petition is filed within the time provided by Rule 1011, the court, on the next day, or as soon thereafter as practicable, shall enter an order for the relief prayed for in the petition.

(c) Order for Relief

An order for relief shall conform substantially to Official Form No. 14.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is adapted from former Bankruptcy Rule 115(a) and (c) and applies in chapter 7 and 11 cases. The right to trial by jury under § 19a of the Bankruptcy Act has been abrogated and the availability of a trial by jury is within the discretion of the bankruptcy judge pursuant to 28 U.S.C. § 1480(b). Rule 9015 governs the demand for a jury trial.

Subdivision (b) of Rule 1013 is derived from former Bankruptcy Rule 115(c) and § 18(e) of the Bankruptcy Act. If an order for relief is not entered on default, dismissal will ordinarily be appropriate but the court may postpone definitive action. See also Rule 9024 with respect to setting aside an order for relief on default for cause.

Subdivision (e) of former Bankruptcy Rule 115 has not been carried over because its provisions are covered by § 303(i) of the Code.

Rule 1014. Change of Venue

(a) Transfer of Cases

(1) *Cases Filed in Proper District.* If a petition is filed in a proper district, on timely motion of a party in interest, and after hearing on notice to the petitioners and to other persons as directed by the court, the case may be transferred to any other district if the court determines that the transfer is for the convenience of the parties and witnesses in the interest of justice.

(2) *Cases Filed in Improper District.* If a petition is filed in an improper district, on timely motion of a party in interest and after hearing on notice to the petitioners and to other per-

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sons as directed by the court, the case may be retained or transferred to any other district if the court determines that the retention or transfer is for the convenience of the parties and witnesses in the interest of justice. Notwithstanding the foregoing, if no objection is raised, the court may, without a hearing, retain a case filed in an improper district.

(b) Procedure When Petitions Involving the Same Debtor or Related Debtors Are Filed in Different Courts

If petitions commencing cases under the Code are filed in different districts by or against (1) the same debtor, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, on motion filed in the court in which the first petition is filed and after hearing on notice to the petitioners and other persons as directed by the court, the court may determine, for the convenience of the parties and witnesses, in the interest of justice the court or courts in which the case or cases should proceed. Except as otherwise ordered by the court in which the first petition is filed, the proceedings on the other petitions shall be stayed by the courts in which the petitions have been filed until the determination is made. The courts in which petitions have been filed shall act in accordance with the determination.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from former Bankruptcy Rule 116 which contained venue as well as transfer provisions. Public Law 95-598, however, placed the venue provisions in 28 U.S.C. § 1472, and no purpose is served by repeating them in this rule. Transfer of cases is provided in 28 U.S.C. § 1475 but this rule adds the procedure for obtaining transfer. Pursuant to 28 U.S.C. § 1472, proper venue for cases filed under the Code is either the district of domicile, residence, principal place of business, or location of principal assets for 180 days or the longer portion thereof immediately preceding the petition. 28 U.S.C. § 1475 permits the court to transfer a case in the interest of justice and for the convenience of the parties. If the venue is improper, the court may retain or transfer the case in the interest of justice and for the convenience of the parties pursuant to 28 U.S.C. § 1477.

Subdivision (a) of the rule is derived from former Bankruptcy Rule 116(b). It implements 28 U.S.C. §§ 1475 and 1477 and clarifies the procedure to be followed in requesting and effecting transfer of a case. Subdivision (a) protects the parties against being subjected to a transfer except on a timely motion of a party in interest. If the transfer would result in fragmentation or duplication of administration, increase expense, or delay closing the estate, such a factor would bear on the timeliness of the motion as well as on the propriety of the transfer under the standards prescribed in subdivision (a). Subdivision (a) of the rule requires the interest of justice and the convenience of the parties to be the grounds of any transfer of a case or of the retention of a case filed in an improper district as does 28 U.S.C. § 1477. *Cf.* 28 U.S.C. § 1404(a) (district court may transfer any civil action "[f] or the convenience of parties and witnesses, in the interest of justice"). It also expressly requires a hearing on notice to the petitioner or petitioners before the transfer of any case may be ordered. Under this rule, a motion by a party in interest is necessary. There is no provision for the court to act on its own initiative.

Subdivision (b) is derived from former Bankruptcy Rule 116(c). It authorizes the court in which the first petition is filed under the Code by or against a debtor to entertain a motion seeking a determination whether the case so commenced should continue or be transferred and consolidated or administered jointly with another case commenced by or against the same or related person in another court under a different chapter of the Code. Subdivision (b) is correlated with 28 U.S.C. § 1472 which authorizes petitioners to file cases involving a partnership and partners or affiliated debtors.

The reference in subdivision (b) to petitions filed "by" a partner or "by" any other of the persons mentioned is to be understood as referring to voluntary petitions. It is not the purpose of this subdivision to permit more than one case to be filed in the same court because a creditor signing an involuntary petition happens to be a partner, a partnership, or an affiliate of a debtor.

Transfers of adversary proceedings in cases under title 11 are governed by Rule 7087 and 28 U.S.C. § 1475.

Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court

(a) Cases Involving Same Debtor

If two or more petitions are pending in the same court by or against the same debtor, the court may order consolidation of the cases.

(b) Cases Involving Two or More Related Debtors

If a joint petition or two or more petitions are pending in the same court by or against (1) a husband and wife, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest.

(c) Expediting and Protective Orders

When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is derived from former Bankruptcy Rule 117(a). It applies to cases when the same debtor is named in both voluntary and involuntary petitions, when husband and wife have filed a joint petition pursuant to § 302 of the Code, and when two or more involuntary petitions are filed against the same debtor. It also applies when cases are pending in the same court by virtue of a transfer of one or more petitions from another court. Subdivision (c) allows the court discretion regarding the order of trial of issues raised by two or more involuntary petitions against the same debtor.

Subdivision (b) recognizes the propriety of joint administration of estates in certain kinds of cases. The election or appointment of one trustee for two or more jointly administered estates is authorized by Rule 2009. The authority of the court to order joint administration under subdivision (b) extends equally to the situation when the petitions are filed under different sections, *e.g.*, when one petition is voluntary and the other involuntary, and when all of the petitions are filed under the same section of the Code.

Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) ap-

plies. This rule does not deal with the consolidation of cases involving two or more separate debtors. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule since the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates. For illustrations of the substantive consolidation of separate estates, see *Sampsell v. Imperial Paper & Color Corp.*, 313 U.S. 215 (1941). See also *Chemical Bank N.Y. Trust Co. v. Kheel*, 369 F.2d 845 (2d Cir. 1966); Seligson & Mandell, *Multi-Debtor Petition—Consolidation of Debtors and Due Process of Law*, 73 Com.L.J. 341 (1968); Kennedy, *Insolvency and the Corporate Veil in the United States* in *Proceedings of the 8th International Symposium on Comparative Law* 232, 248–55 (1971).

Joint administration as distinguished from consolidation may include combining the estates by using a single docket for the matters occurring in the administration, including the listing of filed claims, the combining of notices to creditors of the different estates, and the joint handling of other purely administrative matters that may aid in expediting the cases and rendering the process less costly.

Subdivision (c) is an adaptation of the provisions of Rule 42(a) F.R.Civ.P. for the purposes of administration of estates under this rule. The rule does not deal with filing fees when an order for the consolidation of cases or joint administration of estates is made.

A joint petition of husband and wife, requiring the payment of a single filing fee, is permitted by § 302 of the Code. Consolidation of such a case, however, rests in the discretion of the court; see § 302(b) of the Code.

Rule 1016. Death or Insanity of Debtor

Death or insanity of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or insanity had not occurred. If a reorganization or individual's debt adjustment case is pending under chapter 11 or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or insanity had not occurred.

Notes of Advisory Committee on Rules

This rule is derived from former Rules 118 and 11-16. In a chapter 11 reorganization case or chapter 13 individual's debt adjustment case, the likelihood is that the case will be dismissed.

Rule 1017. Dismissal of Case; Suspension

(a) Voluntary Dismissal; Dismissal for Want of Prosecution

Except as provided in § 1307(b) of the Code, a petition shall not be dismissed on motion of the petitioner or for want of prosecution or other cause or by consent of the parties prior to a hearing on notice to all creditors as provided in Rule 2002(a). For such notice, the debtor shall file a list of all creditors with their addresses within the time fixed by the court unless the list was previously filed. If the debtor fails to file the list, the court may order the preparing and filing by the debtor or other person.

(b) Dismissal for Failure To Pay Filing Fee

(1) For failure to pay any installment of the filing fee the court may dismiss the petition after hearing on notice to the debtor and the trustee.

(2) If the petition is dismissed or the case closed without full payment of the filing fee, the installments collected shall be distributed in the same manner and proportions as if the filing fee had been paid in full.

(3) Notice of dismissal for failure to pay the filing fee shall be given within 30 days after the dismissal to creditors appearing on the list of creditors and to those who have filed claims, in the manner provided in Rule 2002.

(c) Suspension

A petition shall not be dismissed or proceedings suspended pursuant to § 305 of the Code prior to a hearing on notice as provided in Rule 2002(a).

(d) Procedure for Dismissal or Conversion

A proceeding to dismiss a case or convert a case to another chapter is governed by Rule 9014.

Notes of Advisory Committee on Rules

Subdivision (a) of this rule is derived from former Bankruptcy Rule 120(a). While the rule applies to voluntary and involuntary cases, the "consent of the parties" referred to is that of petitioning creditors and the debtor in an involuntary case. The last sentence recognizes that the court should not be confined to petitioning creditors in its choice of parties on whom to call for assistance in preparing the list of creditors when the debtor fails to do so. This subdivision implements §§ 303(j), 707, 1112 and 1307 of the Code by specifying the manner of and persons to whom notice shall be given and requiring the court to hold a hearing on the issue of dismissal.

Subdivision (b) is derived from former Bankruptcy Rule 120(b). A dismissal under this subdivision can occur only when the petition has been permitted to be filed pursuant to Rule 1006(b). The provision for notice in paragraph (3) is correlated with the provision in Rule 4006 when there is a waiver, denial, or revocation of a discharge. As pointed out in the Note accompanying Rule 4008, the purpose of notifying creditors of a debtor that no discharge has been granted is to correct their assumption to the contrary so that they can take appropriate steps to protect their claims.

Subdivision (c) is new and specifies the notice required for a hearing on dismissal or suspension pursuant to § 305 of the Code. The suspension to which this subdivision refers is that of the case; it does not concern abstention of the court in hearing an adversary proceeding pursuant to 28 U.S.C. § 1478(b).

Subdivision (d). Any proceeding, whether by a debtor or other party, to dismiss or convert a case under §§ 706, 707, 1112, or 1307 is commenced by a motion pursuant to Rule 9014.

Rule 1018. Contested Involuntary Petitions; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings

The following rules in Part VII apply in all proceedings relating to a contested involuntary petition and in all proceedings to vacate an order for relief: Rules 7005, 7008–7010, 7015, 7016, 7024–7026, 7028–7037, 7052, 7054, 7056, and 7062, except as otherwise provided in Part I of these rules and unless the court otherwise di-

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rects. The court may direct that other rules in Part VII shall also apply. For the purposes of this rule a reference in the Part VII rules to adversary proceedings shall be read as a reference to proceedings relating to a contested involuntary petition, or contested ancillary petition, or proceedings to vacate an order for relief. Reference in the Federal Rules of Civil Procedure to the complaint shall be read as a reference to the petition.

NOTES OF ADVISORY COMMITTEE ON RULES

The rules in Part VII to which this rule refers are adaptations of the Federal Rules of Civil Procedure for the purpose of governing the procedure in adversary proceedings in cases under the Code. See the Note accompanying Rule 7001 *infra*. Because of the special need for dispatch and expedition in the determination of the issues in an involuntary petition, see *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U.S. 300, 309 (1911), the objective of some of the Federal Rules of Civil Procedure and their adaptations in Part VII to facilitate the settlement of multiple controversies involving many persons in a single lawsuit is not compatible with the exigencies of bankruptcy administration. See *United States F. & G. Co. v. Bray*, 225 U.S. 205, 218 (1912). For that reason Rules 7013, 7014 and 7018-7023 will rarely be appropriate in a proceeding on a contested petition.

Certain terms used in the Federal Rules of Civil Procedure have altered meanings when they are made applicable in cases under the Code by these rules. See Rule 9002 *infra*. This Rule 1018 requires that the terms "adversary proceedings" when used in the rules in Part VII and "complaint" when used in the Federal Rules of Civil Procedure be given altered meanings when they are made applicable to proceedings relating to a contested petition or proceedings to vacate any order for relief. A motion to vacate an order for relief, whether or not made on a petition that was or could have been contested, is governed by the rules in Part VII referred to in this Rule 1018.

Rule 1019. Conversion of Chapter 11 Reorganization Case or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case

When a chapter 11 or chapter 13 case has been converted or reconverted to a chapter 7 case:

(1) *Filing of Lists, Inventories, Schedules, Statements.* Lists, inventories, schedules, statements of financial affairs, and statements of executory contracts theretofore filed shall be deemed to be filed in the chapter 7 case, unless the court directs otherwise. If they have not been previously filed, the debtor shall comply with Rule 1007 as if an order for relief had been entered on an involuntary petition on the date of the entry of the order directing that the case continue under chapter 7.

(2) *Notice of Order of Conversion.* Within 20 days after entry of the order converting the case to a chapter 7 case, notice of the order shall be given to all creditors in the manner provided by Rule 2002 and shall be included in the notice of the meeting of creditors.

(3) *Reconversion to Chapter 7.* When a chapter 7 case had been converted to a chapter 11 or chapter 13 case and thereafter reconverted to a chapter 7 case, if the time for filing claims, a complaint objecting to discharge, or a complaint to obtain a determination of the dischargeability of any debt expired in the original chapter 7 case, the time shall not be revived or extended except as provided in Rule 4004 or 4007.

(4) *Claims Filed in Superseded Case.* All claims filed in the superseded case shall be deemed filed in the chapter 7 case.

(5) *Turnover of Records and Property.* After qualification of, or assumption of duties by the chapter 7 trustee, any debtor in possession or trustee previously acting in the chapter 11 or chapter 13 case shall, forthwith, unless otherwise ordered, turn over to the chapter 7 trustee all records and property of the estate in his possession or control.

(6) *Filing Final Report and Schedule of Postpetition Debts.* Each debtor in possession or trustee in the superseded case shall file with the court a final report and account within 30 days following the entry of the order of conversion, unless the court directs otherwise. The report shall include a schedule of unpaid debts incurred after commencement of the chapter 11 or chapter 13 case. If the conversion order is entered after confirmation of a plan, the debtor shall file with the court (A) a schedule of property not listed in the final report and account acquired after the filing of the original petition but before entry of the conversion order; (B) a schedule of unpaid debts not listed in the final report and account incurred after confirmation but before entry of the conversion order; and (C) a schedule of executory contracts entered into or assumed after the filing of the original petition but before entry of the conversion order.

(7) *Filing of Postpetition Claims; Notice.* On the filing of the schedule of unpaid debts, the court shall order that written notice be given to those entities, including the United States, any state, or any subdivision thereof, that their claims may be filed within 60 days from the entry of the order, pursuant to Rule 3001(a)-(d). The court shall fix the time for filing claims arising from debts not so scheduled or arising from rejection of executory contracts under §§ 348(c) and 365(d) of the Code.

(8) *Extension of Time to File Claims Against Surplus.* Any extension of time for the filing of claims against a surplus granted pursuant to Rule 3002(c)(6), shall apply to holders of claims who failed to file their claims within the time prescribed, or fixed by the court pursuant to paragraph (7) of this rule, and notice shall be given as provided in Rule 2002.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from former Bankruptcy Rule 122 and implements § 348 of the Code. The rule applies to proceedings in a chapter 7 case following supersession of a case commenced under chapter 11 or 13, whether the latter was initiated by an original petition or was converted from a pending chapter 7 or another chapter case. The rule is not intended to invalidate any action taken in the superseded case before its conversion to chapter 7.

Paragraph (1): If requirements applicable in the superseded case respecting the filing of schedules of debts and property, or lists of creditors and inventory, and of statements of financial affairs have been complied with before the order directing conversion to liquidation, these documents will ordinarily provide all the information about the debts, property, financial affairs, and contracts of the debtor needed for the ad-

ministration of the estate. If the information submitted in the superseded case is inadequate for the purposes of administration, however, the court may direct the preparation of further informational material and the manner and time of its submission pursuant to paragraph (1). If no schedules, lists, inventories, or statements were filed in the superseded case, this paragraph imposes the duty on the debtor to file schedules and a statement of affairs pursuant to Rule 1007 as if an involuntary petition had been filed on the date when the court directed the conversion of the case to a liquidation case.

Paragraphs (2) and (3). Paragraph (2) requires notice to be given to all creditors of the order of conversion. The notice is to be included in the notice of the meeting of creditors and Official Form No. 16 may be adapted for use. A meeting of creditors may have been held in the superseded case as required by § 341(a) of the Code but that would not dispense with the need to hold one in the ensuing liquidation case. Section 701(a) of the Code permits the court to appoint the trustee acting in the chapter 11 or 13 case as interim trustee in the chapter 7 case. Section 702(a) of the Code allows creditors to elect a trustee but only at the meeting of creditors held under § 341. The right to elect a trustee is not lost because the chapter 7 case follows a chapter 11 or 13 case. Thus a meeting of creditors is necessary. The date fixed for the meeting of creditors will control at least the time for filing claims pursuant to Rule 3002(c). That time will remain applicable in the ensuing chapter 7 case except as paragraph (3) provides, if that time had expired in an earlier chapter 7 case which was converted to the chapter 11 or 13 case, it is not revived in the subsequent chapter 7 case. The same is true if the time for filing a complaint objecting to discharge or to determine nondischargeability of a debt had expired. Paragraph (3), however, recognizes that such time may be extended by the court under Rule 4004 or 4007 on motion made within the original prescribed time.

Paragraph (4) renders it unnecessary to file anew claims that had been filed in the chapter 11 or 13 case before conversion to chapter 7.

Paragraph (5) contemplates that typically, after the court orders conversion of a chapter case to liquidation, a trustee under chapter 7 will forthwith take charge of the property of the estate and proceed expeditiously to liquidate it. The court may appoint the interim trustee in the chapter 7 case pursuant to § 701(a) of the Code. If creditors do not elect a trustee under § 702, the interim trustee becomes the trustee.

Paragraph (6) requires the trustee or debtor in possession acting in the chapter 11 or 13 case to file a final report and schedule of debts incurred in that case. This schedule will provide the information necessary for giving the notice required by paragraph (7) of the rule.

Paragraph (7) requires that claims that arose in the chapter 11 or 13 case be filed within 60 days after entry of the order converting the case to one under chapter 7. Claims not scheduled pursuant to paragraph (6) of the rule or arising from the rejection of an executory contract entered into during the chapter case may be filed within a time fixed by the court. Pursuant to § 348(c) of the Code, the conversion order is treated as the order for relief to fix the time for the trustee to assume or reject executory contracts under § 365(d).

Paragraph (8) permits the extension of the time for filing claims when claims are not timely filed but only with respect to any surplus that may remain in the estate. See also § 726(a)(2)(C) and (3) of the Code.

PART II—OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS

Rule 2001. Appointment of Interim Trustee Before Order for Relief in a Chapter 7 Liquidation Case

(a) Appointment

At any time following the commencement of an involuntary liquidation case and before an order for relief, the court on written motion of a party in interest may appoint an interim trustee under § 303(g) of the Code. The motion shall set forth the necessity for the appointment and may be granted only after hearing on notice to the debtor, the petitioning creditors and other parties in interest as the court may designate.

(b) Bond of Movant

An interim trustee may not be appointed under this rule unless the movant furnishes a bond in an amount approved by the court, conditioned to indemnify the debtor for costs, attorney's fee, expenses, and damages allowable under § 303(i) of the Code.

(c) Order of Appointment

The order appointing the interim trustee shall state why the appointment is necessary and shall specify the trustee's duties.

(d) Turnover and Report

Following qualification of the trustee selected under § 702 of the Code, the interim trustee, unless otherwise ordered, shall (1) forthwith turn over to the trustee all the records and property of the estate in possession or subject to control of the interim trustee and, (2) within 30 days thereafter file a final report and account.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is adapted from former Bankruptcy Rule 201. See also former Chapter X Rule 10-201. In conformity with title 11 of the United States Code, this rule substitutes "interim trustee" for "receiver." Subdivision (a) and (e) of Rule 201 are not included because the provisions contained therein are found in detail in § 303(g) of the Code, or they are inconsistent with § 701 of the Code. Similarly, the provisions in Rule 201(d) relating to a debtor's counterbond are not included because of their presence in § 303(g).

Subdivision (a) makes it clear that the court may not on its own motion order the appointment of an interim trustee before an order for relief is entered. Appointment may be ordered only on motion of a party in interest.

Subdivision (b) requires those seeking the appointment of an interim trustee to furnish a bond. The bond may be the same one required of petitioning creditors under § 303(e) of the Code to indemnify the debtor for damages allowed by the court under § 303(i).

Subdivision (c) requires that the order specify which duties enumerated in § 303(g) shall be performed by the interim trustee. Reference should be made to Rule 2015 for additional duties required of an interim trustee including keeping records and filing periodic reports with the court.

Subdivision (d) requires turnover of records and property to the trustee selected under § 702 of the Code, after qualification. That trustee may be the interim trustee who becomes the trustee because of the

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failure of creditors to elect one under § 702(d) or the trustee elected by creditors under § 702(b), (c).

Rule 2002. Notices to Creditors, Equity Security Holders, and United States

(a) Twenty-Day Notices to Parties in Interest

Except as provided in subdivisions (h), (i) and (k) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 20 days notice by mail of (1) the meeting of creditors pursuant to § 341 of the Code; (2) a proposed use, sale, or lease of property other than in the ordinary course of business unless the court for cause shown shortens the time or directs another method of giving notice; (3) the hearing on approval of a compromise or settlement of a controversy, unless the court for cause shown directs that notice not be sent; (4) the date fixed for the filing of claims against a surplus in an estate as provided in Rule 3002(c)(6); (5) in a chapter 7 liquidation and a chapter 11 reorganization case, the hearing on the dismissal or conversion of a case to another chapter; (6) the time fixed to accept or reject a proposed modification of a plan; (7) hearings on all applications for compensation or reimbursement of expenses totalling in excess of $100; and (8) the time fixed for filing proofs of claims pursuant to Rule 3003(c).

(b) Twenty-Five-Day Notices to Parties in Interest

Except as provided in subdivisions (h), (i) and (k) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 25 days notice by mail of (1) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement; and (2) the time fixed for filing objections to and the hearing to consider confirmation of a plan.

(c) Content of Notice

(1) *Proposed Use, Sale, or Lease of Property.* Subject to Rule 6004 the notice of a proposed use, sale, or lease of property required by subdivision (a)(2) of this rule shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property.

(2) *Notice of Hearing on Compensation.* The notice of a hearing on an application for compensation or reimbursement of expenses required by subdivision (a)(7) of this rule shall identify the applicant and the amounts requested.

(d) Notice to Equity Security Holders

In a chapter 11 reorganization case, unless otherwise ordered by the court, the clerk, or some other person as the court may direct, shall in the manner and form directed by the court give notice to all equity security holders of (1) the order for relief; (2) any meeting of equity security holders ordered by the court pursuant to § 341 of the Code; (3) the hearing on the dismissal or conversion of a case to another chapter; (4) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement; (5) the time fixed for filing objections to and the hearing to consider confirmation of a plan; and (6) the time fixed to accept or reject a proposed modification of a plan.

(e) Notice of No Dividend

In a chapter 7 liquidation case, if it appears from the schedules that there are no assets from which a dividend can be paid, the notice of the meeting of creditors may include a statement to that effect; that it is unnecessary to file claims; and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims.

(f) Other Notices

Except as provided in subdivision (k) of this rule, the clerk, or some other person as the Court may direct, shall give the debtor, all creditors and indenture trustees notice by mail of (1) the order for relief; (2) dismissal of the case; (3) the time allowed for filing claims pursuant to Rule 3002; (4) the entry of an order directing that the case be converted to a case under a different chapter; (5) the time fixed for filing a complaint objecting to the debtor's discharge pursuant to § 727 of the Code as provided in Rule 4004; (6) the time fixed for filing a complaint to determine the dischargeability of a debt pursuant to § 523 of the Code as provided in Rule 4007; (7) the order of discharge as provided in Rule 4004(g); (8) the waiver denial, or revocation of a discharge as provided in Rule 4006; (9) entry of an order confirming a chapter 9 or 11 plan; and (10) a summary of the trustee's final report and account in a chapter 7 case if the net proceeds realized exceed $250. Notice of the time fixed for accepting or rejecting a plan pursuant to Rule 3017(c) shall be given in accordance with Rule 3017(d).

(g) Addresses of Notices

All notices required to be mailed under this rule to a creditor, equity security holder, or indenture trustee shall be addressed as he or his authorized agent may direct in a request filed with the court; otherwise, to the address shown in the list of creditors or the schedule whichever is filed later, but if a different address is stated in a proof of claim duly filed, that address shall be used.

(h) Notices to Creditors Whose Claims are Filed

In a chapter 7 case, the court may, after 90 days following the first date set for the meeting of creditors pursuant to § 341 of the Code, direct that all notices required by subdivision (a) of this rule, except clause (4) thereof, be mailed only to creditors whose claims have been filed and creditors, if any, who are still permitted to file claims by reason of an extension granted under Rule 3002(c)(6).

(i) Notices to Committees

Copies of all notices required to be mailed under this rule shall be mailed to the committees appointed pursuant to the Code or to their authorized agents. Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a)(2), (3) and (7)

of this rule be mailed only to the committees or to their authorized agents and to the creditors and equity security holders who file with the court a request that all notices be mailed to them.

(j) Notices to the United States

Copies of notices required to be mailed to all creditors under this rule shall be mailed (1) in a chapter 11 reorganization case to the Securities and Exchange Commission at Washington, D.C., and at any other place the Commission designates in writing filed with the court if the Commission has filed a notice of appearance in the case or has made a request in writing filed with the court; (2) in a commodity broker case, to the Commodity Futures Trading Commission at Washington, D.C.; (3) in a chapter 11 case to the District Director of Internal Revenue for the district in which the case is pending; (4) if the papers in the case disclose a debt to the United States other than for taxes, to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted; or if the filed papers disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.

(k) Notice by Publication

The court may order notice by publication if it finds that notice by mail as provided in this rule is impracticable or that it is desirable to supplement the notice.

(*l*) Orders Designating Matter of Notices

The court may from time to time enter orders designating the matters in respect to which, the person to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.

(m) Caption

The caption of every notice given under this rule shall comply with Rule 1005.

(n) [1] In a voluntary case commenced under the Code by an individual debtor whose debts are primarily consumer debts, the clerk, or some other person as the court may direct, shall give the trustee and all creditors notice by mail of the order for relief not more than 20 days after the entry of such order.

(As amended Aug. 30, 1983, Pub. L. 98-91, § 2(a), 97 Stat. 607; July 10, 1984, Pub. L. 98-353, title III, § 321, 98 Stat. 357.)

NOTES OF ADVISORY COMMITTEE ON RULES

Some of the notices required by this rule may be given either by the clerk or as the court may otherwise direct. For example, the court may order the trustee or debtor in possession to transmit one or more of the notices required by this rule, such as, notice of a proposed sale of property. See § 363(b) of the Code. When publication of notices is required or desirable, reference should be made to Rule 9008.

Notice of the order for relief is required to be given by § 342 of the Code and by subdivision (f)(1) of this rule. That notice may be combined with the notice of the meeting of creditors as indicated in Official Form No. 16, the notice and order of the meeting of creditors.

Subdivision (*a*) sets forth the requirement that 20 days notice be given of the significant events in a case under the Bankruptcy Code. The former Act and Rules provided a ten day notice in bankruptcy and Chapter XI cases, and a 20 day notice in a Chapter X case. This rule generally makes uniform the 20 day notice provision except that subdivision (b) contains a 25 day period for certain events in a chapter 9, 11, or 13 case. Generally, Rule 9006 permits reduction of time periods. Since notice by mail is complete on mailing, the requirement of subdivision (a) is satisfied if the notices are deposited in the mail at least 20 days before the event. See Rule 9006(e). The exceptions referred to in the introductory phrase include the modifications in the notice procedure permitted by subdivision (h) as to non-filing creditors, subdivision (i) as to cases where a committee is functioning, and subdivision (k) where compliance with subdivision (a) is impracticable.

The notice of a proposed sale affords creditors an opportunity to object to the sale and raise a dispute for the court's attention. Section 363(b) of the Code permits the trustee or debtor in possession to sell property, other than in the ordinary course of business, only after notice and hearing. If no objection is raised after notice, § 102(1) provides that there need not be an actual hearing. Thus, absent objection, there would be no court involvement with respect to a trustee's sale. Once an objection is raised, only the court may pass on it.

Prior to the Code the court could shorten the notice period for a proposed sale of property or dispense with notice. This subdivision (a), permits the 20 day period to be shortened in appropriate circumstances but the rule does not contain a provision allowing the court to dispense with notice. The rule is thus consistent with the Code, §§ 363(b) and 102(1)(A) of the Code. See 28 U.S.C. § 2075. It may be necessary, in certain circumstances, however, to use a method of notice other than mail. Subdivision (a)(2) vests the court with discretion, on cause shown, to order a different method. Reference should also be made to Rule 6004 which allows a different type of notice of proposed sales when the property is of little value.

Notice of the hearing on an application for compensation or reimbursement of expenses totalling $100 or less need not be given. In chapter 13 cases relatively small amounts are sometimes allowed for post-confirmation services and it would not serve a useful purpose to require advance notice.

Subdivision (*b*) is similar to subdivision (a) but lengthens the notice time to 25 days with respect to those events particularly significant in chapter 9, 11 and 13 cases. The additional time may be necessary to formulate objections to a disclosure statement or confirmation of a plan and preparation for the hearing on approval of the disclosure statement or confirmation. The disclosure statement and hearing thereon is only applicable in chapter 9 cases (§ 901(a) of the Code), and chapter 11 cases (§ 1125 of the Code).

Subdivision (*c*) specifies certain matters that should be included in the notice of a proposed sale of property and notice of the hearing on an application for allowances. Rule 6004 fixes the time within which parties in interest may file objections to a proposed sale of property.

Subdivision (*d*) relates exclusively to the notices given to equity security holders in chapter 11 cases. Under chapter 11, a plan may impair the interests of the debtor's shareholders or a plan may be a relatively simple restructuring of unsecured debt. In some cases, it is necessary that equity interest holders receive various notices and in other cases there is no purpose to be served. This subdivision indicates that the court is not mandated to order notices but rather that the matter should be treated with some flexibility. The court may decide whether notice is to be given and

[1] So in original. Subsec. (n) enacted without a catchline.

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how it is to be given. Under § 341(b) of the Code, a meeting of equity security holders is not required in each case, only when it is ordered by the court. Thus subdivision (d)(2) requires notice only when the court orders a meeting.

In addition to the notices specified in this subdivision, there may be other events or matters arising in a case as to which equity security holders should receive notice. These are situations left to determination by the court.

Subdivision (e), authorizing a notice of the apparent insufficiency of assets for the payment of any dividend, is correlated with Rule 3002(c)(5), which provides for the issuance of an additional notice to creditors if the possibility of a payment later materializes.

Subdivision (f) provides for the transmission of other notices to which no time period applies. Clause (1) requires notice of the order for relief; this complements the mandate of § 342 of the Code requiring such notice as is appropriate of the order for relief. This notice may be combined with the notice of the meeting of creditors to avoid the necessity of more than one mailing. See Official Form No. 16, notice of meeting of creditors.

Subdivision (g) recognizes that an agent authorized to receive notices for a creditor may, without a court order, designate where notices to the creditor he represents should be addressed. Agent includes an officer of a corporation, an attorney at law, or an attorney in fact if the requisite authority has been given him. It should be noted that Official Forms Nos. 17 and 18 do not include an authorization of the holder of a power of attorney to receive notices for the creditor. Neither these forms nor this rule carries any implication that such an authorization may not be given in a power of attorney or that a request for notices to be addressed to both the creditor or his duly authorized agent may not be filed.

Subdivision (h). After the time for filing claims has expired in a chapter 7 case, creditors who have not filed their claims in accordance with Rule 3002(c) are not entitled to share in the estate except as they may come within the special provisions of § 726 of the Code or Rule 3002(c)(6). The elimination of notice to creditors who have no recognized stake in the estate may permit economies in time and expense. Reduction of the list of creditors to receive notices under this subdivision is discretionary. This subdivision does not apply to the notice of the meeting of creditors.

Subdivision (i) contains a list of matters of which notice may be given a creditors' committee or to its authorized agent in lieu of notice to the creditors. Such notice may serve every practical purpose of a notice to all the creditors and save delay and expense. *In re Schulte-United, Inc.*, 59 F.2d 553, 561 (8th Cir. 1932).

Subdivision (j). The premise for the requirement that the district director of internal revenue receive copies of notices that all creditors receive in a chapter 11 case is that every debtor is potentially a tax debtor of the United States. Notice to the district director alerts him to the possibility that a tax debtor's estate is about to be liquidated or reorganized and that the debtor may be discharged. When other indebtedness to the United States is indicated, the United States attorney is notified as the person in the best position to protect the interests of the government. In addition, the provision requires notice by mail to the head of any department, agency, or instrumentality of the United States through whose action the debtor became indebted to the United States. This rule is not intended to preclude a local rule from requiring a state or local tax authority to receive some or all of the notices to creditors under these rules.

Subdivision (k) specifies two kinds of situations in which notice by publication may be appropriate: (1) when notice by mail is impracticable; and (2) when notice by mail alone is less than adequate. Notice by mail may be impracticable when, for example, the debtor has disappeared or his records have been destroyed and the names and addresses of his creditors are unavailable, or when the number of creditors with nominal claims is very large and the estate to be distributed may be insufficient to defray the costs of issuing the notices. Supplementing notice by mail is also indicated when the debtor's records are incomplete or inaccurate and it is reasonable to believe that publication may reach some of the creditors who would otherwise be missed. Rule 9008 applies when the court directs notice by publication under this rule. Neither clause (2) of subdivision (a) nor subdivision (k) of this rule is concerned with the publication of advertisement to the general public of a sale of property of the estate at public auction under Rule 6004(b). See 3 Collier, *Bankruptcy* 522-23 (14th ed. 1971); 4B *id.* 1165-67 (1967); 2 *id.* ¶ 363.03 (15th ed. 1981).

Subdivision (m). Inclusion in notices to creditors of information as to other names used by the debtor as required by Rule 1005 will assist them in the preparation of their proofs of claim and in deciding whether to file a complaint objecting to the debtor's discharge. Additional names may be listed by the debtor on his statement of affairs when he did not file the petition. The mailing of notices should not be postponed to await a delayed filing of the statement of financial affairs.

1984 AMENDMENT

Subd. (n). Pub. L. 98-353 added subd. (n).

1983 AMENDMENT

Subd. (f). Pub. L. 98-91 inserted ", or some other person as the Court may direct," after "clerk".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1 of Pub. L. 98-91 provided: "That rule 2002(f) of the Bankruptcy Rules, as proposed by the United States Supreme Court in the order of April 25, 1983, of the Court, shall take effect on August 1, 1983, except as otherwise provided in section 2 [amending subd. (f) of this rule and enacting a provision set out as a note below]."

Section 2(b) of Pub. L. 98-91 provided that: "The amendment made by subsection (a) [amending subd. (f) of this rule] shall take effect on August 1, 1983."

Rule 2003. Meeting of Creditors or Equity Security Holders

(a) Date and Place

The court shall call a meeting of creditors to be held not less than 20 nor more than 40 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the court may set a later time for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the court within the district convenient for the parties in interest.

(b) Order of Meeting

(1) *Meeting of Creditors.* The clerk shall preside at the meeting of creditors unless (1) the court designates a different person, or (2) the creditors who may vote for a trustee under § 702(a) of the Code and who hold a majority in amount of claims that vote designate a presiding officer. In a chapter 11 reorganization case, if a chairman has been selected by a creditors'

committee appointed pursuant to § 1102(a)(1), the chairman or his designee shall preside. The business of the meeting shall include the examination of the debtor under oath and, in a chapter 7 liquidation case, may include the election of a trustee or of a creditors' committee. The presiding officer shall have the authority to administer oaths. When a trustee is elected, the creditors may recommend the amount of the trustee's bond to be fixed by the court.

(2) *Meeting of Equity Security Holders.* If the court orders a meeting of equity security holders pursuant to § 341(b) of the Code, the clerk shall preside unless the holders of equity security interests present at the meeting who hold a majority in amount of the interests at the meeting designate a presiding officer.

(3) *Right to Vote.* In a chapter 7 liquidation case, a creditor is entitled to vote at a meeting if, at or before the meeting, he has filed a proof of claim or a writing setting forth facts evidencing a right to vote pursuant to § 702(a) of the Code unless objection is made to the claim or the proof of claim is insufficient on its face. If the court orders an election of a separate trustee for a general partner's estate under Rule 2009(e)(1), a creditor of the partnership may file a proof of claim or writing evidencing a right to vote for that trustee notwithstanding that a trustee for the partnership has previously qualified. Notwithstanding objection to the amount or allowability of a claim for the purpose of voting, the court may, after such notice and hearing as it may direct, temporarily allow it for that purpose in an amount that seems proper to the court.

(c) Minutes and Record of Meeting

Minutes of the meeting of creditors or equity security holders shall be prepared by the presiding officer. Any examination under oath shall be recorded verbatim by electronic sound recording equipment or other means of recording.

(d) Report to the Court

The presiding officer shall transmit to the court the name and address of any person elected trustee or a member of a creditors' committee. If an election is disputed, the presiding officer shall promptly inform the court in writing that a dispute exists. Pending disposition by the court of a disputed election for trustee, the interim trustee shall continue in office. If no motion for the resolution of such election dispute is made to the court within 10 days after the date of the creditors' meeting, the interim trustee shall serve as trustee in the case.

(e) Adjournment

The meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time without further written notice.

NOTES OF ADVISORY COMMITTEE ON RULES

Section 341(a) of the Code requires a meeting of creditors in a chapter 7, 11 or 13 case, and § 341(b) permits the court to order a meeting of equity security holders. A major change from prior law, however, prohibits the judge from attending or presiding over the meeting. Section 341(c).

This rule does not apply either in a case for the reorganization of a railroad or for the adjustment of debts of a municipality. Sections 1161 and 901 render §§ 341 and 343 inapplicable in these types of cases. Section 341 sets the requirement for a meeting of creditors and § 343 provides for the examination of the debtor.

Subdivision (a). The meeting is to be held between 20 and 40 days after the date of the order for relief. In a voluntary case, the date of the order for relief is the date of the filing of the petition (§ 301 of the Code); in an involuntary case, it is the date of an actual order (§ 303(i) of the Code).

Subdivision (b) provides flexibility as to who will preside at the meeting of creditors. The court may designate a person to serve as presiding officer, such as the interim trustee appointed under § 701 of the Code. If the court does not designate anyone, the clerk will preside. In either case, creditors may elect a person of their own choosing. In any event, the clerk may remain to record the proceedings and take appearances. Use of the clerk is not contrary to the legislative policy of § 341(c). The judge remains insulated from any information coming forth at the meeting and any information obtained by the clerk must not be relayed to the judge.

Although the clerk may preside at the meeting, the clerk is not performing any kind of judicial role, nor should the clerk give any semblance of performing such a role. It would be pretentious for the clerk to ascend the bench, don a robe or be addressed as "your honor". The clerk should not appear to parties or others as any type of judicial officer.

In a chapter 11 case, if a committee of unsecured creditors has been appointed pursuant to § 1102(a)(1) of the Code and a chairman has been selected, the chairman will preside or a person, such as the attorney for the committee, may be designated to preside by the chairman.

Since the judge must fix the bond of the trustee but cannot be present at the meeting, the rule allows the creditors to recommend the amount of the bond. They should be able to obtain relevant information concerning the extent of assets of the debtor at the meeting.

Paragraph (1) authorizes the presiding officer to administer oaths. This is important because the debtor's examination must be under oath.

Paragraph (3) of subdivision (b) has application only in a chapter 7 case. That is the only type of case under the Code that permits election of a trustee or committee. In all other cases, no vote is taken at the meeting of creditors. If it is necessary for the court to make a determination with respect to a claim, the meeting may be adjourned until the objection or dispute is resolved.

The second sentence recognizes that partnership creditors may vote for a trustee of a partner's estate along with the separate creditors of the partner. Although § 723(c) gives the trustee of a partnership a claim against a partner's estate for the full amount of partnership creditors' claims allowed, the purpose and function of this provision are to simplify distribution and prevent double proof, not to disfranchise partnership creditors in electing a trustee of an estate against which they hold allowable claims.

Subdivision (c) requires minutes and a record of the meeting to be maintained by the presiding officer. A verbatim record must be made of the debtor's examination but the rule is flexible as to the means used to record the examination.

Subdivision (d) recognizes that the court must be informed immediately about the election or nonelection of a trustee in a chapter 7 case. Pursuant to Rule 2008, the clerk officially informs the trustee of his election or appointment and how he is to qualify. The presiding person has no authority to resolve a disputed election.

For purposes of expediency, the results of the election should be obtained for each alternative presented by the dispute and immediately reported to the court. Thus, when an interested party presents the dispute to the court, its prompt resolution by the court will

determine the dispute and a new or adjourned meeting to conduct the election may be avoided. The clerk is not an interested party.

A creditors' committee may be elected only in a chapter 7 case. In chapter 11 cases, a creditors' committee is appointed pursuant to § 1102.

While a final meeting is not required, Rule 2002(f)(10) provides for the trustee's final account to be sent to creditors.

Rule 2004. Examination

(a) Examination on Motion

On motion of any party in interest, the court may order the examination of any person.

(b) Scope of Examination

The examination of any person under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In an individual's debt adjustment case under chapter 13 or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

(c) Compelling Attendance and Production of Documentary Evidence

The attendance of any person for examination and the production of documentary evidence may be compelled in the manner provided in Rule 9016 for the attendance of witnesses at a hearing or trial.

(d) Time and Place of Examination of Debtor

The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.

(e) Mileage

A person other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first petition commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is derived from former Bankruptcy Rule 205(a). See generally 2 Collier, *Bankruptcy* ¶¶ 343.02, 343.08, 343.13 (15th ed. 1981). It specifies the manner of moving for an examination. The motion may be heard *ex parte* or it may be heard on notice.

Subdivision (b) is derived from former Bankruptcy Rules 205(d) and 11-26.

Subdivision (c) specifies the mode of compelling attendance of a witness or party for an examination and for the production of evidence under this rule. The subdivision is substantially declaratory of the practice that had developed under § 21a of the Act. See 2 Collier, *supra* ¶ 343.11.

This subdivision will be applicable for the most part to the examination of a person other than the debtor. The debtor is required to appear at the meeting of creditors for examination. The word "person" includes the debtor and this subdivision may be used if necessary to obtain the debtor's attendance for examination.

Subdivision (d) is derived from former Bankruptcy Rule 205(f) and is not a limitation on subdivision (c). Any person, including the debtor, served with a subpoena within the range of a subpoena must attend for examination pursuant to subdivision (c). Subdivision (d) applies only to the debtor and a subpoena need not be issued. There are no territorial limits on the service of an order on the debtor. See, *e.g., In re Totem Lodge & Country Club, Inc.*, 134 F. Supp. 158 (S.D.N.Y. 1955).

Subdivision (e) is derived from former Bankruptcy Rule 205(g). The lawful mileage and fee for attendance at a United States court as a witness are prescribed by 28 U.S.C. § 1821.

Definition of debtor. The word "debtor" as used in this rule includes the persons specified in the definition in Rule 9001(5).

Spousal privilege. The limitation on the spousal privilege formerly contained in § 21a of the Act is not carried over in the Code. For privileges generally, see Rule 501 of the Federal Rules of Evidence made applicable in cases under the Code by Rule 1101 thereof.

Rule 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination

(a) Order To Compel Attendance for Examination

On motion of any party in interest supported by an affidavit alleging (1) that the examination of the debtor is necessary for the proper administration of the estate and that there is reasonable cause to believe that the debtor is about to leave or has left his residence or principal place of business to avoid examination, or (2) that the debtor has evaded service of a subpoena or of an order to attend for examination, or (3) that the debtor has willfully disobeyed a subpoena or order to attend for examination, duly served, the court may issue to the marshal, or some other officer authorized by law, an order directing the officer to bring the debtor before the court without unnecessary delay. If, after hearing, the court finds the allegations to be true, the court shall thereupon cause the debtor to be examined forthwith. If necessary, the court shall fix conditions for further examination and for the debtor's obedience to all orders made in reference thereto.

(b) Removal

Whenever any order to bring the debtor before the court is issued under this rule and the debtor is found in a district other than that of the court issuing the order, the debtor may be taken into custody under the order and removed in accordance with the following rules:

(1) If taken at a place less than 100 miles from the place of issue of the order, the debtor shall be brought forthwith before the court that issued the order.

(2) If taken at a place 100 miles or more from the place of issue of the order, the debtor shall be brought without unnecessary delay before the nearest federal magistrate, bankruptcy judge, or district judge. If, after hearing, the magistrate, bankruptcy judge, or district judge finds that an order has issued under this rule and that the person in custody is the debtor, or if the person in custody waives a hearing, the magistrate, bankruptcy judge, or district judge shall issue an order of removal and the person in custody shall be released on conditions assuring prompt appearance before the court which issued the order to compel the attendance.

(c) Conditions of Release

In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the provisions and policies of title 18, U.S.C., § 3146(a) and (b).

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from former Bankruptcy Rule 206. The rule requires the debtor to be examined as soon as possible if allegations of the movant for compulsory examination under this rule are found to be true after a hearing. Subdivision (b) includes in paragraphs (1) and (2) provisions adapted from subdivisions (a) and (b) of Rule 40 of the Federal Rules of Criminal Procedure, which governs the handling of a person arrested in one district on a warrant issued in another. Subdivision (c) incorporates by reference the features of subdivisions (a) and (b) of 18 U.S.C. § 3146, which prescribe standards, procedures and factors to be considered in determining conditions of release of accused persons in noncapital cases prior to trial. The word "debtor" as used in this rule includes the persons named in Rule 9001(5).

The affidavit required to be submitted in support of the motion may be subscribed by the unsworn declaration provided for in 28 U.S.C. § 1746.

Rule 2006. Solicitation and Voting of Proxies in Chapter 7 Liquidation Cases

(a) Applicability

This rule applies only in a liquidation case pending under chapter 7 of the Code.

(b) Definitions

(1) *Proxy.* A proxy is a written power of attorney authorizing any person to vote the claim or otherwise act as the owner's attorney in fact in connection with the administration of the estate.

(2) *Solicitation of Proxy.* The solicitation of a proxy is any communication, other than one from an attorney to a regular client who owns a claim or from an attorney to the owner of a claim who has requested the attorney to represent the owner, by which a creditor is asked, directly or indirectly, to give a proxy after or in contemplation of the filing of a petition by or against the debtor.

(c) Authorized Solicitation

(1) A proxy may be solicited only by (A) a creditor owning an allowable unsecured claim against the estate on the date of the filing of the petition; (B) a committee elected pursuant to § 705 of the Code; (C) a committee of creditors selected by a majority in number and amount of claims of creditors (i) whose claims are not contingent or unliquidated, (ii) who are not disqualified from voting under § 702(a) of the Code and (iii) who were present or represented at a meeting of which all creditors having claims of over $500 or the 100 creditors having the largest claims had at least five days notice in writing and of which meeting written minutes were kept and are available reporting the names of the creditors present or represented and voting and the amounts of their claims; or (D) a bona fide trade or credit association, but such association may solicit only creditors who were its members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition.

(2) A proxy may be solicited only in writing.

(d) Solicitation Not Authorized

This rule does not permit solicitation (1) in any interest other than that of general creditors; (2) by or on behalf of any custodian; (3) by the interim trustee or by or on behalf of any person not qualified to vote under § 702(a) of the Code; (4) by or on behalf of an attorney at law; or (5) by or on behalf of a transferee of a claim for collection only.

(e) Data Required From Holders of Multiple Proxies

At any time before the voting commences at any meeting of creditors pursuant to Rule 2003, or at any other time as the court may direct, a holder of two or more proxies shall file with the clerk a verified list of the proxies to be voted and a verified statement of the pertinent facts and circumstances in connection with the execution and delivery of each proxy, including:

(1) a copy of the solicitation;

(2) identification of the solicitor, the forwarder, if he is neither the solicitor nor the owner of the claim, and the proxyholder, including their connections with the debtor and with each other. If the solicitor, forwarder, or proxyholder is an association, there shall also be included a statement that the creditors whose claims have been solicited and the creditors whose claims are to be voted were members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition. If the solicitor, forwarder, or proxyholder is a committee of creditors, the statement shall also set forth the date and place the committee was organized, that the committee was organized in accordance with clause (B) or (C) of paragraph (c)(1) of this rule, the members of the committee, the amounts of their claims, when the claims were acquired, the amounts paid therefor, and the extent to which the claims of the committee members are secured or entitled to priority;

(3) a statement that no consideration has been paid or promised by the proxyholder for the proxy;

(4) a statement as to whether there is any agreement and, if so, the particulars thereof, between the proxyholder and any other person for the payment of any consideration in connection with voting the proxy, or for

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the sharing of compensation with any person, other than a member or regular associate of his law firm, which may be allowed the trustee or any person for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(5) if the proxy was solicited by a person other than the proxyholder, or forwarded to the holder by a person who is neither a solicitor of the proxy nor the owner of the claim, a statement signed and verified by the solicitor or forwarder that no consideration has been paid or promised by him for the proxy, and whether there is any agreement, and, if so, the particulars thereof, between the solicitor or forwarder and any other person for the payment of any consideration in connection with voting the proxy, or for sharing compensation with any person other than a member or regular associate of his law firm which may be allowed the trustee or any person for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(6) if the solicitor, forwarder, or proxyholder is a committee, a statement signed and verified by each member as to the amount and source of any consideration paid or to be paid to such member in connection with the case other than by way of dividend on his claim.

(f) Enforcement of Restrictions on Solicitation

On motion of any party in interest or on its own initiative, the court may determine whether there has been a failure to comply with the provisions of this rule or any other impropriety in connection with the solicitation or voting of a proxy. After notice and a hearing the court may reject any proxy for cause, vacate any order entered in consequence of the voting of any proxy which should have been rejected, or take any other appropriate action.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is a comprehensive regulation of solicitation and voting of proxies in liquidation cases. It is derived from former Bankruptcy Rule 208. The rule applies only in chapter 7 cases because no voting occurs, other than on a plan, in a chapter 11 case. Former Bankruptcy Rule 208 did not apply to solicitations of acceptances of plans.

Creditor control was a basic feature of the Act and is continued, in part, by the Code. Creditor democracy is perverted and the congressional objective frustrated, however, if control of administration falls into the hands of persons whose principal interest is not in what the estate can be made to yield to the unsecured creditors but in what it can yield to those involved in its administration or in other ulterior objectives.

Subdivision (b). The definition of proxy in the first paragraph of subdivision (b) is derived from former Bankruptcy Rule 208.

Subdivision (c). The purpose of the rule is to protect creditors against loss of control of administration of their debtors' estates to holders of proxies having interests that differ from those of the creditors. The rule does not prohibit solicitation but restricts it to those who were creditors at the commencement of the case or their freely and fairly selected representatives. The special role occupied by credit and trade associations is recognized in the last clause of subdivision (c)(1). On the assumption that members or subscribers may have affiliated with an association in part for the purpose of obtaining its services as a representative in liquidation proceedings, an established association is authorized to solicit its own members, or its regular customers or clients, who were creditors on the date of the filing of the petition. Although the association may not solicit nonmembers or nonsubscribers for proxies, it may sponsor a meeting of creditors at which a committee entitled to solicit proxies may be selected in accordance with clause (C) of subdivision (c)(1).

Under certain circumstances, the relationship of a creditor, creditors' committee, or association to the estate or the case may be such as to warrant rejection of any proxy solicited by such a person or group. Thus a person who is forbidden by the Code to vote his own claim should be equally disabled to solicit proxies from creditors. Solicitation by or on behalf of the debtor has been uniformly condemned, *e.g., In re White,* 15 F.2d 371 (9th Cir. 1926), as has solicitation on behalf of a preferred creditor, *Matter of Law,* 13 Am.B.R. 650 (S.D. Ill. 1905). The prohibition on solicitation by a receiver or his attorney made explicit by General Order 39 has been collaterally supported by rulings rejecting proxies solicited by a receiver in equity, *In re Western States Bldg.-Loan Ass'n,* 54 F.2d 415 (S.D. Cal. 1931), and by an assignee for the benefit of creditors, *Lines v. Falstaff Brewing Co.,* 233 F.2d 927 (9th Cir. 1956).

Subdivision (d) prohibits solicitation by any person or group having a relationship described in the preceding paragraph. It also makes no exception for attorneys or transferees of claims for collection. The rule does not undertake to regulate communications between an attorney and his regular client or between an attorney and a creditor who has asked the attorney to represent him in a proceeding under the Code, but any other communication by an attorney or any other person or group requesting a proxy from the owner of a claim constitutes a regulated solicitation. Solicitation by an attorney of a proxy from a creditor who was not a client prior to the solicitation is objectionable not only as unethical conduct as recognized by such cases as *In the Matter of Darland Company,* 184 F. Supp. 760 (S.D. Iowa 1960) but also and more importantly because the practice carries a substantial risk that administration will fall into the hands of those whose interest is in obtaining fees from the estate rather than securing dividends for creditors. The same risk attaches to solicitation by the holder of a claim for collection only.

Subdivision (e). The regulation of solicitation and voting of proxies is achieved by the rule principally through the imposition of requirements of disclosure on the holders of two or more proxies. The disclosures must be made to the clerk before the meeting at which the proxies are to be voted to afford the clerk or a party in interest an opportunity to examine the circumstances accompanying the acquisition of the proxies in advance of any exercise of the proxies. In the light of the examination the clerk or a party in interest should bring to the attention of the judge any question that arises and the judge may permit the proxies that comply with the rule to be voted and reject those that do not unless the holders can effect or establish compliance in such manner as the court shall prescribe. The holders of single proxies are excused from the disclosure requirements because of the insubstantiality of the risk that such proxies have been solicited, or will be voted, in an interest other than that of general creditors.

Every holder of two or more proxies must include in the submission a verified statement that no consideration has been paid or promised for the proxy, either by the proxyholder or the solicitor or any forwarder of the proxy. Any payment or promise of consideration for a proxy would be conclusive evidence of a purpose to acquire control of the administration of an

estate for an ulterior purpose. The holder of multiple proxies must also include in the submission a verified statement as to whether there is any agreement by the holder, the solicitor, or any forwarder of the proxy for the employment of any person in the administration of an estate or for the sharing of any compensation allowed in connection with the administration of the estate. The provisions requiring these statements implement the policy of the Code expressed in § 504 as well as the policy of this rule to deter the acquisition of proxies for the purpose of obtaining a share in the outlays for administration. Finally the facts as to any consideration moving or promised to any member of a committee which functions as a solicitor, forwarder, or proxyholder must be disclosed by the proxyholder. Such information would be of significance to the court in evaluating the purpose of the committee in obtaining, transmitting, or voting proxies.

Subdivision (f) has counterparts in the local rules referred to in the Advisory Committee's Note to former Bankruptcy Rule 208. Courts have been accorded a wide range of discretion in the handling of disputes involving proxies. Thus the referee was allowed to reject proxies and to proceed forthwith to hold a scheduled election at the same meeting. *E.g., In re Portage Wholesale Co.*, 183 F.2d 959 (7th Cir. 1950); *In re McGill*, 106 Fed. 57 (6th Cir. 1901); *In re Deena Woolen Mills, Inc.*, 114 F. Supp. 260, 273 (D. Me. 1953); *In re Finlay*, 3 Am.B.R. 738 (S.D.N.Y. 1900). The bankrupty judge may postpone an election to permit a determination of issues presented by a dispute as to proxies and to afford those creditors whose proxies are rejected an opportunity to give new proxies or to attend an adjourned meeting to vote their own claims. *Cf. In the Matter of Lenrick Sales, Inc.*, 369 F.2d 439, 442-43 (3d Cir.), cert. denied, 389 U.S. 822 (1967); *In the Matter of Construction Supply Corp.* 221 F. Supp. 124, 128 (E.D. Va. 1963). This rule is not intended to restrict the scope of the court's discretion in the handling of disputes as to proxies.

Rule 2007. Appointment of Creditors' Committee Organized Before Order for Relief

(a) Appointment

In a chapter 9 municipality or chapter 11 reorganization case, on application of a party in interest and after notice as the court may direct, the court may appoint as the committee of unsecured creditors required by § 1102(a) of the Code, members of a committee selected before the order for relief in accordance with subdivision (b) of this rule.

(b) Selection of Members of Committee

The court may find that a committee selected by unsecured creditors before the order for relief in a chapter 9 or chapter 11 case of the Code satisfies the requirements of § 1102(b)(1) of the Code if:

(1) it was selected by a majority in number and amount of claims of unsecured creditors who may vote under § 702(a) of the Code and were present in person or represented at a meeting of which all creditors having unsecured claims of over $1,000 or the 100 unsecured creditors having the largest claims had at least five days notice in writing, and of which meeting written minutes reporting the names of the creditors present or represented and voting and the amounts of their claims were kept and are available for inspection;

(2) all proxies voted at the meeting for the elected committee were solicited pursuant to Rule 2006 and the lists and statements required by subdivision (e) thereof have been filed with the court; and

(3) the organization of the committee was in all other respects fair and proper.

Notes of Advisory Committee on Rules

Section 1102(b)(1) of the Code permits the court to appoint as the unsecured creditors' committee, the committee that was selected by creditors before the order for relief. This provision recognizes the propriety of continuing a "prepetition" committee in an official capacity. Such a committee, however, must be found to have been fairly chosen and representative of the different kinds of claims to be represented.

Subdivision (a) does not necessarily require a hearing but does require a party in interest to bring to the court's attention the fact that a prepetition committee had been organized and should be appointed. An application would suffice for this purpose. Party in interest would include the committee, any member of the committee, or any of its agents acting for the committee. Whether or not notice of the application should be given to any other party is left to the discretion of the court.

Subdivision (b) implements § 1102(b)(1). The Code provision allows the court to appoint, as the official § 1102(a) committee, a "prepetition" committee if its members were fairly chosen and the committee is representative of the different kinds of claims. This subdivision of the rule indicates some of the factors the court may consider in determining whether the requirements of § 1102(b)(1) have been satisfied. In effect, the subdivision provides various factors which are similar to those set forth in Rule 2006 with respect to the solicitation and voting of proxies in a chapter 7 liquidation case.

Rule 2008. Notice to Trustee of Selection

The clerk shall immediately notify the trustee of his selection, how he may qualify and, if applicable, the amount of the bond. The trustee shall notify the court in writing of the acceptance or rejection of the office within five days after receipt of notice of selection.

Notes of Advisory Committee on Rules

This rule is adapted from former Bankruptcy Rule 209(c). The remainder of that rule is inapplicable because its provisions are covered by §§ 701-703, 321 of the Code.

If the person selected as trustee accepts the office, he must qualify within five days after his selection, as required by § 322(a) of the Code.

In districts having a standing trustee for chapter 13 cases, a blanket acceptance of the appointment would be sufficient for compliance by the standing trustee with this rule.

Rule 2009. Trustees for Estates When Joint Administration Ordered

(a) Election of Single Trustee for Estates Being Jointly Administered

If the court orders a joint administration of two or more estates pursuant to Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered.

(b) Right of Creditors To Elect Separate Trustee

Notwithstanding entry of an order for joint administration pursuant to Rule 1015(b) the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in § 702 of the Code.

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(c) Appointment of Trustees for Estates Being Jointly Administered

(1) *Chapter 7 Liquidation Cases.* The court may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

(2) *Chapter 11 Reorganization Cases.* If a trustee is ordered, the court may appoint one or more trustees for estates being jointly administered in chapter 11 cases.

(3) *Chapter 13 Individual's Debt Adjustment Cases.* The court may appoint one or more trustees for estates being jointly administered in chapter 13 cases.

(d) Potential Conflicts of Interest

On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee, the court shall order separate trustees for estates being jointly administered.

(e) Trustees for Partnership and Partners' Individual Estates

Notwithstanding the foregoing provisions of this rule, the trustee of a partnership estate shall also be the trustee of the individual estate of any general partner if the estates are being jointly administered unless the court, for cause shown, either (1) permits the creditors of a general partner to elect a separate trustee or (2) appoints a separate trustee for the individual estate.

(f) Separate Accounts

The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is applicable in chapter 7 cases and, in part, in chapter 11 and 13 cases. The provisions in subdivisions (a) and (b) concerning creditor election of a trustee apply only in a chapter 7 case because it is only pursuant to § 702 of the Code that creditors may elect a trustee. Subdivision (c) of the rule applies in chapter 11 and 13 as well as chapter 7 cases; pursuant to § 1104 of the Code, the court may order the appointment of a trustee on application of a party in interest and, pursuant to § 1163 of the Code, the court must appoint a trustee in a railroad reorganization case. Subdivision (c) should not be taken as an indication that more than one trustee may be appointed for a single debtor. Section 1104(c) permits only one trustee for each estate. In a chapter 13 case, if there is no standing trustee, the court is to appoint a person to serve as trustee pursuant to § 1302 of the Code. There is no provision for a trustee in a chapter 9 case, except for a very limited purpose; see § 926 of the Code.

This rule recognizes that economical and expeditious administration of two or more estates may be facilitated not only by the selection of a single trustee for a partnership and its partners, but by such selection whenever estates are being jointly administered pursuant to Rule 1015. See *In the Matter of International Oil Co.*, 427 F.2d 186, 187 (2d Cir. 1970). The rule is derived from former § 5c of the Act and former Bankruptcy Rule 210. The premise of § 5c of the Act was that notwithstanding the potentiality of conflict between the interests of the creditors of the partners and those of the creditors of the partnership, the conflict is not sufficiently serious or frequent in most cases to warrant the selection of separate trustees for the firm and the several partners. Even before the proviso was added to § 5c of the Act in 1938 to permit the creditors of a general partner to elect their separate trustee for his estate, it was held that the court had discretion to permit such an election or to make a separate appointment when a conflict of interest was recognized. *In re Wood*, 248 Fed. 246, 249–50 (6th Cir.), cert. denied, 247 U.S. 512 (1918); 4 Collier, *Bankruptcy* ¶ 723.04 (15th ed. 1980). The rule retains in subdivision (e) the features of the practice respecting the selection of a trustee that was developed under § 5 of the Act. Subdivisions (a) and (c) permit the court to authorize election of a single trustee or to make a single appointment when joint administration of estates of other kinds of debtors is ordered, but subdivision (d) requires the court to make a preliminary evaluation of the risks of conflict of interest. If after the election or appointment of a common trustee a conflict of interest materializes, the court must take appropriate action to deal with it.

Subdivision (f) is derived from § 5e of the Act and former Bankruptcy Rule 210(f) and requires that the common trustee keep a separate account for each estate in all cases that are jointly administered.

Rule 2010. Qualification by Trustee; Proceeding on Bond

(a) Blanket Bond

The court may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by the trustee or trustees to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case.

(b) Qualification by Filing Acceptance

A trustee for whom a blanket bond has been filed shall qualify by filing an acceptance of the election or appointment.

(c) Evidence of Qualification

A certified copy of the order approving the trustee's bond or of the acceptance filed under subdivision (b) of this rule shall constitute conclusive evidence of qualification.

(d) Proceeding on Bond

A proceeding on the trustee's bond may be brought by any party in interest in the name of the United States for the use of the person injured by the breach of the condition.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivisions (a) and (b). Subdivision (a) gives authority for approval by the court of a single bond to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case. The cases need not be related in any way. Substantial economies can be effected if a single bond covering a number of different cases can be issued and approved at one time. When a blanket bond is filed, the trustee qualifies under subdivision (b) of the rule by filing an acceptance of the office.

Subdivision (c) prescribes the evidentiary effect of a certified copy of an order approving the trustee's bond given by a trustee under this rule or, when a blanket bond has been authorized, of a certified copy of acceptance. This rule supplements the Federal Rules of Evidence, which apply in bankruptcy cases. See Rule 1101 of the Federal Rules of Evidence. The order of approval should conform to Official Form No. 25. See, however, § 549(c) of the Code which provides only for the filing of the petition in the real estate records to serve as constructive notice of the pendency of the case. See also Rule 2011 which prescribes the evidentiary effect of a certificate that the debtor is a debtor in possession.

Subdivision (*d*) is derived from former Bankruptcy Rule 212(f). Reference should be made to § 322(a) and (d) of the Code which requires the bond to be filed with the bankruptcy court and places a two year limitation for the commencement of a proceeding on the bond. A bond filed under this rule should conform to Official Form No. 25. A proceeding on the bond of a trustee is governed by the rules in Part VII. See the Note accompanying Rule 7001. See also Rule 9025.

Rule 2011. Evidence of Debtor in Possession

Whenever evidence is required that a debtor is a debtor in possession, the clerk may so certify and the certificate shall constitute conclusive evidence of that fact.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule prescribes the evidentiary effect of a certificate issued by the clerk that the debtor is a debtor in possession. See Official Form No. 26. Only chapter 11 of the Code provides for a debtor in possession. See § 1107(a) of the Code. If, however, a trustee is appointed in the chapter 11 case, there will not be a debtor in possession. See §§ 1101(1), 1105 of the Code.

Rule 2012. Substitution of Successor Trustee; Accounting

When a trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a case under the Code:

(1) the successor is automatically substituted as a party in any pending action, proceeding, or matter; and

(2) within the time fixed by the court, the successor trustee shall prepare and file with the court an accounting of the prior administration of the estate.

NOTES OF ADVISORY COMMITTEE ON RULES

Paragraph (1) of this rule implements § 325 of the Code. It provides that a pending action or proceeding continues without abatement and that the trustee's successor is automatically substituted as a party whether it be another trustee or the debtor returned to possession, as such party.

Paragraph (2) places it within the responsibility of a successor trustee to file an accounting of the prior administration of the estate. If an accounting is impossible to obtain from the prior trustee because of death or lack of cooperation, prior reports submitted in the earlier administration may be updated.

Rule 2013. Limitation on Appointment or Employment of Trustees, Examiners, Appraisers and Auctioneers

(a) Limitation on Appointments

Appointments of trustees and examiners and employment of appraisers and auctioneers shall be made so that the annual aggregate compensation of any person shall not be disproportionate or excessive, giving proper regard to geographic constraints.

(b) Record To Be Kept

The clerk shall maintain a public record listing fees paid from estates (1) to trustees and attorneys, accountants, appraisers, auctioneers and other professional persons employed by trustees, and (2) to examiners appointed by the court. The record shall include the name and docket number of the case, the name of the individual or firm receiving the fee and the amount of the fee paid. The record shall be maintained chronologically and shall be kept current and open to examination by the public without charge.

(c) Summary of Record

At the close of each annual period, the clerk shall prepare a summary of the public record by individual or firm name, to reflect total fees paid during the preceding year. The summary shall be open to examination by the public without charge.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is adapted from former Rule 213. The first sentence of that rule is omitted because of the provisions in 28 U.S.C. §§ 586 and 604(f) creating panels of private trustees.

The rule is not applicable to standing trustees serving in chapter 13 cases. See § 1302 of the Code.

A basic purpose of the rule is to prevent what Congress has defined as "cronyism." Appointment or employment, whether in a chapter 7 or 11 case, should not center among a small select group of individuals unless the circumstances are such that it would be warranted. The public record of appointments to be kept by the clerk will provide a means for monitoring the appointment process.

Subdivison (*b*) provides a convenient source for public review of fees paid from debtors' estates in the bankruptcy courts. Thus, public recognition of appointments, fairly distributed and based on professional qualifications and expertise, will be promoted and notions of improper favor dispelled. This rule is in keeping with the findings of the Congressional subcommittees as set forth in the House Report of the Committee on the Judiciary, No. 95-595, 95th Cong., 1st Sess. 89-99 (1977). These findings included the observations that there were frequent appointments of the same person, contacts developed between the bankruptcy bar and the courts, and an unusually close relationship between the bar and the judges developed over the years. A major purpose of the new statute is to dilute these practices and instill greater public confidence in the system. Rule 2013 implements that laudatory purpose.

Rule 2014. Employment of Professional Persons

(a) Application for and Order of Employment

An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professional persons pursuant to § 327 or § 1103 of the Code shall be made only on application of the trustee or committee, stating the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for his selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, or any other party in interest, their respective attorneys and accountants.

(b) Services Rendered by Member or Associate of Firm of Attorneys or Accountants

If, under the Code and this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed, any partner, member, or regular associate of the partnership, corporation, or individual may act as attorney or accountant so employed, without further order of the court.

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NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*) is adapted from the second sentence of former Bankruptcy Rule 215(a). The remainder of that rule is covered by § 327 of the Code.

Subdivision (*b*) is derived from former Bankruptcy Rule 215(f). The compensation provisions are set forth in § 504 of the Code.

Rule 2015. Duty of Trustee or Debtor in Possession to Keep Records, Make Reports, and Give Notice of Case

(a) Trustee or Debtor in Possession

A trustee or debtor in possession shall (1) in a chapter 7 liquidation and a chapter 11 reorganization case and if the court so directs within 30 days after entering on his duties file a complete inventory of the property of the debtor unless such an inventory has already been filed; (2) keep a record of receipts and the disposition of money and property received; (3) file the reports and summaries required by § 704(7) of the Code within the times fixed by the court and which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited; (4) as soon as possible after the commencement of the case, give notice of the case to every person known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case; (5) within 30 days after the date of the order confirming a plan or within such other time as the court may fix, file a report with the court concerning the action taken by the trustee or debtor in possession and the progress made in the consummation of the plan and file further reports as the court may direct until the plan has been consummated; (6) after consummation of a plan, file an application for a final decree showing that the plan has been consummated, and the names and addresses, if known, of the holders of claims or interests which have not been surrendered or released in accordance with the provisions of the plan and the nature and amounts of claims or interests, and other facts as may be necessary to enable the court to pass on the provisions to be included in the final decree.

(b) Chapter 13 Trustee and Debtor

(1) *Business Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (1)–(4) of subdivision (a) of this rule.

(2) *Nonbusiness Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is not engaged in business, the trustee shall perform the duties prescribed by clause (2) of subdivision (a) of this rule.

(c) Transmission of Reports

In a chapter 11 case the court may direct that copies or summaries of annual reports and copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule combines the provisions found in former Rules 218, 10-208, 11-30 and 13-208 of the Rules of Bankruptcy Procedure. It specifies various duties which are in addition to those required by §§ 704, 1106, 1302 and 1304 of the Code.

In *subdivision* (*a*) the times permitted to be fixed by the court in clause (3) for the filing of reports and summaries may be fixed by local rule or order.

Subdivision (*b*). This subdivision prescribes duties on either the debtor or trustee in chapter 13 cases, depending on whether or not the debtor is engaged in business (§ 1304 of the Code). The duty of giving notice prescribed by subdivision (a)(4) is not included in a nonbusiness case because of its impracticability.

Subdivision (*c*) is derived from former Chapter X Rule 10-208(c) which, in turn, was derived from § 190 of the Act. The equity security holders to whom the reports should be sent are those of record at the time of transmittal of such reports.

Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses

(a) Application for Compensation or Reimbursement

A person seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file with the court an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other person for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other person.

(b) Disclosure of Compensation Paid or Promised to Attorney for Debtor

Every attorney for a debtor, whether or not the attorney applies for compensation, shall file with the court on or before the first date set for the meeting of creditors, or at another time as the court may direct, the statement required by § 329 of the Code which shall also set forth whether the attorney has shared or

agreed to share the compensation with any other person. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from former Rule 219. Many of the former rule's requirements are, however, set forth in the Code. Section 329 requires disclosure by an attorney of transactions with the debtor, § 330 sets forth the bases for allowing compensation, and § 504 prohibits sharing of compensation. This rule implements those various provisions.

Subdivision (*a*) includes within its provisions a committee, member thereof, agent, attorney or accountant for the committee when compensation or reimbursement of expenses is sought from the estate.

Regular associate of a law firm is defined in Rule 9001(9) to include any attorney regularly employed by, associated with, or counsel to that law firm. Firm is defined in Rule 9001(6) to include a partnership or professional corporation.

Rule 2017. Examination of Debtor's Transactions with His Attorney

(a) Payment or Transfer to Attorney Before Commencement of Case

On motion by any party in interest or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor, to an attorney for services rendered or to be rendered is excessive.

(b) Payment or Transfer to Attorney After Commencement of Case

On motion by the debtor or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property or any agreement therefor, by the debtor to an attorney after the commencement of a case under the Code is excessive, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefor is for services in any way related to the case.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 60d of the Act and former Bankruptcy Rule 220 and implements § 329 of the Code. Information required to be disclosed by the attorney for a debtor by § 329 of the Code and by the debtor in his Statement of Financial Affairs (Item #15 of Form No. 7, Item #20 of Form No. 8) will assist the court in determining whether to proceed under this rule. Section 60d was enacted in recognition of "the temptation of a failing debtor to deal too liberally with his property in employing counsel to protect him in view of financial reverses and probable failure." *In re Wood & Henderson*, 210 U.S. 246, 253 (1908). This rule, like § 60d of the Act and § 329 of the Code, is premised on the need for and appropriateness of judicial scrutiny of arrangements between a debtor and his attorney to protect the creditors of the estate and the debtor against overreaching by an officer of the court who is in a peculiarly advantageous position to impose on both the creditors and his client. 2 Collier, *Bankruptcy* ¶ 329.02 (15th ed. 1980); MacLachlan, *Bankruptcy* 318 (1956). Rule 9014 applies to any contested matter arising under this rule.

This rule is not to be construed to permit post-petition payments or transfers which may be avoided under other provisions of the Code.

Rule 2018. Intervention; Right to Be Heard

(a) Permissive Intervention

In a case under the Code, after hearing on such notice as the court directs and for cause shown, the court may permit any interested entity to intervene generally or with respect to any specified matter.

(b) Intervention by Attorney General of a State

In a chapter 7, 11, or 13 case, the Attorney General of a State may appear and be heard on behalf of consumer creditors if the court determines the appearance is in the public interest, but the Attorney General may not appeal from any judgment, order, or decree in the case.

(c) Chapter 9 Municipality Case

The Secretary of the Treasury may, or if requested by the court shall, intervene in a chapter 9 case. Representatives of the state in which the debtor is located may intervene in a chapter 9 case with respect to matters specified by the court.

(d) Labor Unions

In a chapter 9 or 11 case, a labor union or employees' association, representative of employees of the debtor, shall have the right to be heard on the economic soundness of a plan affecting the interests of the employees but it may not appeal from any judgment, order, or decree in the case unless otherwise permitted by law.

(e) Service on Entities Covered by This Rule

The court may enter orders governing the service of notice and papers on entities permitted to intervene or be heard pursuant to this rule.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from former Rules 8-210, 9-15 and 10-210 and it implements §§ 1109 and 1164 of the Code.

Pursuant to § 1109 of the Code, parties in interest have a right to be heard and the Securities and Exchange Commission may raise and be heard on any issue but it may not take an appeal. That section is applicable in chapter 9 cases (§ 901 of the Code) and in chapter 11 cases, including cases under subchapter IV thereof for the reorganization of a railroad.

In a railroad reorganization case under subchapter IV of chapter 11, § 1164 also gives the right to be heard to the Interstate Commerce Commission, the Department of Transportation and any state or local regulatory commission with jurisdiction over the debtor, but these entities may not appeal.

This rule does not apply in adversary proceedings. For intervention in adversary proceedings, see Rule 7024. The rules do not provide any right of compensation to or reimbursement of expenses for intervenors or others covered by this rule. Section 503(b)(3)(D) and (4) is not applicable to the entities covered by this rule.

Subdivision (*a*) is derived from former Chapter VIII Rule 8-210 and former Chapter X Rule 10-210. It permits intervention of an entity (see § 101(14), (21) of the Code) not otherwise entitled to do so under the

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Code or this rule. Such a party seeking to intervene must show cause therefor.

Subdivision (b) specifically grants the appropriate state's Attorney General the right to appear and be heard on behalf of consumer creditors when it is in the public interest. See House Rep. No. 95-595, 95th Cong., 1st Sess. (1977) 189. While "consumer creditor" is not defined in the Code or elsewhere, it would include the type of individual entitled to priority under § 507(a)(5) of the Code, that is, an individual who has deposited money for the purchase, lease or rental of property or the purchase of services for the personal, family, or household use of the individual. It would also include individuals who purchased or leased property for such purposes in connection with which there may exist claims for breach of warranty.

This subdivision does not grant the Attorney General the status of party in interest. In other contexts, the Attorney General will, of course, be a party in interest as for example, in representing a state in connection with a tax claim.

Subdivision (c) recognizes the possible interests of the Secretary of the Treasury or of the state of the debtor's locale when a municipality is the debtor. It is derived from former Chapter IX Rule 9-15 and § 85(d) of the Act.

Subdivision (d) is derived from former Chapter X Rule 10-210 which, in turn, was derived from § 206 of the Act. Section 206 has no counterpart in the Code.

Subdivision (e) is derived from former Chapter VIII Rule 8-210(d). It gives the court flexibility in directing the type of future notices to be given intervenors.

Rule 2019. Representation of Creditors and Equity Security Holders in Chapter 9 Municipality and Chapter 11 Reorganization Cases

(a) Data Required

In a chapter 9 municipality or chapter 11 reorganization case, except with respect to a committee appointed pursuant to § 1102 of the Code, every person or committee representing more than one creditor or equity security holder and, unless otherwise directed by the court, every indenture trustee, shall file a verified statement with the clerk setting forth (1) the name and address of the creditor or equity security holder; (2) the nature and amount of the claim or interest and the time of acquisition thereof unless it is alleged to have been acquired more than one year prior to the filing of the petition; (3) a recital of the pertinent facts and circumstances in connection with the employment of the person or indenture trustee, and, in the case of a committee, the name or names of the person or persons at whose instance, directly or indirectly, the employment was arranged or the committee was organized or agreed to act; and (4) with reference to the time of the employment of the person, the organization or formation of the committee, or the appearance in the case of any indenture trustee, the amounts of claims or interests owned by the person, the members of the committee or the indenture trustee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof. The statement shall include a copy of the instrument, if any, whereby the person, committee, or indenture trustee is empowered to act on behalf of creditors or equity security holders. A supplemental statement shall be filed promptly, setting forth any material changes in the facts contained in the statement filed pursuant to this subdivision.

(b) Failure To Comply; Effect

On motion of any party in interest or on its own initiative, the court may (1) determine whether there has been a failure to comply with the provisions of subdivision (a) of this rule or with any other applicable law regulating the activities and personnel of any person, committee, or indenture trustee or any other impropriety in connection with any solicitation and, if it so determines, the court may refuse to permit that person, committee, or indenture trustee to be heard further or to intervene in the case; (2) examine any representation provision of a deposit agreement, proxy, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, and any claim or interest acquired by any person or committee in contemplation or in the course of a case under the Code and grant appropriate relief; and (3) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by a person or committee who has not complied with this rule or with § 1125(b) of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is a comprehensive regulation of representation in chapter 9 municipality and in chapter 11 reorganization cases. It is derived from §§ 209-213 of the Act and former Chapter X Rule 10-211.

Subdivision (b) is derived from §§ 212, 213 of the Act. As used in clause (2), "other authorization" would include a power or warrant of attorney which are specifically mentioned in § 212 of the Act. This rule deals with representation provisions in mortgages, trust deeds, etc. to protect the beneficiaries from unfair practices and the like. It does not deal with the validation or invalidation of security interests generally. If immediate compliance is not possible, the court may permit a representative to be heard on a specific matter, but there is no implicit waiver of compliance on a permanent basis.

PART III—CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS

Rule 3001. Proof of Claim

(a) Form and Content

A proof of claim is a written statement setting forth a creditor's claim. A proof of claim for wages, salary, or commissions shall conform substantially to Official Form No. 20 or No. 21; any other proof of claim shall conform substantially to Official Form No. 19.

(b) Who May Execute

A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.

(c) Claim Based on a Writing

When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(d) Evidence of Perfection of Security Interest

If a security interest in property of the debtor is claimed, the proof of claim shall be ac-

companied by evidence that the security interest has been perfected.

(e) Transferred Claim

(1) *Unconditional Transfer Before Proof Filed.* If a claim other than one based on a bond or debenture has been unconditionally transferred before proof of the claim has been filed, the proof of claim may be filed only by the transferee. If the claim has been transferred after the filing of the petition, the proof of claim shall be supported by (A) a statement of the transferor acknowledging the transfer and stating the consideration therefor or (B) a statement of the transferee setting forth the consideration for the transfer and why the transferee is unable to obtain the statement from the transferor.

(2) *Unconditional Transfer After Proof Filed.* If a claim other than one based on a bond or debenture has been unconditionally transferred after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the original claimant by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed with the clerk within 20 days of the mailing of the notice or within any additional time allowed by the court. If the court finds, after a hearing on notice, that the claim has been unconditionally transferred, it shall enter an order substituting the transferee for the original claimant, otherwise the court shall enter such order as may be appropriate.

(3) *Transfer of Claim for Security Before Proof Filed.* If a claim other than one based on a bond or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer. If the claim was transferred after the filing of the petition, the proof shall also be supported by (A) a statement of the transferor acknowledging the transfer and stating the consideration therefor, or (B) a statement of the transferee setting forth the consideration for the transfer and why the transferee is unable to obtain the statement from the transferor. If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by mail of the right to join in the filed claim. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. After a hearing on notice, the court shall enter such orders respecting allowance and voting of the claim, payment of dividends thereon, and participation in the administration of the estate as may be appropriate.

(4) *Transfer of Claim for Security After Proof Filed.* If a claim other than one based on a bond or debenture has been transferred for security after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the original claimant by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed with the clerk within 20 days of the mailing of the notice or within any additional time allowed by the court. After a hearing on notice, the court shall enter such orders respecting allowance and voting of the claim, payment of dividends thereon, and participation in the administration of the estate as may be appropriate.

(5) *Service of Objection; Notice of Hearing.* A copy of an objection to the evidence of transfer filed pursuant to paragraph (2) or (4) of this subdivision together with a notice of a hearing shall be mailed or otherwise delivered to the transferee at least 30 days prior to the hearing.

(f) Evidentiary Effect

A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

(g) [1] To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.

(As amended July 10, 1984, Pub. L. 98-353, title III, § 354, 98 Stat. 361.)

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is adapted from former Bankruptcy Rules 301 and 302. The Federal Rules of Evidence, made applicable to cases under the Code by Rule 1101, do not prescribe the evidentiary effect to be accorded particular documents. Subdivision (f) of this rule supplements the Federal Rules of Evidence as they apply to cases under the Code.

Subdivision (c). This subdivision is similar to former Bankruptcy Rule 302(c) and continues the requirement for the filing of any written security agreement and provides that the filing of a duplicate of a writing underlying a claim authenticates the claim with the same effect as the filing of the original writing. *Cf.* Rules 1001(4) and 1003 of F.R. of Evid. Subdivision (d) together with the requirement in the first sentence of subdivision (c) for the filing of any written security agreement, is designed to facilitate the determination whether the claim is secured and properly perfected so as to be valid against the trustee.

Subdivision (d). "Satisfactory evidence" of perfection, which is to accompany the proof of claim, would include a duplicate of an instrument filed or recorded, a duplicate of a certificate of title when a security interest is perfected by notation on such a certificate, a statement that pledged property has been in possession of the secured party since a specified date, or a statement of the reasons why no action was necessary for perfection. The secured creditor may not be required to file a proof of claim under this rule if he is not seeking allowance of a claim for a deficiency. But see § 506(d) of the Code.

Subdivision (e). The rule recognizes the differences between an unconditional transfer of a claim and a transfer for the purpose of security and prescribes a procedure for dealing with the rights of the transferor and transferee when the transfer is for security. The rule clarifies the procedure to be followed when a transfer precedes or follows the filing of the petition. The interests of sound administration are served by requiring the post-petition transferee to file with the proof of claim a statement of the transferor acknowl-

[1] So in original. Subsec. (g) enacted without a catchline.

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edging the transfer and the consideration for the transfer. Such a disclosure will assist the court in dealing with evils that may arise out of post-bankruptcy traffic in claims against an estate. *Monroe v. Scofield*, 135 F.2d 725 (10th Cir. 1943); *In re Philadelphia & Western Ry.*, 64 F. Supp. 738 (E.D. Pa. 1946); *cf. In re Latham Lithographic Corp.*, 107 F.2d 749 (2d Cir. 1939). Both paragraphs (1) and (3) of this subdivision, which deal with a transfer before the filing of a proof of claim, recognize that the transferee may be unable to obtain the required statement from the transferor, but in that event a sound reason for such inability must accompany the proof of claim filed by the transferee.

Paragraphs (3) and (4) clarify the status of a claim transferred for the purpose of security. An assignee for security has been recognized as a rightful claimant in bankruptcy. *Feder v. John Engelhorn & Sons*, 202 F.2d 411 (2d Cir. 1953). An assignor's right to file a claim notwithstanding the assignment was sustained in *In re R & L Engineering Co.*, 182 F. Supp. 317 (S.D. Cal. 1960). Facilitation of the filing of proofs by both claimants as holders of interests in a single claim is consonant with equitable treatment of the parties and sound administration. See *In re Latham Lithographic Corp.*, 107 F.2d 749 (2d Cir. 1939).

Paragraphs (2) and (4) of subdivision (e) deal with the transfer of a claim after proof has been filed. Evidence of the terms of the transfer required to be disclosed to the court will facilitate the court's determination of the appropriate order to be entered because of the transfer.

Paragraph (5) describes the procedure to be followed when an objection is made by the transferor to the transferee's filed evidence of transfer.

REFERENCES IN TEXT

The United States Warehouse Act, referred to in subsec. (g), is Part C of act Aug. 11, 1916, ch. 313, 39 Stat. 486, as amended, which is classified generally to chapter 10 (§ 241 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 241 of Title 7 and Tables.

1984 AMENDMENT

Subd. (g). Pub. L. 98-353 added subd. (g).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

Rule 3002. Filing Proof of Claim or Interest

(a) Necessity for Filing

An unsecured creditor or an equity security holder must file a proof of claim or interest in accordance with this rule for the claim or interest to be allowed, except as provided in Rules 3003, 3004, and 3005.

(b) Place of Filing

A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) Time for filing

In a chapter 7 liquidation or chapter 13 individual's debt adjustment case, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, except as follows:

(1) On motion of the United States, a state, or subdivision thereof before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the United States, a state, or subdivision thereof.

(2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.

(3) An unsecured claim which arises in favor of a person or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that person or denies or avoids the person's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.

(4) A claim arising from the rejection of an executory contract of the debtor may be filed within the time as the court may direct.

(5) If notice of insufficient assets to pay a dividend was given to creditors pursuant to Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall notify the creditors of that fact and that they may file proofs of claim within 90 days after the mailing of the notice.

(6) In a chapter 7 liquidation case, if a surplus remains after all claims allowed have been paid in full, the court may grant an extension of time for the filing of claims against the surplus not filed within the time hereinabove prescribed.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is substantially a restatement of the general requirement that claims be proved and filed. The exceptions refer to Rule 3003 providing for the filing of claims in chapter 9 and 11 cases, and to Rules 3004 and 3005 authorizing claims to be filed by the debtor or trustee and the filing of a claim by a contingent creditor of the debtor.

A secured claim need not be filed or allowed under § 502 or § 506(d) unless a party in interest has requested a determination and allowance or disallowance under § 502.

Subdivision (c) is adapted from former Bankruptcy Rule 302(e) but changes the time limits on the filing of claims in chapter 7 and 13 cases from six months to 90 days after the first date set for the meeting of creditors. The special rule for early filing by a secured creditor in a chapter 13 case, in former Rule 13-302(e)(1) is not continued.

Although the claim of a secured creditor may have arisen before the petition, a judgment avoiding the security interest may not have been entered until after the time for filing claims has expired. Under Rule 3002(c)(3) the creditor who did not file a secured claim may nevertheless file an unsecured claim within the time prescribed. A judgment does not become final for the purpose of starting the 30 day period provided for by paragraph (3) until the time for appeal has expired or, if an appeal is taken, until the appeal has been disposed of. *In re Tapp*, 61 F. Supp. 594 (W.D. Ky. 1945).

Paragraph (1) is derived from former Bankruptcy Rule 302(e). The governmental unit may move for an extension of the 90 day period. Pursuant to § 501(c) of the Code, if the government does not file its claim within the proper time period, the debtor or trustee may file on its behalf. An extension is not needed by the debtor or trustee because the right to file does not arise until the government's time has expired.

Paragraph (4) is derived from former chapter rules. (See, *e.g.*, Rule 11-33(a)(2)(B). In light of the reduced time it is necessary that a party with a claim arising

from the rejection of an executory contract have sufficient time to file that claim. This clause allows the court to fix an appropriate time.

Paragraph (5) of subdivision (c) is correlated with the provision in Rule 2002(e) authorizing notification to creditors of estates from which no dividends are anticipated. The clause permits creditors who have refrained from filing claims after receiving notification to be given an opportunity to file when subsequent developments indicate the possibility of a dividend. The notice required by this clause must be given in the manner provided in Rule 2002. The information relating to the discovery of assets will usually be obtained by the clerk from the trustee's interim reports or special notification by the trustee.

Provision is made in Rule 2002(a) and (h) for notifying all creditors of the fixing of a time for filing claims against a surplus under paragraph (6). This paragraph does not deal with the distribution of the surplus. Reference must also be made to § 726(a)(2)(C) and (3) which permits distribution on late filed claims.

Paragraph (6) is only operative in a chapter 7 case. In chapter 13 cases, the plan itself provides the distribution to creditors which is not necessarily dependent on the size of the estate.

Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases

(a) Applicability of Rule

This rule applies in chapter 9 and 11 cases.

(b) Schedule of Liability and List of Equity Security Holders

(1) *Schedule of Liabilities.* The schedule of liabilities filed pursuant to § 521(1) of the Code shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2) of this rule.

(2) *List of Equity Security Holders.* The list of equity security holders filed pursuant to Rule 1007(a)(3) shall constitute prima facie evidence of the validity and amount of the equity security interests and it shall not be necessary for the holders of such interests to file a proof of interest.

(c) Filing Proof of Claim

(1) *Who May File.* Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule.

(2) *Who Must File.* Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

(3) *Time for Filing.* The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed.

(4) *Effect of Filing Claim.* A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to § 521(1) of the Code.

(5) *Filing by Indenture Trustee.* An indenture trustee may file a claim on behalf of all known or unknown holders of securities issued pursuant to the trust instrument under which it is trustee.

(d) Proof of Right to Record Status

For the purposes of Rules 3017, 3018 and 3021 and for receiving notices, a person who is not the record holder of a security may file a statement setting forth facts which entitle that person to be treated as the record holder. An objection to the statement may be filed by any party in interest.

Notes of Advisory Committee on Rules

Subdivision (a). This rule applies only in chapter 9 and chapter 11 cases. It is adapted from former Chapter X Rule 10-401 and provides an exception to the requirement for filing proofs of claim and interest as expressed in §§ 925 and 1111(a) of the Code.

Subdivision (b). This general statement implements §§ 925 and 1111(a) of the Code.

Subdivision (c). This subdivision permits, in paragraph (1), the filing of a proof of claim but does not make it mandatory. Paragraph (2) requires, as does the Code, filing when a claim is scheduled as disputed, contingent, or unliquidated as to amount. It is the creditor's responsibility to determine if the claim is accurately listed. Notice of the provision of this rule is provided for in Official Form No. 16, the order for the meeting of creditors. In an appropriate case the court may order creditors whose claims are scheduled as disputed, contingent, or unliquidated be notified of that fact but the procedure is left to the discretion of the court.

Subdivision (d) is derived from former Chapter X Rule 10-401(f).

Except with respect to the need and time for filing claims, the other aspects concerning claims covered by Rules 3001 and 3002 are applicable in chapter 9 and 11 cases.

Holders of equity security interests need not file proofs of interest. Voting and distribution participation is dependent on ownership as disclosed by the appropriate records of a transfer agent or the corporate or other business records at the time prescribed in Rules 3017 and 3021.

Rule 3004. Filing of Claims by Debtor or Trustee

If a creditor fails to file a proof of claim on or before the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, the debtor or trustee may do so in the name of the creditor. The clerk shall forthwith mail notice of the filing to the creditor, the debtor and the trustee. The creditor may thereafter file a proof of claim pursuant to Rule 3002 or Rule 3003, which proof when filed shall supersede the proof filed by the debtor or trustee.

Notes of Advisory Committee on Rules

This rule is adapted from former Bankruptcy Rule 303 but conforms with the changes made by § 501(c) of the Code. Rule 303 permitted only the filing of tax and wage claims by the debtor. Section 501(c) of the Code, however, permits the filing by the debtor or trustee on behalf of any creditor.

It is the policy of the Code that debtors' estates should be administered for the benefit of creditors without regard to the dischargeability of their claims. After their estates have been closed, however, discharged debtors may find themselves saddled with liabilities, particularly for taxes, which remain unpaid because of the failure of creditors holding nondischargeable claims to file proofs of claim and receive

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distributions thereon. The result is that the debtor is deprived of an important benefit of the Code without any fault or omission on the debtor's part and without any objective of the Code being served thereby.

Section 501(c) of the Code authorizes a debtor or trustee to file a proof of claim for any holder of a claim. Although all claims may not be nondischargeable, it may be difficult to determine, in particular, whether tax claims survive discharge. See Plumb, *Federal Tax Liens and Priorities in Bankruptcy*, 43 Ref. J. 37, 43-44 (1969); 1 Collier, *Bankruptcy* ¶17.14 (14th ed. 1967); 3 *id.* ¶ 523.06 (15th ed. 1979). To eliminate the necessity of the resolution of this troublesome issue, the option accorded the debtor by the Code does not depend on the nondischargeability of the claim. No serious administrative problems and no unfairness to creditors seemed to develop from adoption of Rule 303, the forerunner to § 501(c). The authority to file is conditioned on the creditor's failure to file the proof of claim on or before the first date set for the meeting of creditors, which is the date a claim must ordinarily be filed in order to be voted in a chapter 7 case. Notice to the creditor is provided to enable him to file a proof of claim pursuant to Rule 3002, which proof, when filed, would supersede the proof filed by the debtor or trustee. Notice to the trustee would serve to alert the trustee to the special character of the proof and the possible need for supplementary evidence of the validity and amount of the claim. If the trustee does not qualify until after a proof of claim is filed by the debtor pursuant to this rule, he should be notified as soon as practicable thereafter.

To the extent the claim is allowed and dividends paid thereon, it will be reduced or perhaps paid in full. If the claim is also filed pursuant to Rule 3005, only one distribution thereon may be made. As expressly required by Rule 3005 and by the purpose of this rule such distribution must diminish the claim.

Rule 3005. Filing of Claim, Acceptance, or Rejection By Guarantor, Surety, Indorser, or Other Codebtor

(a) Filing of Claim

If a creditor has not filed a proof of claim pursuant to Rule 3002(c) or 3003(c), one who is or may be liable with the debtor to that creditor, or who has secured that creditor, may, within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c) whichever is applicable, execute and file a proof of claim in the name of the creditor, if known, or if unknown, in his own name. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of distribution. The creditor may thereafter file a proof of claim pursuant to Rule 3002(c) or 3003(c) and it shall supersede the proof of claim filed pursuant to the first sentence of this subdivision.

(b) Filing of Acceptance or Rejection; Substitution of Creditor

One who has filed a claim pursuant to the first sentence of subdivision (a) of this rule may file an acceptance or rejection of a plan in the name of the creditor, if known, or if unknown, in his own name but if the creditor files a proof of claim within the time permitted by Rule 3003(c) or files a notice with the court prior to confirmation of a plan of his intention to act in his own behalf, the creditor shall be substituted for the obligor with respect to that claim.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is adapted from former Rules 304 and 10-402. Together with § 501(b) of the Code, the rule makes clear that anyone who may be liable on a debt of the debtor, including a surety, guarantor, indorser, or other codebtor, is authorized to file in the name of the creditor of the debtor.

Subdivision (a). Rule 3002(c) provides the time period for filing proofs of claim in chapter 7 and 13 cases; Rule 3003(c) provides the time, when necessary, for filing claims in a chapter 9 or 11 case.

Subdivision (b). This subdivision applies in chapter 9 and 11 cases as distinguished from chapter 7 cases. It permits voting for or against a plan by an obligor who files a claim in place of the creditor.

Rule 3006. Withdrawal of Claim or Acceptance or Rejection of Plan

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee selected pursuant to §§ 705(a) or 1102 of the Code. The order of the court shall contain such terms and conditions as the court deems proper. Unless the court orders otherwise, an authorized withdrawal of a claim shall constitute withdrawal of any related acceptance or rejection of a plan.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from former Rules 305 and 10-404.

Since 1938 it has generally been held that Rule 41 F.R.Civ.P. governs the withdrawal of a proof of claim. *In re Empire Coal Sales Corp.*, 45 F. Supp. 974, 976 (S.D.N.Y.), aff'd sub nom. *Kleid v. Ruthbell Coal Co.*, 131 F.2d 372, 373 (2d Cir. 1942); *Kelso v. MacLaren*, 122 F.2d 867, 870 (8th Cir. 1941); *In re Hills*, 35 F. Supp. 532, 533 (W.D. Wash. 1940). Accordingly, the cited cases held that after an objection has been filed a proof of claim may be withdrawn only subject to approval by the court. This constitutes a restriction of the right of withdrawal as recognized by some though by no means all of the cases antedating the promulgation of the Federal Rules of Civil Procedure. See 3 Collier *Bankruptcy*, ¶ 57.12 (14th ed. 1961); Note, 20 Bost. U. L. Rev. 121 (1940).

The filing of a claim does not commence an adversary proceeding but the filing of an objection to the claim initiates a contest that must be disposed of by the court. This rule recognizes the applicability of the considerations underlying Rule 41(a) F.R.Civ.P. to the withdrawal of a claim after it has been put in issue by an objection. Rule 41(a)(2) F.R.Civ.P. requires leave of court to obtain dismissal over the objection of a defendant who has pleaded a counterclaim prior to the service of the plaintiff's motion to dismiss. Although the applicability of this provision to the withdrawal of a claim was assumed in *Conway v. Union Bank of Switzerland*, 204 F.2d 603, 608 (2d Cir. 1953), *Kleid v. Ruthbell Coal Co., supra, Kelso v. MacLaren, supra,* and *In re Hills, supra,* this rule vests discretion in the court to grant, deny, or condition the request of a creditor to withdraw, without regard to whether the trustee has filed a merely defensive objection or a complaint seeking an affirmative recovery of money or property from the creditor.

A number of pre-1938 cases sustained denial of a creditor's request to withdraw proof of claim on the ground of estoppel or election of remedies. 2 Remington, *Bankruptcy* 186 (Henderson ed. 1956); *cf.* 3 Col-

lier, *supra* ¶ 57.12, at 201 (1964). Voting a claim for a trustee was an important factor in the denial of a request to withdraw in *Standard Varnish Works v. Haydock*, 143 Fed. 318, 319-20 (6th Cir. 1906), and *In re Cann*, 47 F.2d 661, 662 (W.D. Pa. 1931). And it has frequently been recognized that a creditor should not be allowed to withdraw a claim after accepting a dividend. *In re Friedmann*, 1 Am. B. R. 510, 512 (Ref., S.D.N.Y. 1899); 3 Collier 205 (1964); *cf. In re O'Gara Coal Co.*, 12 F.2d 426, 429 (7th Cir.), cert. denied, 271 U.S. 683 (1926). It was held in *Industrial Credit Co. v. Hazen*, 222 F.2d 225 (8th Cir. 1955), however, that although a claimant had participated in the first meeting of creditors and in the examination of witnesses, the creditor was entitled under Rule 41(a)(1) F.R.Civ.P. to withdraw the claim as of right by filing a notice of withdrawal before the trustee filed an objection under § 57g of the Act. While this rule incorporates the post-1938 case law referred to in the first paragraph of this note, it rejects the inference drawn in the *Hazen* case that Rule 41(a) F.R.Civ.P. supersedes the pre-1938 case law that vests discretion in the court to deny or restrict withdrawal of a claim by a creditor on the ground of estoppel or election of remedies. While purely formal or technical participation in a case by a creditor who has filed a claim should not deprive the creditor of the right to withdraw the claim, a creditor who has accepted a dividend or who has voted in the election of a trustee or otherwise participated actively in proceedings in a case should be permitted to withdraw only with the approval of the court on terms it deems appropriate after notice to the trustee. 3 Collier 205-06 (1964).

Rule 3007. Objections to Claims

An objection to the allowance of a claim shall be in writing and filed with the court. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 47a(8) of the Act and former Bankruptcy Rule 306. It prescribes the manner in which an objection to a claim shall be made and notice of the hearing thereon given to the claimant. The requirement of a writing does not apply to an objection to the allowance of a claim for the purpose of voting for a trustee or creditors' committee in a chapter 7 case. See Rule 2003.

The contested matter initiated by an objection to a claim is governed by rule 9014, unless a counterclaim by the trustee is joined with the objection to the claim. The filing of a counterclaim ordinarily commences an adversary proceeding subject to the rules in Part VII.

While the debtor's other creditors may make objections to the allowance of a claim, the demands of orderly and expeditious administration have led to a recognition that the right to object is generally exercised by the trustee. Pursuant to § 502(a) of the Code, however, any party in interest may object to a claim. But under § 704 the trustee, if any purpose would be served thereby, has the duty to examine proofs of claim and object to improper claims.

By virtue of the automatic allowance of a claim not objected to, a dividend may be paid on a claim which may thereafter be disallowed on objection made pursuant to this rule. The amount of the dividend paid before the disallowance in such event would be recoverable by the trustee in an adversary proceeding.

Rule 3008. Reconsideration of Claims

A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.

NOTES OF ADVISORY COMMITTEE ON RULES

Section 502(j) of the Code deals only with the reconsideration of allowed claims as did former § 57k of the Act and General Order 21(b). It had sometimes been held that a referee had no jurisdiction to reconsider a disallowed claim, or the amount or priority of an allowed claim, at the instance of the claimant. See, *e.g.*, *In re Gouse*, 7 F. Supp. 106 (M.D. Pa. 1934); *In re Tomlinson & Dye, Inc.*, 3 F. Supp. 800 (N.D. Okla. 1933). This view disregarded § 2a(2) of the Act and the "ancient and elementary power" of a referee as a court to reconsider orders. *In re Pottasch Brow. Co., Inc.*, 79 F.2d 613, 616 (2d Cir. 1935); *Castaner v. Mora*, 234 F.2d 710 (1st Cir. 1956). This rule recognizes, as did former Bankruptcy Rule 307, the power of the court to reconsider an order of disallowance on appropriate motion.

Reconsideration of a claim that has been previously allowed or disallowed after objection is discretionary with the court. The right to seek reconsideration of an allowed claim, like the right to object to its allowance, is generally exercised by the trustee if one has qualified and is performing the duties of that office with reasonable diligence and fidelity. A request for reconsideration of a disallowance would, on the other hand, ordinarily come from the claimant.

A proof of claim executed and filed in accordance with the rules in this Part III is prima facie evidence of the validity and the amount of the claim notwithstanding a motion for reconsideration of an order of allowance. Failure to respond does not constitute an admission, though it may be deemed a consent to a reconsideration. *In re Goble Boat Co.*, 190 Fed. 92 (N.D.N.Y. 1911). The court may decline to reconsider an order of allowance or disallowance without notice to any adverse party and without affording any hearing to the movant. If a motion to reconsider is granted, notice and hearing must be afforded to parties in interest before the previous action in the claim taken in respect to the claim may be vacated or modified. After reconsideration, the court may allow or disallow the claim, increase or decrease the amount of a prior allowance, accord the claim a priority different from that originally assigned it, or enter any other appropriate order.

The rule expands § 502(j) which provides for reconsideration of an allowance only before the case is closed. Authorities have disagreed as to whether reconsideration may be had after a case has been reopened. Compare 3 Collier *Bankruptcy* ¶57.23[4] (14th ed. 1964), see generally 3 *id.* ¶502.10 (15th ed. 1979), with 2 Remington, *Bankruptcy* 498 (Henderson ed. 1956). If a case is reopened as provided in § 350(b) of the Code, reconsideration of the allowance or disallowance of a claim may be sought and granted in accordance with this rule.

Rule 3009. Declaration and Payment of Dividends in Chapter 7 Liquidation Cases

In chapter 7 cases, dividends to creditors shall be paid as promptly as practicable in the amounts and at the times as ordered by the court. Dividend checks shall be made payable and mailed to each creditor whose claim has been allowed, unless a power of attorney authorizing another person to receive dividends has been executed and filed in accordance with Rule 9010. In that event, dividend checks shall be made payable to the creditor and to the

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other person and shall be mailed to the other person.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from former Rules 308 and 11-35(a). The preparation of records showing dividends declared and to whom payable is subject to prescription by the Director of the Administrative Office pursuant to Rule 5003(e). The rule governs distributions to creditors having priority as well as to general unsecured creditors. Notwithstanding the detailed statutory provisions regulating the declaration of dividends, a necessarily wide discretion over this matter has been recognized to reside in the court. See 3A Collier, *Bankruptcy* ¶65.03 (14th ed. 1975); 1 *Proceedings of Seminar for Newly Appointed Referees in Bankruptcy* 173 (1964). Although the rule leaves to the discretion of the court the amount and the times of dividend payments, it recognizes the creditors' right to as prompt payment as practicable.

The second and third sentences of the rule make explicit the method of payment of dividends and afford protection of the interests of the creditor and the holder of a power of attorney authorized to receive payment.

The rule does not permit variance at local option. This represents a marked change from former Bankruptcy Rule 308.

Rule 3010. Small Dividends and Payments in Chapter 7 Liquidation and Chapter 13 Individual's Debt Adjustment Cases

(a) Chapter 7 Cases

In a chapter 7 case no dividend in an amount less than $5 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Any such dividend not distributed to a creditor shall be treated in the same manner as unclaimed funds as provided in § 347 of the Code.

(b) Chapter 13 Cases

In a chapter 13 case no payment in an amount less than $15 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates $15. Any funds remaining shall be distributed with the final payment.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule permits a court to eliminate the disproportionate expense and inconvenience incurred by the issuance of a dividend check of less than $5 (or $15 in a chapter 13 case). Creditors are more irritated than pleased to receive such small dividends, but the money is held subject to their specific request as are unclaimed dividends under § 347(a) of the Code. When the trustee deposits undistributed dividends pursuant to a direction in accordance with this rule the trustee should file with the clerk a list of the names and addresses, so far as known, of the persons entitled to the money so deposited and the respective amounts payable to them pursuant to Rule 3011. In a chapter 13 case, the small dividend will accumulate and will be payable at the latest, with the final dividend. Local rule or order may change the practice permitted in this rule and, in that connection, the order may be incorporated in the order confirming a chapter 13 plan.

Rule 3011. Unclaimed Funds in Chapter 7 Liquidation and Chapter 13 Individual's Debt Adjustment Cases

The trustee shall file with the clerk a list of all known names and addresses of the persons and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from former Bankruptcy Rule 310. The operative provisions of that rule, however, are contained in § 347(a) of the Code, requiring the trustee to stop payment of checks remaining unpaid 90 days after distribution. The rule adds the requirement of filing a list of the names and addresses of the persons entitled to these dividends. This rule applies in a chapter 7 or 13 case but not in a chapter 9 or 11 case. The latter cases are governed by § 347(b) of the Code which provides for unclaimed distributions to be returned to the debtor or other entity acquiring the assets of the debtor.

Rule 3012. Valuation of Security

The court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other person as the court may direct.

NOTES OF ADVISORY COMMITTEE ON RULES

Pursuant to § 506(a) of the Code, secured claims are to be valued and allowed as secured to the extent of the value of the collateral and unsecured, to the extent it is enforceable, for the excess over such value. The valuation of secured claims may become important in different contexts *e.g.*, to determine the issue of adequate protection under § 361, impairment under § 1124, or treatment of the claim in a plan pursuant to § 1129(b) of the Code. This rule permits the issue to be raised on motion by a party in interest. The secured creditor is entitled to notice of the hearing on the motion and the court may direct that others in the case also receive such notice.

An adversary proceeding is commenced when the validity, priority, or extent of a lien is at issue as prescribed by Rule 7001. That proceeding is relevant to the basis of the lien itself while valuation under Rule 3012 would be for the purposes indicated above.

Rule 3013. Classification of Claims and Interests

For the purposes of the plan and its acceptance, the court may, on motion after hearing on notice as the court may direct, determine classes of creditors and equity security holders pursuant to §§ 1122 and 1322(b)(1) of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES

Sections 1122 and 1322(b)(1) set the standards for classifying claims and interests but provide that such classification is accomplished in the plan. This rule does not change the standards; rather it recognizes that it may be desirable or necessary to establish proper classification before a plan can be formulated. It provides for a court hearing on such notice as the court may direct.

Rule 3014. Election Pursuant to § 1111(b) by Secured Creditor in Chapter 9 Municipality and Chapter 11 Reorganization Cases

An election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. The election shall be in

writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan.

NOTES OF ADVISORY COMMITTEE ON RULES

Pursuant to § 1111(b)(1) of the Code, a nonrecourse secured loan is converted, automatically, into a recourse loan thereby entitling the creditor to an unsecured deficiency claim if the value of the collateral is less than the debt. The class, however, may retain the loan as a nonrecourse loan by electing application of § 1111(b)(2) by the majorities stated in § 1111(b)(1)(A)(i). That section does not specify any time periods for making the election.

Rule 3014 provides that if no agreement is negotiated, the election of § 1111(b)(2) of the Code may be made at any time prior to conclusion of the hearing on the disclosure statement. Once the hearing has been concluded, it would be too late for a secured creditor class to demand different treatment unless the court has fixed a later time. This would be the case if, for example, a public class of secured creditors should have an approved disclosure statement prior to electing under § 1111(b).

Generally it is important that the proponent of a plan ascertain the position of the secured creditor class before a plan is proposed. The secured creditor class must know the prospects of its treatment under the plan before it can intelligently determine its rights under § 1111(b). The rule recognizes that there may be negotiations between the proponent of the plan and the secured creditor leading to a representation of desired treatment under § 1111(b). If that treatment is approved by the requisite majorities of the class and culminates in a written, signed statement filed with the court, that statement becomes binding and the class may not thereafter demand different treatment under § 1111(b) with respect to that plan. The proponent of the plan is thus enabled to seek approval of the disclosure statement and transmit the plan for voting in anticipation of confirmation. Only if that plan is not confirmed may the class of secured creditors thereafter change its prior election.

While this rule and the Code refer to a class of secured creditors it should be noted that ordinarily each secured creditor is in a separate and distinct class. In that event, the secured creditor has the sole power to determine application of § 1111(b) with respect to that claim.

Rule 3015. Filing of Plan in Chapter 13 Individual's Debt Adjustment Cases

The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 15 days thereafter and such time shall not be further extended except for cause shown and on notice as the court may direct. Every proposed plan and any modification thereof shall be dated. The clerk shall include the plan or a summary of the plan with each notice of the hearing on confirmation pursuant to Rule 2002(b). If required by the court, the debtor shall furnish a sufficient number of copies to enable the clerk to include a copy of the plan with the notice of the hearing.

NOTES OF ADVISORY COMMITTEE ON RULES

Section 1321 provides only that the "debtor shall file a plan." No time periods are specified, nor is any other detail provided. The rule requires a chapter 13 plan to be filed either with the petition or within 15 days thereafter. The court may, for cause, extend the time. The rule permits a summary of the plan to be transmitted with the notice of the hearing on confirmati The court may, however, require the plan itself to transmitted and the debtor to supply enough cop for this purpose. In the former rules under Chap XIII the plan would accompany the notice of the fi meeting of creditors. It is more important for the pl or a summary of its terms to be sent with the notice the confirmation hearing. At that hearing objectio to the plan will be heard by the court.

Rule 3016. Filing of Plan and Disclosure Statement Chapter 9 Municipality and Chapter 11 Reorganization Cases

(a) Time for Filing Plan

A party in interest, other than the debt who is authorized to file a plan under § 1121 of the Code, may file a plan at any time befo the conclusion of the hearing on the disclosu statement or thereafter with leave of court.

(b) Identification of Plan

Every proposed plan and any modificati thereof shall be dated and, in a chapter 11 ca identified with the name of the person or p sons submitting or filing it.

(c) Disclosure Statement

In a chapter 9 or 11 case, a disclosure sta ment pursuant to § 1125 or evidence showi compliance with § 1126(b) of the Code shall filed with the plan or within a time fixed the court.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule implements the Code provisions conce ing the filing of plans in chapters 9 and 11.

Chapter 9 Cases. Section 941 provides that debtor may file a plan with the petition or thereaf but within a time fixed by the court. A rule, therefo is unnecessary to specify the time for filing chapte plans.

Chapter 11 Nonrailroad Cases. Section 1121 conta detailed provisions with respect to who may file chapter 11 plan and, in part, the time period. Secti 1121(a) permits a debtor to file a plan with the pe tion or at any time during the case. Section 1121 and (c) grants exclusive periods of 120 days and days for the debtor to file and obtain acceptance o plan. Failure to take advantage of these periods or t appointment of a trustee would permit other part in interest to file a plan. These statutory provisio are not repeated in the rules.

Chapter 11 Railroad Cases. Pursuant to subchap IV of chapter 11, § 1121 of the Code is applicable railroad cases; see §§ 1161, 103(g). A trustee, howev is to be appointed in every case; thus, pursuant § 1121(c), any party in interest may file a plan. See d cussion of subdivision (a) of this rule, *infra*.

Subdivision (a). Section 1121(c), while permitti parties in interest a limited right to file plans, does provide any time limitation. This subdivision sets the deadline, the conclusion of the hearing on the d closure statement. The court may, however, grant ditional time. It is derived from former Chapter Rule 10-301(c)(2) which used, as the cut-off time, t conclusion of the hearing on approval of a plan. As dicated, *supra*, § 1121(a) permits a debtor to file a pl at any time during the chapter 11 case. Und § 1121(c), parties other than a debtor may file a pl only after a trustee is appointed or the debtor's exc sive time expires.

Subdivision (b) requires plans to be properly iden fied.

Subdivision (c). This provision is new. In chapte and 11 cases (including railroad reorganization cas postpetition solicitation of votes on a plan requi

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transmittal of a disclosure statement, the contents of which have been approved by the court. See § 1125 of the Code. A prepetition solicitation must either have been in conformity with applicable nonbankruptcy law or, if none, the disclosure must have been of adequate information as set forth in § 1125 of the Code. See § 1126(b). Subdivision (c) of this rule provides the time for filing the disclosure statement or evidence of compliance with § 1126(b) which ordinarily will be with the plan but the court may allow a later time or the court may, pursuant to the last sentence, fix a time certain. Rule 3017 deals with the hearing on the disclosure statement. The disclosure statement, pursuant to § 1125 is to contain adequate information. "Adequate information" is defined in § 1125(a) as information that would permit a reasonable creditor or equity security holder to make an informed judgment on the plan.

Rule 3017. Court Consideration of Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases

(a) Hearing on Disclosure Statement and Objections Thereto

Following the filing of a disclosure statement as provided in Rule 3016(c), the court shall hold a hearing on not less than 25 days notice to the debtor, creditors, equity security holders and other parties in interest as provided in Rule 2002 to consider such statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, trustee, any committee appointed under the Code, the Securities and Exchange Commission and any party in interest who requests in writing a copy of the statement or plan. Objections to the disclosure statement shall be filed with the court and served on the debtor, the trustee, any committee appointed under the Code and such other entity as may be designated by the court, at any time prior to approval of the disclosure statement or by such earlier date as the court may fix.

(b) Determination on Disclosure Statement

Following the hearing the court shall determine whether the disclosure statement should be approved.

(c) Dates Fixed for Voting on Plan and Confirmation

On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

(d) Transmission and Notice to Creditors and Equity Security Holders

On approval of a disclosure statement, the debtor in possession, trustee, proponent of the plan, or clerk as ordered by the court shall mail to all creditors and equity security holders (1) the plan, or a court approved summary of the plan; (2) the disclosure statement approved by the court; (3) notice of the time within which acceptances and rejections of such plan may be filed; (4) notice of any date fixed for the hearing on confirmation; and (5) such other information as the court may direct including any opinion of the court approving the disclosure statement or a court approved summary of the opinion. In addition, a form of ballot conforming to Official Form No. 30 shall be mailed to creditors and equity security holders entitled to vote on the plan. In the event the opinion of the court is not transmitted or only a summary of the plan is transmitted, the opinion of the court or the plan shall be provided on request of a party in interest at the expense of the proponent of the plan. For the purposes of this subdivision, creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record at the date the order approving the disclosure statement was entered.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is adapted from former Rule 10-303 which dealt with the approval of a Chapter X plan by the court. There is no requirement for plan approval in a chapter 9 or 11 case under the Code but there is the requirement that a disclosure statement containing adequate financial information be approved by the court after notice and a hearing before votes on a plan are solicited. Section 1125(b) of the Code is made applicable in chapter 9 cases by § 901(a). It is also applicable in railroad reorganization cases under subchapter IV of chapter 11; see § 1161 of the Code.

Subdivision (a) of this rule provides for the hearing on the disclosure statement. Thus, a hearing would be required in all cases; whether it may be ex parte would depend on the circumstances of the case, but a mere absence of objections would not eliminate the need for a hearing; see § 102(1) of the Code.

No provision similar to former Rule 10-303(f) is included. That subdivision together with former Rule 10-304 prohibited solicitation of votes until after entry of an order approving the plan. Section 1125(b) of the Code explicitly provides that votes on a plan may not be solicited until a disclosure statement approved by the court is transmitted. Pursuant to the change in rulemaking power, a comparable provision in this rule is unnecessary. 28 U.S.C. § 2075.

Copies of the disclosure statement and plan need not be mailed with the notice of the hearing or otherwise transmitted prior to the hearing except with respect to the parties explicitly set forth in the subdivision.

It should be noted that, by construction, the singular includes the plural. Therefore, the phrase "plan or plans" or "disclosure statement or statements" has not been used although the possibility of multiple plans and statements is recognized.

Subdivision (d) permits the court to require a party other than the clerk of the bankruptcy court to bear the responsibility for transmitting the notices and documents specified in the rule when votes on the plan are solicited. Ordinarily the person responsible for such mailing will be the proponent of the plan. In rare cases the clerk may be directed to mail these documents, particularly when the trustee would have the responsibility but there is insufficient money in the estate to enable the trustee to perform this task.

Rule 3018. Acceptance or Rejection of Plans

(a) Persons Entitled To Accept or Reject Plan; Time for Acceptance or Rejection

A plan may be accepted or rejected by the following entities within the time fixed by the court pursuant to rule 3017: (1) any creditor whose claim is deemed allowed pursuant to § 502 of the code or has been allowed by the court; (2) subject to subdivision (b) of this rule, any creditor who is a security holder of record at the date the order approving the disclosure statement is entered whose claim has not been disallowed; and, (3) an equity security holder of

record at the date the order approving the disclosure statement is entered whose interest has not been disallowed. For cause shown and within the time fixed for acceptance or rejection of a plan, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.

(b) Acceptances or Rejections Obtained Before Petition

Acceptances or rejections of a plan may be obtained before the commencement of a case under the Code and may be filed with the court on behalf of (1) the holder of a claim or interest which is deemed allowed pursuant to § 502 of the Code or allowed by the court; (2) a creditor who is a security holder of record at the date specified in the solicitation for the purposes of such solicitation and whose claim has not been disallowed; and (3) an equity security holder of record at the date specified in the solicitation for the purposes of such solicitation and whose interest has not been disallowed. A holder of a claim or interest who has accepted or rejected a plan before the commencement of the case under the Code shall not be deemed to have accepted or rejected the plan if the court finds after notice and hearing that the plan was not transmitted to substantially all impaired creditors and impaired equity security holders, that an unreasonably short time was prescribed for such creditors and equity security holders to accept or reject the plan, or that the solicitation was not in compliance with § 1126(b) of the Code.

(c) Form of Acceptance or Rejection

An acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or his authorized agent, and conform to Official Form No. 30. If more than one plan is transmitted purusant to Rule 3017, an acceptance or rejection may be filed by each creditor or equity security holder for any number of plans transmitted and if acceptances are filed for more than one plan, the creditor or equity security holder may indicate his preferences among the plans so accepted.

(d) Acceptance or Rejection by Partially Secured Creditor

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan in both capacities.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule applies in chapter 9, 11 and 13 cases under the Code. The references in the rule to equity security holders will not, however, be relevant in chapter 9 or 13 cases. The rule will be of little utility in a chapter 13 case because only secured creditors may be requested to vote on a plan; unsecured creditors are not entitled to vote; see § 1325(a)(4), (5) of the Code.

Subdivision (a) is derived from former Rule 10-305(a). It substitutes, in a reorganization case, entry of the order approving the disclosure statement for the order approving a plan in conformity with the differences between Chapter X and chapter 11. In keeping with the underlying theory it continues to recognize that the lapse of time between the filing of the petition and entry of such order will normally be significant and, during that interim, bonds and equity interests can change ownership.

Subdivision (b) recognizes the former Chapter XI practice permitting a plan and acceptances to be filed with the petition, as does § 1126(b) of the Code. However, because a plan under chapter 11 may affect shareholder interests, there should be reference to a record date of ownership. In this instance the appropriate record date is that used in the prepetition solicitation materials because it is those acceptances or rejections which are being submitted to the court.

While § 1126(c), (d), and (e) prohibits use of an acceptance or rejection not procured in good faith, the added provision in subdivision (b) of the rule is somewhat more detailed. It would prohibit use of prepetition acceptances or rejections when some but not all impaired creditors or equity security holders are solicited or when they are not given a reasonable opportunity to submit their acceptances or rejections. This provision together with § 1126(e) gives the court the power to nullify abusive solicitation procedures.

Subdivision (c). It is possible that multiple plans may be before the court for confirmation. Pursuant to § 1129(c) of the Code, the court may confirm only one plan but is required to consider the preferences expressed by those accepting the plans in determining which one to confirm.

Subdivisions (d) and (e) of former Rule 10-305 are not continued since comparable provisions are contained in the statute; see § 1126(c), (d), (e).

It should be noted that while the singular "plan" is used throughout, by construction the plural is included; see § 102(7).

Rule 3019. Modification of Accepted Plan Before Confirmation

After a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code and any other person designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule implements §§ 942, 1127 and 1323 of the Code. For example, § 1127 provides for modification before and after confirmation but does not deal with the minor modifications that do not adversely change any rights. The rule makes clear that a modification may be made, after acceptance of the plan without submission to creditors and equity security holders if their interests are not affected. To come within this rule, the modification should be one that does not change the rights of a creditor or equity security holder as fixed in the plan before modification.

Rule 3020. Deposit; Confirmation of Plan

(a) Deposit

In a chapter 11 case, prior to entry of the order confirming the plan, the court may order the deposit with the trustee or debtor in possession of the consideration required by the plan to be distributed on confirmation. Any money

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deposited shall be kept in a special account established for the exclusive purpose of making the distribution.

(b) Objections to and Hearing on Confirmation

(1) *Objections.* Objections to confirmation of the plan shall be filed with the court and served on the debtor, the trustee, any committee appointed under the Code and on any other entity designated by the court, within a time fixed by the court. An objection to confirmation is governed by Rule 9014.

(2) *Hearing.* The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may find, without receiving evidence, that the plan has been proposed in good faith and not by any means forbidden by law.

(c) Order of Confirmation

The order of confirmation shall conform to Official Form No. 31 and notice of entry thereof shall be mailed promptly by the clerk to the debtor, creditors, equity security holders and other parties in interest.

(d) Retained Power

Notwithstanding the entry of the order of confirmation, the court may enter all orders necessary to administer the estate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is adapted from former Rules 10-307, 11-38, and 13-213. It applies to cases filed under chapters 9, 11 and 13. Certain subdivisions of the earlier rules have not been included, such as, a subdivision revesting title in the debtor because § 541 of the Code does not transfer title out of the debtor as did § 70a of the Bankruptcy Act; see also §§ 1141(b), 1327(b). Subdivision (b) of former Rule 13-213 is not included because its provisions are contained in the statute; see §§ 1322, 1325(b), 105.

Subdivision (a) gives discretion to the court to require in chapter 11 cases the deposit of any consideration to be distributed on confirmation. If money is to be distributed, it is to be deposited in a special account to assure that it will not be used for any other purpose. The Code is silent in chapter 11 with respect to the need to make a deposit or the person with whom any deposit is to be made. Consequently, there is no statutory authority for any person to act in a capacity similar to the disbursing agent under former Chapter XI practice. This rule provides that only the debtor in possession or trustee should be appointed as the recipient of the deposit. Any consideration other than money, *e.g.*, notes or stock may be given directly to the debtor in possession or trustee and need not be left in any kind of special account. In chapter 9 cases, § 944(b) provides for deposit with a disbursing agent appointed by the court of any consideration to be distributed under the plan.

Subdivision (d) clarifies the authority of the court to conclude matters pending before it prior to confirmation and to continue to administer the estate as necessary, *e.g.*, resolving objections to claims.

Rule 3021. Distribution Under Plan

After confirmation of a plan, distribution shall be made to creditors whose claims have been allowed, to holders of stock, bonds, debentures, notes, and other securities of record at the time of commencement of distribution whose claims or equity security interests have not been disallowed and to indenture trustees who have filed claims pursuant to Rule 3003(c)(5) and which have been allowed.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from former Chapter X Rule 10-405(a). Subdivision (b) of that rule is covered by § 1143 of the Code.

Rule 3022. Final Decree

After an estate is fully administered, including distribution of any deposit required by the plan, the court shall enter a final decree (1) discharging any trustee if not previously discharged and cancelling his bond; (2) making provision by way of injunction or otherwise as may be equitable; and (3) closing the case.

NOTES OF ADVISORY COMMITTEE ON RULES

Section 350 of the Code requires the court to close the case after the estate is fully administered and the trustee has been discharged. Section 1143 places a five year limitation on the surrender of securities when required for participation under a plan but this provision should not delay entry of the final decree.

PART IV—THE DEBTOR: DUTIES AND BENEFITS

Rule 4001. Relief from Automatic Stay; Use of Cash Collateral

(a) Request for Relief From Stay or To Use Cash Collateral

A request for relief from an automatic stay provided by the Code or for the use of cash collateral pursuant to § 363(c)(2) shall be made in accordance with Rule 9014.

(b) Final Hearing on Stay

The stay of any act against property of the estate under § 362(a) of the Code expires 30 days after a final hearing is commenced pursuant to § 362(e)(2) unless within that time the court denies the motion for relief from the stay.

(c) Ex Parte Relief From Stay

Relief from a stay under § 362(a) may be granted without prior notice to the adverse party only if (1) it clearly appears from specific facts shown by affidavit or by a verified motion that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party or his attorney can be heard in opposition, and (2) the movant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons why notice should not be required. The party obtaining relief under this subdivision and § 362(f) shall immediately give oral notice thereof to the trustee or debtor in possession and to the debtor and forthwith mail or otherwise transmit to such person or persons a copy of the order granting relief. On two days notice to the party who obtained relief from the stay without notice or on shorter notice to that party as the court may prescribe, the adverse party may appear and move reinstatement of the stay. In that event, the court shall proceed expeditiously to hear and determine the motion.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule implements § 362 of the Code which set forth provisions regarding the automatic stay that

arises on the filing of a petition. That section and this rule are applicable in chapters 7, 9, 11 and 13 cases. It also implements § 363(c)(2) concerning use of cash collateral.

Subdivision (a) transforms with respect to the automatic stay what was an adversary proceeding under the former rules to motion practice. The Code provides automatic stays in several sections, *e.g.*, §§ 362(a), 1301(a), and in § 362(d) provides some grounds for relief from the stay. This rule specifies that the pleading seeking relief is by means of a motion. Thus the time period in Rule 7012 to answer a complaint would not be applicable and shorter periods may be fixed. Section 362(e) requires the preliminary hearing to be concluded within 30 days of it inception, rendering ordinary complaint and answer practice inappropriate.

This subdivision also makes clear that a motion under Rule 9014 is the proper procedure for a debtor to seek court permission to use cash collateral. See § 363(c)(2). Pursuant to Rule 5005, the motion should be filed in the court in which the case in pending. The court or local rule may specify the persons to be served with the motion for relief from the stay; see Rule 9013.

Subdivision (b) of the rule fills a procedural void left by § 362. Pursuant to § 362(e), the automatic stay is terminated 30 days after a motion for relief is made unless the court continues the stay as a result of a final hearing or, pending final hearing, after a preliminary hearing. If a preliminary hearing is held, § 362(e) requires the final hearing to be commenced within 30 days after the preliminary hearing. Although the expressed legislative intent is to require expeditious resolution of a secured party's motion for relief, § 362 is silent as to the time within which the final hearing must be concluded. Subdivision (b) imposes a 30 day deadline on the court to resolve the dispute.

At the final hearing, the stay is to be terminated, modified, annulled, or conditioned for cause, which includes, *inter alia*, lack of adequate protection; § 362(d). The burden of proving adequate protection is on the party opposing relief from the stay; § 362(g)(2). Adequate protection is exemplified in § 361.

Subdivision (c) implements § 362(f) which permits ex parte relief from the stay when there will be irreparable damage. This subdivision sets forth the procedure to be followed when relief is sought under § 362(f). It is derived from former Bankruptcy Rule 601(d).

Rule 4002. Duties of Debtor

In addition to performing other duties prescribed by the Code and rules, the debtor shall (1) attend and submit to an examination at the times ordered by the court; (2) attend the hearing on a complaint objecting to discharge and testify, if called as a witness; (3) inform the trustee immediately in writing as to the location of real property in which the debtor has an interest and the name and address of every person holding money or property subject to the debtor's withdrawal or order if a schedule of property has not yet been filed pursuant to Rule 1007; and (4) cooperate with the trustee in the preparation of an inventory, the examination of proofs of claim, and the administration of the estate.

Notes of Advisory Committee on Rules

This rule should be read together with §§ 343 and 521 of the Code and Rule 1007, all of which impose duties on the debtor. Clause (3) of this rule implements the provisions of Rule 2015(a).

Rule 4003. Exemptions

(a) Claim of Exemptions

A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) Objections to Claim of Exemptions

The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) or the filing of any amendment to the list unless, within such period, further time is granted by the court. Copies of the objections shall be delivered or mailed to the trustee and to the person filing the list and his attorney.

(c) Burden of Proof

In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

(d) Avoidance by Debtor of Transfers of Exempt Property

A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014.

Notes of Advisory Committee on Rules

This rule is derived from § 522(1) of the Code and, in part, former Bankruptcy Rule 403. The Code changes the thrust of that rule by making it the burden of the debtor to list his exemptions and the burden of parties in interest to raise objections in the absence of which "the property claimed as exempt on such list is exempt;" § 522(1).

Subdivision (a). While § 522(1) refers to a list of property claimed as exempt, the rule incorporates such a list as part of Official Form No. 6, the schedule of the debtor's assets, rather than requiring a separate list and filing. Rule 1007, to which subdivision (a) refers, requires that schedule to be filed within 15 days after the order for relief, unless the court extends the time.

Section 522(1) also provides that a dependent of the debtor may file the list if the debtor fails to do so. Subdivision (a) of the rule allows such filing from the expiration of the debtor's time until 30 days thereafter. Dependent is defined in § 522(a)(1).

Subdivision (d) provides that a proceeding by the debtor, permitted by § 522(f) of the Code, is a contested matter rather than the more formal adversary proceeding. Proceedings within the scope of this subdivision are distinguished from proceedings brought by the trustee to avoid transfers. The latter are classified as adversary proceedings by Rule 7001.

Rule 4004. Grant or Denial of Discharge

(a) Time for Filing Complaint Objecting to Discharge; Notice of Time Fixed

In a chapter 7 liquidation case a complaint objecting to the debtor's discharge under § 727(a) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to § 341(a). In a chapter 11 reorganization case, such com-

plaint shall be filed not later than the first date set for the hearing on confirmation. The court shall give not less than 25 days notice of the time so fixed to all creditors in the manner provided in Rule 2002, and to the trustee and his attorney.

(b) Extension of Time

On motion of any party in interest, after hearing on notice, the court may for cause extend the time for filing a complaint objecting to discharge. The motion shall be made before such time has expired.

(c) Grant of Discharge

In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge, the court shall forthwith grant the discharge unless (1) the debtor is not an individual, (2) a complaint objecting to the discharge has been filed, or (3) the debtor has filed a waiver under § 727(a)(10) of the Code. Notwithstanding the foregoing, on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within such period, the court may defer entry of the order to a date certain.

(d) Applicability of Rules in Part VII

A proceeding commenced by a complaint objecting to discharge is governed by the rules in Part VII.

(e) Order of Discharge

An order of discharge shall conform to Official Form No. 27.

(f) Registration in Other Districts

An order of discharge that has become final may be registered in any other district by filing a certified copy of the order in the office of the clerk of the bankruptcy court of that district. When so registered the order of discharge shall have the same effect as an order of the court of the district where registered.

(g) Notice of Discharge

The clerk shall promptly mail a copy of the final order of discharge to the persons specified in subdivision (a) of this rule.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is adapted from former Bankruptcy Rule 404.

Subdivisions (a) and (b) of this rule prescribe the procedure for determining whether a discharge will be granted pursuant to § 727 of the Code. The time fixed by subdivision (a) may be enlarged as provided in subdivision (b).

The notice referred to in subdivision (a) is required to be given by mail and addressed to creditors as provided in Rule 2002.

An extension granted on a motion pursuant to subdivision (b) of the rule would ordinarily benefit only the movant, but its scope and effect would depend on the terms of the extension.

Subdivision (c). If a complaint objecting to discharge is filed, the court's grant or denial of the discharge will be entered at the conclusion of the proceeding as a judgment in accordance with Rule 9021. The inclusion of the clause in subdivision (c) qualifying the duty of the court to grant a discharge when a waiver has been filed is in accord with the construction of the Code. 4 Collier, *Bankruptcy* ¶ 727.12 (15th ed. 1979).

The last sentence of subdivision (c) takes cognizance of § 524(c) of the Code which authorizes a debtor to enter into enforceable reaffirmation agreements only prior to entry of the order of discharge. Immediate entry of that order after expiration of the time fixed for filing complaints objecting to discharge may render it more difficult for a debtor to settle pending litigation to determine the dischargeability of a debt and execute a reaffirmation agreement as part of a settlement.

Subdivision (d). An objection to discharge is required to be made by a complaint, which initiates an adversary proceeding as provided in Rule 7003. Pursuant to Rule 5005, the complaint should be filed in the court in which the case is pending.

Subdivision (e). Official Form No. 27 to which subdivision (e) refers, includes notice of the effects of a discharge specified in § 524(a) of the Code.

Subdivision (f). Registration may facilitate the enforcement of the order of discharge in a district other than that in which it was entered. See 2 Moore's *Federal Practice* ¶ 1.04[2] (2d ed. 1967). Because of the nationwide service of process authorized by Rule 7004, however, registration of the order of discharge is not necessary under these rules to enable a discharged debtor to obtain relief against a creditor proceeding anywhere in the United States in disregard of the injunctive provisions of the order of discharge.

Subdivision (g). Notice of discharge should be mailed promptly after the order becomes final so that creditors may be informed of entry of the order and of its injunctive provisions. Rule 2002 specifies the manner of the notice and persons to whom the notice is to be given.

Rule 4005. Burden of Proof in Objecting to Discharge

At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving his objection.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule does not address the burden of going forward with the evidence. Subject to the allocation by the rule of the initial burden of producing evidence and the ultimate burden of persuasion, the rule leaves to the courts the formulation of rules governing the shift of the burden of going forward with the evidence in the light of considerations such as the difficulty of proving the nonexistence of a fact and of establishing a fact as to which the evidence is likely to be more accessible to the debtor than to the objector. *See, e.g., In re Haggerty,* 165 F.2d 977, 979–80 (2d Cir. 1948); *Federal Provision Co. v. Ershowsky,* 94 F.2d 574, 575 (2d Cir. 1938); *In re Riceputo,* 41 F. Supp. 926, 927–28 (E.D.N.Y. 1941).

Rule 4006. Notice of No Discharge

If an order is entered denying or revoking a discharge or if a waiver of discharge is filed, after the order becomes final or the waiver is filed the clerk shall promptly give notice thereof to all creditors in the manner provided in Rule 2002.

NOTES OF ADVISORY COMMITTEE ON RULES

The suspension by § 108(c) of the Code of the statute of limitations affecting any debt of a debtor terminates within 30 days after the debtor is denied a discharge or otherwise loses his right to a discharge. If, however, a debtor's failure to receive a discharge does not come to the attention of his creditors until after the statutes of limitations have run, the debtor obtains substantially the same benefits from his bankruptcy as a debtor who is discharged.

This rule requires the clerk to notify creditors if a debtor fails to obtain a discharge because a waiver of discharge was filed under § 727(a)(10) or as a result of

an order denying or revoking the discharge under § 727(a) or (d).

Rule 4007. Determination of Dischargeability of a Debt

(a) Persons Entitled To File Complaint

A debtor or any creditor may file a complaint with the court to obtain a determination of the dischargeability of any debt.

(b) Time for Commencing Proceeding Other Than Under § 523(c) of the Code

A complaint other than under § 523(c) may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule.

(c) Time for Filing Complaint Under § 523(c) in Chapter 7 Liquidation and Chapter 11 Reorganization Cases; Notice of Time Fixed

A complaint to determine the dischargeability of any debt pursuant to § 523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to § 341(a). The court shall give all creditors not less than 30 days notice of the time so fixed in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be made before the time has expired.

(d) Time for Filing Complaint Under § 523(c) in Chapter 13 Individual's Debt Adjustment Cases; Notice of Time Fixed

On motion by a debtor for a discharge under § 1328(b), the court shall enter an order fixing a time for the filing of a complaint to determine the dischargeability of any debt pursuant to § 523(c) and shall give not less than 30 days notice of the time fixed to all creditors in the manner provided in Rule 2002. On motion of any party in interest after hearing on notice the court may for cause extend the time fixed under this subdivision. The motion shall be made before the time has expired.

(e) Applicability of Rules in Part VII

A proceeding commenced by a complaint filed under this rule is governed by the rules in Part VII.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule prescribes the procedure to be followed when a party requests the court to determine dischargeability of a debt pursuant to § 523 of the Code.

Although a complaint that comes within § 523(c) must ordinarily be filed before determining whether the debtor will be discharged, the court need not determine the issues presented by the complaint filed under this rule until the question of discharge has been determined under Rule 4004. A complaint filed under this rule initiates an adversary proceeding as provided in Rule 7003.

Subdivision (b) does not contain a time limit for filing a complaint to determine the dischargeability of a type of debt listed as nondischargeable under § 523(a)(1), (3), (5), (7), (8), or (9). Jurisdiction over this issue on these debts is held concurrently by the bankruptcy court and any appropriate nonbankruptcy forum.

Subdivision (c) differs from subdivision (b) by imposing a deadline for filing complaints to determine the issue of dischargeability of debts set out in § 523(a)(2), (4) or (6) of the Code. The bankruptcy court has exclusive jurisdiction to determine dischargeability of these debts. If a complaint is not timely filed, the debt is discharged. See § 523(c).

Subdivision (e). The complaint required by this subdivision should be filed in the court in which the case is pending pursuant to Rule 5005.

Rule 4008. Discharge and Reaffirmation Hearing

Not more than 30 days following the entry of an order granting or denying a discharge, or confirming a plan in a chapter 11 reorganization case concerning an individual debtor and on not less than 10 days notice to the debtor and the trustee, the court shall hold a hearing as provided in § 524(d) of the Code. A motion by the debtor for approval of a reaffirmation agreement shall be filed before or at the hearing.

NOTES OF ADVISORY COMMITTEE ON RULES

Section 524(d) of the Code requires the court to hold a hearing to inform an individual debtor concerning the granting or denial of discharge and the law applicable to reaffirmation agreements.

The notice of the § 524(d) hearing may be combined with the notice of the meeting of creditors or entered as a separate order.

The expression "not more than" contained in the first sentence of the rule is for the explicit purpose of requiring the hearing to occur within that time period and cannot be extended.

PART V—BANKRUPTCY COURTS AND CLERKS

Rule 5001. Bankruptcy Courts and Clerks' Offices

(a) Bankruptcy Courts Always Open

Bankruptcy courts shall be deemed always open for the purpose of filing any pleading or other proper paper, issuing and returning process, and filing, making, or entering motions, orders and rules.

(b) Trials and Hearings; Orders in Chambers

All trials and hearings shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a bankruptcy judge in chambers and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

(c) Clerk's Office

The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and the legal holidays listed in Rule 6(a) F.R.Civ.P. A local rule or order may provide that the clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than those listed in Rule 77(c) F.R.Civ.P.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is adapted from subdivisions (a), (b) and (c) of Rule 77 F.R.Civ.P.

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REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subd. (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 5002. Restrictions on Appointments

(a) Appointment of Relatives Prohibited

No individual may be appointed as a trustee or examiner or be employed as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to § 327 or § 1103 of the Code if the individual is a relative of the bankruptcy judge making the appointment or approving the employment. Whenever under this subdivision an individual is ineligible for appointment or employment, the individual's firm, partnership, corporation, or any other form of business association or relationship, and all members, associates and professional employees thereof are also ineligible for appointment or employment.

(b) Judicial Determination that Appointment or Employment Is Improper

A bankruptcy judge may not appoint a person as a trustee or examiner or approve the employment of a person as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to § 327 or § 1103 of the code if that person is or has been so connected with such judge as to render the appointment or employment improper.

(As amended Apr. 29, 1985, eff. Aug. 1, 1985.)

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is adapted from former Bankruptcy Rule 505(a). The scope of the prohibition on appointment or employment is expanded to include an examiner appointed under § 1104 of the Code and attorneys and other professional persons whose employment must be approved by the court under § 327 or § 1103.

The rule supplements two statutory provisions. Under 18 U.S.C. § 1910, it is a criminal offense for a judge to appoint a relative as a trustee and, under 28 U.S.C. § 458, a person may not be "appointed to or employed in any office or duty in any court" if he is a relative of any judge of that court. The rule prohibits the appointment or employment of a relative of a bankruptcy judge in a case pending before that bankruptcy judge or before other bankruptcy judges sitting within the district.

A relative is defined in § 101(34) of the Code to be an "individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree." Persons within the third degree under the common law system are as follows: first degree—parents, brothers and sisters, and children; second degree—grandparents, uncles and aunts, first cousins, nephews and nieces, and grandchildren; third degree—great grandparents, great uncles and aunts, first cousins once removed, second cousins, grand nephews and nieces, great grandchildren. Rule 9001 incorporates the definitions of §101 of the Code.

In order for the policy of this rule to be meaningfully implemented, it is necessary to extend the prohibition against appointment or employment to the firm or other business association of the ineligible person and to those affiliated with the firm or business association. "Firm" is defined in Rule 9001 to include a professional partnership or corporation of attorneys or accountants. All other types of business and professional associations and relationships are covered by this rule.

NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT

The amended rule is divided into two subdivisions. Subdivision (a) applies to relatives of bankruptcy judges and subdivision (b) applies to persons who are or have been connected with bankruptcy judges. Subdivision (a) permits no judicial discretion; subdivision (b) allows judicial discretion. In both subdivisions of the amended rule "bankruptcy judge" has been substituted for "judge". The amended rule makes clear that it only applies to relatives of, or persons connected with, the bankruptcy judge. See *In re Hilltop Sand and Gravel, Inc.*, 35 B.R. 412 (N.D. Ohio 1983).

Subdivision (a). The original rule prohibited all bankruptcy judges in a district from appointing or approving the employment of (i) a relative of any bankruptcy judge serving in the district, (ii) the firm or business association of any ineligible relative and (iii) any member or professional employee of the firm or business association of an ineligible relative. In addition, the definition of relative, the third degree relationship under the common law, is quite broad. The restriction on the employment opportunities of relatives of bankruptcy judges was magnified by the fact that many law and accounting firms have practices and offices spanning the nation.

Relatives are not eligible for appointment or employment when the bankruptcy judge to whom they are related makes the appointment or approves the employment. Canon 3(b)(4) of the Code of Judicial Conduct, which provides that the judge "shall exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism," should guide a bankruptcy judge when a relative of a judge of the same bankruptcy court is considered for appointment or employment.

Subdivision (b), derived from clause (2) of the original rule, makes a person ineligible for appointment or employment if the person is so connected with a bankruptcy judge making the appointment or approving the employment as to render the appointment or approval of employment improper. The caption and text of the subdivision emphasize that application of the connection test is committed to the sound discretion of the bankruptcy judge who is to make the appointment or approve the employment. All relevant circumstances are to be taken into account by the court. The most important of those circumstances include: the nature and duration of the connection with the bankruptcy judge; whether the connection still exists, and, if not, when it was terminated; and the type of appointment or employment. These and other considerations must be carefully evaluated by the bankruptcy judge.

The policy underlying subdivision (b) is essentially the same as the policy embodied in the Code of Judicial Conduct. Canon 2 of the Code of Judicial Conduct instructs a judge to avoid impropriety and the appearance of impropriety, and Canon 3(b)(4) provides that the judge "should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism." Subdivision (b) alerts the potential appointee or employee and party seeking approval of employment to consider the possible relevance or impact of subdivision (b) and indicates to them that appropriate disclosure must be made to the bankruptcy court before accepting appointment or employment. The information required may be made a part of the application for approval of employment. See Rule 2014(a).

Subdivision (b) departs from the former rule in an important respect: a firm or business association is not prohibited from appointment or employment merely because an individual member or employee of the firm or business association is ineligible under subdivision (b).

The emphasis given to the bankruptcy court's judicial discretion in applying subdivision (b) and the absence of a *per se* extension of ineligibility to the firm

or business association or any ineligible individual complement the amendments to subdivision (a). The change is intended to moderate the prior limitation on the employment opportunities of attorneys, accountants and other professional persons who are or who have been connected in some way with the bankruptcy judge. For example, in all but the most unusual situations service as a law clerk to a bankruptcy judge is not the type of connection which alone precludes appointment or employment. Even if a bankruptcy judge determines that it is improper to appoint or approve the employment of a former law clerk in the period immediately after completion of the former law clerk's service with the judge, the firm which employes the former law clerk will, absent other circumstances, be eligible for employment. In each instance all the facts must be considered by the bankruptcy judge.

Subdivision (b) applies to persons connected with a bankruptcy judge. "Person" is defined in § 101 of the Bankruptcy Code to include an "individual, partnership and corporation". A partnership or corporation may be appointed or employed to serve in a bankruptcy case. If a bankruptcy judge is connected in some way with a partnership or corporation, it is necessary for the court to determine whether the appointment or employment of that partnership or corporation is proper.

The amended rule does not regulate professional relationships which do not require approval of a bankruptcy judge. Disqualification of the bankruptcy judge pursuant to 28 U.S.C. § 455 may, however, be appropriate. Under Rule 5004(a), a bankruptcy judge may find that disqualification from only some aspect of the case, rather than the entire case, is necessary. A situation may also arise in which the disqualifying circumstance only comes to light after services have been performed. Rule 5004(b) provides that if compensation from the estate is sought for these services, the bankruptcy judge is disqualified from awarding compensation.

Rule 5003. Records Kept by the Clerk

(a) Bankruptcy Dockets

The clerk shall keep bankruptcy dockets recording all judgments and orders and the activity in each case as prescribed by the Director of the Administrative Office of the United States Courts. The entry of a judgment or order in a docket shall show the date the entry is made.

(b) Claims Register

The clerk shall keep in a claims register a list of claims filed in a case when it appears that there will be a distribution to unsecured creditors.

(c) Judgments

The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a correct copy of every final judgment or order affecting title to or lien on real propety or for the recovery of money or property, and any other order which the court may direct to be kept.

(d) Index of Cases; Certificate of Search

The clerk shall keep suitable indices of all cases filed under the Code as prescribed by the Director of the Administrative Office of the United States Courts. On request, the clerk shall make a search of any index and papers in his custody and certify whether a case has been filed in or transferred to the court or a discharge entered in its records.

(e) Other Books and Records of the Clerk

The clerk shall also keep such other books and records as may be required by the Director of the Administrative Office of the United States Courts.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule consolidates former Bankruptcy Rules 504 and 507. The record-keeping duties of the referee under former Bankruptcy Rule 504 are transferred to the clerk. Subdivisions (a), (c), (d) and (e) are similar to subdivisions (a)-(d) of Rule 79 F.R.Civ.P.

Subdivision (b) requires that filed claims be listed on a claims register only when there may be a distribution to unsecured creditors. Compilation of the list for no asset or nominal asset cases would serve no purpose.

Rule 2013 requires the clerk to maintain a public record of fees paid from the estate and an annual summary thereof.

Former Bankruptcy Rules 507(d) and 508, which made materials in the clerk's office and files available to the public, are not necessary because § 107 of the Code guarantees public access to files and dockets of cases under the Code.

Rule 5004. Disqualification

(a) Disqualification of Judge

A bankruptcy judge shall be governed by 28 U.S.C. § 455, and when disqualified from acting thereunder, shall disqualify himself from presiding over the adversary proceeding or contested matter in which the disqualifying circumstance arises or, if appropriate, shall disqualify himself from presiding over the case.

(b) Disqualification of Judge from Allowing Compensation

A judge shall disqualify himself from allowing compensation to a person who is a relative or with whom he is so connected as to render it improper for him to authorize such compensation.

(As amended Apr. 29, 1985, eff. Aug. 1, 1985.)

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). Disqualification of a bankruptcy judge is governed by 28 U.S.C. § 455. That section provides that the judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned" or under certain other circumstances. In a case under the Code it is possible that the disqualifying circumstance will be isolated to an adversary proceeding or contested matter. The rule makes it clear that when the disqualifying circumstance is limited in that way the judge need only disqualify himself from presiding over that adversary proceeding or contested matter.

It is possible, however, that even if the disqualifying circumstance arises in connection with an adversary proceeding, the effect will be so pervasive that disqualification from presiding over the case is appropriate. This distinction is consistent with the definition of "proceeding" in 28 U.S.C. § 455(d)(1).

Subdivision (b) precludes a bankruptcy judge from allowing compensation from the estate to a relative or other person closely associated with the judge. The subdivision applies where the judge has not appointed or approved the employment of the person requesting compensation. Perhaps the most frequent application of the subdivision will be in the allowance of administrative expenses under § 503(b)(3)-(5) of the Code. For example, if an attorney or accountant is retained by an indenture trustee who thereafter makes a substan-

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tial contribution in a chapter 11 case, the attorney or accountant may seek compensation under § 503(b)(4). If the attorney or accountant is a relative of or associated with the bankruptcy judge, the judge may not allow compensation to the attorney or accountant. Section 101(34) defines relative and Rule 9001 incorporates the definitions of the Code. See the Advisory Committee's Note to Rule 5002.

NOTES OF ADVISORY COMMITTEE ON RULES—1985 AMENDMENT

Subdivision (a) was affected by the Bankruptcy Amendments and Federal Judgeship Act of 1984, P.L. 98-353, 98 Stat. 333. The 1978 Bankruptcy Reform Act, P.L. 95-598, included bankruptcy judges in the definition of United States judges in 28 U.S.C. § 451 and they were therefore subject to the provisions of 28 U.S.C. § 455. This was to become effective on April 1, 1984, P.L. 95-598, § 404(b). Section 113 of P.L. 98-353, however, appears to have rendered the amendment to 28 U.S.C. § 451 ineffective. Subdivision (a) of the rule retains the substance and intent of the earlier draft by making bankruptcy judges subject to 28 U.S.C. § 455.

The word "associated" in subdivision (b) has been changed to "connected" in order to conform with Rule 5002(b).

Rule 5005. Filing of Papers

(a) Filing

The petition, proofs of claim or interest, complaints, motions, applications, objections and other papers required to be filed by these rules, except as provided in 28 U.S.C. § 1473, shall be filed with the clerk of the court in which the case under the Code is pending. The judge of that court may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the clerk.

(b) Error in Filing

A paper intended to be filed but erroneously delivered to the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the clerk of the bankruptcy court. In the interest of justice, the court may order that the paper shall be deemed filed as of the date of its original delivery.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) is an adaptation of Rule 5(e) F.R.Civ.P. Sections 301-304 of the Code and Rules 1002 and 1003 require that cases under the Code be commenced by filing a petition "with the bankruptcy court." Other sections of the Code and other rules refer to or contemplate filing but there is no specific reference to filing with the bankruptcy court. For example, § 501 of the Code requires filing of proofs of claim and Rule 3016(c) requires the filing of a disclosure statement. This subdivision applies to all situations in which filing is required. Except when filing in another district is authorized by 28 U.S.C. § 1473, all papers, including complaints commencing adversary proceedings, must be filed in the court where the case under the Code is pending.

Subdivision (b) is the same as former Bankruptcy Rule 509(c).

Rule 5006. Certification of Copies of Papers

The clerk shall issue a certified copy of the record of any proceeding in a case under the Code or of any paper filed with the court on payment of any prescribed fee.

NOTES OF ADVISORY COMMITTEE ON RULES

Fees for certification and copying are fixed by the Judicial Conference under 28 U.S.C. § 1930(b).

Rule 1101 F. R. Evid. makes the Federal Rules of Evidence applicable to cases under the Code. Rule 1005 F. R. Evid. allows the contents of an official record or of a paper filed with the court to be proved by a duly certified copy. A copy certified and issued in accordance with Rule 5006 is accorded authenticity by Rule 902(4) F. R. Evid.

Rule 5007. Record of Proceedings and Transcripts

(a) Filing of Record or Transcript

The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and promptly file them with the clerk. The person preparing any transcript shall promptly file a certified copy with the clerk.

(b) Transcript Fees

The fees for copies of transcripts shall be charged at rates prescribed by the Judicial Conference of the United States. No fee may be charged for the certified copy filed with the clerk for the records of the court.

(c) Admissibility of Record in Evidence

A certified sound recording or a transcript of a proceeding shall be admissible as prima facie evidence to establish the record.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule supplements 28 U.S.C. § 773. A record of proceedings before the bankruptcy judge is to be made whenever practicable. By whatever means the record is made, subdivision (a) requires that the preparer of the record certify and file the original notes, tape recording, or other form of sound recording of the proceedings. Similarly, if a transcript is requested, the preparer is to file a certified copy with the clerk.

Subdivision (b) is derived from 28 U.S.C. § 753(f).

Subdivision (c) is derived from former Bankruptcy Rule 811(c). This subdivision extends to a sound recording the same evidentiary status as a transcript under 28 U.S.C. § 773(b).

Rule 5008. Funds of the Estate

(a) Court Approval Required

A deposit or investment for which a bond or deposit of securities is required under § 345(b) of the Code shall not be made until the court, on motion with such notice as the court directs, approves the bond or the deposit of securities.

(b) Report of Deposit or Investment

Promptly after making the initial deposit or investment of the estate's funds and thereafter as the court may direct, the trustee shall file a report which identifies the depository or describes the investment and states the amount of any deposit or investment and whether any portion is insured or guaranteed by the United States or a department, agency, or instrumentality of the United States, or backed by the full faith and credit of the United States.

(c) Deposit of Securities; Agreement

Securities accepted for deposit in lieu of a surety on a depository bond shall be deposited in the custody of the Federal Reserve Bank or

branch thereof designated by the court or in the custody of such other person as the court may direct. The securities shall be deposited conditioned on proper accounting for all money deposited or invested and for any return on any such money, prompt repayment of such money and return thereon, and faithful performance of the duties as a depository or entity with whom an investment is made. The entity depositing securities shall execute an agreement for the deposit of securities in favor of the United States which incorporates the foregoing conditions. Securities subject to such an agreement shall be subject to the order of the court.

(d) Action on Bond or Agreement for Deposit of Securities

Proceedings on a bond given pursuant to § 345(b) of the Code or on an agreement for deposit of securities required by subdivision (c) of this rule shall be in the name of the United States for the use of the estate or any person injured by a breach of the condition.

(e) Prohibition of Deposits When Adequacy of Security Doubtful

No trustee or other person shall deposit or invest funds received or held by him as a fiduciary under the Code if there is reasonable cause to believe that the bond or the security therefor or the deposited securities are or may be inadequate in view of existing and expected deposits or investments.

(f) Reports Required

Depositories and entities with whom deposits or investments are made shall file reports as prescribed by regulations of the Director of the Administrative Office of the United States Courts.

(g) Deficiency in Amount of Bond or Deposited Securities

Whenever the bond and any deposited securities do not or will not constitute adequate security because of exisiting and expected deposits or investments, the court shall require the depository or entity with whom an investment is made to increase the amount of the bond or the deposited securities within a fixed time. If within the time fixed the depository or entity with whom an investment is made fails to increase the amount of the bond or the deposited securities to an amount adequate for existing and expected deposits or investments, the court shall order immediate payment of all money on deposit or invested with it, with all interest payable thereon.

(h) Relief From Liability on Bond

A surety on a bond may move to be relieved from liability with respect to any subsequent default. If after hearing on notice to the depository or entity with whom the investment is made, to other sureties, to trustees and to other representatives of estates having money of the estate protected by the bond, the court determines that the motion may be granted without injury to any party in interest, the surety shall be relieved after a new bond or other appropriate security is submitted and approved.

(i) Combining of Funds for Deposit

The court may authorize the deposit or investment of funds from more than one estate in a single account or investment instrument. The trustee shall maintain records identifying separately the money of each estate. The court shall require that a statement of account be filed at least quarterly.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). Section 345 of the Code permits the trustee to deposit or invest money of the estate without prior approval of the court. The trustee may select any kind of financial institution as a depository and any form of investment instrument. Except when the deposit or investment is backed by the United States, the depository must either post a bond or deposit securities. Section 345(b)(1)(B) requires court approval of the bond. Subdivision (a) requires that the court's approval of the bond be obtained before funds of the estate are deposited or invested. The same requirement of prior court approval is also made applicable to the deposit of securities.

Subdivision (b) requires that the initial deposit or investment of the estate's funds be reported to the court. A local rule or order may require the filing of additional reports concerning the management of the estate's funds. If the deposit or investment is not backed by the United States, the report should identify the order of the court approving the bond or the deposit of securities. The court may direct that the report of initial deposits or investments or other reports be provided to creditors or other parties in interest.

Subdivision (c) is an adaptation of former Bankruptcy Rule 512(b). This subdivision makes the conditions of the bond specified in § 345(b)(1) of the Code applicable to a deposit of securities under § 345(b)(2) and also requires the execution of an agreement for deposit of securities which incorporates these conditions. The first sentence of the subdivision goes beyond the comparable provision in former Bankruptcy Rule 512(b) by specifically authorizing the court to permit the securities to be held by an entity other than the Federal Reserve Bank.

Subdivisions (*d*)–(*h*) are derived from former Bankruptcy Rule 512.

Subdivision (i) authorizes the court to permit a trustee to combine money of more than one estate for the purposes of deposit or investment. Combined deposits or investments may be particularly beneficial when a standing chapter 13 trustee has a large number of plans to administer. The subdivision requires that at least quarterly statements of account be filed, but leaves to the court the form of the account and whether more frequent reports should be filed.

Rule 5009. Closing Cases

When an estate has been fully administered and the court has discharged the trustee, the case shall be closed.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is the same as § 350(a) of the Code. An estate may be closed even though the period allowed by Rule 3002(c) for filing claims has not expired. The closing of a case may be expedited when a notice of no dividends is given under Rule 2002(e). Dismissal of a case for want of prosecution or failure to pay filing fees is governed by Rule 1017.

Rule 5010. Reopening Cases

A case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code.

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NOTES OF ADVISORY COMMITTEE ON RULES

Section 350(b) of the Code provides: "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause."

Rule 9024, which incorporates Rule 60 F.R.Civ.P., exempts motions to reopen cases under the Code from the one year limitation of Rule 60(b).

Although a case has been closed the court may sometimes act without reopening the case. Under Rule 9024, clerical errors in judgments, orders, or other parts of the record or errors therein caused by oversight or omission may be corrected. A judgment determined to be non-dischargeable pursuant to Rule 4007 may be enforced after a case is closed by a writ of execution obtained pursuant to Rule 7069.

PART VI—COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6001. Burden of Proof As to Validity of Post Petition Transfer

Any entity asserting the validity of a transfer under § 549 of the Code shall have the burden of proof.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from former Bankruptcy Rule 603. The Act contained, in § 70d, a provision placing the burden of proof on the same person as did Rule 603. The Code does not contain any directive with respect to the burden of proof. This omission, in all probability, resulted from the intention to leave matters affecting evidence to these rules. See H. Rep. No. 95-595, 95th Cong. 1st Sess. (1977) 293.

Rule 6002. Accounting by Prior Custodian of Property of the Estate

(a) Accounting Required

Any custodian required by the Code to deliver property in his possession or control to the trustee, shall promptly file a report and account with the bankruptcy court with respect to the property of the estate and his administration thereof.

(b) Examination of Administration

On the filing of the report and account required by subdivision (a) of this rule and after an examination has been made into the superseded administration, after hearing on notice the court shall determine the propriety of the administration, including the reasonableness of all disbursements.

NOTES OF ADVISORY COMMITTEE ON RULES

"Custodian" is defined in § 101(10) of the Code. The definition includes a trustee or receiver appointed in proceedings not under the Code, as well as an assignee for the benefit of creditors.

This rule prescribes the procedure to be followed by a custodian who under § 543 of the Code is required to deliver property to the trustee and to account for its disposition. The examination under subdivision (b) may be initiated (1) on the motion of the custodian required to account under subdivision (a) for an approval of his account and discharge thereon, (2) on the motion of, or the filing of an objection to the custodian's account by, the trustee or any other party in interest, or (3) on the court's own initiative. Rule 9014 applies to any contested matter arising under this rule.

Section 543(d) is similar to an abstention provision. It grants the bankruptcy court discretion to permit the custodian to remain in possession and control of the property. In that event, the custodian is excused from complying with § 543(a)-(c) and thus would not be required to turn over the property to the trustee. When there is no duty to turn over to the trustee, Rule 6002 would not be applicable.

Rule 6003. Disbursement of Money of the Estate

Disbursement of estate funds shall be by check unless another method is approved by the court. On motion of a party in interest, the court may require countersignatures except that signature by the judge shall not be permitted.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule authorizes the trustee to disburse money of the estate not only by check but by any other method approved by the court. In this latter regard, it continues the flexibility introduced by former Bankruptcy Rule 605(c) to recognize that mechanisms for payments through bank accounts are subject to technological and other changes. Local rule or a court order in a particular case may prescribe record-keeping requirements. The second sentence implements the policy of removing judges from nonjudicial functions.

Rule 6004. Use, Sale or Lease of Property

(a) Notice of Proposed Use, Sale, or Lease of Property

Notice of a proposed use, sale, or lease of property other than in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c), and (i).

(b) Objection to Proposal

Except as provided in subdivision (c) of this rule, an objection to a proposed use, sale, or lease of property shall be filed and served not less than five days before the date set for the proposed action or within the time fixed by the court.

(c) Sale of Property Under $2,500

Notwithstanding subdivision (a) of this rule, when all of the nonexempt property of the estate has an aggregate gross value less than $2,500, it shall be sufficient to give a general notice of intent to sell such property other that in the ordinary course of business to all creditors, indenture trustees, committees appointed or elected pursuant to the Code and other persons as the court may direct. An objection to any such sale may be filed and served by a party in interest within 15 days of the mailing of the notice, or within the time fixed by the court.

(d) Hearing

If a timely objection is made pursuant to subdivision (b) or (c) of the rule, the date of the hearing thereon may be set in the notice given pursuant to subdivision (a) of this rule.

(e) Conduct of Sale Not in the Ordinary Course of Business

(1) *Public or Private Sale.* All sales not in the ordinary course of business may be private or by public auction. Unless it is impracticable, an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a

whole if sold in bulk shall be filed with the clerk on completion of a sale. If the property is sold by an auctioneer, he shall file the statement and furnish a copy to the trustee, debtor in possession, or chapter 13 debtor. If the property is not sold by an auctioneer, the trustee, debtor in possession, or chapter 13 debtor shall file the statement.

(2) *Execution of Instruments.* After a sale in accordance with this rule the debtor, the trustee, or debtor in possession, as the case may be, shall execute any instrument necessary or ordered by the court to effectuate the transfer to the purchaser.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivisions (a) and (b). Pursuant to § 363(b) of the Code, a trustee or debtor in possession may use, sell, or lease property other than in the ordinary course of business only after notice and hearing. Rule 2002(a), (c) and (i) specifies the time when notice of sale is to be given, the contents of the notice and the persons to whom notice is to be given of sales of property. Subdivision (a) makes those provisions applicable as well to notices for proposed use and lease of property.

The Code does not provide the time within which parties may file objections to a proposed sale. Subdivision (b) of the rule requires the objection to be in writing and filed not less than five days before the proposed action is to take place. The objection should also be served within that time on the person who is proposing to take the action which would be either the trustee or debtor in possession. This time period is subject to change by the court. In some instances there is a need to conduct a sale in a short period of time and the court is given discretion to tailor the requirements to the circumstances.

Subdivision (c). In some situations a notice of sale for different pieces of property to all persons specified in Rule 2002(a) may be uneconomic and inefficient. This is particularly true in some chapter 7 liquidation cases when there is property of relatively little value which must be sold by the trustee. Subdivision (c) allows a general notice of intent to sell when the aggregate value of the estate's property is less than $2,500. The gross value is the value of the property without regard to the amount of any debt secured by a lien on the property. It is not necessary to give a detailed notice specifying the time and place of a particular sale. Thus, the requirements of Rule 2002(c) need not be met. If this method of providing notice of sales is used, the subdivision specifies that parties in interest may serve and file objections to the proposed sale of any property within the class and the time for service and filing is fixed at not later than 15 days after mailing the notice. The court may fix a different time. Subdivision (c) would have little utility in chapter 11 cases. Pursuant to Rule 2002(i), the court can limit notices of sale to the creditors' committee appointed under § 1102 of the Code and the same burdens present in a small chapter 7 case would not exist.

Subdivision (d). If a timely objection is filed, a hearing is required with respect to the use, sale, or lease of property. Subdivision (d) renders the filing of an objection tantamount to requesting a hearing so as to require a hearing pursuant to §§ 363(b) and 102(1)(B)(i).

Subdivision (e) is derived in part from former Bankruptcy Rule 606(b) but does not carry forward the requirement of that rule that court approval be obtained for sales of property. Pursuant to § 363(b) court approval is not required unless timely objection is made to the proposed sale. The itemized statement or information required by the subdivision is not necessary when it would be impracticable to prepare it or set forth the information. For example, a liquidation sale of retail goods although not in the ordinary course of business may be on a daily ongoing basis and only summaries may be available.

The duty imposed by paragraph (2) does not affect the power of the bankruptcy court to order third persons to execute instruments transferring property purchased at a sale under this subdivision. See, *e.g., In re Rosenberg,* 138 F.2d 409 (7th Cir. 1943).

Rule 6005. Appraisers and Auctioneers

The order of the court approving the employment of an appraiser or auctioneer shall fix the amount or rate of his compensation. No officer or employee of the Judicial Branch of the United States or the United States Department of Justice shall be eligible to act as appraiser or auctioneer. No residence or licensing requirement shall disqualify an appraiser or auctioneer from employment.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from former Bankruptcy Rule 606(c) and implements § 327 of the Code. Pursuant to § 327, the trustee or debtor in possession may employ one or more appraisers or auctioneers, subject to court approval. This rule requires the court order approving such employment to fix the amount or rate of compensation. The second sentence of the former rule is retained to continue to safeguard against imputations of favoritism which detract from public confidence in bankruptcy administration. The final sentence is to guard against imposition of parochial requirements not warranted by any consideration having to do with sound bankruptcy administration.

Reference should also be made to Rule 2013(a) regarding the limitation on employment of appraisers and auctioneers, and Rule 2014(a) regarding the application for appointment of an appraiser or auctioneer.

Rule 6006. Assumption, Rejection and Assignment of Executory Contracts

(a) Proceeding To Assume, Reject, or Assign

A proceeding to assume, reject, or assign an executory contract, including an unexpired lease, other than as part of a plan is governed by Rule 9014.

(b) Proceeding To Require Trustee To Act

A proceeding by a party to an executory contract or unexpired lease in a chapter 9 municipality case, chapter 11 reorganization case, or chapter 13 individual's debt adjustment case, to require the trustee, debtor in possession, or debtor to determine whether to assume or reject the contract or lease is governed by Rule 9014.

(c) Hearing

When a motion is made pursuant to subdivision (a) or (b) of this rule, the court shall set a hearing on notice to the other party to the contract and to other parties in interest as the court may direct.

NOTES OF ADVISORY COMMITTEE ON RULES

Section 365(a) of the Code requires court approval for the assumption or rejection of an executory contract by the trustee or debtor in possession. The trustee or debtor in possession may also assign an executory contract, § 365(f)(1), but must first assume the contract, § 365(f)(2). Rule 6006 provides a procedure for obtaining court approval. It does not apply to the automatic rejection of contracts which are not assumed in chapter 7 liquidation cases within 60 days after the order for relief, or to the assumption or rejection of contracts in a plan pursuant to § 1123(b)(2) or § 1322(b)(7).

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Subdivision (a) by referring to Rule 9014 requires a motion to be brought for the assumption, rejection, or assignment of an executory contract. Normally, the motion will be brought by the trustee, debtor in possession or debtor in a chapter 9 or chapter 13 case. The authorization to assume a contract and to assign it may be sought in a single motion and determined by a single order.

Subdivision (b) makes applicable the same motion procedure when the other party to the contract seeks to require the chapter officer to take some action. Section 365(d)(2) recognizes that this procedure is available to these contractual parties. This provision of the Code and subdivision of the rule apply only in chapter 9, 11 and 13 cases. A motion is not necessary in chapter 7 cases because in those cases a contract is deemed rejected if the trustee does not timely assume it.

Subdivision (c) provides for the court to set a hearing on a motion made under subdivision (a) or (b). The other party to the contract should be given appropriate notice of the hearing and the court may order that other parties in interest, such as a creditors' committee, also be given notice.

Rule 6007. Abandonment or Disposition of Property

(a) Notice of Proposed Abandonment or Disposition; Objections

Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to all creditors, indenture trustees and committees appointed or elected pursuant to the Code. An objection may be filed and served by a party in interest within 15 days of the mailing of the notice, or within the time fixed by the court.

(b) Motion by Party in Interest

A party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate.

(c) Hearing

If a timely objection is made as prescribed by subdivision (a) of this rule, or if a motion is made as prescribed by subdivision (b), the court shall set a hearing on notice to the persons as the court may direct.

NOTES OF ADVISORY COMMITTEE ON RULES

Sections 554 and 725 of the Code permit and require abandonment and disposition of property of the estate. Pursuant to § 554, the trustee may abandon property but only after notice and hearing. This section is applicable in chapter 7, 11 and 13 cases. Section 725 requires the trustee to dispose of property in which someone other than the estate has an interest, prior to final distribution. It applies only in chapter 7 cases. Notice and hearing are also required conditions. Section 102(1) provides that "notice and hearing" is construed to mean appropriate notice and an opportunity for a hearing. Neither § 554 nor § 725 specify to whom the notices are to be sent. This rule does not apply to § 554(c). Pursuant to that subsection, property is deemed abandoned if it is not administered. A hearing is not required by the statute.

Subdivision (a) requires the notices to be sent to all creditors, indenture trustees, and committees elected under § 705 or appointed under § 1102 of the Code. This may appear burdensome, expensive and inefficient but the subdivision is in keeping with the Code's requirement for notice and the Code's intent to remove the bankruptcy judge from undisputed matters. The burden, expense and inefficiency can be alleviated in large measure by incorporating the notice into or together with the notice of the meeting of creditors so that separate notices would not be required.

Subdivision (b) implements § 554(b) which specifies that a party in interest may request an order that the trustee abandon property. The rule specifies that the request be by motion and, pursuant to the Code, lists the parties who should receive notice.

Subdivision (c) requires a hearing when an objection under subdivision (a) is filed or a motion under subdivision (b) is made. Filing of an objection is sufficient to require a hearing; a separate or joined request for a hearing is unnecessary since the objection itself is tantamount to such a request.

Rule 6008. Redemption of Property from Lien or Sale

On motion by the debtor, trustee, or debtor in possession and after hearing on notice as the court may direct, the court may authorize the redemption of property from a lien or from a sale to enforce a lien in accordance with applicable law.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from former Bankruptcy Rule 609. No provision in the Code addresses the trustee's right of redemption. Ordinarily the secured creditor should be given notice of the trustee's motion so that any objection may be raised to the proposed redemption.

The rule applies also to a debtor exercising a right of redemption pursuant to § 722. A proceeding under that section is governed by Rule 9014.

Rule 6009. Prosecution and Defense of Proceedings by Trustee or Debtor in Possession

With or without court approval, the trustee or debtor in possession may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding in behalf of the estate before any tribunal.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from former Bankruptcy Rule 610.

Rule 6010. Proceeding to Avoid Indemnifying Lien or Transfer to Surety

If a lien voidable under § 547 of the Code has been dissolved by the furnishing of a bond or other obligation and the surety thereon has been indemnified by the transfer of, or the creation of a lien upon, nonexempt property of the debtor, the surety shall be joined as a defendant in any proceeding to avoid the indemnifying transfer or lien. Such proceeding is governed by the rules in Part VII. If an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, on motion by any party in interest after notice and hearing the court shall ascertain the value of such property or lien. If the value is less than the amount for which the property or lien is indemnity, the surety may elect to retain the property or lien on payment of the value so ascertained to the trustee or debtor in possession, within the time fixed by the court.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from former Bankruptcy Rule 612.

PART VII—ADVERSARY PROCEEDINGS

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. It is a proceeding in a bankruptcy court (1) to recover money or property, except a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002, (2) to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d), (3) to obtain approval pursuant to § 363(h) for the sale of both the interest of the estate and of a coowner in property, (4) to object to or revoke a discharge, (5) to revoke an order of confirmation of a chapter 11 or chapter 13 plan, (6) to determine the dischargeability of a debt, (7) to obtain an injunction or other equitable relief, (8) to subordinate any allowed claim or interest, except when subordination is provided in a chapter 9, 11, or 13 plan, (9) to obtain a declaratory judgment relating to any of the foregoing, or (10) to determine a claim or cause of action removed to a bankruptcy court.

NOTES OF ADVISORY COMMITTEE ON RULES

The rules in Part VII govern the procedural aspects of litigation involving the matters referred to in this Rule 7001. Under Rule 9014 some of the Part VII rules also apply to contested matters.

These Part VII rules are based on the premise that to the extent possible practice before the bankruptcy courts and the district courts should be the same. These rules either incorporate or are adaptations of most of the Federal Rules of Civil Procedure. Although the Part VII rules of the former Bankruptcy Rules also relied heavily on the F.R.Civ.P., the former Part VII rules departed from the civil practice in two significant ways: a trial or pretrial conference had to be scheduled as soon as the adversary proceeding was filed and pleadings had to be filed within periods shorter than those established by the F.R.Civ.P. These departures from the civil practice have been eliminated.

The content and numbering of these Part VII rules correlates to the content and numbering of the F.R.Civ.P. Most, but not all, of the F.R.Civ.P. have a comparable Part VII rule. When there is no Part VII rule with a number corresponding to a particular F.R.Civ.P., Parts V and IX of these rules must be consulted to determine if one of the rules in those parts deals with the subject. The list below indicates the F.R.Civ.P., or subdivision thereof, covered by a rule in either Part V or Part IX.

F.R.Civ.P.	Rule in Part V or IX
6	9006
7(b)	9013
10(a)	9004(b)
11	9011
38,39	9015(a)-(e)
47-51	9015(f)
43,44,44.1	9017
45	9016
58	9021
59	9023
60	9024
61	9005
63	9028
77(a),(b),(c)	5001
77(d)	9022(d)
79(a)-(d)	5003
81(c)	9027
83	9029
92	9030

Proceedings to which the rules in Part VII apply directly include those brought to avoid transfers by the debtor under §§ 544, 545, 547, 548 and 549 of the Code; subject to important exceptions, proceedings to recover money or property; proceedings on bonds under Rules 5008(d) and 9025; proceedings under Rule 4004 to determine whether a discharge in a chapter 7 or 11 case should be denied because of an objection grounded on § 727 and proceedings in a chapter 7 or 13 case to revoke a discharge as provided in §§ 727(d) or 1328(e); and proceedings initiated pursuant to § 523(c) of the Code to determine the dischargeability of a particular debt. Those proceedings were classified as adversary proceedings under former Bankruptcy Rule 701.

Also included as adversary proceedings are proceedings to revoke an order of confirmation of a plan in a chapter 11 or 13 case as provided in §§1144 and 1330, to subordinate under § 510(c), other than as part of a plan, an allowed claim or interest, and to sell under § 363(h) both the interest of the estate and a co-owner in property.

Declaratory judgments with respect to the subject matter of the various adversary proceedings are also adversary proceedings.

Any claim or cause of action removed to a bankruptcy court pursuant to 28 U.S.C. § 1478 is also an adversary proceeding.

Unlike former Bankruptcy Rule 701, requests for relief from an automatic stay do not commence an adversary proceeding. Section 362(e) of the Code and Rule 4001 establish an expedited schedule for judicial disposition of requests for relief from the automatic stay. The formalities of the adversary proceeding process and the time for serving pleadings are not well suited to the expedited schedule. The motion practice prescribed in Rule 4001 is best suited to such requests because the court has the flexibility to fix hearing dates and other deadlines appropriate to the particular situation.

Clause (1) contains important exceptions. A person with an interest in property in the possession of the trustee or debtor in possession may seek to recover or reclaim that property under § 554(b) or § 725 of the Code. Since many attempts to recover or reclaim property under these two sections do not generate disputes, application of the formalities of the Part VII Rules is not appropriate. Also excluded from adversary proceedings is litigation arising from an examination under Rule 2017 of a debtor's payments of money or transfers of property to an attorney representing the debtor in a case under the Code or an examination of a superseded administration under Rule 6002.

Exemptions and objections thereto are governed by Rule 4003. Filing of proofs of claim and the allowances thereof are governed by Rules 3001-3005, and objections to claims are governed by Rule 3007. When an objection to a claim is joined with a demand for relief of the kind specified in this Rule 7001, the matter becomes an adversary proceeding. See Rule 3007.

Rule 7002. References to Federal Rules of Civil Procedure

Whenever a Federal Rule of Civil Procedure applicable to adversary proceedings makes reference to another Federal Rule of Civil Procedure, the reference shall be read as a reference to the Federal Rule of Civil Procedure as modified in this Part VII.

NOTES OF ADVISORY COMMITTEE ON RULES

Rules 5, 12, 13, 14, 25, 27, 30, 41 and 52 F.R.Civ.P. are made applicable to adversary proceedings by Part VII. Each of those rules contains a cross reference to another Federal Rule; however, the Part VII rule which incorporates the cross-referenced Federal Rule modifies the Federal Rule in some way. Under this Rule

7002 the cross reference is to the Federal Rule as modified by Part VII. For example, Rule 5 F.R.Civ.P., which is made applicable to adversary proceedings by Rule 7005, contains a reference to Rule 4 F.R.Civ.P. Under this Rule 7002, the cross reference is to Rule 4 F.R.Civ.P. as modified by Rule 7004.

Rules 7, 10, 12, 13, 14, 19, 22, 23.2, 24–37, 41, 45, 49, 50, 52, 55, 59, 60, 62 F.R.Civ.P. are made applicable to adversary proceedings by Part VII or generally to cases under the Code by Part IX. Each of those Federal Rules contains a cross reference to another Federal Rule which is not modified by the Part VII or Part IX rule which makes the cross-referenced Federal Rule applicable. Since the cross-referenced rule is not modified by a Part VII rule this Rule 7002 does not apply.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 7003. Commencement of Adversary Proceeding

Rule 3 F.R.Civ.P. applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 5005(a) requires that a complaint commencing an adversary proceeding be filed with the court in which the case under the Code is pending unless 28 U.S.C. § 1473 authorizes the filing of the complaint in another district.

Rule 7004. Process; Service of Summons, Complaint

(a) Summons; Service; Proof of Service

Rule 4(a), (b), (d), (e) and (g)–(i) F.R.Civ.P. applies in adversary proceedings. Personal service pursuant to Rule 4(d) F.R.Civ.P. may be made by any person not less than 18 years of age who is not a party and the summons may be delivered by the clerk to any such person.

(b) Service by First Class Mail

In addition to the methods of service authorized by Rule 4(d) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession.

(2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such defendant in the courts of general jurisdiction of that state. The summons and complaint in such case shall be addressed to the person required to be served at his dwelling house or usual place of abode or at the place where he regularly conducts his business or profession.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by mailing a copy of the summons and complaint to the United States attorney for the district in which the action is brought and also the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to such officer or agency.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the person upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such defendant in the court of general jurisdiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at his dwelling house or usual place of abode or at the place where he regularly carries on his business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

(9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing copies of the summons and complaint to the debtor at the address shown in the petition or statement of affairs or to such other address as the debtor may designate in writing filed with the court and, if the debtor is represented by an attorney, to the attorney at his post-office address.

(c) Service by Publication

If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in Rule 4(d) or (i) F.R.Civ.P. or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail postage prepaid, to the party's last known address and by at least

one publication in such manner and form as the court may direct.

(d) Nationwide Service of Process

The summons and complaint and all other process except a subpoena may be served anywhere in the United States.

(e) Service on Debtor and Others in Foreign Country

The summons and complaint and all other process except a subpoena may be served as provided in Rule 4(d)(1) and (d)(3) in a foreign country (A) on the debtor, any person required to perform the duties of a debtor, any general partner of a partnership debtor, or any attorney who is a party to a transaction subject to examination under Rule 2017; or (B) on any party to an adversary proceeding to determine or protect rights in property in the custody of the court; or (C) on any person whenever such service is authorized by a federal or state law referred to in Rule 4(d)(7) or (e).

(f) Summons: Time Limit for Service

If service is made pursuant to Rule 4(d)(1)–(7) it shall be made by delivery of the summons and complaint within 10 days following issuance of the summons. If service is made by any authorized form of mail, the summons and complaint shall be deposited in the mail within 10 days following issuance of the summons. If a summons is not timely delivered or mailed, another summons shall be issued and served.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of the rule, by incorporation of Rule 4(a), (b), (d), (e) and (g)–(i) F.R.Civ.P., governs the mechanics of issuance of a summons and its form, the manner of service on parties and their representatives, and service in foreign countries.

Subdivision (b), which is the same as former Rule 704(c), authorizes service of process by first class mail postage prepaid. This rule retains the modes of service contained in former Bankruptcy Rule 704. The former practice, in effect since 1976, has proven satisfactory.

Subdivision (c) is derived from former Bankruptcy Rule 704(d)(2).

Subdivision (d). Nationwide service of process is authorized by subdivision (d).

Subdivision (e) authorizes service by delivery on individuals and corporations in foreign countries if the party to be served is the debtor or any person required to perform the duties of the debtor and certain other persons, the adversary proceeding involves property in the custody of the bankruptcy court, or if federal or state law authorizes such service in a foreign country.

Subdivision (f). The requirement of former Bankruptcy Rule 704 that the summons be served within 10 days is carried over into these rules by subdivision (f).

Rule 7005. Service and Filing of Pleadings and Other Papers

Rule 5 F.R.Civ.P. applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 5 F.R.Civ.P. refers to Rule 4 F.R.Civ.P. Pursuant to Rule 7002 this reference is to Rule 4 F.R.Civ.P. as incorporated and modified by Rule 7004.

Rule 7007. Pleadings Allowed

Rule 7 F.R.Civ.P. applies in adversary proceedings.

Rule 7008. General Rules of Pleading

(a) Applicability of Rule 8 F.R.Civ.P.

Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending.

(b) Attorney's Fees

A request for an award of attorney's fees shall be pleaded as a claim in a complaint, cross-claim, third-party complaint, answer, or reply as may be appropriate.

Rule 7009. Pleading Special Matters

Rule 9 F.R.Civ.P. applies in adversary proceedings.

Rule 7010. Form of Pleadings

Rule 10 F.R.Civ.P. applies in adversary proceedings, except that the caption of each pleading in such a proceeding shall conform substantially to Offical Form No. 34.

Rule 7012. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings

(a) When Presented

If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court. The court shall prescribe the time for service of the answer when service of a complaint is made by publication or upon a party in a foreign country. A party served with a pleading stating a cross-claim shall serve an answer thereto within 20 days after service. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to a complaint within 35 days after the issuance of the summons, and shall serve an answer to a cross-claim, or a reply to a counterclaim, within 35 days after service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of a more definite statement.

(b) Applicability of Rule 12(b)–(h) F.R.Civ.P.

Rule 12(b)–(h) F.R.Civ.P. applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) continues the practice of former Bankruptcy Rule 712(a) by requiring that the answer to a complaint be filed within 30 days after the issuance of the summons. Under Rule 7004(f), the summons must be served within 10 days of issuance. The other pleading periods in adversary proceedings are the same as those in civil actions before the district courts, except that the United States is allowed 35 rather than 60 days to respond.

Rule 12(b)(7) and (h)(2) F.R.Civ.P. refers to Rule 19 F.R.Civ.P. Pursuant to Rule 7002 these references are to Rule 19 F.R.Civ.P. as incorporated and modified by Rule 7019.

Rule 7013. Counterclaim and Cross-Claim

Rule 13 F.R.Civ.P. applies in adversary proceedings, except that a party sued by a trustee or debtor in possession need not state as a counterclaim any claim which he has against the debtor, his property, or the estate, unless the claim arose after the entry of an order for relief. A trustee or debtor in possession who fails to plead a counterclaim through oversight, inadvertence, or excusable neglect, or when justice so requires, may by leave of court amend the pleading, or commence a new adversary proceeding or separate action.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 13(h) F.R.Civ.P. refers to Rule 19 F.R.Civ.P. Pursuant to Rule 7002 this reference is to Rule 19 F.R.Civ.P. as incorporated and mofified by Rule 7019.

Rule 7014. Third-Party Practice

Rule 14 F.R.Civ.P. applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule does not purport to deal with questions of jurisdiction. The scope of the jurisdictional grant under 28 U.S.C. § 1471 and whether the doctrines of pendent or ancillary jurisdiction are applicable to adversary proceedings will be determined by the courts.

Rule 14 F.R.Civ.P. refers to Rules 12 and 13 F.R.Civ.P. Pursuant to Rule 7002 those references are to Rules 12 and 13 as incorporated and modified by Rules 7012 and 7013.

Rule 7015. Amended and Supplemental Pleadings

Rule 15 F.R.Civ.P. applies in adversary proceedings.

Rule 7016. Pre-Trial Procedure; Formulating Issues

Rule 16 F.R.Civ.P. applies in adversary proceedings.

Rule 7017. Parties Plaintiff and Defendant; Capacity

Rule 17 F.R.Civ.P. applies in adversary proceedings, except as provided in Rules 2110(d) and 5008(d).

NOTES OF ADVISORY COMMITTEE ON RULES

Rules 2010(d) and 5008(d), which implement §§ 322 and 345 of the Code, authorise a party in interest to prosecute a claim on the bond of a trustee or depository in the name of the United States.

Rule 7018. Joinder of Claims and Remedies

Rule 18 F.R.Civ.P. applies in adversary proceedings.

Rule 7019. Joinder of Persons Needed for Just Determination

Rule 19 F.R.Civ.P. applies in adversary proceedings, except that (1) if a person joined as a party raises the defense that the bankruptcy court lacks jurisdiction over the subject matter and the defense is sustained, the court shall dismiss such person from the adversary proceedings and (2) if a person joined as a party properly and timely raises the defense of improper venue, the court shall determine, as provided in 28 U.S.C. § 1477, whether that part of the proceeding involving the joined party shall be retained or transferred to another district, or whether the entire adversary proceeding shall be transferred to another district.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule addresses a situation different from that encountered by the district court when its jurisdiction is based on diversity of citizenship under 28 U.S.C. § 1332. Joining of a party whose citizenship is the same as that of an adversary destroys the district court's jurisdiction over the entire civil action but under 28 U.S.C. § 1471 the attempted joinder of such a person would not affect the bankruptcy court's jurisdiction over the original adversary proceeding.

Rule 7020. Permissive Joinder of Parties

Rule 20 F.R.Civ.P. applies in adversary proceedings.

Rule 7021. Misjoinder and Non-Joinder of Parties

Rule 21 F.R.Civ.P. applies in adversary proceedings.

Rule 7022. Interpleader

Rule 22(1) F.R.Civ.P. applies in adversary proceedings.

Rule 7023. Class Proceedings

Rule 23 F.R.Civ.P. applies in adversary proceedings.

Rule 7023.1. Derivative Proceedings by Shareholders

Rule 23.1 F.R.Civ.P. applies in adversary proceedings.

7023.2. Adversary Proceedings Relating to Unincorporated Associations

Rule 23.2 F.R.Civ.P. applies in adversary proceedings.

Rule 7024. Intervention

Rule 24 F.R.Civ.P. applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

A person may seek to intervene in the case under the Code or in an adversary proceeding relating to the case under the Code. Intervention in a case under the Code is governed by Rule 2018 and intervention in an adversary proceeding is governed by this rule. Intervention in a case and intervention in an adversary proceeding must be sought separately.

Rule 7025. Substitution of Parties

Subject to the provisions of Rule 2012, Rule 25 F.R.Civ.P. applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 25 F.R.Civ.P. refers to Rule 4 F.R.Civ.P. Pursuant to Rule 7002 that reference is to Rule 4 as incorporated and modified by Rule 7004.

Rule 7026. General Provisions Governing Discovery

Rule 26 F.R.Civ.P. applies in adversary proceedings.

Rule 7027. Depositions Before Adversary Proceedings or Pending Appeal

Rule 27 F.R.Civ.P. applies to adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 27(a)(2) F.R.Civ.P. refers to Rule 4 F.R.Civ.P. Pursuant to Rule 7002 the reference is to Rule 4 F.R.Civ.P. as incorporated and modified by Rule 7004.

Rule 7028. Persons Before Whom Depositions May Be Taken

Rule 28 F.R.Civ.P. applies in adversary proceedings.

Rule 7029. Stipulations Regarding Discovery Procedure

Rule 29 F.R.Civ.P. applies in adversary proceedings.

Rule 7030. Depositions Upon Oral Examination

Rule 30 F.R.Civ.P. applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 30 F.R.Civ.P. refers to Rule 4 F.R.Civ.P. Pursuant to Rule 7002 that reference is a reference to Rule 4 F.R.Civ.P. as incorporated and modified by Rule 7004.

Rule 7031. Deposition Upon Written Questions

Rule 31 F.R.Civ.P. applies in adversary proceedings.

Rule 7032. Use of Depositions in Adversary Proceedings

Rule 32 F.R.Civ.P. applies in adversary proceedings.

Rule 7033. Interrogatories to Parties

Rule 33 F.R.Civ.P. applies in adversary proceedings.

Rule 7034. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

Rule 34 F.R.Civ.P. applies in adversary proceedings.

Rule 7035. Physical and Mental Examination of Persons

Rule 35 F.R.Civ.P. applies in adversary proceedings.

Rule 7036. Requests for Admission

Rule 36 F.R.Civ.P. applies in adversary proceedings.

Rule 7037. Failure to Make Discovery: Sanctions

Rule 37 F.R.Civ.P. applies in adversary proceedings.

Rule 7040. Assignment of Cases for Trial

Rule 40 F.R.Civ.P. applies in adversary proceedings.

Rule 7041. Dismissal of Adversary Proceedings

Rule 41 F.R.Civ.P. applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee and only on order of the court containing terms and conditions which the court deems proper.

NOTES OF ADVISORY COMMITTEE ON RULES

Dismissal of a complaint objecting to a discharge raises special concerns because the plaintiff may have been induced to dismiss by an advantage given or promised by the debtor or someone acting in his interest. Some courts by local rule or order have required the debtor and his attorney or the plaintiff to file an affidavit that nothing has been promised to the plaintiff in consideration of the withdrawal of the objection. By specifically authorizing the court to impose conditions in the order of dismissal this rule permits the continuation of this salutary practice.

Rule 41 F.R.Civ.P. refers to Rule 19 F.R.Civ.P. Pursuant to Rule 7002 that reference is to Rule 19 F.R.Civ.P. as incorporated and modified by Rule 7019.

Rule 7042. Consolidation of Adversary Proceedings; Separate Trials

Rule 42 F.R.Civ.P. applies in adversary proceedings.

Rule 7052. Findings by the Court

Rule 52 F.R.Civ.P. applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 52(a) F.R.Civ.P. refers to Rule 12 F.R.Civ.P. Pursuant to Rule 7002 this reference is to Rule 12 F.R.Civ.P. as incorporated and modified by Rule 7012.

Rule 7054. Judgments; Costs

(a) Judgments

Rule 54(a)–(c) F.R.Civ.P. applies in adversary proceedings.

(b) Costs

The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice; on motion served within five days thereafter, the action of the clerk may be reviewed by the court.

Rule 7055. Default

Rule 55 F.R.Civ.P. applies in adversary proceedings.

Rule 7056. Summary Judgment

Rule 56 F.R.Civ.P. applies in adversary proceedings.

Rule 7062. Stay of Proceedings to Enforce a Judgment

Rule 62 F.R.Civ.P. applies in adversary proceedings except that an order granting relief from an automatic stay provided by § 362, § 922, or § 1301 of the Code, an order authorizing or prohibiting the use of cash collateral or property of the estate under § 363, and an order authorizing the trustee to obtain credit pursuant to § 364 shall be additional exceptions to Rule 62(a).

NOTES OF ADVISORY COMMITTEE ON RULES

The additional exceptions set forth in this rule make applicable to those matters the consequences contained in Rule 62(c) and (d) with respect to orders in actions for injunctions.

Rule 7064. Seizure of Person or Property

Rule 62 F.R.Civ.P. applies in adversary proceedings.

Rule 7065. Injunctions

Rule 65 F.R.Civ.P. applies in adversary proceedings, except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c).

Rule 7067. Deposit in Court

Rule 67 F.R.Civ.P. applies in adversary proceedings.

Rule 7068. Offer of Judgment

Rule 68 F.R.Civ.P. applies in adversary proceedings.

Rule 7069. Execution

Rule 69 F.R.Civ.P. applies in adversary proceedings.

Rule 7070. Judgment for Specific Acts; Vesting Title

Rule 70 F.R.Civ.P. applies in adversary proceedings and the court may enter a judgment divesting the title of any party and vesting title in others whenever the real or personal property involved is subject to the jurisdiction of the bankruptcy court.

Rule 7071. Process in Behalf of and Against Persons Not Parties

Rule 71 F.R.Civ.P. applies in adversary proceedings.

Rule 7087. Transfer of Adversary Proceeding

On motion and after a hearing, the court may transfer an adversary proceeding or any part thereof to another district pursuant to 28 U.S.C. § 1475 and § 1477, except as provided in Rule 7019(2).

PART VIII—APPEALS TO DISTRICT COURT OR BANKRUPTCY APPELLATE PANEL

Rule 8001. Manner of Taking Appeal; Voluntary Dismissal; Effect of Appeal to Court of Appeals

(a) Appeal as of Right; How Taken

An appeal from a final judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel shall be taken by filing a notice of appeal with the clerk of the bankruptcy court within the time allowed by Rule 8002. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal. The notice of appeal shall conform substantially to Official Form No. 35, shall contain the names of all parties to the judgment, order, or decree appealed from and the names, addresses and telephone numbers of their respective attorneys, and be accompanied by the prescribed fee. Each appellant shall file a sufficient number of copies of the notice of appeal to enable the clerk of the bankruptcy court to comply promptly with Rule 8004.

(b) Appeal by Leave; How Taken

An appeal from an interlocutory judgment, order or decree of a bankruptcy judge as permitted by 28 U.S.C. § 1334(b) or § 1482(b) shall be taken by filing a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.

(c) Voluntary Dismissal

(1) *Before Docketing.* If an appeal has not been docketed, the appeal may be dismissed by the bankruptcy judge on the filing of a stipulation for dismissal signed by all the parties, or on motion and notice by the appellant.

(2) *After Docketing.* If an appeal has been docketed and the parties to the appeal sign and file with the clerk of the district court or bankruptcy appellate panel an agreement that the appeal be dismissed and pay any court costs or fees that may be due, the clerk of the district court or bankruptcy appellate panel shall enter an order dismissing the appeal. An appeal may also be dismissed on motion of the appellant on terms and conditions fixed by the district court or bankruptcy appellate panel.

(d) Effect of Taking a Direct Appeal to the Court of Appeals

(1) *Dismissal of Pending Appeal to the District Court or the Bankruptcy Appellate Panel.* On the filing of a notice of a direct appeal by agreement of the parties to the court of appeals under 28 U.S.C. § 1293(b), the clerk of the bankruptcy court shall enter an order vacating any prior notice of appeal to the district court or bankruptcy appellate panel from the same judgment, order, or decree of the bankruptcy court and, if the appeal to the district court or bankruptcy appellate panel has not been dock-

eted, the clerk of the bankruptcy court shall enter an order dismissing the appeal. If the appeal to the district court or bankruptcy appellate panel has been docketed, the clerk of the bankruptcy court shall forward to the clerk of the district court or the clerk of the bankruptcy appellate panel a copy of the order vacating the notice of appeal and on receipt thereof the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter an order dismissing the appeal.

(2) *Dismissal of Subsequent Appeal to the District Court or the Bankruptcy Appellate Panel.* If a notice of direct appeal under 28 U.S.C. § 1293(b) is filed and thereafter a notice of appeal to the district court or bankruptcy appellate panel from the same judgment, order, or decree is filed, the clerk of the bankruptcy court shall enter an order dismissing the appeal to the district court or the bankruptcy appellate panel.

(3) *Appeal After Dismissal of Direct Appeal by Court of Appeals.* If the direct appeal under 28 U.S.C. § 1293(b) is dismissed by the court of appeals on the ground that the judgment, order, or decree appealed from is not final, the appellant or cross appellant may, within 10 days of entry of the order of the dismissal in the court of appeals, file a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.

NOTES OF ADVISORY COMMITTEE ON RULES

These rules in Part VIII apply only to appeals to the district courts or bankruptcy appellate panels. Subsequent appeals to the courts of appeals, or direct appeals by agreement of the parties under 28 U.S.C. § 1293(b), are governed by the Federal Rules of Appellate Procedure.

Subdivisions (*a*) *and* (*b*) require that a notice of appeal be filed whenever a litigant seeks to secure appellate review by the district court or bankruptcy appellate panel. An appeal from an interlocutory order which will be heard only if leave is granted under 28 U.S.C. §§ 1334(b) or 1482(b) is taken by filing a notice of appeal accompanied by a motion for leave to appeal which complies with the requirements set forth in Rule 8003. Rule 8003 also governs other aspects of interlocutory appeals.

Subdivision (*c*) is an adaptation of Rule 42 F.R.App.P.

Subdivision (*d*) deals with the situation in which an appellant perfects an appeal to the district court or a bankruptcy appellate panel and also a direct appeal pursuant to 28 U.S.C. § 1293(b) to the court of appeals. This subdivision provides that once the appeal to the court of appeals is taken, a notice of appeal to the district court or bankruptcy appellate panel shall be dismissed and, if the first appeal is to the district court or bankruptcy appellate panel, the first appeal shall be dismissed. Paragraph (3) gives an appellant or cross appellant an opportunity to file an appeal to the district court or bankruptcy appellate panel if the court of appeals dismisses the direct appeal because the judgment, order, or decree appealed from is not final. Since the court of appeals has determined the judgment, order, or decree is not final, the new appeal is an appeal for which leave is necessary.

Rule 8002. Time for Filing Notice of Appeal

(a) Ten-Day Period

The notice of appeal shall be filed with the clerk of the bankruptcy court within 10 days of the date of the entry of the judgment, order, or decree appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires. If a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, the clerk of that court or the clerk of the appellate panel shall note thereon the date on which it was received and transmit it to the clerk of the bankruptcy court and it shall be deemed filed in the bankruptcy court on the date so noted.

(b) Effect of Motion on Time for Appeal

If a timely motion is filed in the bankruptcy court by any party: (1) for judgment notwithstanding the verdict under Rule 9015; (2) under Rule 7052(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) under Rule 9023 to alter or amend the judgment; or (4) under Rule 9023 for a new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect; a new notice of appeal must be filed. No additional fees shall be required for such filing.

(c) Extension of Time for Appeal

The bankruptcy court may extend the time for filing the notice of appeal by any party for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing a notice of appeal must be made before the time for filing a notice of appeal has expired, except that a request made no more than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect if the judgment or order appealed from does not authorize the sale of any property or the obtaining of credit or the incurring of debt under § 364 of the Code, or is not a judgment or order approving a disclosure statement, confirming a plan, dismissing a case, or converting the case to a case under another chapter of the Code.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 4(a) F.R.App.P. The time to appeal from a judgment, order, or decree of a bankruptcy judge is 10 days, rather than the 30 days provided for in the civil practice. The shortened time is specified in order to obtain prompt appellate review, often important to the administration of a case under the Code. If a timely notice of appeal is filed, other parties have an additional 10 days within which to file a notice of appeal. A notice of appeal filed within the additional 10 day period by an appellee is a cross appeal, but there is a separate appeal if a non-appellee files a notice of appeal within that 10 day period. The district courts and bankruptcy appellate panels have inherent authority to consolidate appeals.

Subdivision (*b*) is essentially the same as Rule 4(a)(4) of the F.R.App.P.

Subdivision (*c*) is similar to former Bankruptcy Rule 802(c). To expedite the disposition of appeals the max-

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imum extension of time is 20 days instead of the 30 days provided by Rule 4(a)(5) of the F.R.App.P. Subject to the exceptions set forth in subdivision (c), the court may extend the time for taking an appeal when a motion for extension is filed after the expiration of the original 10 day period but no later than 20 days after the expiration of the original 10 day period. Orders of the bankruptcy court relating to the sale of property, extension of credit, confirmation of a plan, dismissal or conversion of the case, and approval of the disclosure statement are of such significance to the administration of the case, the parties in interest, and third parties that this subdivision requires that either an appeal or a motion for extension be filed within the original 10 day period.

If a timely notice of appeal is not filed, no appeal may be taken later. Former Bankruptcy Rule 803, which provided that a referee's judgment became final when the appeal period expired, has been omitted as unnecessary.

Rule 8003. Leave to Appeal

(a) Content of Motion; Answer

A motion for leave to appeal under 28 U.S.C. § 1334(b) or § 1482(b) shall contain: (1) a statement of the facts necessary to an understanding of the questions to be presented by the appeal; (2) a statement of those questions and of the relief sought; (3) a statement of the reasons why an appeal should be granted; and (4) a copy of the judgment, order, or decree complained of and of any opinion or memorandum relating thereto. Within 10 days after service of the motion an adverse party may file with the clerk of the bankruptcy court an answer in opposition.

(b) Transmittal; Determination of Motion

The clerk of the bankruptcy court shall transmit the notice of appeal, the motion for leave to appeal and any answer thereto to the clerk of the district court or the clerk of the bankruptcy appellate panel as soon as all parties have filed answers or the time for filing an answer has expired. The motion and answer shall be submitted without oral argument unless otherwise ordered.

(c) Appeal Improperly Taken Regarded as a Motion for Leave To Appeal

If a required motion for leave to appeal is not filed, but a notice of appeal is timely filed, the district court or bankruptcy appellate panel may grant leave to appeal or direct that a motion for leave to appeal be filed. The district court or the bankruptcy appellate panel may also deny leave to appeal but in so doing shall consider the notice of appeal as a motion for leave to appeal. Unless an order directing that a motion for leave to appeal be filed provides otherwise, the motion shall be filed within 10 days of entry of the order.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivisions (a) and (b) of this rule are derived from Rules 5 and 6 F.R.App.P. The motion for leave to appeal is addressed to the district court or the bankruptcy appellate panel, although filed with the clerk of the bankruptcy court.

Subdivision (c) provides that if a party mistakenly believes the order appealed from is final and files only a notice of appeal, the appeal is not automatically dismissed. The district court or bankruptcy appellate panel has the options to direct that a motion be filed, to decide exclusively on the papers already filed to grant leave to appeal, or to deny leave to appeal. Cf. 28 U.S.C. § 2103.

Rule 8004. Service of the Notice of Appeal

The clerk of the bankruptcy court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant or, if a party is not represented by counsel, to the party at his last known address. Failure to serve notice shall not affect the validity of the appeal. The clerk shall note on each copy served the date of the filing of the notice of appeal and shall note in the docket the names of the parties to whom copies are mailed and the date of the mailing.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 3(d) F.R.App.P.

Rule 8005. Stay Pending Appeal

A motion for a stay of the judgment, order, or decree of a bankruptcy court, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be made in the first instance in the bankruptcy court. Notwithstanding Rule 7062 but subject to the power of the district court and the bankruptcy appellate panel reserved hereinafter, the bankruptcy court may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest. A motion for such relief, or for modification or termination of relief granted by the bankruptcy court, may be made to the district court or the bankruptcy appellate panel, but the motion shall show why the relief, modification, or termination was not obtained from the bankruptcy court. The district court or the bankruptcy appellate panel may condition the relief it grants under this rule on the filing of a bond or other appropriate security with the bankruptcy court. When an appeal is taken by a trustee, a bond or other appropriate security may be required, but when an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States a bond or other security shall not be required.

NOTES OF ADVISORY COMMITTEE ON RULES

The first, third, and fourth sentences of this rule are adaptations of Rule 8(a) and (b) F.R.App.P. The second sentence of the rule is derived from § 39(c) of the Bankruptcy Act and confers on the bankruptcy judge discretion respecting the stay or continuation of other proceedings in the case while an appeal is pending.

The last sentence of the rule, which specifically subjects a trustee to the same kind of security requirements as other litigants, is derived from former Bankruptcy Rule 805. The exemption of the United States from the bond or security requirements is the same as the exemption contained in Rule 62(e) F.R.Civ.P.

Sections 363(m) and 364(e) of the Code provide that unless an order approving a sale of property, or authorizing the obtaining of credit or the incurring of debt is stayed pending appeal, the sale of property to a good faith purchaser or a good faith extension of

credit, with or without any priority or lien, shall not be affected by the reversal or modification of such order on appeal, whether or not the purchaser or creditor knows of the pendency of the appeal.

Rule 8006. Record and Issues on Appeal

Within 10 days after filing the notice of appeal as provided by Rule 8001(a) or entry of an order granting leave to appeal the appellant shall file with the clerk of the bankruptcy court and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. Within seven days after the service of the statement of the appellant the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal and, if the appellee has filed a cross appeal, the appellee as cross appellant shall file and serve a statement of the issues to be presented on the cross appeal and a designation of additional items to be included in the record. A cross appellee may, within seven days of service of the statement of the cross appellant, file and serve on the cross appellant a designation of additional items to be included in the record. The record on appeal shall include the items so designated by the parties, the notice of appeal, the judgment, order, or decree appealed from, and any opinion, findings of fact, and conclusions of law of the court. If the record designated by any party includes a transcript of any proceeding or a part thereof, he shall immediately after filing the designation deliver to the reporter and file with the clerk of the bankruptcy court a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any other action necessary to enable the clerk to assemble and transmit the record.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 10(b) F.R.App.P. The last sentence of the rule is derived from Rule 11(a) F.R.App.P.

Rule 8007. Completion and Transmission of the Record; Docketing of the Appeal

(a) Duty of Reporter To Prepare and File Transcript

On receipt of a request for a transcript, the reporter shall acknowledge on the request the date it was received and the date on which he expects to have the transcript completed and shall transmit the request, so endorsed, to the clerk of the bankruptcy court. On completion of the transcript the reporter shall file it with the clerk of the bankruptcy court. If the transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk of the bankruptcy court and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the clerk of the bankruptcy court shall notify the bankruptcy judge.

(b) Duty of Clerk To Transmit Record; Copies of Record; Docketing of Appeal

When the record is complete for purposes of appeal, the clerk of the bankruptcy court shall transmit it forthwith to the clerk of the district court or the clerk of the bankruptcy appellate panel. If the record is to be retained in the bankruptcy court as provided in subdivision (c) of this rule, the clerk shall transmit the notice of appeal and the judgment, order, or decree appealed from, and any opinion, findings of fact and conclusions of law of the court. On receipt of the transmission the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter the appeal in the docket and give notice promptly to all parties to the judgment, order, or decree appealed from of the date on which the appeal was docketed. If the bankruptcy appellate panel directs that additional copies of the record be furnished, the clerk of the bankruptcy appellate panel shall notify the appellant and, if the appellant fails to provide the copies, the clerk shall prepare the copies at the expense of the appellant.

(c) Retention of Record in Bankruptcy Court

Any part of the record on appeal may be retained in the bankruptcy court if the parties to the appeal so stipulate or the bankruptcy court so orders. The record on appeal for all purposes shall nevertheless be the record as designated under Rule 8006. When the bankruptcy court has ordered retention, the parties shall provide to the clerk of the bankruptcy court copies of any papers retained and the clerk shall transmit those copies to the district court or the bankruptcy appellate panel. If papers have been retained pursuant to a stipulation of the parties, on request of a party to the stipulation the clerk of the bankruptcy court shall transmit the papers so requested to the district court or the bankruptcy appellate panel. On order of the district court or the bankruptcy appellate panel the bankruptcy clerk shall transmit any retained papers to the clerk of that court or the clerk of the appellate panel.

(d) Record for Preliminary Hearing

If prior to the time the record is transmitted a party moves in the district court or before the bankruptcy appellate panel for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the bankruptcy court at the request of any party to the appeal shall transmit to the clerk of the district court or the clerk of the bankruptcy appellate panel the parts of the original record as any party to the appeal shall designate.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) is an adaptation of Rule 11(b) F.R.App.P.

Subdivision (b) is similar to former Bankruptcy Rule 807. The duty of the clerk of the bankruptcy court to transmit the record as soon as the record is complete is derived from the second paragraph of Rule 11(b) F.R.App.P. The last sentence of the subdivision applies to appeals to bankruptcy appellate panels. Additional copies of the record may be needed when the appendix to the brief required under Rule 8009(b) is not adequate in the judgment of the bankruptcy appellate panel for disposition of the appeal. If additional copies are required, the appellant will arrange for the production of the copies; if the appellant fails to do so, the clerk of the bankruptcy appellate panel shall prepare the copies at the expense of the appellant.

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Subdivision (c) is derived from subdivisions (c), (e) and (f) of Rule 11 F.R.App.P. and subdivision (d) is essentially the same as Rule 11(b) F.R.App.P.

Rule 8008. Filing and Service

(a) Filing

Papers required or permitted to be filed with the clerk of the district court or the clerk of the bankruptcy appellate panel may be filed by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that briefs shall be deemed filed on the day of mailing. An original and one copy of all papers shall be filed when an appeal is to the district court; an original and three copies shall be filed when an appeal is to a bankruptcy appellate panel. The district court or bankruptcy appellate panel may require that additional copies be furnished.

(b) Service of All Papers Required

Copies of all papers filed by any party and not required by these rules to be served by the clerk of the district court or the clerk of the bankruptcy appellate panel shall, at or before the time of filing, be served by the party or a person acting for him on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel.

(c) Manner of Service

Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) Proof of Service

Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. The clerk may permit papers to be filed without acknowledgment or proof of service but shall require the acknowledgment or proof of service to be filed promptly thereafter.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 25 F.R.App.P. Motions, briefs, appendices when required, statements, and any other filed paper must be accompanied by the specified number of copies. Rules 8001 and 8004 govern the number of copies of the notice of appeal which must be filed.

Rule 8009. Briefs and Appendix; Filing and Service

(a) Briefs

Unless the district court or the bankruptcy appellate panel by local rule or by order excuses the filing of briefs or specifies different time limits:

(1) The appellant shall serve and file his brief within 15 days after entry of the appeal on the docket pursuant to Rule 8007.

(2) The appellee shall serve and file his brief within 15 days after service of the brief of appellant. If the appellee has filed a cross appeal, the brief of the appellee shall contain the issues and argument pertinent to the cross appeal, denominated as such, and the response to the brief of the appellant.

(3) The appellant may serve and file a reply brief within 10 days after service of the brief of the appellee, and if the appellee has cross-appealed, the appellee may file and serve a reply brief to the response of the appellant to the issues presented in the cross appeal within 10 days after service of the reply brief of the appellant. No further briefs may be filed except with leave of the district court or the bankruptcy appellate panel.

(b) Appendix to Brief

If the appeal is to a bankruptcy appellate panel, the appellant shall serve and file with his brief excerpts of the record as an appendix, which shall include the following:

(1) The complaint and answer or other equivalent pleadings;

(2) Any pretrial order;

(3) The judgment, order, or decree from which the appeal is taken;

(4) Any other orders relevant to the appeal;

(5) The opinion, findings of fact, or conclusions of law filed or delivered orally by the court and citations of the opinion if published;

(6) Any motion and response on which the court rendered decision;

(7) The notice of appeal; and

(8) The relevant entries in the bankruptcy court docket.

An appellee may also serve and file an appendix which contains material required to be included by the appellant but omitted by appellant.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is adapted from Rules 28(a) and 31(a) F.R.App.P. The introductory clause of the rule recognizes the desirability of allowing local and individual variation in the filing of briefs. The numbered paragraphs prescribe shorter periods than the corresponding periods allowed by Rule 31(a) F.R.App.P.

Subdivision (b), which is similar to an interim rule for bankruptcy appellate panels promulgated by the Ninth Circuit, applies only when an appeal is to an appellate panel. The appellant must prepare an appendix to the brief which contains the documents relevant to the appeal. With the appendix available to each member of the appellate panel, it is unlikely that multiple copies of the record will be necessary. The last sentence of the subdivision enables the appellee to correct an omission of the appellant.

Rule 30 F.R.App.P., which governs the preparation of the appendix in appeals taken to the courts of appeals, specifies fewer documents which must be included in the appendix but permits the parties to include any other material.

Rule 8010. Form of Briefs; Length

(a) Form of Briefs

Unless the district court or the bankruptcy appellate panel by local rule otherwise provides, the form of brief shall be as follows:

(1) *Brief of the Appellant.* The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(A) A table of contents, with page references, and a table of cases alphabetically arranged, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(B) A statement of the basis of appellate jurisdiction.

(C) A statement of the issues presented and the applicable standard of appellate review.

(D) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of the proceedings, and the disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record.

(E) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.

(F) A short conclusion stating the precise relief sought.

(2) *Brief of the Appellee.* The brief of the appellee shall conform to the requirements of paragraph (1)(A)–(E) of this subdivision, except that a statement of the basis of appellate jurisdiction, of the issues, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(b) Reproduction of Statutes, Rules, Regulations, or Similar Material

If determination of the issues presented requires reference to the Code or other statutes, rules, regulations, or similar material, relevant parts thereof shall be reproduced in the brief or in an addendum or they may be supplied to the court in pamphlet form.

(c) Length of Briefs

Unless the district court or the bankruptcy appellate panel by local rule or order otherwise provides, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or similar material.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from subdivisisons (a), (b), (c), and (f) of Rule 28 F.R.App.P.

When an appeal is to a bankruptcy appellate panel and an appendix is filed pursuant to Rule 8009(b) and reference is made in a brief to parts of the record included in the appendix, the reference should be to the appropirate pages of the appendix at which those parts appear.

Rule 8011. Motions

(a) Content of Motions; Response; Reply

A request for an order or other relief shall be made by filing with the clerk of the district court or the clerk of the bankruptcy appellate panel a motion for such order or relief with proof of service on all other parties to the appeal. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within seven days after service of the motion, but the district court or the bankruptcy appellate panel may shorten or extend the time for responding to any motion.

(b) Determination of Motions for Procedural Orders

Notwithstanding subdivision (a) of this rule, motions for procedural orders, including any motion under Rule 9006, may be acted on at any time, without awaiting a response thereto and without hearing. Any party adversely affected by such action may move for reconsideration, vacation, or modification of the action.

(c) Determination of all Motions

All motions will be decided without oral argument unless the court orders otherwise. A motion for a stay, or for other emergency relief may be denied if not presented promptly.

(d) Emergency Motions

Whenever a movant requests expedited action on a motion on the ground that, to avoid irreparable harm, relief is needed in less time than would normally be required for the district court or bankruptcy appellate panel to receive and consider a response, the word "Emergency" shall precede the title of the motion. The motion shall be accompanied by an affidavit setting forth the nature of the emergency. The motion shall state whether all grounds advanced in support thereof were submitted to the bankruptcy judge and, if any grounds relied on were not submitted, why the motion should not be remanded to the bankruptcy judge for reconsideration. The motion shall include the office addresses and telephone numbers of moving and opposing counsel and shall be served pursuant to Rule 8008. Prior to filing the motion, the movant shall make every practicable effort to notify opposing counsel in time for counsel to respond to the motion. The affidavit accompanying the motion shall also state when and how opposing counsel was notified or if opposing counsel was not notified why it was not practicable to do so.

(e) Power of a Single Judge To Entertain Motions

A single judge of a bankruptcy appellate panel may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise decide an appeal or a motion for leave to appeal. The action of a single judge may be reviewed by the panel.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivisions (a), (b) and (e) of this rule conform substantially to subdivisions (a), (b) and (c) of Rule 27 F.R.App.P. Subdivisions (c) and (d) are taken from Rule 13(c) and (d) of the Rules of the First Circuit governing appeals to bankruptcy appellate panels.

Rule 8012. Oral Argument

Oral argument shall be allowed in all cases unless the district judge or the judges of the bankruptcy appellate panel unanimously determine after examination of the briefs and record, or appendix to the brief, that oral argu-

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ment is not needed. Any party shall have an opportunity to file a statement setting forth the reason why oral argument should be allowed.

Oral argument will not be allowed if (1) the appeal is frivolous; (2) the dispositive issue or set of issues has been recently authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from Rule 34(a) F.R.App.P. The other details of oral argument which are covered by the remaining subdivisions of Rule 34 F.R.App.P are not in these rules and are left to local rule or order of the court.

Rule 8013. Disposition of Appeal; Weight Accorded Bankruptcy Judge's Findings of Fact

On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy court's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule accords to the findings of a bankruptcy judge the same weight given the findings of a district judge under Rule 52 F.R.Civ.P. See also Rules 7052(a) and 9014.

Rule 8014. Costs

Except as otherwise provided by law, agreed to by the parties, or ordered by the district court or the bankruptcy appellate panel, costs shall be taxed against the losing party on an appeal. If a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court. Costs incurred in the production of copies of briefs, the appendices, and the record and in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal and the fee for filing the notice of appeal shall be taxed by the clerk of the bankruptcy court as costs of the appeal in favor of the party entitled to costs under this rule.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 39(a), (c) and (e) of the F.R.App.P. Under this rule all costs are taxed by the clerk of the bankruptcy court.

Rule 8015. Motion for Rehearing

Unless the district court or the bankruptcy appellate panel by local rule or by court order otherwise provides, a motion for rehearing may be filed within 10 days after entry of the judgment of the district court or the bankruptcy appellate panel.

NOTES OF ADVISORY COMMITTEE ON RULES

This is an adaptation of the first sentence of Rule 40(a) F.R.App.P. The filing of a motion for rehearing does not toll the time for taking an appeal to the court of appeals from the district court or the bankruptcy appellate panel. Appeals from a district court or a bankruptcy appellate panel are to the appropriate court of appeals. Under Rule 4(a)(4) F.R.App.P. the filing of post-trial motions in the district court has the effect of vitiating any prior notice of appeal and, on the district court's disposition of those post-trial motions, a new appeal period starts. Rule 4 F.R.App.P. does not, however, contain any provision which stays or otherwise alters the time for taking an appeal to the court of appeals when a motion for rehearing is filed under Rule 8015 with the district court or bankruptcy appellate panel.

Rule 8016. Duties of Clerk of District Court and Bankruptcy Appellate Panel

(a) Entry of Judgment

The clerk of the district court or the clerk of the bankruptcy appellate panel shall prepare, sign and enter the judgment following receipt of the opinion of the court or the appellate panel or, if there is no opinion, following the instruction of the court or the appellate panel. The notation of a judgment in the docket constitutes entry of judgment.

(b) Notice or Orders or Judgments; Return of Record

Immediately on the entry of a judgment or order the clerk of the district court or the clerk of the bankruptcy appellate panel shall transmit a notice of the entry to each party to the appeal and to the clerk of the bankruptcy court, together with a copy of any opinion respecting the judgment or order, and shall make a note of the transmission in the docket. Original papers transmitted as the record on appeal shall be returned to the bankruptcy court on disposition of the appeal.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is adapted from Rule 36 F.R.App.P. Subdivision (b) is similar to subdivisions (c) and (d) of Rule 45 F.R.App.P.

Rule 8017. Stay of Judgment of District Court or Bankruptcy Appellate Panel

(a) Automatic Stay of Judgment on Appeal

Judgments of the district court or the bankruptcy appellate panel are stayed until the expiration of 10 days after entry, unless otherwise ordered by the district court or the bankruptcy appellate panel.

(b) Stay Pending Appeal to the Court of Appeals

On motion and notice to the parties to the appeal, the district court or the bankruptcy appellate panel may stay its judgment pending an appeal to the court of appeals. The stay shall not extend beyond 30 days after the entry of the judgment of the district court or the bankruptcy appellate panel unless the period is extended for cause shown. If before the expiration of a stay entered pursuant to this subdivision there is an appeal to the court of appeals by the party who obtained the stay, the stay shall continue until final disposition by the court of appeals. A bond or other security may be required as a condition to the grant or continuation of a stay of the judgment. A bond or other security may be required if a trustee obtains a stay but a bond or security shall not be

required if a stay is obtained by the United States or an officer or agency thereof or at the direction of any department of the Government of the United States.

(c) Power of Court of Appeals not Limited

This rule does not limit the power of a court of appeals or any judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from Rule 62 F.R.Civ.P. and Rule 41 F.R.App.P.

Subdivision (a) accords to the parties to an appeal 10 days within which to decide whether to pursue an appeal to the court of appeals. In ordinary civil litigation there is a similar opportunity. Rule 62(a) F.R.Civ.P. automatically stays enforcement of a district court's judgment in a civil action and Rule 41(a) F.R.App.P. provides that the mandate of the court of appeals shall not issue for 21 days, unless the court otherwise directs. The district court or bankruptcy appellate panel may reduce the 10 day period of this subdivision.

Subdivision (b) vests in the district courts and the bankruptcy appellate panels the same authority the courts of appeals have under Rule 41(b) F.R.App.P. to stay their judgments pending appeal. Perfection of an appeal to the court of appeals while a stay entered by the district court or bankruptcy appellate panel is in effect results in the automatic continuation of that stay during the course of the appeal in the court of appeals.

Subdivision (c) is the same as Rule 62(g) F.R.Civ.P.

Rule 8018. Rules by Circuit Councils and District Courts

Circuit councils which have authorized bankruptcy appellate panels pursuant to 28 U.S.C. § 160 and the district courts in districts in which an appellate panel has not been authorized may by action of a majority of the judges of the council or district court make and amend rules governing practice and procedure for appeals from the bankruptcy courts to the respective bankruptcy appellate panel or district court, not inconsistent with the rules of this Part VIII. Copies of rules and amendments so made shall on promulgation be furnished to the Administrative Office of the United States Courts. The clerk of each district court and the clerk of each bankruptcy appellate panel shall make appropriate arrangements, subject to the approval of the Director of the Administrative Office of the United States Courts, for making copies of such rules available to members of the public who may request them. In all cases not provided for by rule, the district court or the bankruptcy appellate panel may regulate its practice in any manner not inconsistent with these rules.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is similar to Rule 47 F.R.App.P. and Rule 83 F.R.Civ.P. Local rules governing procedure before the bankruptcy courts may be promulgated under Rule 9028.

Rule 8019. Suspension of Rules in Part VIII

In the interest of expediting decision or for other good cause, the district court or the bankruptcy appellate panel may suspend the requirements or provisions of the rules in Part VIII, except Rules 8001, 8002 and 8013, and may order proceedings in accordance with its direction.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from Rule 2 F.R.App.P.

PART IX—GENERAL PROVISIONS

Rule 9001. General Definitions

The definitions of words and phrases in § 101, § 902 and § 1101 and the rules of construction in § 102 of the Code govern their use in these rules. In addition, the following words and phrases used in these rules have the meanings indicated:

(1) "Act" means the Bankruptcy Act of 1898 as amended.

(2) "Bankruptcy court," "court," or "United States Bankruptcy Court" means the court of bankruptcy as defined in § 1(10) and created under § 2a of the Act and the United States Bankruptcy Court created under 28 U.S.C. § 151.

(3) "Bankruptcy Code" or "Code" means title 11 of the United States Code.

(4) "Clerk" means clerk of the bankruptcy court.

(5) "Debtor." When any act is required by these rules to be performed by a debtor or when it is necessary to compel attendance of a debtor for examination and the debtor is not a natural person: (A) if the debtor is a corporation, "debtor" includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control; (B) if the debtor is a partnership, "debtor" includes any or all of its general partners or, if designated by the court, any other person in control.

(6) "Firm" includes a partnership or professional corporation of attorneys or accountants.

(7) "Judgment" means any appealable order.

(8) "Mail" means first class, postage prepaid.

(9) "Regular associate" means any attorney regularly employed by, associated with, or counsel to an individual or firm.

(10) "Trustee" includes a debtor in possession in a chapter 11 case.

REFERENCES IN TEXT

The Bankruptcy Act of 1898 as amended, referred to in pars. (1) and (2), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. Sections 1(10) and 2a of this Act were classified to sections 1(10) and 11(a), respectively, of former Title 11. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95-598, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

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Rule 9002. Meanings of Words in the Federal Rules of Civil Procedure When Applicable to Cases Under The Code

The following words and phrases used in the Federal Rules of Civil Procedure made applicable to cases under the Code by these rules have the meanings indicated unless they are inconsistent with the context:

(1) "Action" or "civil action" means an adversary proceeding or, when appropriate, a contested petition, or proceedings to vacate an order for relief or to determine any other contested matter.

(2) "Appeal" means an appeal as provided by 28 U.S.C. § 1334 or § 1482.

(3) "Clerk" or "clerk of the district court" means clerk of the bankruptcy court.

(4) "District Court," "trial court," "court," or "judge" means bankruptcy judge.

(5) "Judgment" includes any order appealable to an appellate court.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 9003. Prohibition of Ex Parte Contacts

Except as otherwise permitted by applicable law, any party in interest and any attorney, accountant, or employee of a party in interest shall refrain from ex parte meetings and communications with the bankruptcy judge concerning matters affecting a particular case or proceeding.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule regulates the actions of parties in interest and their attorneys or others employed by parties in interest. This regulation of the conduct of parties in interest and their representative is designed to insure that the bankruptcy system operates fairly and that no appearance of unfairness is created. See H. Rep. No. 95-595, 95th Cong., 1st Sess. 95 et seq. (1977).

This rule is not a substitute for or limitation of any applicable canon of professional responsibility or judicial conduct. See, *e.g.*, Canon 7, EC7-35, Disciplinary Rule 7-110(B) of the Code of Professional Responsibility: "Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party;" and Canon 3A(4) of the Code of Judicial Conduct: "A judge should . . . neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding."

Rule 9004. General Requirements of Form

(a) Legibility; Abbreviations

All petitions, pleadings, schedules and other papers shall be clearly legible. Abbreviations in common use in the English language may be used.

(b) Caption

Each paper filed shall contain a caption setting forth the name of the court, the title of the case, the bankruptcy docket number, and a brief designation of the character of the paper.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (b). Additional requirements applicable to the caption for a petition are found in Rule 1005, to the caption for notices to creditors in Rule 2002(m), and to the caption for a pleading or other paper filed in an adversary proceeding in Rule 7010. Failure to comply with this or any other rule imposing a merely formal requirement does not ordinarily result in the loss of rights. See Rule 9005.

Rule 9005. Harmless Error

Rule 61 F.R.Civ.P. applies in cases under the Code. When appropriate, the court may order the correction of any error or defect or the cure of any omission which does not affect substantial rights.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 9006. Time

(a) Computation

In computing any period of time prescribed or allowed by these rules, by the local rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 5001(c), "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the State in which the bankruptcy court is held.

(b) Enlargement

(1) *In General.* Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(2) *Enlargement Not Permitted.* The court may not enlarge the time for taking action under Rule [1] 1007(d), 1017(b)(3), 1019(2),

[1] So in original. Probably should be "Rules".

2003(a) and (d), 4001(b), 7052, 9015(f), 9023, and 9024.

(3) *Enlargement Limited.* The court may enlarge the time for taking action under Rules 1006(b)(2), 3002(c), 4003(b), 4004(a), 4007(c), and 8002 only to the extent and under the conditions stated in those rules.

(c) Reduction

(1) *In General.* Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

(2) *Reduction Not Permitted.* The court may not reduce the time for taking action under Rules 2002(a)(4) and (a)(8), 2003(a), 3002(c), 3014, 3015, 4003(a), 4004(a), 4007(c) and 8002.

(d) For Motions—Affidavits

A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than five days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 9023, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

(e) Time of Service

Service of process and service of any paper other than process or of notice by mail is complete on mailing.

(f) Additional Time After Service by Mail

When there is a right or requirement to do some act or undertake some proceedings within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail, three days shall be added to the prescribed period.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). This rule is an adaptation of Rule 6 F.R.Civ.P. It governs the time for acts to be done and proceedings to be had in cases under the Code and any litigation arising therein.

Subdivision (b) is patterned after Rule 6(b) F.R.Civ.P. and Rule 26(b) F.R.App.P.

Paragraph (1) of this subdivision confers on the court discretion generally to authorize extensions of time for doing acts required or allowed by these rules or orders of court. The exceptions to this general authority to extend the time are contained in paragraphs (2) and (3).

In the interest of prompt administration of bankruptcy cases certain time periods may not be extended. Paragraph (2) lists the rules which establish time periods which may not be extended: Rule 1007(d), time for filing a list of 20 largest creditors; Rule 1017(b)(3), 30 day period for sending notice of dismissal for failure to pay the filing fee; Rule 1019(2), 20 day period for notice of conversion to a chapter 7 case; Rule 2003(a), meeting of creditors not more than 40 days after order for relief; Rule 2003(d), 10 days for filing a motion for resolution of an election dispute; Rule 3014, time for the § 1111(b)(2) election; Rule 4001(b), expiration of stay 30 days following the commencement of final hearing; Rule 7052(b), 10 day period to move to amend findings of fact; Rule 9015(f), 20 day period to move for judgment notwithstanding the verdict; Rule 9023, 10 day period to move for a new trial; and Rule 9024, time to move for relief from judgment.

Many rules which establish a time for doing an act also contain a specific authorization and standard for granting an extension of time and, in some cases, limit the length of an extension. In some instances it would be inconsistent with the objective of the rule and sound administration of the case to permit extension under Rule 9006(b)(1), but with respect to the other rules it is appropriate that the power to extend time be supplemented by Rule 9006(b)(1). Unless a rule which contains a specific authorization to extend time is listed in paragraph (3) of this subdivision, an extension of the time may be granted under paragraph (1) of this subdivision. If a rule is included in paragraph (3) an extension may not be granted under paragraph (1). The following rules are listed in paragraph (3): Rule 1006(b)(2), time for paying the filing fee in installments; Rule 3002(c), 90 day period for filing a claim in a chapter 7 or 13 case; Rule 4003(b), 30 days for filing objections to a claim of exemptions; Rule 4004(a), 60 day period to object to a discharge; Rule 4007(b), 60 day period to file a dischargeability complaint; and Rule 8002, 10 days for filing a notice of appeal.

Subdivision (c). Paragraph (1) of this subdivision authorizes the reduction of the time periods established by these rules or an order of the court. Excluded from this general authority are the time periods established by the rules referred to in paragraph (2) of the subdivision: Rule 2002 (a) and (b), 20 day and 25 day notices of certain hearings and actions in the case; Rule 2003(a), meeting of creditors to be not less than 20 days after the order for relief; Rule 3002(c), 90 days for filing a claim in a chapter 7 or 13 case; Rule 3014, time for § 1111(b)(2) election; Rule 3015, 10 day period after filing of petition to file a chapter 13 plan; Rule 4003(a), 15 days for a dependent to claim exemptions; Rule 4004(a), 60 day period to object to a discharge; Rule 4007(c), 60 day period to file a dischargeability complaint; and Rule 8002, 10 days for filing a notice of appeal. Reduction of the time periods fixed in the rules referred to in this subdivision would be inconsistent with the purposes of those rules and would cause harmful uncertainty.

Subdivision (d) is derived from Rule 6(d) F.R.Civ.P. The reference is to Rule 9023 instead of to Rule 59(c) F.R.Civ.P. because Rule 9023 incorporates Rule 59 F.R.Civ.P. but excepts therefrom motions to reconsider orders allowing and disallowing claims.

Subdivision (f) is new and is the same as Rule 6(e) F.R.Civ.P.

Rule 9007. General Authority to Regulate Notices

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the persons to whom, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Rule 9008. Service or Notice by Publication

Whenever these rules require or authorize service or notice by publication, the court shall, to the extent not otherwise specified in these rules, determine the form and manner thereof, including the newspaper or other medium to be used and the number of publications.

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Rule 9009. Forms

The Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate. Forms may be combined and their contents rearranged to permit economies in their use. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code.

NOTES OF ADVISORY COMMITTEE ON RULES

The rule continues the obligatory character of the Official Forms in the interest of facilitating the processing of the paperwork of bankruptcy administration, but provides that Official Forms will be prescribed by the Judicial Conference of the United States. The Supreme Court and the Congress will thus be relieved of the burden of considering the large number of complex forms used in bankruptcy practice. The use of the Official Forms has generally been held subject to a "rule of substantial compliance" and some of these rules, for example Rule 1002, specifically state that the filed document need only "conform substantially" to the Official Form. See also Rule 9005. The second sentence recognizes the propriety of combining and rearranging Official Forms to take advantage of technological developments and resulting economies.

The Director of the Administrative Office is authorized to issue additional forms for the guidance of the bar.

Rule 9010. Representation and Appearances; Powers of Attorney

(a) Authority To Act Personally or by Attorney

A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act either in his or its own behalf or by an attorney authorized to practice in the court, and (2) perform any act not constituting the practice of law, by an authorized agent, attorney in fact, or proxy.

(b) Notice of Appearance

An attorney appearing for a party in a case under the Code shall file a notice of appearance with his name, office address and telephone number, unless his appearance is otherwise noted in the record.

(c) Power of Attorney

The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to Official Form No. 17 or Official Form No. 18. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in 28 U.S.C. § 459, § 953, or a person authorized to administer oaths under the laws of the state where the oath is administered.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is substantially the same as former Bankruptcy Rule 910 and does not purport to change prior holdings prohibiting a corporation from appearing *pro se*. See *In re Las Colinas Development Corp.*, 585 F.2d 7 (1st Cir. 1978).

Rule 9011. Signing and Verification of Papers

(a) Signature

Every petition, pleading, motion and other paper served or filed in a case under the Code on behalf of a party represented by an attorney, except a list, schedule, statement of financial affairs, statement of executory contracts, Chapter 13 Statement, or amendments thereto, shall be signed by at least one attorney of record in his individual name, whose office address and telephone number shall be stated. A party who is not represented by an attorney shall sign all papers and state his address and telephone number. The signature of an attorney or a party constitutes a certificate by him that he has read the document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harrass, to cause delay, or to increase the cost of litigation. If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person whose signature is required. If a document is signed in violation of this rule, the court on motion or on its own initiative, shall impose on the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

(b) Verification

Except as otherwise specifically provided by these rules, papers filed in a case under the Code need not be verified. Whenever verification is required by these rules, an unsworn declaration as provided in 28 U.S.C. § 1746 satisfies the requirement of verification.

(c) Copies of Signed or Verified Papers

When these rules require copies of a signed or verified paper, it shall suffice if the original is signed or verified and the copies are conformed to the original.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*). Excepted from the papers which an attorney for a debtor must sign are lists, schedules, statements of financial affairs, statements of executory contracts, Chapter 13 Statements and amendments thereto. Rule 1008 requires that these documents be verified by the debtor. Although the petition must also be verified, counsel for the debtor must sign the petition. See Official Form No. 1. An unrepresented party must sign all papers.

The last sentence of this subdivision authorizes a broad range of sanctions.

The word "document" is used in this subdivision to refer to all papers which the attorney or party is required to sign.

Subdivision (*b*) extends to all papers filed in cases under the Code the policy of minimizing reliance on the formalities of verification which is reflected in the third sentence of Rule 11 F.R.Civ.P. The second sentence of subdivision (b) permits the substitution of an unsworn declaration for the verification. See 28 U.S.C.

§ 1746. Rules requiring verification or an affidavit are as follows: Rule 1008, petitions, schedules, statements of financial affairs, Chapter 13 Statements and amendments; Rule 2006(e), list of multiple proxies and statement of facts and circumstances regarding their acquisition; Rule 4001(c), motion for ex parte relief from stay; Rule 7065, incorporating Rule 65(b) F.R.Civ.P. governing issuance of temporary restraining order; Rule 8011(d), affidavit in support of emergency motion on appeal.

Rule 9012. Affirmations

When in a case under the Code an oath is required to be taken a solemn affirmation may be accepted in lieu thereof.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from Rule 43(d) F.R.Civ.P.

The provisions of former Bankruptcy Rule 912(a) relating to who may administer oaths have been deleted as unnecessary. Bankruptcy judges and the clerks and deputy clerks of bankruptcy courts are authorized by statute to administer oaths and affirmations and to take acknowledgments. 28 U.S.C. §§ 459, 953. A person designated to preside at the meeting of creditors has authority under Rule 2003(b)(1) to administer the oath. Administration of the oath at a deposition is governed by Rule 7028.

Rule 9013. Motions: Form and Service

A request for an order, except when an application is authorized by these rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion other than one which may be considered ex parte shall be served by the moving party on the trustee or debtor in possession and on those persons specified by these rules or, if service is not required or the persons to be served are not specified by these rules, the moving party shall serve the persons the court directs.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from Rule 5(a) and Rule 7(b)(1) F.R.Civ.P. Except when an application is specifically authorized by these rules, for example an application under Rule 2014 for approval of the employment of a professional, all requests for court action must be made by motion.

Rule 9014. Contested Matters

In a contested matter in a case under the Code not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court orders an answer to a motion. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004, and, unless the court otherwise directs, the following rules shall apply: 7021, 7025, 7026, 7028–7037, 7041, 7042, 7052, 7054–7056, 7062, 7064, 7069, and 7071. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. A person who desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The clerk shall give notice to the parties of the entry of any order directing that additional rules of Part VII are applicable or that certain of the rules of Part VII are not applicable. The notice shall be given within such time as is necessary to afford the parties a reasonable opportunity to comply with the procedures made applicable by the order.

NOTES OF ADVISORY COMMITTEE ON RULES

Rules 1017(d), 3020(b)(1), 4001(a), 4003(d), and 6006(a), which govern respectively dismissal or conversion of a case, objections to confirmation of a plan, relief from the automatic stay and the use of cash collateral, avoidance of a lien under § 552(f) of the Code, and the assumption or rejection of executory contracts or unexpired leases, specifically provide that litigation under those rules shall be as provided in Rule 9014. This rule also governs litigation in other contested matters.

Whenever there is an actual dispute, other than an adversary proceeding, before the bankruptcy court, the litigation to resolve that dispute is a contested matter. For example, the filing of an objection to a proof of claim, to a claim of exemption, or to a disclosure statement creates a dispute which is a contested matter. Even when an objection is not formally required, there may be a dispute. If a party in interest opposes the amount of compensation sought by a professional, there is a dispute which is a contested matter.

When the rules of Part VII are applicable to a contested matter, reference in the PART VII rules to adversary proceedings is to be read as a reference to a contested matter. See Rule 9002(1).

Rule 9015. Jury Trial

(a) Trial by Jury

Issues triable of right by jury shall, if timely demanded, be by jury, unless the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury.

(b) Demand

(1) *Time; Form.* Any party may demand a trial by jury of any issue triable by a jury by serving on the other parties a demand thereof in writing not later than 10 days after service of the last pleading directed to such issue. The demand may be indorsed on a pleading of the party. When a jury trial is demanded it shall be designated by the clerk in the docket as a jury matter.

(2) *Specification of Issues.* In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury of all the issues so triable. If he has demanded trial by jury of only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues.

(3) *Determination by Court.* On motion or on its own initiative the court may determine whether there is a right to trial by jury of the issues for which a jury trial is demanded or whether a demand for trial by jury in a proceeding on a contested petition shall be granted.

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(c) Waiver

The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5005 constitutes a waiver of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

(d) Trial by the Court

Issues not demanded for trial by jury shall be tried by the court. Notwithstanding the failure of a party to demand a jury when such a demand might have been made of right, the court on its own initiative may order a trial by jury of any or all issues.

(e) Advisory Jury and Trial by Consent

In all actions not triable of right by jury the court on motion or on its own initiative may try any issue with an advisory jury or, except in actions against the United States when a statute of the United States provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

(f) Applicability of Certain of the Federal Rules of Civil Procedure

Rules 47–51 of F.R.Civ.P. apply when a jury trial is conducted.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivisions (a)–(f) of this rule are adaptations of subdivisions of Rules 38 and 39 F.R.Civ.P.

Whether a party is entitled to a jury trial is governed by 28 U.S.C. § 1480(a). Subsection (b) of § 1480 empowers the court to dispense with a jury trial on issues presented by a contested involuntary petition, even when a jury trial is properly demanded. The purpose of § 1480(b) is to insure that contested petitions are decided promptly. The court may under § 1480(b) and subdivision (b)(3) act sua sponte and direct that a contested petition be tried by the court instead of to a jury.

Rule 9027(i) governs the procedure for requesting trial by jury in a matter removed to a bankruptcy court.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subd. (f), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 9016. Subpoena

Rule 45 F.R.Civ.P. applies in bankruptcy cases under the Code.

NOTES OF ADVISORY COMMITTEE ON RULES

Although Rule 7004(d) authorizes nationwide service of process, Rule 45 F.R.Civ.P. limits the subpoena power to the judicial district and places outside the district which are within 100 miles of the place of trial or hearing.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 9017. Evidence

The Federal Rules of Evidence and Rules 43, 44 and 44.1 F.R.Civ.P. apply in cases under the Code.

NOTES OF ADVISORY COMMITTEE ON RULES

Sections 251 and 252 of Public Law 95-598, amended Rule 1101 of the Federal Rules of Evidence to provide that the Federal Rules of Evidence apply in bankruptcy courts and to any case or proceeding under the Code. Rules 43, 44 and 44.1 of the F.R.Civ.P., which supplement the Federal Rules of Evidence, are by this rule made applicable to cases under the Code.

Examples of bankruptcy rules containing matters of an evidentiary nature are: Rule 2011, evidence of debtor retained in possession; Rule 3001(f), proof of claim constitutes prima facie evidence of the amount and validity of a claim; and Rule 5007(c), sound recording of court proceedings constitutes the record of the proceedings.

REFERENCES IN TEXT

The Federal Rules of Evidence and the Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 9018. Secret Confidential, Scandalous, or Defamatory Matter

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation. If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule provides the procedure for invoking the court's power under § 107 of the Code.

Rule 9019. Compromise and Arbitration

(a) Compromise

On motion by the trustee and after a hearing on notice to creditors, the debtor and indenture trustees as provided in Rule 2002(a) and to such other persons as the court may designate, the court may approve a compromise or settlement.

(b) Authority To Compromise or Settle Controversies Within Classes

After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.

(c) Arbitration

On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivisions (a) and (c) of this rule are essentially the same as the provisions of former Bankruptcy Rule 919 and subdivision (b) is the same as former Rule 8-514(b), which was applicable to railroad reorganiza-

tions. Subdivision (b) permits the court to deal efficiently with a case in which there may be a large number of settlements.

Rule 9020. Criminal Contempt Proceedings

(a) Procedure

(1) *Summary Disposition.* Criminal contempt which may be punished by a bankruptcy judge acting pursuant to 28 U.S.C. § 1481 may be punished summarily by a bankruptcy judge if he saw or heard the conduct constituting the contempt and if it was committed in his actual presence. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(2) *Disposition After a Hearing.* Criminal contempt which may be punished by a bankruptcy judge acting pursuant to 28 U.S.C. § 1481, except when determined as provided in paragraph (1) of this subdivision, may be punished by the bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the criminal contempt charged and describe the contempt as criminal and shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense. The notice may be given on the court's own initiative or on application of the United States attorney or by an attorney appointed by the court for that purpose. If the contempt charged involves disrespect to or criticism of the bankruptcy judge, that judge is disqualified from presiding at the hearing except with the consent of the person charged.

(3) *Certification to District Court.* If it appears to a bankruptcy judge that criminal contempt has occurred but the court is without power under 28 U.S.C. § 1481, to punish or to impose the appropriate punishment for the criminal contempt the judge may certify the facts to the district court.

(b) Right to Jury Trial

Nothing in this rule shall be construed to impair the right to jury trial whenever it otherwise exists.

NOTES OF ADVISORY COMMITTEE ON RULES

Section 1481 of Title 28 provides that a bankruptcy court "may not . . . punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment." Rule 9020 does not enlarge the power of bankruptcy courts.

Subdivision (a) is adapted from former Bankruptcy Rule 920 and Rule 42 F.R.Crim.P. Paragraph (1) of the subdivision permits summary imposition of punishment for contempt if the conduct is in the presence of the court and is of such nature that the conduct "obstruct[s] the administration of justice." See 18 U.S.C. § 401(a). Cases interpreting Rule 42(a) F.R.Crim.P. have held that when criminal contempt is in question summary disposition should be the exception: summary disposition should be reserved for situations where it is necessary to protect the judicial institution. 3 Wright, *Federal Practice & Procedure—Criminal* § 707 (1969). Those cases are equally pertinent to the application of this rule and, therefore, contemptuous conduct in the presence of the judge may often be punished only after the notice and hearing requirements of subdivision (b) are satisfied.

If the bankruptcy court concludes it is without power to punish or to impose the proper punishment for conduct which constitutes contempt, subdivision (a)(3) authorizes the bankruptcy court to certify the matter to the district court.

Subdivision (b) makes clear that when a person has a constitutional or statutory right to a jury trial in a criminal contempt matter this rule in no way affects that right. See *Frank v. United States*, 395 U.S. 147 (1969).

The Federal Rules of Civil Procedure do not specifically provide the procedure for the imposition of civil contempt sanctions. The decisional law governing the procedure for imposition of civil sanctions by the district courts will be equally applicable to the bankruptcy courts.

Rule 9021. Entry of Judgment; District Court Record of Judgment

(a) Original Entry of Judgment of Bankruptcy Court

Subject to the provisions of Rule 54(b) F.R.Civ.P.: (1) on a general verdict of a jury, or on a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign and enter the judgment without awaiting any direction by the court; (2) on a decision by the court granting other relief, or on a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment entered in an adversary proceeding or contested matter shall be set forth on a separate document. A judgment is effective when entered as provided in Rule 5003. Entry of the judgment shall not be delayed for the taxing of costs.

(b) District Court Record of Judgments of Bankruptcy Courts

On certification by the clerk of the bankruptcy court to the clerk of the district court of a copy of a judgment of the bankruptcy court for the recovery of money or property, the clerk of the district court shall keep and index the copy in substantially the form and manner prescribed by Rule 79 F.R.Civ.P. for judgments of the district court. Retention and indexing of a judgment by the clerk of the district court under this subdivision shall not affect its appealability or proceedings on appeal from the judgment under the rules in Part VIII, the availability of process to enforce the judgment under Rule 7069, or the availability of relief under Rule 7062 or 7070 but after it has been so indexed, the judgment shall have the same effect and may be enforced as a judgment of the district court so indexed.

(c) Entry of Judgment of District Court

A judgment entered by a district judge in a case or proceeding under the Code shall be indexed in the district court's civil docket. The clerk of the district court shall certify a copy of the judgment to the clerk of the bankruptcy court.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). This rule is derived from Rule 58 F.R.Civ.P. The requirement that a judgment entered in an adversary proceeding or contested matter be set forth on a separate document is to eliminate uncertainty as to whether an opinion or memorandum of

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the court is a judgment. There is no sound reason to require that every order in a case under the Code be evidenced by a separate document.

Subdivision (b) establishes a procedure for entering a judgment of a bankruptcy court for the recovery of money or property in an index of judgments kept by the clerk of the district court. It clarifies the availability of the same remedies for the enforcement of a bankruptcy court judgment as those provided for the enforcement of a district court judgment. See 28 U.S.C. §§ 1961–63. When indexed in accordance with subdivision (b) of this rule a judgment of the bankruptcy court may be found by anyone searching for liens of record in the judgment records of the district court. Certification of a copy of the judgment to the clerk of the district court provides a basis for registration of the judgment pursuant to 28 U.S.C. § 1963 in any other district. When so registered, the judgment may be enforced by issuance of execution and orders for supplementary proceedings that may be served anywhere within the state where the registering court sits. See 7 Moore, *Federal Practice* 2409-11 (2d ed. 1971). The procedures available in the district court are not exclusive, however, and the holder of a judgment entered by the bankruptcy court may use the remedies under Rules 7069 and 7070 even if the judgment is indexed by the clerk of the district court.

Subdivision (c) makes it clear that when a district court hears a matter reserved to it by 28 U.S.C. §§ 1471, 1481, its judgments are entered in the district court's civil docket and in the docket of the bankruptcy court. When the district court acts as an appellate court, Rule 8016(a) governs the entry of judgments on appeal.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subds. (a) and (b), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 9022. Notice of Judgment or Order

(a) Judgment or Order of Bankruptcy Judge

Immediately on the entry of a judgment or order the clerk shall serve a notice of the entry by mail in the manner provided by Rule 7005 on the contesting parties and on other entities as the court directs. Service of the notice shall be noted in the docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.

(b) Judgment or Order of District Judge

Notice of a judgment or order entered by a district judge while acting in a case under the Code is governed by Rule 77(d) F.R.Civ.P.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is an adaptation of Rule 77(d) F.R.Civ.P.

Subdivision (b) complements Rule 9021(b). When a district court acts as an appellate court, Rule 8016(b) requires the clerk to give notice of the judgment on appeal.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subd. (b), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 9023. New Trials; Amendment of Judgments

Rule 59 F.R.Civ.P. applies in cases under the Code, except as provided in Rule 3008.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 59 F.R.Civ.P. regulates motions for a new trial and amendment of judgment. Those motions must be served within 10 days of the entry of judgment. No similar time limit is contained in Rule 3008 which governs reconsideration of claims.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 9024. Relief from Judgment or Order

Rule 60 F.R.Civ.P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(b), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144 or § 1330.

NOTES OF ADVISORY COMMITTEE ON RULES

Motions to reopen cases are governed by Rule 5010. Reconsideration of orders allowing and disallowing claims is governed by Rule 3008. For the purpose of this rule all orders of the bankruptcy court are subject to Rule 60 F.R.Civ.P.

Pursuant to § 727(e) of the Code a complaint to revoke a discharge must be filed within one year of the entry of the discharge or, when certain grounds of revocation are asserted, the later of one year after the entry of the discharge or the date the case is closed. Under § 1144 and § 1330 of the Code a party must file a complaint to revoke an order confirming a chapter 11 or 13 plan within 180 days of its entry. Clauses (2) and (3) of this rule make it clear that the time periods established by §§ 727(e), 1144 and 1330 of the Code may not be circumvented by the invocation of F.R.Civ.P. 60(b).

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 9025. Security: Proceedings Against Sureties

Whenever the Code or these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court, and liability may be determined in an adversary proceeding governed by the rules in Part VII.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 65.1 F.R.Civ.P. and applies to any surety on a bond given pursuant to § 303(e) of the Code, Rules 2001, 2010, 5008, 7062, 7065, 8005, or any other rule authorizing the giving of such security.

Rule 9026. Exceptions Unnecessary

Rule 46 F.R.Civ.P. applies in cases under the Code.

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REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 9027. Removal

(a) Application

(1) *Where Filed; Form and Content.* An application for removal shall be filed in the bankruptcy court for the district and division within which is located the state or federal court where the civil action is pending. The application shall be verified and contain a short and plain statement of the facts which entitle the applicant to remove and be accompanied by a copy of all process and pleadings.

(2) *Time for Filing; Civil Action Initiated Before Commencement of the Case Under the Code.* If the claim or cause of action in a civil action is pending when a case under the Code is commenced, an application for removal may be filed in the bankruptcy court only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

(3) *Time for Filing; Civil Action Initiated After Commencement of the Case Under the Code.* If a case under the Code is pending when a claim or cause of action is asserted in a court other than a bankruptcy court, an application for removal may be filed in the bankruptcy court only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

(b) Bond

An application for removal, except when the applicant is the trustee, debtor, debtor in possession, or the United States shall be accompanied by a bond with good and sufficient surety conditioned that the party will pay all costs and disbursements incurred by reason of the removal should it be determined that the claim or cause of action was not removable or was improperly removed.

(c) Notice

Promptly after filing the application and the bond, if required, in the bankruptcy court, the applicant shall serve a copy of the application on all parties to the removed claim or cause of action.

(d) Filing in Non-Bankruptcy Court

Removal of the claim or cause of action is effected on the filing of a copy of the removal application with the clerk of the court from which the claim or cause of action is removed. The parties shall proceed no further in that court unless and until the claim or cause of action is remanded.

(e) Remand

A motion for remand of the removed claim or cause of action may be filed only in the bankruptcy court and shall be served on the parties to the removed claim or cause of action. A motion to remand shall be determined as soon as practicable. A certified copy of an order of remand shall be mailed to the clerk of the court from which the claim or cause of action was removed.

(f) Procedure After Removal

(1) After removal of a claim or cause of action to a bankruptcy court the bankruptcy court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the court from which the claim or cause of action was removed or otherwise.

(2) The bankruptcy court may require the applicant to file with the clerk copies of all records and proceedings relating to the claim or cause of action in the court from which the claim or cause of action was removed.

(g) Process After Removal

If one or more of the defendants has not been served with process, the service has not been perfected prior to removal, or the process served proves to be defective, such process or service may be completed or new process issued in the same manner as in adversary proceedings originally filed in the bankruptcy court. This subdivision shall not deprive any defendant on whom process is served after removal of his right to move to remand the case.

(h) Applicability of Part VII

The rules of Part VII apply to a claim or cause of action removed to a bankruptcy court from a federal or state court and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, he shall answer or present the other defenses or objections available to him under the rules of Part VII within 20 days following the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief on which the action or proceeding is based, or within 20 days following the service of summons on such initial pleading, or within five days following the filing of the application for removal, whichever period is longest.

(i) Time for Filing a Demand for Jury Trial

If at the time of removal all necessary pleadings have been served, a party entitled to trial by jury shall be accorded it, if his demand therefor is served within 10 days following the filing of the application for removal if he is the applicant, or if he is not the applicant, within 10 days following service on him of notice of the filing of the application. A party who, prior to removal, has made an express demand for trial by jury in accordance with federal or state law, need not renew the demand after removal. If state law applicable in the court from which the claim or cause of action is removed does not require the parties to make an express demand for trial by jury, they need not make a demand

after removal unless the bankruptcy court so directs. The bankruptcy court may so direct on its own initiative and shall so direct at the request of any party to the removed claim or cause of action. The failure of a party to make demand as directed constitutes a waiver by him of trial by jury.

(j) Record Supplied

When a party is entitled to copies of the records and proceedings in any civil action or proceeding in a federal or a state court, to be used in a bankruptcy court, and the clerk of the federal or state court, on demand accompanied by payment or tender of the lawful fees, fails to deliver certified copies, the bankruptcy court may, on affidavit reciting the facts, direct such record to be supplied by affidavit or otherwise. Thereupon the proceedings, trial and judgment may be had in the bankruptcy court, and all process awarded, as if certified copies had been filed in the bankruptcy court.

(k) Attachment or Sequestration; Securities

When a claim or cause of action is removed to a bankruptcy court, any attachment or sequestration of property in the court from which the claim or cause of action was removed shall hold the property to answer the final judgment or decree in the same manner as the property would have been held to answer final jugment or decree had it been rendered by the court from which the claim or cause of action was removed. All bonds, undertakings, or security given by either party to the claim or cause of action prior to its removal shall remain valid and effectual notwithstanding such removal. All injunctions issued, orders entered and other proceedings had prior to removal shall remain in full force and effect until disolved or modified by the bankruptcy court.

NOTES OF ADVISORY COMMITTEE ON RULES

Under 28 U.S.C. § 1478(a) "any claim or cause of action in a civil action, other than a proceeding before the United States Tax Court or a civil action by a Government unit to enforce [a] . . . regulatory or police power" may be removed "if the bankruptcy courts have jurisdiction over such claim or cause of action." This rule specifies how removal is accomplished, the procedure thereafter, and the procedure to request remand of the removed claim or cause of action. If the claim or cause of action which is removed to the bankruptcy court is subject to the automatic stay of § 362 of the Code, the litigation may not proceed in the bankruptcy court until relief from the stay is granted.

The subdivisions of this rule conform substantially to 28 U.S.C. §§ 1446–1450 and Rule 81(a) F.R.Civ.P. pertaining to removal to the district courts.

Subdivision (a)(1) is derived from 28 U.S.C. § 1446(a).

Subdivisions (a)(2) and (a)(3) are derived from paragraphs one and two of 28 U.S.C. § 1446(b). Timely exercise of the right to remove is as important in bankruptcy cases as in removals from a state court to a district court.

Subdivision (a)(2) governs the situation in which there is litigation pending and a party to the litigation becomes a debtor under the Code. Frequently, removal would be of little utility in such cases because the pending litigation will be stayed by § 362(a) on commencement of the case under the Code. As long as the stay remains in effect there is no reason to impose a time limit for removal to the bankruptcy court and, therefore, clause (B) of subdivision (a)(2) provides that a removal application may be filed within 30 days of entry of an order terminating the stay. Parties to stayed litigation will not be required to act immediately on commencement of a case under the Code to protect their right to remove. If the pending litigation is not stayed by § 362(a) of the Code, the removal application must ordinarily be filed within 90 days of the order for relief. Clause (C) contains an alternative period for a chapter 11 case. If a trustee is appointed, the removal application may be filed within 30 days of the trustee's qualification, provided that the removal application is filed not more than 180 days after the order for relief.

The removal application must be filed within the longest of the three possible periods. For example, in a chapter 11 case if the 90 day period expires but a trustee is appointed shortly thereafter, the removal application may be filed within 30 days of the trustee's qualification but not later than 180 days after the order for relief. Nevertheless, if the claim or cause of action in the civil action is stayed under § 362, the application may be filed after the 180 day period expires, provided the application is filed within 30 days of an order terminating the stay.

Subdivision (a)(3) applies to the situation in which the case under the Code is pending when the removable claim or cause of action is asserted in a civil action initiated in other than the bankruptcy court. The time for filing the application for removal begins to run on receipt of the first pleading containing the removable claim or cause of action. Only litigation not stayed by the Code or by court order may properly be initiated after the case under the Code is commenced. See *e.g.*, § 362(a).

Subdivision (b). With one exception, this subdivision is the same as 28 U.S.C. § 1446(d). The exemption from the bond requirement is enlarged to include a trustee or debtor in possession. Complete exemption from the bond requirement for removal is appropriate because of the limited resources which may be available at the beginning of a case and the small probability that an action will be improperly removed.

Recovery on the bond is permitted only when the removal was improper. If the removal is proper but the bankruptcy court orders the action remanded on equitable grounds, 28 U.S.C. § 1478(b), there is no recovery on the bond.

Subdivisions (c) and (d) are patterned on 28 U.S.C. § 1446(e).

Subdivision (e). There is no provision in the Federal Rules of Civil Procedure for seeking remand. The first sentence of this subdivision requires that a request for remand be by motion and that the moving party serve all other parties; however, no hearing is required. In recognition of the intrusion of the removal practice on the state and federal courts from which claims or causes of action are removed, the subdivision directs the bankruptcy court to decide remand motions as soon as practicable. The last sentence of this subdivision is derived from 28 U.S.C. § 1446(c)

Subdivisions (f) and (g), with appropriate changes to conform them to the bankruptcy context, are the same as 28 U.S.C. § 1447(a) and (b) and 28 U.S.C. § 1448, respectively.

Subdivisions (h) and (i) are taken from Rule 81(c) F.R.Civ.P.

Subdivisions (j) and (k) are derived from 28 U.S.C. § 1449 and § 1450, respectively.

Remand orders of bankruptcy judges are not appealable. 28 U.S.C. § 1478(b).

This rule does not deal with the question whether a single plaintiff or defendant may remove a claim or cause of action if there are two or more plaintiffs or defendants. See 28 U.S.C. § 1478.

Rule 9028. Disability of a Judge

If by reason of death, sickness, or other disability, a judge before whom an involuntary pe-

tition or an adversary proceeding has been tried or a hearing conducted is unable to perform the duties to be performed by the court under these rules after a verdict is returned, or findings of fact and conclusions of law or a memorandum is filed, then any other judge regularly sitting in or assigned to the court in which the trial or hearing was conducted may perform those duties; but if the other judge is satisfied that he cannot perform those duties because he did not preside or for any other reason, he may in his discretion grant a new trial.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 63 F.R.Civ.P.

Rule 9029. Local Bankruptcy Rules

Each bankruptcy court by action of a majority of the judges thereof may make and amend rules governing its practice and procedure not inconsistent with these rules. Copies of rules and amendments so made shall on their promulgation be furnished to the Administrative Office of the United States Courts. The clerk of each court shall make appropriate arrangements, subject to the approval of the Director of the Administrative Office of the United States Courts, for making copies of the rules available to members of the public who may request them. In all cases not provided for by rule, the bankruptcy court may regulate its practice in any manner not inconsistent with these rules.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 83 F.R.Civ.P. and Rule 57(a) F.R.Crim.P. Under this rule bankruptcy courts may make local rules which govern practice before those courts. Circuit councils and district courts are authorized by Rule 8018 to make local rules governing appellate practice.

Rule 9030. Jurisdiction and Venue Unaffected

These rules shall not be construed to extend or limit the jurisdiction of the bankruptcy courts or the venue of any matters therein.

NOTES OF ADVISORY COMMITTEE ON RULES

The rule is an adaptation of Rule 82 F.R.Civ.P.

Rule 9031. Masters Not Authorized

Rule 53 F.R.Civ.P. does not apply in cases under the Code.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule precludes the appointment of masters in cases and proceedings under the Code.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 9032. Effect of Amendment of Federal Rules of Civil Procedure

The Federal Rules of Civil Procedure which are incorporated by reference and made applicable by these rules shall be the Federal Rules of Civil Procedure in effect on the effective date of these rules and as thereafter amended, unless otherwise provided by such amendment.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The effective date of these rules, referred to in text, is Aug. 1, 1983. See Effective Date note set out prec. Rule 1001 of this Appendix.

PART X—UNITED STATES TRUSTEES

Rule X-1001. Applicability of Rules

(a) Part X Rules

The rules in Part X apply to cases under the Code filed in or transferred to any district in which a United States trustee is authorized.

(b) Inapplicability of Rules

The following rules do not apply in cases under the Code filed in or transferred to any district specified in subdivision (a) of this rule: 2001(a), (c), 2002(a)(1), 2003(a),(b)(1), (2),(d), 2007, 2008, 2009(c), (d), (e), 2010(a), 5008, and the second sentence of 6003.

NOTES OF ADVISORY COMMITTEE ON RULES

Section 1501 of the Code lists the following judicial or "pilot" districts in which United States trustees are to be appointed by the Attorney General pursuant to 28 U.S.C. § 581: Northern District of Alabama, Central District of California, Districts of Colorado, District of Columbia, Delaware, Northern District of Illinois, Districts of Kansas, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, Southern District of New York, Districts of North Dakota, Rhode Island, South Dakota, Northern District of Texas, and Eastern District of Virginia.

These Part X rules are for use in those districts in connection with the duties and responsibilities of the United States trustees. They are set out separately to facilitate their repeal in the event the United States trustee system is not continued by Congress beyond March 31, 1984. See Pub. L. 95-598, § 408(c).

Subdivision (b) indicates the rules that are not applicable in the pilot districts. Following is a list of the rules in Part X and the rules which they affect, in addition to those listed in Rule X-1001:

Rules in Part X	Rules in Parts I through IX affected by rules in Part X
X-1002	1007(d)
X-1002(a)	1007(a)
X-1002(b)	1007(a)(4)
	1002(b)
	1003(b)
	1007(f)
X-1003(a)	2001(a)
X-1003(b)	2001(c)
X-1004	2008
	2009(e)
	2013(a)
X-1005	2009(e)
X-1005(a)	2009(c)
X-1006	2007 (as to chapter 11)
X-1006(a)	2003(a)
X-1006(b)(1)	2003(b)(1)
X-1006(b)(2)	2003(b)(2)
X-1006(c)	2003(d)
X-1007(a)	2015(a)(1)
X-1007(b)	4002
X-1008	2002(a),(b)
X-1008(a)	2002(a)(2),(5),(7),(f)

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Cross references to rules affected by rules in Part X (in addition to those listed in Rule X-1001)

Rule affected	Rules in Part X
1002(b)	X-1002(b)
1003(b)	X-1002(b)
1007(a)(4)	X-1002(b)
1007(a)	X-1002(a)
1007(d)	X-1002
2002(a)	X-1008
2002(a)(2)	X-1008(a)
2002(a)(5)	X-1008(a)
2002(a)(7)	X-1008(a)
2002(b)	X-1008(a)
2002(f)	X-1008(a)
2015(a)(1)	X-1007(a)

Rule X-1002. Petitions, Lists, Schedules and Statements

(a) Petitions and Accompanying Materials

(1) *Number of Copies.* In addition to the number of copies required to be filed pursuant to Rules 1002(b), 1003(b) and 1007(f), there shall be filed one copy of the petition, the list of creditors, the schedule of assets and liabilities, the statement of financial affairs, the statement of executory contracts, and the Chapter 13 Statement and any amendments thereto.

(2) *Transmission to United States Trustee.* The clerk shall forthwith transmit to the United States trustee the additional copies filed pursuant to this subdivision. Written notice of a hearing for an extension of time to file schedules, statements and lists pursuant to Rule 1007(a)(4) shall be given the United States trustee.

(b) Filing Lists by Debtor in Chapter 11 Reorganization Cases

In chapter 11 cases, the debtor shall file an additional copy of the lists of creditors and of the 20 largest unsecured creditors required by Rule 1007(a) and (d). The lists shall contain additional information as the United States trustee may require and one copy of each shall be transmitted forthwith by the clerk to the United States trustee.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule X-1002 requires that a copy of the petition commencing a case under the Code, whether it is a case under chapter 7, 9, 11, or 13, be sent to the United States trustee. This supplements Rules 1002(b) and 1003(b). Sections 301-303 of the Code provide that petitions are to be filed with the bankruptcy court. Nevertheless, the United States trustee should be apprised of the commencement of every case and this is most easily accomplished by providing that office with a copy of the petition.

The clerk also must transmit a copy of the lists of creditors and any schedules and statements that are filed. Rule 1007(d) requires a list of the 20 largest creditors and a list of all creditors to be filed. These lists should be transmitted to the United States trustee.

The clerk should transmit the papers specified in this rule forthwith on their filing because the United States trustee requires the information to perform certain duties, *e.g.*, appointment of an interim trustee, § 15701 of the Code, and appointment of a committee of unsecured creditors, § 151102.

Lists of the largest creditors have frequently been deficient, and have hampered the United States trustee in appointing a creditors' committee. Subdivision (b) of this rule provides the United States trustee with authority to require sufficient information to assemble a creditors' committee that complies with § 1102(b) of the Code.

Rule X-1003. Appointment of Interim Trustee Before Order for Relief in a Chapter 7 Liquidation Case

(a) Appointment

At any time following the commencement of an involuntary liquidation case and before an order for relief, the court on written motion of a party in interest may order the appointment of an interim trustee under § 15303 of the Code. The motion shall set forth the necessity for the appointment and may be granted only after hearing on notice to the debtor, the United States trustee, and other parties in interest as the court may designate.

(b) Form of Order

The order directing the appointment of an interim trustee shall state why the appointment is necessary and shall specify the trustee's duties.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule parallels Rule 2001(a) with minor adjustments to reflect that in a United States trustee district, it is the United States trustee, rather than the court, who appoints interim trustees.

Rule X-1004. Notification to Trustee of Selection; Blanket Bond

(a) Notification

The United States trustee shall immediately notify the trustee of his selection, how he may qualify, and, if applicable, the amount of the bond. The trustee shall give written notification to the court and the United States trustee of the acceptance or rejection of the office within five days after receipt of notice of selection.

(b) Blanket Bond

The United States trustee may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by the trustee or trustees to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule parallels Rules 2008 and 2010, except for adjustments to reflect that in a United States trustee district, it is the United States trustee, rather than the court, who appoints interim trustees and sets the bond.

If a person selected as trustee accepts the office, he should also qualify within five days after the selection as required by § 322(a). A standing trustee appointed for chapter 13 cases may notify the court and the United States trustee of the acceptance of office in advance of the commencement of individual cases.

No bond is required if the United States trustee personally serves as trustee in a case; see § 15322(a).

Rule X-1005. Trustees for Estates When Joint Administration Ordered

(a) Appointment of Trustees for Estates Being Jointly Administered

(1) *Chapter 7 Liquidation Cases.* The United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

(2) *Chapter 11 Reorganization Cases.* If a trustee is ordered, the United States trustee may appoint one or more trustees for estates being jointly administered in chapter 11 cases.

(3) *Chapter 13 Individual's Debt Adjustment Cases.* The United States trustee may appoint one or more trustees for estates being jointly administered in chapter 13 cases.

(b) Potential Conflicts of Interest

On a showing that creditors of the different estates will be prejudiced by conflicts of interest of a common trustee the court shall order the appointment of separate trustees for estates being jointly administered.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule parallels Rule 2009(c) and (d), and differs only in that it makes clear that the United States trustee, rather than the court, has the responsibility for appointing trustees. See §§ 15701, 151104, 151302 of the Code and 28 U.S.C. § 586(b).

If separate trustees are ordered pursuant to subdivision (b), separate and successor trustees should be chosen as prescribed by § 703 of the Code. If the occasion for another election arises, the United States trustee should call a meeting of creditors for this purpose.

Rule 2009(e) is not applicable in pilot districts as a direct restriction on the United States trustee because the exercise of discretion by the executive branch is not subject to advance restriction by rule of court or otherwise. *United States v. Cox*, 342 F.2d 167 (5th Cir. 1965), cert. denied, 365 U.S. 863 (1965); *United States v. Frumento*, 409 F. Supp. 136, 141 (E.D. Pa.), *aff'd*, 563 F.2d 1083 (3d Cir. 1977), cert. denied, 434 U.S. 1072 (1977); *accord, Smith v. United States*, 375 F.2d 243 (5th Cir. 1967); House Report No. 95-595, 95th Cong., 1st Sess. 110 (1977). Any appointment of a trustee by a United States trustee in a case under chapter 11 may be disapproved by the court for cause; see § 151104(c).

Rule X-1006. Meetings of Creditors or Equity Security Holders

(a) Date and Place

The United States trustee shall call a meeting of creditors to be held not less than 20 nor more than 40 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the United States trustee may set a later time for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest.

(b) Order of Meeting

(1) *Meeting of Creditors.* The United States trustee or his designee shall preside at the meeting of creditors. The business of the meeting shall include the examination of the debtor under oath and, in a chapter 7 liquidation case, may include the election of a trustee or of a creditors' committee. The presiding officer shall have authority to administer oaths.

(2) *Meeting of Equity Security Holders.* If the court orders a meeting of equity security holders pursuant to § 341(b) of the Code, the United States trustee shall fix a date for the meeting and he or his designee shall preside.

(c) Report to the Court

The United States trustee shall transmit to the court the name and address of any person elected trustee or a member of a creditors' committee. If an election is disputed, the presiding officer shall promptly inform the court in writing of the dispute. Pending disposition of the dispute by the court, the interim trustee shall continue in office. If no motion for the resolution of the election dispute is made to the court within ten days after the date of the creditors' meeting, the interim trustee shall serve as trustee in the case.

(d) Special Meetings

The United States trustee may call a special meeting of creditors on application or on his own initiative.

(e) Final Meeting

If the United States trustee calls a final meeting of creditors in a case in which the net proceeds realized exceed $250, the clerk of the bankruptcy court shall mail a summary of the trustee's final account to the creditors with the notice of the meeting, together with a statement of the amount of the claims allowed. The trustee or his designee shall attend the final meeting and shall, if requested, report on the administration of the estate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule imposes on the United States trustee the duty to fix the date for the meeting of creditors required by § 341(a) of the Code and the meeting of equity security holders if one is ordered by the court. Although the United States trustee fixes the date of the meeting, a duty that is parallel to that imposed on the court by Rule 2003(a), the clerk of the bankruptcy court transmits the notice of the meeting unless the court orders otherwise, as prescribed by Rule 2002(a)(1). As indicated in Rule X-1006, there is flexibility with regard to the location of the meeting.

Pursuant to §§ 702 and 705 of the Code, creditors may elect a trustee and a committee in a chapter 7 case. Subdivision (b) of this rule provides that the United States trustee or his designee will preside over any election that is held under those sections. While Rule X-1006 is applicable to cases under chapter 11 and chapter 13, trustees and committees are not elected in these cases.

Subdivision (c) recognizes that the court should be informed immediately about the election or nonelection of a trustee in a chapter 7 case. This subdivision also notes that there may be a disputed election, but in no event may the United States trustee or his designee resolve the dispute. For purposes of expediency, the results of the election could be obtained for each alternative presented by the dispute and reported to the court. Thus, when an interested party (not the United States trustee) moves for resolution of the dispute, the court will determine the issue and another meeting to conduct the election may not be necessary.

Rule X-1007. Duty of Trustee or Debtor in Possession to Make Reports, Furnish Information, and Cooperate with United States Trustee

(a) Duty To File Inventory

A trustee or debtor in possession shall file the inventory required by Rule 2015(a)(1) with the United States trustee and with the court if the court so directs.

(b) Duty To Furnish Information to, and Cooperate With, United States Trustee

The trustee or debtor in possession shall cooperate with the United States trustee by fur-

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nishing such information as the United States trustee may reasonably require in supervising the administration of the estate. The trustee or debtor in possession in a chapter 11 reorganization case, and the debtor in a chapter 13 individual's debt adjustment case when the debtor is engaged in business, shall furnish the United States trustee and file with the clerk regular reports of operations as the United States trustee may reasonably require.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*) supplements Rule 2015(a) and the legislative direction that the administration of cases is under the supervision of the United States trustee. 28 U.S.C. § 586(a)(3). Thus, in the absence of a contest, the court should not become involved in receiving or reviewing interim reports of the assets of a debtor, except under the limited circumstances set forth in § 704(7) of the Code.

The United States trustee is charged with the supervision of the administration of all cases under chapters 7, 11 and 13. 28 U.S.C. § 586(a), and chapter 15 of the Code. Subdivision (b), which is based in part on Rule 4002, makes clear the duties of the parties to assist the United States trustee in performing that function. The timely filing of reports of operations is crucial to the efficient administration of chapter 11 and business chapter 13 cases. Under the former Bankruptcy Act, these reports were regularly filed with the bankruptcy judges, but since the United States trustees unlike courts cannot enter orders, this rule enables the United States trustee to superintend the activities of trustees and debtors in possession.

Rule X-1008. Notices to United States Trustee

(a) Notices To Be Furnished to United States Trustees

Unless the United States trustee otherwise requests, the United States trustee shall receive notice of and pleadings relating to:

(1) the matters described in Rule 2002(a)(2), (5), (7), 2002(b), and (f);

(2) applications for approval of the employment of professional persons under Rule 2014;

(3) applications for compensation of professional persons under Rule 2016;

(4) the hearing to consider a disclosure statement pursuant to Rule 3017;

(5) the hearing on the appointment of a trustee or examiner; and

(6) any other matter notice of which is requested by the United States trustee or ordered by the court.

(b) Time for Notice to United States Trustee

Subject to Rule 2002, the United States trustee shall receive notice within sufficient time to permit him to participate in the matter.

(c) United States Trustee Need Not Furnish Notice

The United States trustee shall not be required to give any notice provided for in Rule 2002(a) or (b).

NOTES OF ADVISORY COMMITTEE ON RULES

This rule supplements Rule 2002 and provides for notice to the United States trustee of those matters within his responsibility. The rule omits those notices described in Rule 2002(a)(1) because a meeting of creditors may be convened only by the United States trustee. Rule X-1008 also omits the notice described in Rule 2002(a)(3) (compromise of controversies), 2002(a)(4) (claims against a surplus), and 2002(a)(6) (acceptance or rejection of proposed modifications of a plan in a case under chapter 11), because these do not relate to matters that generally involve the United States trustee. When the facts are such that the United States trustee should be able to monitor those aspects of a case, the rule provides that the United States trustee may request notices. Similarly, this rule permits a United States trustee in a particular judicial district to request notices in certain categories, or request not to receive notices in other categories when the practice in that district makes that desirable.

Rule X-1009. Right to be Heard; Filing Papers

(a) Right To Be Heard

The United States trustee may raise and appear and be heard on any issue relating to his responsibilities in a case under the Code.

(b) Filing of Papers

In the interest of effective administration, the court or the United States trustee may require a party in interest to file with the United States trustee a copy of any paper filed with the court.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*) gives the United States trustee standing to be heard. He should have the opportunity, for example, to object to or support actions proposed to be taken by a chapter 7 trustee. Similarly, he should have the opportunity to move to convert or dismiss a chapter 11 case if the operation of the business or management of the property precludes effective administration of the case under that chapter. This rule does not attempt to expand the authority of the United States trustee to move to convert or dismiss a case under § 1112(b), and leaves the interpretation of that provision to the courts. Subdivision (a) gives effect to the Congressional intent that the United States trustee shall have an active role in cases under the Code.

Subdivision (*b*) enables the United States trustee to be informed of all developments in a case. It supplements the provisions of Rule X-1008 which requires certain notices and pleadings to be sent to the United States trustee.

Rule X-1010. Prohibition of Ex Parte Contacts

The United States trustee, his assistants, and agents shall refrain from ex parte meetings and communications with the bankruptcy judge concerning matters affecting a particular case or proceeding. This rule does not preclude communication with a bankruptcy judge to discuss general problems of administration and improvement of bankruptcy administration, including the operation of the United States trustee system.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule and Rule 9003 do not supersede or limit any applicable canon of professional responsibility or judicial conduct. See Advisory Committee Note to Rule 9003.

Communication between the judicial and administrative systems is expressly not prohibited. It may be desirable that the court and the United States trustee cooperatively seek ways to improve the administration of cases under the Code.

OFFICIAL FORMS

[NOTE: *These official forms should be observed and used with such alterations as may be ap-*

propriate to suit the circumstances. See Rule 9009.]

Form 1.—Voluntary Petition

UNITED STATES BANKRUPTCY COURT
FOR THE _____ DISTRICT
OF _____

In re _____, Debtor [set forth here all names including trade names used by Debtor within last 6 years]. Social Security No. _____ and Debtor's Employer's Tax Identification No. _____	Case No. _____

VOLUNTARY PETITION

1. Petitioner's mailing address, including county, is _____
_____.

2. Petitioner has resided [*or* has had his domicile *or* has had his principal place of business *or* has had his principal assets] within this district for the preceding 180 days [*or* for a longer portion of the preceding 180 days than in any other district].

3. Petitioner is qualified to file this petition and is entitled to the benefits of title 11, United States Code as a voluntary debtor.

4. [*If appropriate*] A copy of petitioner's proposed plan, dated _____, is attached [*or* Petitioner intends to file a plan pursuant to chapter 11 *or* chapter 13] of title 11, United States Code.

5. [*If petitioner is a corporation*] Exhibit "A" is attached to and made part of this petition.

(6) [*If petitioner is an individual whose debts are primarily consumer debts.*] Petitioner is aware that [he or she] may proceed under chapter 7 or 13 of title 11, United States Code, understands the relief available under each such chapter, and chooses to proceed under chapter 7 of such title.

(7) [*If petitioner is an individual whose debts are primarily consumer debts and such petitioner is represented by an attorney.*] A declaration or an affidavit in the form of Exhibit "B" is attached to and made a part of this petition.

WHEREFORE, petitioner prays for relief in accordance with chapter 7 [*or* chapter 11 *or* chapter 13] of title 11, United States Code.

Signed: _____,
Attorney for Petitioner.

Address: _____,
_____,

[*Petitioner signs if not represented by attorney.*]

_____,
Petitioner.

I, _____, the petitioner named in the foregoing petition, declare under penalty of perjury that the foregoing is true and correct.

Executed on _____

Signature: _____
Petitioner.

Exhibit "A"

[*If petitioner is a corporation, this Exhibit "A" shall be completed and attached to the petition pursuant to paragraph 5 thereof.*]

[*Caption as in Form No. 1*]

FOR COURT USE ONLY

_____
Date Petition Filed

_____
Case Number

_____
Bankruptcy Judge

1. Petitioner's employer identification number is _____.

2. If any of petitioner's securities are registered under section 12 of the Securities and Exchange Act of 1934, SEC file number is _____.

3. The following financial data is the latest available information and refers to petitioner's condition on _____.

a. Total assets: $_____
b. Total liabilities: $_____

		Approximate number of holders
Secured debt, excluding that listed below	$_____	_____
Debt securities held by more than 100 holders	$_____	_____
Secured	$_____	_____
Unsecured	$_____	_____
Other liabilities, excluding contingent or unliquidated claims	$_____	_____
Number of shares of common stock	$_____	_____

Comments, if any: _____
_____
_____

4. Brief description of petitioner's business:
_____
_____
_____

5. [*If presently available, supply the following information*] The name of any person who directly or indirectly owns, controls, or holds, with power to vote, 20% or more of the voting securities of petitioner is _____
_____

6. [*If presently available, supply the following information*] The names of all corporations 20% or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held, with power to vote, by petitioner are _____
_____
_____

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Exhibit "B"

[If petitioner is an individual whose debts are primarily consumer debts, this Exhibit "B" shall be completed and attached to the petition pursuant to paragraph (7) thereof.]

[Caption as in Form No. 1]

FOR COURT USE ONLY

Date Petition Filed

Case Number

Bankruptcy Judge

I, , the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7 or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

Executed on _____

Signature _____

Attorney for Petitioner

(As amended July 10, 1984, Pub. L. 98-353, title III, § 322, 98 Stat. 357.)

NOTES OF ADVISORY COMMITTEE ON RULES

This form may be used to commence a voluntary case under chapter 7, 11, or 13 of the Bankruptcy Code. A chapter 9 petition requires other allegations (see § 109(c) of the Code) but this form may be adapted for such use.

The title of the case, in the caption of the form, should include all names used by the debtor, such as trade names, names used in doing business, married names and maiden names. This will enable creditors to properly identify the debtor when they receive notices and orders.

A joint petition, available for an individual and spouse, may be filed under chapter 7, 11, or 13. See § 302 of the Code. This form may be adapted for such use.

The unsworn declaration at the end of the petition conforms with 28 U.S.C. § 1746 (1976) which permits the declaration to be made in the manner indicated with the same force and effect as a sworn statement. The form may be adapted for use outside of the United States by adding the words "under the laws of the United States" after the word "perjury".

Exhibit "A" to be attached to the petition of a corporate debtor is for the purpose of supplying the Securities and Exchange Commission with the information it requires at the beginning stages of a chapter 11 case.

1984 AMENDMENT

Pars. (6), (7). Pub. L. 98-353 added pars. (6) and (7).

Exhibit B. Pub. L. 98-353 added Exhibit "B".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

Form 2.—Application to Pay Filing Fee in Installments

UNITED STATES BANKRUPTCY COURT
FOR THE _____ DISTRICT
OF _____

In re _____, Debtor. } Case No. _____

APPLICATION TO PAY FILING FEE IN INSTALLMENTS

1. Applicant files herewith a petition commencing a voluntary [or joint] case under title 11, United States Code.

2. Applicant is unable to pay the filing fee except in installments.

3. Applicant proposes to pay such fee to the clerk of the bankruptcy court on the following terms: _____

4. Applicant has not paid any money or transferred any property to applicant's attorney for services in connection with this case or any pending case under title 11, United States Code, and applicant will not make any payment or transfer any property to his attorney for such services until the filing fee is paid in full.

WHEREFORE, applicant prays that he be permitted to pay the filing fee in installments.

Dated: _____

Signed: _____,
Applicant.

Address: _____,

NOTES OF ADVISORY COMMITTEE ON RULES

The application for permission to pay filing fees in installments may be filed in accordance with 28 U.S.C. § 1930(a), and Rule 1006. Only an individual debtor in a voluntary case, or individual debtors filing a joint petition may pay the fee in installments.

If a joint petition is filed, this form may be adapted for use by both petitioners.

Form 3.—Order for Payment of Filing Fee in Installments

[Caption as in Form No. 2]

ORDER FOR PAYMENT OF FILING FEE IN INSTALLMENTS

The debtor having applied for permission to pay the filing fee in this case in installments:

It is ordered that the debtor pay the filing fee still owing, namely, $_____, as follows:

It is further ordered that all payments be made at the office of the clerk of the United States Bankruptcy Court located at _____, and that until the filing fee is paid in full, the debtor shall not pay any money or transfer any property to his attorney, and his attorney shall not accept any money or property from the debtor for services in connection with this case.

Dated: _____

BY THE COURT

_____,
Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

Issuance of an order permitting payment of the filing fees in installments is governed by Rule 1006.

This form may be adapted for use in a joint case when both petitioners apply to pay the filing fee in installments.

Form 4.—Unsworn Declaration under Penalty of Perjury on Behalf of a Corporation or Partnership

I, _____, [the president *or other officer or* an authorized agent of the corporation] [*or* a member *or* an authorized agent of the partnership] named as petitioner in the foregoing petition, declare under penalty of perjury that the foregoing is true and correct, and that the filing of this petition on behalf of the [corporation] [*or* partnership] has been authorized.

Executed on _____

Signature: _____

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 1008 requires all petitions to be verified. This form is to be used on behalf of a corporation or partnership. It may be adapted for use in connection with other papers required by these rules to be verified. See the Note to Rule 9011. 28 U.S.C. § 1746 permits an unsworn declaration to be used in lieu of a verification. See Advisory Committee Note to Form No. 1.

Form 5.—Certificate of Commencement of Case

[*Caption as in Form No. 1*]

CERTIFICATE OF COMMENCEMENT OF CASE

I hereby certify that on _____, _____ the above named debtor filed a petition [*or if applicable* a petition was filed against the above named debtor] requesting relief under chapter _____ of title 11, United States Code (the Bankruptcy Code).

Dated: _____

_____

Clerk of the Bankruptcy Court.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is adapted from certificates that have been in use in several districts. The certificate may be used to alert persons dealing with the debtor or property of the debtor of the pendency of a case under the Code before the notice of the meeting of creditors is sent.

Form 6.—Schedules of Assets and Liabilities

[*Caption as in Form No. 1*]

SCHEDULE A.—STATEMENT OF ALL LIABILITIES OF DEBTOR.

Schedules A-1, A-2 and A-3 must include all the claims against the debtor or his property as of the date of the filing of the petition by or against him.

Schedule A-1.—Creditors having priority.

(1) Nature of claim.	(2) Name of creditor and complete mailing address including zip code	(3) Specify when claim was incurred and the consideration therefor; when claim is subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	(4) Indicate if claim is contingent, unliquidated, or disputed	(5) Amount of claim

a. Wages, salary, and commissions, including vacation, severance and sick leave pay owing to employees not exceeding $2,000 to each, earned within 90 days before filing of petition or cessation of business (if earlier specify date). $_____

b. Contributions to employee benefit plans for services rendered within 180 days before filing of petition or cessation of business (if earlier specify date). $_____

c. Deposits by individuals, not exceeding $900 for each for purchase, lease, or rental of property or services for personal, family, or household use that were not delivered or provided. $_____

d. Taxes owing [itemize by type of tax and taxing authority] $_____

(1) To the United States $_____

(2) To any state $_____

(3) To any other taxing authority $_____

Total $_____

Schedule A-2.—Creditors holding security

(1) Name of creditor and complete mailing address including ZIP code.	(2) Description of security and date when obtained by creditor	(3) Specify when claim was incurred and the consideration therefor; when claim is subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	(4) Indicate if claim is contingent, unliquidated, or disputed	(5) Market value	(6) Amount of claim without deduction of value of security
				Total	$_____

Schedule A-3.—Creditors having unsecured claims without priority.

(1)	(2)	(3)	(4)
Name of creditor (including last known holder of any negotiable instrument) and complete mailing address including ZIP code.	Specify when claim was incurred and the consideration therefor; when claim is contingent, unliquidated, disputed, subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt.	Indicate if claim is contingent, unliquidated, or disputed.	Amount of claim
		Total	$_____

SCHEDULE B—STATEMENT OF ALL PROPERTY OF DEBTOR

Schedules B-1, B-2, B-3, and B-4 must include all property of the debtor as of the date of the filing of the petition by or against him.

Schedule B-1.—Real Property

Description and location of all real property in which debtor has an interest (including equitable and future interests, interests in estates by the entirety, community property, life estates, leaseholds, and rights and powers exercisable for his own benefit)	Nature of interest (specify all deeds and written instruments relating thereto)	Market value of debtor's interest without deduction for secured claims listed in Schedule A-2 or exemptions claimed in Schedule B-4
	Total	$_____

Schedule B-2.—Personal Property

Type of Property	Description and Location	Market value of debtor's interest without deduction for secured claims listed on Schedule A-2 or exemptions claimed in Schedule B-4
	Total	$_____

a. Cash on hand ..... $_____
b. Deposits of money with banking institutions, savings and loan associations, brokerage houses, credit unions, public utility companies, landlords and others ..... _____
c. Households goods, supplies and furnishings ..... _____
d. Books, pictures, and other art objects; stamp, coin and other collections ..... _____
e. Wearing apparel, jewelry, firearms, sports equipment and other personal possessions ..... _____
f. Automobiles, trucks, trailers and other vehicles ..... _____
g. Boats, motors and their accessories ..... _____
h. Livestock, poultry and other animals ..... _____
i. Farming equipment, supplies and implements ..... _____
j. Office equipment, furnishings and supplies ..... _____
k. Machinery, fixtures, equipment and supplies [other than those listed in Items j and l] used in business ..... _____
l. Inventory ..... _____
m. Tangible personal property of any other description ..... _____
n. Patents, copyrights, licenses, franchises and other general intangibles [specify all documents and writings relating thereto] ..... _____
o. Government and corporate bonds and other negotiable and nonnegotiable instruments ..... _____
p. Other liquidated debts owing debtor ..... _____
q. Contingent and unliquidated claims of every nature, including counterclaims of the debtor [give estimated value of each] ..... _____
r. Interests in insurance policies [name insurance company of each policy and itemize surrender or refund value of each] ..... _____
s. Annuities [itemize and name each issuer] ..... _____
t. Stock and interests in incorporated and unincorporated companies [itemize separately] ..... _____
u. Interests in partnerships ..... _____
v. Equitable and future interests, life estates, and rights or powers exercisable for the benefit of the debtor (other than those listed in schedule B-1) [specify all written instruments relating thereto] ..... _____
Total $_____

Schedule B-3.—Property not otherwise scheduled

Type of Property	Description and Location	Market value of debtor's interest without deduction for secured claims listed in Schedule A-2 or exemption claimed in Schedule B-4

a. Property transferred under assignment for benefit of creditors, within 120 days prior to filing of petition [specify date of assignment, name and address of assignee, amount realized therefrom by the assignee, and disposition of proceeds so far as known to debtor] ..... $_____
b. Property of any kind not otherwise scheduled ..... _____
Total $_____

Debtor selects the following property as exempt pursuant to 11 U.S.C. § 522(d) [*or* the laws of the State of _____.]

Schedule B-4.—Property claimed as exempt

Type of Property	Location, description, and, so far as relevant to the claim of exemption, present use of property	Specify statute creating the exemption	Value claimed exempt
			$____
		Total	$____

Summary of debts and property.

[*From the statements of the debtor in Schedules A and B*]

Schedule		Total
	Debts	
A-1/a,b	Wages, etc. having priority	$____
A-1(c)	Deposits of money	____
A-1/d(1)	Taxes owing United States	____
A-1/d(2)	Taxes owing states	____
A-1/d(3)	Taxes owing other taxing authorities	____
A-2	Secured claims	____
A-3	Unsecured claims without priority	____
	Schedule A total	$____
	Property	
B-1	Real property [total value]	$____
B-2/a	Cash on hand	____
B-2/b	Deposits	____
B-2/c	Household goods	____
B-2/d	Books, pictures, and collections	____
B-2/e	Wearing apparel and personal possessions	____
B-2/f	Automobiles and other vehicles	____
B-2/g	Boats, motors, and accessories	____
B-2/h	Livestock and other animals	____
B-2/i	Farming supplies and implements	____
B-2/j	Office equipment and supplies	____
B-2/k	Machinery, equipment, and supplies used in business	____
B-2/l	Inventory	____
B-2/m	Other tangible personal property	____
B-2/n	Patents and other general intangibles	____
B-2/o	Bonds and other instruments	____
B-2/p	Other liquidated debts	____
B-2/q	Contingent and unliquidated claims	____
B-2/r	Interests in insurance policies	____
B-2/s	Annuities	____
B-2/t	Interests in corporations and unincorporated companies	____
B-2/u	Interests in partnerships	____
B-2/v	Equitable and future interests, rights, and powers in personalty	____
B-3/a	Property assigned for benefit of creditors	____
B-3/b	Property not otherwise scheduled	____
	Schedule B total	$____

UNSWORN DECLARATION UNDER PENALTY OF PERJURY OF INDIVIDUAL TO SCHEDULES A AND B

I, _____, declare under penalty of perjury that I have read the foregoing schedules, consisting of ____ sheets, and that they are true and correct to the best of my knowledge, information and belief.

Executed on _____

Signature: _____

UNSWORN DECLARATION UNDER PENALTY OF PERJURY ON BEHALF O CORPORATION OR PARTNERSHIP T SCHEDULES A AND B

I, _____, [the president *or other office* or an authorized agent of the corporation] [*or* member *or* an authorized agent of the partnership] named as debtor in this case, declar under penalty of perjury that I have read th foregoing schedules, consisting of ____ sheet and that they are true and correct to the be of my knowledge, information, and belief.

Executed on _____

Signature: _____

NOTES OF ADVISORY COMMITTEE ON RULES

These schedules may be used pursuant to § 521(1) the Code.

The unsworn declarations at the end of the form a in conformity with 28 U.S.C. § 1746. See Advisor Committee Note to Form No. 1.

Form 7.—Statement of Financial Affairs fo Debtor Not Engaged in Business

[*Caption as in Form No. 1*]

STATEMENT OF FINANCIAL AFFAIR FOR DEBTOR NOT ENGAGED IN BUSI NESS

[Each question shall be answered or the fail ure to answer explained. If the answer i "none" or "not applicable" so state. If addition al space is needed for the answer to any ques tion, a separate sheet, properly identified an made a part hereof, should be used and at tached.

The term, "original petition," used in the fol lowing questions, shall mean the petition file under Rule 1002, 1003, or 1004.]

1. Name and residence.

a. What is your full name?

b. Have you used, or been known by, any other names within the six years immediately preceding the filing of the original petition herein? (If so, give particulars.)

c. Where do you now reside?

d. Where else have you resided during the six years immediately preceding the filing of the original petition herein?

2. Occupation and income.

a. What is your occupation?

b. Where are you now employed? (Give the name and address of your employer, or the address at which you carry on your trade or profession, and the length of time you have been so employed or engaged.)

c. Have you been in a partnership with anyone, or engaged in any business during the six years immediately preceding the filing of the original petition herein? (If so, give particulars, including names, dates, and places.)

d. What amount of income have you received from your trade or profession during each of the two calendar years immediately preceding the filing of the original petition herein?

e. What amount of income have you received from other sources during each of these two

years? (Give particulars, including each source, and the amount received therefrom.)

3. Tax returns and refunds.

a. Where did you file your federal, state and municipal income tax returns for the two years immediately preceding the filing of the original petition herein?

b. What tax refunds (income and other) have you received during the year immediately preceding the filing of the original petition herein?

c. To what tax refunds (income or other), if any, are you, or may you be, entitled? (Give particulars, including information as to any refund payable jointly to you and your spouse or any other person.)

4. Financial accounts, certificates of deposit and safe deposit boxes.

a. What accounts or certificates of deposit or shares in banks, savings and loan, thrift, building and loan and homestead associations, credit unions, brokerage houses, pension funds and the like have you maintained, alone or together with any other person, and in your own or any other name within the two years immediately preceding the filing of the original petition herein? (Give the name and address of each institution, the name and number under which the account or certificate is maintained, and the name and address of every other person authorized to make withdrawals from such account.)

b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash, or other valuables within the two years immediately preceding the filing of the original petition herein? (Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name and address of every other person who had the right of access thereto, a brief description of the contents thereof, and, if the box has been surrendered, state when surrendered, or, if transferred, when transferred, and the name and address of the transferee.)

5. Books and records.

a. Have you kept books of account or records relating to your affairs within the two years immediately preceding the filing of the original petition herein?

b. In whose possession are these books or records? (Give names and addresses.)

c. If any of these books or records are not available, explain.

d. Have any books of account or records relating to your affairs been destroyed, lost, or otherwise disposed of within the two years immediately preceding the filing of the original petition herein? (If so, give particulars, including date of destruction, loss, or disposition, and reason therefor.)

6. Property held for another person.

What property do you hold for any other person? (Give name and address of each person, and describe the property, or value thereof, and all writings relating thereto.)

7. Property held by another.

Is any other person holding anything of value in which you have an interest? (Give name and address, location and description of the property, and circumstances of the holding.)

8. Prior bankruptcy.

What cases under the Bankruptcy Act or title 11, United States Code, have previously been brought by or against you? (State the location of the bankruptcy court, the nature and number of each case, the date when it was filed, and whether a discharge was granted or denied, the case was dismissed, or a composition, arrangement, or plan was confirmed.)

9. Receiverships, general assignments, and other modes of liquidation.

a. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver, trustee, or other liquidating agent? (If so, give a brief description of the property, the name and address of the receiver, trustee, or other agent, and, if the agent was appointed in a court proceeding, the name and location of the court, the title and number of the case, and the nature thereof.)

b. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within one year immediately preceding the filing of the original petition herein? (If so, give dates, the name and address of the assignee, and a brief statement of the terms of assignment or settlement.)

10. Suits, executions, and attachments.

a. Were you a party to any suit pending at the time of the filing of the original petition herein? (If so, give the name and location of the court and the title and nature of the proceeding.)

b. Were you a party to any suit terminated within the year immediately preceding the filing of the original petition herein? (If so, give the name and location of the court, the title and nature of the proceeding, and the result.)

c. Has any of your property been attached, garnished, or seized under any legal or equitable process within the year immediately preceding the filing of the original petition herein? (If so, describe the property seized or person garnished, and at whose suit.)

11. (a) Payment of loans, installment purchases and other debts.

What payments in whole or in part have you made during the year immediately preceding the filing of the orignial petition herein on any of the following: (1) loans; (2) installment purchases of goods and services; and (3) other debts? (Give the names and addresses of the persons receiving payment, the amounts of the loans or other debts and the purchase price of the goods and services, the dates of the original transactions, the amounts and dates of payments and, if any of the payees are your relatives or insiders, the relationship; if the debtor is a partnership and any of the payees is or was a partner or a relative of a partner, state the relationship; if the debtor is a corporation and any of the payees is or was an officer, director, or stockholder, or a relative of an officer, director, or stockholder, state the relationship.)

(b) Setoffs.

What debts have you owed to any creditor, including any bank, which were setoff by that creditor against a debt or deposit owing by the creditor to you during the year immediately preceding the filing of the original petition herein? (Give the names and addresses of the persons setting off such debts, the dates of the setoffs, the amounts of the debts owing by you and to you and, if any of the creditors are your relatives or insiders, the relationship.)

12. Transfers of property.

a. Have you made any gifts, other than ordinary and usual presents to family members and charitable donations, during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of donees and dates, description, and value of gifts.)

b. Have you made any other transfer, absolute or for the purpose of security, or any other disposition, of real or personal property during the year immediately preceding the filing of the original petition herein? (Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative or insider, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.)

13. Repossessions and returns.

Has any property been returned to, or repossessed by, the seller or by a secured party during the year immediately preceding the filing of the original petition herein? (If so, give particulars, including the name and address of the party getting the property and its description and value.)

14. Losses.

a. Have you suffered any losses from fire, theft, or gambling during the year immediately preceding or since the filing of the original petition herein? (If so, give particulars, including dates, names, and places, and the amounts of money or value and general description of property lost.)

b. Was the loss covered in whole or part by insurance? (If so, give particulars.)

15. Payments or transfers to attorneys.

a. Have you consulted an attorney during the year immediately preceding or since the filing of the original petition herein? (Give dates, name and address.)

b. Have you during the year immediately preceding or since the filing of the original petition herein paid any money or transferred any property to the attorney or to any other person on his behalf? (If so, give particulars, including amount paid or value of property transferred and date of payment or transfer.)

c. Have you, either during the year immediately preceding or since the filing of the original petition herein, agreed to pay any money or transfer any property to an attorney at law, or to any other person on his behalf? (If so, give particulars, including amount and terms of obligation.)

I, _____, declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and that they are true and correct to the best of my knowledge, information, and belief.

Executed on _____

_____,
Debtor.

NOTES OF ADVISORY COMMITTEE ON RULES

See Advisory Committee Note to Form No. 1 for discussion of unsworn statement at the end of this form.

Form 8.—Statement of Financial Affairs for Debtor Engaged in Business.

[*Caption as in Form No. 1*]

STATEMENT OF FINANCIAL AFFAIRS FOR DEBTOR ENGAGED IN BUSINESS

[Each question shall be answered or the failure to answer explained. If the answer is "none" or "not applicable," so state. If additional space is needed for the answer to any question, a separate sheet properly identified and made a part hereof, should be used and attached.

If the debtor is a partnership or a corporation, the questions shall be deemed to be addressed to, and shall be answered on behalf of, the partnership or corporation; and the statement shall be certified by a member of the partnership or by a duly authorized officer of the corporation.

The term, "original petition," used in the following questions, shall mean the petition filed under Rule 1002, 1003, or 1004.]

1. Nature, location, and name of business.

a. Under what name and where do you carry on your business?

b. In what business are you engaged? (If business operations have been terminated, give the date of termination.)

c. When did you commence the business?

d. Where else, and under what other names, have you carried on business within the six years immediately preceding the filing of the original petition herein? (Give street addresses, the names of any partners, joint adventurers, or other associates, the nature of the business, and the periods for which it was carried on.)

2. Books and records.

a. By whom, or under whose supervision, have your books of account and records been kept during the six years immediately preceding the filing of the original petition herein? (Give names, addresses, and periods of time.)

b. By whom have your books of account and records been audited during the six years immediately preceding the filing of the original petition herein? (Give names, addresses, and dates of audits.)

c. In whose possession are your books of account and records? (Give names and addresses.)

d. If any of these books or records are not available, explain.

e. Have any books of account or records relating to your affairs been destroyed, lost, or otherwise disposed of within the two years immediately preceding the filing of the original

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petition herein? (If so, give particulars, including date of destruction, loss, or disposition, and reason therefor.)

3. Financial statements.

Have you issued any written financial statements within the two years immediately preceding the filing of the original petition herein? (Give dates, and the name and addresses of the persons to whom issued, including mercantile and trade agencies.)

4. Inventories

a. When was the last inventory of your property taken?

b. By whom, or under whose supervision, was this inventory taken?

c. What was the amount, in dollars, of the inventory? (State whether the inventory was taken at cost, market, or otherwise.)

d. When was the next prior inventory of your property taken?

e. By whom, or under whose supervision, was this inventory taken?

f. What was the amount, in dollars, of the inventory? (State whether the inventory was taken at cost, market, or otherwise.)

g. In whose possession are the records of the two inventories above referred to? (Give names and addresses.)

5. Income other than from operation of business.

What amount of income, other than from operation of your business, have you received during each of the two years immediately preceding the filing of the original petition herein? (Give particulars, including each source, and the amount received therefrom.)

6. Tax returns and refunds.

a. In whose possession are copies of your federal, state and municipal income tax returns for the three years immediately preceding the filing of the original petition herein?

b. What tax refunds (income or other) have you received during the two years immediately preceding the filing of the original petition herein?

c. To what tax refunds (income or other), if any, are you, or may you be, entitled? (Give particulars, including information as to any refund payable jointly to you and your spouse or any other person.)

7. Financial accounts, certificates of deposit and safe deposit boxes.

What accounts or certificates of deposit or shares in banks, savings and loan, thrift, building and loan and homestead associations, credit unions, brokerage houses, pension funds and the like have you maintained, alone or together with any other person, and in your own or any other name, within the two years immediately preceding the filing of the original petition herein? (Give the name and address of each institution, the name and number under which the account or certificate is maintained, and the name and address of every person authorized to make withdrawals from such account.)

b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash, or other valuables within the two years immediately preceding the filing of the original petition herein? (Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name and address of every person who had the right of access thereto, a description of the contents thereof, and, if the box has been surrendered, state when surrendered or, if transferred, when transferred and the name and address of the transferee.)

8. Property held for another person.

What property do you hold for any other person? (Give name and address of each person, and describe the property, the amount or value thereof and all writings relating thereto.)

9. Property held by another person.

Is any other person holding anything of value in which you have an interest? (Give name and address, location and description of the property, and circumstances of the holding.)

10. Prior bankruptcy proceedings.

What cases under the Bankruptcy Act or title 11, United States Code have previously been brought by or against you? (State the location of the bankruptcy court, the nature and number of the case, and whether a discharge was granted or denied, the case was dismissed, or a composition, arrangement, or plan was confirmed.)

11. Receiverships, general assignments, and other modes of liquidation.

a. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver, trustee, or other liquidating agent? (If so, give a brief description of the property and the name and address of the receiver, trustee, or other agent, and, if the agent was appointed in a court proceeding, the name and location of the court, the title and number of the case, and the nature thereof.)

b. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within the two years immediately preceding the filing of the original petition herein? (If so, give dates, the name and address of the assignee, and a brief statement of the terms of assignment or settlement.)

12. Suits, executions, and attachments.

a. Were you a party to any suit pending at the time of the filing of the original petition herein? (If so, give the name and location of the court and the title and nature of the proceeding.)

b. Were you a party to any suit terminated within the year immediately preceding the filing of the original petition herein? (If so, give the name and location of the court, the title and nature of the proceeding, and the result.)

c. Has any of your property been attached, garnished, or seized under any legal or equitable process within the year immediately preceding the filing of the original petition herein? (If so, describe the property seized or person garnished, and at whose suit.)

13. a. Payments of loans, installment purchases and other debts.

What payments in whole or in part have you made during the year immediately preceding the filing of the original petition herein on any of the following: (1) loans; (2) installment purchases of goods and services; and (3) other debts? (Give the names and addresses of the persons receiving payment, the amounts of the loans or other debts and of the purchase price of the goods and services, the dates of the original transactions, the amounts and dates of payments, and, if any of the payees are your relatives or insiders, the relationship; if the debtor is a partnership and any of the payees is or was a partner or a relative of a partner, state the relationship; if the debtor is a corporation and any of the payees is or was an officer, director, or stockholder, or a relative of an officer, director, or stockholder, state the relationship.)

b. Setoffs.

What debts have you owed to any creditor, including any bank, which were setoff by that creditor against a debt or deposit owing by the creditor to you during the year immediately preceding the filing of the original petition herein? (Give the names and addresses of the persons setting off such debts, the dates of the setoffs, the amounts of the debts owing by you and to you and, if any of the creditors are your relatives or insiders, the relationship.)

14. Transfers of property.

a. Have you made any gifts, other than ordinary and usual presents to family members and charitable donations during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of donees and dates, description, and value of gifts.)

b. Have you made any other transfer, absolute or for the purpose of security, or any other disposition which was not in the ordinary course of business during the year immediately preceding the filing of the original petition herein? (Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and state whether the transferee is a relative, partner, shareholder, officer, director, or insider, the consideration, if any, received for the property, and the disposition of such consideration.)

15. Accounts and other receivables.

Have you assigned, either absolutely or as security, any of your accounts or other receivables during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of assignees.)

16. Repossessions and returns.

Has any property been returned to, or repossessed by, the seller, lessor, or a secured party during the year immediately preceding the filing of the original petition herein? (If so, give particulars, including the name and address of the party getting the property and its description and value.)

17. Business leases.

If you are a tenant of business property, what is the name and address of your landlord, the amount of your rental, the date to which rent had been paid at the time of the filing of the original petition herein, and the amount of security held by the landlord?

18. Losses.

a. Have you suffered any losses from fire, theft, or gambling during the year immediately preceding the filing of the original petition herein? (If so, give particulars, including dates, names, and places, and the amounts of money or value and general description of property lost.)

b. Was the loss covered in whole or part by insurance? (If so, give particulars.)

19. Withdrawals.

a. If you are an individual proprietor of your business, what personal withdrawals of any kind have you made from the business during the year immediately preceding the filing of the original petition herein?

b. If the debtor is a partnership or corporation, what withdrawals, in any form (including compensation, bonuses or loans), have been made or received by any member of the partnership, or by any officer, director, insider, managing executive, or shareholder of the corporation, during the year immediately preceding the filing of the original petition herein? (Give the name and designation or relationship to the debtor of each person, the dates and amounts of withdrawals, and the nature or purpose thereof.)

20. Payments or transfers to attorneys.

a. Have you consulted an attorney during the year immediately preceding or since the filing of the original petition herein? (Give date, name, and address.)

b. Have you during the year immediately preceding or since the filing of the original petition herein paid any money or transferred any property to the attorney, or to any other person on his behalf? (If so, give particulars, including amount paid or value of property transferred and date of payment or transfer.)

c. Have you, either during the year immediately preceding or since the filing of the original petition herein, agreed to pay any money or transfer any property to an attorney at law, or to any other person on his behalf? (If so, give particulars, including amount and terms of obligation.)

(If the debtor is a partnership or corporation, the following additional questions should be answered.)

21. Members of partnership; officers, directors, managers, and principal stockholders of corporation.

a. What is the name and address of each member of the partnership, or the name, title, and address of each officer, director, insider, and managing executive, and of each stockholder holding 20 percent or more of the issued and outstanding stock, of the corporation?

b. During the year immediately preceding the filing of the original petition herein, has any member withdrawn from the partnership, or any officer, director, insider, or managing executive of the corporation terminated his rela-

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tionship, or any stockholder holding 20 percent or more of the issued stock disposed of more than 50 percent of his holdings? (If so, give name and address and reason for withdrawal, termination, or disposition, if known.)

c. Has any person acquired or disposed of 20 percent or more of the stock of the corporation during the year immediately preceding the filing of the petition? (If so, give name and address and particulars.)

I, _____, declare under penalty of perjury that I have read the answers contained in the foregoing statement of affairs and that they are true and correct to the best of my knowledge, information, and belief.

Executed on _____

Signature: _____

[*Person declaring for partnership or corporation should indicate position or relationship to debtor.*]

NOTES OF ADVISORY COMMITTEE ON RULES

Many of the questions on this form are the same as on Form No. 7, Statement of Financial Affairs for Debtor Not Engaged in Business.

The question regarding loans repaid (#13) includes installment credit sales of goods or services. The information is helpful with respect to possible preferences.

Information regarding leases (#17) may be helpful with respect to lease termination or extension and whether the landlord may be holding a deposit.

Form 9.—List of Creditors Holding 20 Largest Unsecured Claims

[*Caption as in Form No. 2*]

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the Debtor's creditors holding the 20 largest unsecured claims which is prepared in accordance with Rule 1007(d) for filing in this chapter 11 [*or* chapter 9] case. The list does not include (1) those persons who come within the definition of insider set forth in 11 U.S.C. § 101(25), (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims, or (3) governmental units.

(1) Name of creditor and complete mailing address including zip code.	(2) Name, telephone number and complete mailing address including zip code of employee, agent or department of creditor familiar with claim who may be contacted	(3) Nature of claim (trade debt, bank loan, type of judgment, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to setoff	(5) Amount of claim [if secured also state value of security]

Date: _____

_____

Debtor.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is for use in chapter 11 reorganization and chapter 9 municipality debt adjustment cases to enable the appointment, pursuant to §§ 1102 and 901 of the Code, of a committee of unsecured creditors. The information contained on the form is to assist in expediting the formation of the committee and to assure adequate creditor representation.

In accordance with § 1102 of the Code, the form indicates that insiders should not be listed. "Insiders" is defined in § 101(25) of the Code to include, *inter alia*, persons who are related to the debtor, are partners, officers, directors, affiliates as further defined in § 101(2) of the Code, or are otherwise in control of the debtor. Reference should be made to § 101 for the complete listing of insiders.

The nature of the claim should be specified to indicate whether it is an institutional debt, a trade debt for merchandise or supplies, a debt based on a judgment and the underlying basis for the judgment, or the like.

In column (2), it is important to provide specific information with respect to the person to be contacted. In order to form the committee it may be necessary to write or telephone the creditors. If the creditor company is a large organization individual contact may otherwise be difficult or impossible.

A secured creditor should be listed among the 20 largest unsecured creditors only if that creditor is sufficiently undersecured so as to fall within that category.

Form 10.—Chapter 13 Statement

[*Caption as in Form No. 1*]

CHAPTER 13 STATEMENT

[Each question shall be answered or the failure to answer explained. If the answer is "none" or "not applicable" so state. If additional space is needed for the answer to any question, a separate sheet, properly identified and made a part hereof, should be used and attached.

The term "original petition," used in the following questions, shall mean the original petition filed under § 301 of the Code or, if the chapter 13 case was converted from another chapter of the Code, shall mean the petition by or against you which originated the first case.

This form must be completed in full whether a single or a joint petition is filed. When information is requested for "each" or "either spouse filing a petition" it should be supplied for both when a joint petition is filed.]

1. *Name and residence.*

a. Give full name.

Husband [*or, if single,* Debtor _____

Wife _____

b. Where does debtor, if single, or each spouse filing a petition now reside?

(1) Mailing address of husband [*or* debtor]

_____

City or town, state and zip code

_____

_____

(2) Mailing address of wife

_____

City or town, state and zip code

_____

_____

(3) Telephone number including area code

Husband [*or, if single,* Debtor] _____

Wife _____

c. What does debtor, if single, or each spouse filing a petition consider his or her residence, if different from that listed in b, above?

Husband [*or* Debtor] _____

Wife _____

2. *Occupation and income.*

a. Give present occupation of debtor, if single, or each spouse filing a petition. (If more than one, list all for debtor or each spouse filing a petition.)

Husband [*or* Debtor] _____

_____

Wife _____

_____

b. What is the name, address, and telephone number of present employer (or employers) of debtor, if single, or each spouse filing a petition? (Include also any identifying badge or card number with employer.)

Husband [*or* Debtor] _____

_____

Wife _____

_____

c. How long has debtor, if single, or each spouse filing a petition been employed by present employer?

Husband [*or* Debtor] _____

_____

Wife _____

_____

d. If debtor or either spouse filing a petition has not been employed by present employer for a period of one year, state the name of prior employer(s) and nature of employment during that period.

Husband [*or* Debtor] _____

_____

Wife _____

_____

e. Has debtor or either spouse filing a petition operated a business, in partnership or otherwise, during the past three years? (If so, give the particulars, including names, dates, and places.)

Husband [*or* Debtor] _____

_____

Wife _____

_____

f. Answer the following questions for debtor, if single, or each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed:

(1) What are your gross wages, salary or commissions per pay period?

	Husband [*or* Debtor]	Wife
(a) Weekly	___	___
(b) Semi-monthly	___	___
(c) Monthly	___	___
(d) Other (specify)	___	___

(2) What are your payroll deductions per pay period for:

	Husband [*or* Debtor]	Wife
(a) Payroll taxes (including social security)	___	___
(b) Insurance	___	___
(c) Credit union	___	___
(d) Union dues	___	___
(e) Other (specify)	___	___

(3) What is your take-home pay per pay period?

Husband [*or* Debtor]	Wife
___	___

(4) What was the amount of your gross income for the last calendar year?

Husband [*or* Debtor]	Wife
___	___

(5) Is your employment subject to seasonal or other change?

Husband [*or* Debtor]	Wife
___	___

(6) Has either of you made any wage assignments or allotments? (If so, indicate which spouse's wages assigned or allotted, the name and address of the person to whom assigned or allotted, and the amount owing, if any, to such person. If allotment or assignment is to a creditor, the claim should also be listed in Item 11a.)

_____

_____

3. *Dependents.* (To be answered by debtor if unmarried, otherwise for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed.)

a. Does either of you pay [*or* receive] alimony, maintenance, or support? _____ If so, how much per month? _____ For whose support? (Give name, age, and relationship to you.)

Husband [*or* Debtor] _____

_____

Wife _____

_____

b. List all other dependents, other than present spouse, not listed in a, above. (Give name, age and relationship to you.)

Husband [*or* Debtor] _____

_____

Wife _____

_____

4. *Budget.*

a. Give your estimated average future monthly income, if unmarried, otherwise for each spouse whether single or joint petition is filed, unless spouses are separated and a single petition is filed.

(1) Husband's [*or* Debtor's] monthly take-home pay	___
(2) Wife's monthly take-home pay	___
(3) Other monthly income (specify)	___
Total	___

b. Give estimated average future monthly expenses of family (not including debts to be paid under plan), consisting of:

(1) Rent or home mortgage payment (include lot rental for trailer)	___
(2) Utilities (Electricity _____, Heat _____, Water _____, Telephone _____)	___

(3) Food ____
(4) Clothing ____
(5) Laundry and cleaning ____
(6) Newspapers, periodicals, and books (including school books) ____
(7) Medical and drug expenses ____
(8) Insurance (not deducted from wages)
(a) Auto ____
(b) Other ____
(9) Transportation (not including auto payments to be paid under plan) ____
(10) Recreation ____
(11) Dues, union, professional, social or otherwise (not deducted from wages) ____
(12) Taxes (not deducted from wages) ____
(13) Alimony, maintenance, or support payments ____
(14) Other payments for support of dependents not living at home ____
(15) Religious and other charitable contributions ____
(16) Other (specify)
_____ ____
_____ ____
Total ____

c. Excess of estimated future monthly income (last line of Item 4a, above) over estimated future expenses (last line of Item 4b, above) ____

d. Total amount to be paid each month under plan ____

5. *Payment of attorney.*

a. How much have you agreed to pay or what property have you agreed to transfer to your attorney in connection with this case? ____

b. How much have you paid or what have you transferred to the attorney? ____

6. *Tax refunds.* (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed, unless spouses are separated and a single petition is filed.)

To what tax refunds (income or other), if any, is either of you, or may either of you be, entitled? (Give particulars, including information as to any refunds payable jointly to you or any other person. All such refunds should also be listed in Item 13b.)

_____

_____

7. *Financial accounts, certificates of deposit and safe deposit boxes.* (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed.)

a. Does either of you currently have any accounts or certificates of deposit or shares in banks, savings and loan, thrift, building and loan and homestead associations, credit unions, brokerage houses, pension funds and the like? (If so, give name and address of each institution, number and nature of account, current balance, and name and address of every other person authorized to make withdrawals from the account. Such accounts should also be listed in Item 13b.)

_____

_____

b. Does either of you currently keep any safe deposit boxes or other depositories? (If so, give name and address of bank or other depository, name and address of every other person who has a right of access thereto, and a brief description of the contents thereof, which should also be listed in Item 13b.)

_____

_____

8. *Prior Bankruptcy.*

What proceedings under the Bankruptcy Act or Bankruptcy Code have previously been brought by or against you or either spouse filing a petition? (State the location of the bankruptcy court, the nature and number of each proceeding, the date when it was filed, and whether a discharge was granted or denied, the proceeding was dismissed, or a composition, arrangement, or plan was confirmed.)

_____

_____

9. *Foreclosures, executions, and attachments.* (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed.)

a. Is any of the property of either of you, including real estate, involved in a foreclosure proceeding, in or out of court? (If so, identify the property and the person foreclosing.)

_____

_____

b. Has any property or income of either of you been attached, garnished, or seized under any legal or equitable process within the 90 days immediately preceding the filing of the original petition herein? (If so, describe the property seized, or person garnished, and at whose suit.)

_____

_____

10. *Repossessions and returns.* (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed.)

Has any property of either of you been returned to, repossessed, or seized by the seller or by any other party, including a landlord, during the 90 days immediately preceding the filing of the original petition herein? (If so, give particulars, including the name and address of the party taking the property and its description and value.)

_____

_____

11. *Transfers of Property.* (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed.)

a. Has either of you made any gifts, other than ordinary and usual presents to family members and charitable donations, during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of donees and dates, description and value of gifts.)

_____

_____

b. Has either of you made any other transfer, absolute or for the purpose of security, or any other disposition, of real or personal property during the year immediately preceding the filing of the original petition herein? (Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative or insider, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.)

12. *Debts.* (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed.)

a. Debts Having Priority.

(1) Nature of claim	(2) Name of creditor and complete mailing address including zip code	(3) Specify when claim was incurred and the consideration therefor; when claim is subject to setoff, evidenced by a judgment, negotiable instrument, or other writing	(4) Indicate if claim is contingent, unliquidated, or disputed	(5) Amount of claim
1. Wages, salary, and commissions, including vacation, severance and sick leave pay owing to employees not exceeding $2,000 to each, earned within 90 days before filing of petition or cessation of business (if earlier specify date).				$
2. Contributions to employee benefit plans for services rendered within 180 days before filing of petition or cessation of business (if earlier specify date).				$
3. Deposits by individuals, not exceeding $900 for each for purchase, lease, or rental of property or services for personal, family, or household use that were not delivered or provided.				$
4. Taxes owing [itemize by type of tax and taxing authority]				
(A) To the United States				$
(B) To any state				
(C) To any other taxing authority				
Total				

b. Secured Debts. List all debts which are or may be secured by real or personal property. (Indicate in sixth column, if debt payable in installments, the amount of each installment, the installment period (monthly, weekly, or otherwise) and number of installments in arrears, if any. Indicate in last column whether husband or wife solely liable, or whether you are jointly liable.)

Creditor's name, account number and complete mailing address including zip code	Consideration or basis for debt	Amount claimed by creditor	If disputed, amount admitted by debtor	Description of collateral [include year and make of automobile]	Installment amount, period, and number of installments in arrears	Household or wife solely liable, or jointly liable

Total secured debts

c. Unsecured Debts. List all other debts, liquidated and unliquidated, including taxes, attorneys' fees, and tort claims.

Creditor's name, account number and complete mailing address including zip code	Consideration or basis for debt	Amount claimed by creditor	If disputed, amount admitted by debtor	Husband or wife solely liable, or jointly liable

Total unsecured debts

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13. *Codebtors.* (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed.)

a. Are any other persons liable, as cosigners, guarantors, or in any other manner, on any of the debts of either of you or is either of you so liable on the debts of others? (If so, give particulars, indicating which spouse is liable and including names of creditors, nature of debt, names and addresses of codebtors, and their relationship, if any, to you.)

_____

_____

_____

b. If so, have the codebtors made any payments on the debts? (Give name of each codebtor and amount paid by codebtor.)

_____

_____

_____

c. Has either of you made any payments on the debts? (If so, specify total amount paid to each creditor, whether paid by husband or wife, and name of codebtor.)

_____

_____

_____

14. *Property and Exemptions.* (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed.)

a. Real Property. List all real property owned by either of you at date of filing of original petition herein. (Indicate in last column whether owned solely by husband or wife, or jointly.)

Description and location of property	Name of any co-owner other than spouse	Present market value (without deduction for mortgage or other security interest)	Amount of mortgage or other security interest on this property	Name of mortgagee or other secured creditor	Value claimed exempt (specify federal or state statute creating the exemption)	Owned solely by husband or wife or jointly

b. Personal Property. List all other property, owned by either of you at date of filing of original petition herein.

Description	Location of property if not at debtor's residence	Name of any co-owner other than spouse	Present market value (without deduction for mortgage or other security interest)	Amount of mortgage or other security interest on this property	Name of mortgagee or other secured creditor	Value claimed exempt, (specify federal or state statute creating the exemption)	Owned solely by husband or wife or jointly
Autos (give year and make)							
Household goods							
Personal effects							
Cash or financial account							
Other (specify)							

(To be signed by both spouses when joint petition is filed.)

I, _____, [*if joint petition is filed* and I, _____,] declare under penalty of perjury that I have read the answers contained in the foregoing statement, consisting of _____ sheets, and that they are true and complete to

the best of my knowledge, information, and belief.

_____
Husband [or Debtor]

_____
Wife

Executed on _____

NOTES OF ADVISORY COMMITTEE ON RULES

This form is adapted from former Chapter XIII Official Form No. 13-5. It may be used whether a single chapter 13 petition is filed or a joint petition is filed by husband and wife as authorized by § 302 of the Code.

Question 4 of the Statement, calling for a detailed family budget is particularly designed to insure that the debtor and the debtor's attorney will have compiled information relative to the feasibility of the plan prior to the creditors' meeting.

Inquiry as to most transactions and developments affecting the financial condition of the debtor is limited to the year preceding the filing of the petition or to a shorter period. The scope of examination at the meeting or at any other time is not restricted by the scope of the inquiries in the Chapter 13 Statement. In Question 14a and b any claim of exempt property should be listed. This information assists the court in comparing the creditors' return under the plan and a possible chapter 7 case. Although Chapter 13 Statements are required by Rule 1007(f) to be filed in the same number as the petition they accompany, only the original need be signed and verified, but the copies must be conformed to the original. See Bankruptcy Rule 9011(c).

Form No. 11.—Involuntary Case: Creditors' Petition

[*Caption as in Form No. 1*]

INVOLUNTARY CASE: CREDITORS' PETITION

1. Petitioners, _____ _____, of *_____, and _____ _____, of *_____, and _____ _____, of *_____, are creditors of _____, of *_____ _____ [*include county*], holding claims against the debtor, not contingent as to liability, amounting in the aggregate, in excess of the value of any lien held by them on the debtor's property securing such claims, to at least $5,000. The nature and amount of petitioners' claims are as follows: _____
_____
_____

2. The debtor's principal place of business [*or* principal assets *or* domicile *or* residence] has been within this district for the 180 days preceding the filing of this petition [*or* for a longer portion of the 180 days preceding the filing of this petition than in any other district].

3. The debtor is a person against whom an order for relief may be entered under title 11, United States Code.

4. [The debtor is generally not paying its debts as they become due as indicated by the following _____
_____.]
or [Within 120 days preceding the filing of this petition, a custodian was appointed for *or* has taken possession of substantially all of the property of the debtor, as follows:
_____
_____.]

WHEREFORE petitioners pray that an order of relief be entered against _____ under chapter 7 [*or* 11] of title 11, United States Code.

Signed: _____,
Attorney for Petitioners.

Address: _____
_____

[*Petitioners sign if not represented by attorney*]

_____,
_____,
_____,
Petitioners.

I, _____, one of the petitioners named in the foregoing petition, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Executed on _____

Signature: _____,
Petitioner.

* State mailing address.

NOTES OF ADVISORY COMMITTEE ON RULES

The requisites for an involuntary petition are specified in § 303 of the Code.

28 U.S.C. § 1746 permits the unsworn declaration in lieu of a verification. See Advisory Committee Note to Form No. 1.

Form No. 12.—Involuntary Case Against Partnership: Partner's Petition

[*Caption as in Form No. 1*]

INVOLUNTARY CASE AGAINST PARTNERSHIP: PARTNER'S PETITION

1. Petitoner, _____ _____, of *_____ is one of the general partners of _____, a partnership, of *_____ [*include county*]

2. The other general partners of the debtor are _____ _____, of *_____ and _____ _____ of *_____.

3. The debtor has had its principal place of business [*or* its principal assets *or* its domicile *or* its residence] within this district for the 180 days preceding the filing of this petition [*or* for a longer portion of the 180 days preceding the filing of this petition than in any other district].

4. The debtor is a person against whom an order for relief may be entered under title 11, United States Code.

5. [The debtor is generally not paying its debts as they become due as indicated by the following _____] *or* [Within 120 days preceding the filing of this petition, a custodian was appointed for *or* has taken possession of substantially all of the property of the debtor, as follows:
_____
_____.]

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WHEREFORE, petitioner prays that an order of relief be entered against _____ under chapter 7 [*or* 11] of title 11, United States Code.

Signed: _____,

Attorney for Petitioner.

Address: _____,

_____,

[*Petitioner signs if not represented by attorney*]

_____,

Petitioner.

I, _____, the petitioner named in the foregoing petition, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on _____

Signature: _____,

Petitioner.

* State mailing address.

NOTES OF ADVISORY COMMITTEE ON RULES

Pursuant to § 303(b)(3)(A) of the Code, a petition by fewer than all of the general partners seeking an order for relief with respect to the partnership is treated as an involuntary petition. It is adversarial in character because not all of the partners are joining in the petition.

Section 303(b)(3)(B) permits a petition against the partnership if relief has been ordered under the Code with respect to all of the general partners. In that event, the petition may be filed by a general partner, a trustee of a general partner's estate, or a creditor of the partnership. This form may be adapted for use in that type of case.

28 U.S.C. § 1472(1) specifies the proper venue alternatives for all persons, including partnerships, as domicile, residence, principal place of business or location of principal assets. These options are set forth in paragraph (3) of the form. The paragraph may be adapted for use when venue is based on a pending case commenced by an affiliate pursuant to 28 U.S.C. § 1472(2).

Form No. 13.—Summons to Debtor.

[*Caption as in Form No. 1*]

SUMMONS

To the above-named debtor:

A petition under title 11, United States Code having been filed against you on _____, in this bankruptcy court, praying for an order for relief under 11 U.S.C. chapter 7 [*or* 11],

You are hereby summoned and required to file with this court and to serve upon _____, the petitioners' attorney, whose address is _____, a motion or an answer * to the petition which is herewith served upon you, on or before _____. If you fail to do so, the order for relief will be entered.

_____,

Clerk of the Bankruptcy Court.

By: _____

Deputy Clerk.

[SEAL OF THE UNITED STATES BANKRUPTCY COURT]

Date of issuance: _____

* If you make a motion, Bankruptcy Rule 1011 governs the time within which your answer must be served.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is to be used as provided in Rule 1010.

Form No. 14.—Order for Relief

[*Caption as in Form No. 1*]

ORDER FOR RELIEF

On consideration of the petition filed on _____ against the above-named debtor, an order for relief under chapter 7 [*or* 11] of title 11 of the United States Code is GRANTED.

Dated: _____

BY THE COURT

_____

Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is an adaptation of former Official Form No. 11. It is appropriate for use when relief is ordered on an involuntary petition filed under § 303 of the Code with respect to chapter 7 (liquidation) or chapter 11 (reorganization).

If a contested petition is tried by the court without a jury (or with an advisory jury), the findings of fact and conclusions of law thereon must be stated separately. See Rule 7052(a), which is made applicable to proceedings on a contested petition by Rule 1018.

Form No. 15.—Appointment of Committee of Unsecured Creditors in a Chapter 9 Municipality or Chapter 11 Reorganization Case

[*Caption as in Form No. 1*]

APPOINTMENT OF COMMITTEE OF UNSECURED CREDITORS IN A CHAPTER 9 MUNICIPALITY OR CHAPTER 11 REORGANIZATION CASE

The following creditors of the above-named debtor holding the 7 largest unsecured claims [*or* who are members of a committee organized by creditors before the order for relief under chapter 9 (*or* 11) of the Bankruptcy Code which was fairly chosen and is representative of the different kinds of claims to be represented] and who are willing to serve are appointed to the committee of unsecured creditors:

1. _____ _____ of *_____
2. _____ _____ of *_____
3. _____ _____ of *_____
4. _____ _____ of *_____
5. _____ _____ of *_____
6. _____ _____ of *_____
7. _____ _____ of *_____

Dated: _____

BY THE COURT

_____

Bankruptcy Judge.

* State mailing address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. Pursuant to § 1102 of the Code the court is to appoint a committee of unsecured creditors which ordinarily is to consist of the creditors holding the 7 largest claims and who are willing to serve. If,

however, a committee has been organized prior to the filing of the petition, is representative and was fairly chosen, that committee may be continued as the official or statutory committee.

This form can be adapted for use by the United States trustee who, pursuant to § 151102 of the Code, will appoint the committee. It may also be adapted for use if the court (or United States trustee on order of the court) appoints any other committee, *e.g.*, of equity security holders.

Pursuant to § 901(a) of the Code, the provisions of § 1102, including subsection (a)(1), apply in a case under chapter 9, Adjustment of Debts of Municipality. In a chapter 9 case, only the court will appoint the committee. There is no provision in chapter 15 for a United States trustee to have any appointing function in that type of a case.

Subsection (a)(1) of § 1102 is not applicable in a railroad reorganization case and, therefore, the court will not appoint an unsecured creditor's committee.

Form No. 16.—Order for Meeting of Creditors and Related Orders, Combined with Notice Thereof and of Automatic Stay

[*Caption as in Form No. 1*]

ORDER FOR MEETING OF CREDITORS AND FIXING TIMES FOR FILING OBJECTIONS TO DISCHARGE AND FOR FILING COMPLAINTS TO DETERMINE DISCHARGEABILITY OF CERTAIN DEBTS, COMBINED WITH NOTICE THEREOF AND OF AUTOMATIC STAY

To the debtor, his creditors, and other parties in interest:

An order for relief under 11 U.S.C. chapter 7 [*or*, 11, *or* 13] having been entered on a petition filed by [*or* against] _____ of _____, on _____ it is ordered, and notice is hereby given, that:

[MEETING OF CREDITORS]

1. A meeting of creditors pursuant to 11 U.S.C. § 341(a) has been scheduled for _____ at _____ o'clock ____m. at _____.

2. The debtor shall appear in person [*or, if the debtor is a partnership,* by a general partner, *or, if the debtor is a corporation,* by its president *or other executive officer*] at that time and place for the purpose of being examined.

[DEADLINE TO OBJECT TO DISCHARGE OR DETERMINE NONDISCHARGEABILITY OF CERTAIN DEBTS]

3. [*If the debtor is an individual*] _____ is fixed as the last day for the filing of objections to the discharge of the debtor pursuant to 11 U.S.C. § 727.

4. [*If the debtor is an individual*] _____ is fixed as the last day for the filing of a complaint to determine the dischargeability of any debt pursuant to 11 U.S.C. § 523(c).

[ADDITIONAL INFORMATION CONCERNING THE MEETING, THE AUTOMATIC STAY AND THE DISCHARGE]

You are further notified that:

The meeting may be continued or adjourned from time to time by notice at the meeting, without further written notice to creditors.

At the meeting the creditors may file their claims, [elect a trustee as permitted by law, designate a person to supervise the meeting, elect a committee of creditors,] examine the debtor, and transact such other business as may properly come before the meeting.

As a result of the filing of the petition, certain acts and proceedings against the debtor and his property are stayed as provided in 11 U.S.C. § 362(a).

[*If the debtor is an individual*] If no objection to the discharge of the debtor is filed on or before the last day fixed therefor as stated in subparagraph 3 above, the debtor will be granted his discharge. If no complaint to determine the dischargeability of a debt under clause (2), (4), or (6) of 11 U.S.C. § 523(a) is filed within the time fixed therefor as stated in subparagraph 4 above, the debt may be discharged.

[FILING OF CLAIMS]

[*For a chapter 7 or 13 case*] In order to have his claim allowed so that he may share in any distribution from the estate, a creditor must file a claim, whether or not he is included in the list of creditors filed by the debtor. Claims which are not filed within 90 days following the above date set for the meeting of creditors will not be allowed, except as otherwise provided by law. A claim may be filed in the office of the clerk of the bankruptcy court on an official form prescribed for a proof of claim.

[*If a no-asset or nominal asset case, the following paragraph may be used in lieu of the preceding paragraph.*] It appears from the schedules of the debtor that there are no assets from which any dividend can be paid to creditors. It is unnecessary for any creditor to file his claim at this time in order to share in any distribution from the estate. If it subsequently appears that there are assets from which a dividend may be paid, creditors will be so notified and given an opportunity to file their claims.

[*For a chapter 11 case*] The debtor [*or* trustee] has filed or will file a list of creditors and equity security holders pursuant to Rule 1007. Any creditor holding a listed claim which is not listed as disputed, contingent, or unliquidated as to amount, may, but need not, file a proof of claim in this case. Creditors whose claims are not listed or whose claims are listed as disputed, contingent, or unliquidated as to amount and who desire to participate in the case or share in any distribution must file their proofs of claim on or before _____, which date is hereby fixed as the last day for filing a proof of claim [*or, if appropriate,* on or before a date to be later fixed of which you will be notified]. Any creditor who desires to rely on the list has the responsibility for determining that he is accurately listed.

[OBJECTION TO CLAIM OF EXEMPTIONS]

Unless the court extends the time, any objection to the debtor's claim of exempt property

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(Schedule B-4) must be filed within 30 days after the conclusion of the meeting of creditors.

[TRUSTEE]

[*If appropriate*] _____ of* _____ has been appointed [interim] trustee of the estate of the above-named debtor.

Dated: _____

BY THE COURT

_____,

Bankruptcy Judge.

*State mailing address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form can be used for cases filed under chapter 7, 11, or 13. It conforms with Rule 2003 which specifies that the court is to call the meeting of creditors even though, under the Code, it may not preside at such meeting.

This form revises former Official Form No. 12. The alternative paragraph is to be used when the court exercises the option under Rule 2002(e) to notify the creditors that no dividends are to be anticipated and no claims need be filed.

Form No. 17.—General Power of Attorney

[*Caption as in Form No. 2*]

GENERAL POWER OF ATTORNEY

To ____ _____ of *_____, and ____ _____ of *_____:

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned and with full power of substitution, to vote on any question that may be lawfully submitted to creditors of the debtor in the above-entitled case; [*if appropriate*] to vote for a trustee of the estate of the debtor and for a committee of creditors; to receive dividends; and in general to perform any act not constituting the practice of law for the undersigned in all matters arising in this case.

Dated: _____

Signed: _____

[*If appropriate*] By _____

as _____

Address: _____

_____

[*If executed by an individual*] Acknowledged before me on _____.

[*If executed on behalf of a partnership*] Acknowledged before me on _____, by _____, who says that he is a member of the partnership named above and is authorized to execute this power of attorney in its behalf.

[*If executed on behalf of a corporation*] Acknowledged before me on _____, by _____, who says that he is _____ of the corporation named above and is authorized to execute this power of attorney in its behalf.

_____,

_____

[*Official character.*]

*State mailing address.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 9010(c) requires a general power of attorney to be prepared substantially in conformity with this form which is derived from former Official Form No. 13. While a power of attorney may of course be executed in favor of an attorney at law who is also retained as such to represent the creditor executing the form, the power of attorney does not purport to confer the right to act as an attorney at law. The corollary is that one not an attorney at law may act under a general power of attorney within the limitations prescribed in the form.

Form No. 18.—Special Power of Attorney

[*Caption as in Form No. 2*]

SPECIAL POWER OF ATTORNEY

To ____ _____ of *_____, and _____ of *_____:

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned [*if desired:* and with full power of substitution,] to attend the meeting of creditors of the debtor or any adjournment thereof, and to vote in my behalf on any question that may be lawfully submitted to creditors at such meeting or adjourned meeting, and for a trustee or trustees of the estate of the debtor.

Dated: _____

Signed: _____

[*If appropriate*] By _____

as _____

Address: _____,

_____

[*If executed by an individual*] Acknowledged before me on _____.

[*If executed on behalf of a partnership*] Acknowledged before me on _____, by _____, who says that he is a member of the partnership named above and is authorized to execute this power of attorney in its behalf.

[*If executed on behalf of a corporation*] Acknowledged before me on _____, by _____, who says that he is _____ of the corporation named above and is authorized to execute this power of attorney in its behalf.

_____

_____

[*Official character.*]

*State mailing address.

NOTES OF ADVISORY COMMITTEE ON RULES

A special power of attorney shall conform substantially with this official form, as provided in Rule 9010(c), but it may grant either more or less authority in accordance with the language used. The form is derived from former Official Form No. 14.

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Form No. 19.—Proof of Claim

[*Caption as in Form No. 2*]

PROOF OF CLAIM

1. [*If claimant is an individual claiming for himself*] The undersigned, _____ who is the claimant herein, resides at *_____.

[*If claimant is a partnership claiming through a member*] The undersigned, _____, who resides at *_____, is a member of _____, a partnership, composed of the undersigned and _____, of *_____, and doing business at *_____, and is authorized to make this proof of claim in behalf of the partnership.

[*If claimant is a corporation claiming through an authorized officer*] The undersigned, _____, who resides at *_____, is the _____ of _____, a corporation organized under the laws of _____ and doing business at *_____, and is authorized to make this proof of claim on behalf of the corporation.

[*If claim is made by agent*] The undersigned, _____, who resides at *_____, is the agent of _____, of *_____, and is authorized to make this proof of claim on behalf of the claimant.

2. The debtor was, at the time of the filing of the petition, initiating this case, and still is indebted [*or* liable] to this claimant, in the sum of $_____.

3. The consideration for this debt [*or* ground of liability] is as follows: _____

_____

[*If filed in a chapter 7 or 13 case*] This claim consists of $_____ in principal amount and $_____ in additional charges [*or* no additional charges]. [*Itemize all charges in addition to principal amount of debt, state basis for inclusion and computation, and set forth any other consideration relevant to the legality of the charge.*] _____

_____

_____

4. [*If the claim is founded on writing*] The writing on which this claim is founded (or a duplicate thereof) is attached hereto [*or* cannot be attached for the reason set forth in the statement attached hereto].

5. [*If appropriate*] This claim is founded on an open account, which became [*or* will become] due on _____, as shown by the itemized statement attached hereto. Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account or any part of it.

6. No judgment has been rendered on the claim except

_____ _____

_____

7. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. This claim is not subject to any setoff or counterclaim except _____

_____

_____

9. No security interest is held for this claim except _____ [*If security interest in property of the debtor is claimed*] The undersigned claims the security interest under the writin referred to in paragraph 4 hereof [*or* under separate writing which (or a duplicate which) is attached hereto, *or* under a separat writing which cannot be attached hereto fo the reason set forth in the statement attache hereto]. Evidence of perfection of such securit interest is also attached hereto.

10. This claim is a general unsecured claim except to the extent that the security interes if any, described in paragraph 9 is sufficient t satisfy the claim. [*If priority is claimed, sta the amount and basis thereof.*] _____

_____

Dated: _____

Signed: _____

Penalty for Presenting Fraudulent Clai Fine of not more than $5,000 or imprisonmen for not more than 5 years or both—Title 1 U.S.C., § 152.

* State mailing address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is derived from former Official Form N 15. It may be used by any claimant, including a wag earner for whom alternative short forms have bee specially prepared (Form No. 20 and No. 21), or by a agent or attorney for any claimant. Such a combine form is commonly used in practice.

If a security interest in the debtor's property claimed, paragraph 9 requires that any security agre ment (if not included in the writing on which th claim is founded and which is required by paragraph to be attached) be attached to the proof of claim o that the reason why it cannot be attached be se forth. Paragraph 9 further requires evidence of perfe tion of the security interest to be attached to th proof of claim. See the Note to Rule 3001(d) as t what constitutes satisfactory evidence of perfectio The information so required will expedite determina tion of the validity of any claimed security interest a against the trustee.

Paragraph 10, requiring an explicit statement as t whether the claim is filed as a general, priority, or se cured claim, will facilitate administration and mini mize troublesome litigation over the question whethe a proof of claim was intended as a waiver of security See, *e.g.*, *United States National Bank* v. *Chase Na tional Bank*, 331 U.S. 28, 35-36 (1947); 3 Collier, *Bank ruptcy* ¶ 57.07[3.1] (14th ed. 1961).

Form No. 20.—Proof of Claim for Wages, Salary or Commissions

[*Caption as in Form No. 2*]

PROOF OF CLAIM FOR WAGES, SALARY, OR COMMISSIONS

1. The undersigned, _____, claiman herein resides at _____ and ha social security number _____.

2. The debtor owes the claimant computed as follows:

(a) wages, salary, or commissions for services performed from _____ to _____, at the following rate or rates of compensation _____ $_____

_____ $_____

[*if appropriate*]

(b) allowances and benefits, such as vacation, severance and sick leave pay [specify]

_____

_____ $_____

Total amount claimed $_____

3. The claimant demands priority to the extent permitted by 11 U.S.C. § 507(a)(3).

4. The claimant has received no payment, no security, and no check or other evidence of this debt except as follows: _____.

Dated: _____

Signed: _____

Claimant.

Penalty for Presenting Fraudulent Claim. Fine of not more than $5,000 or imprisonment for not more than 5 years or both—Title 18, U.S.C., § 152.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is an adaptation of former Official Form No. 16 for the exclusive use of claimants for personal earnings in cases under the Code. Its limited purpose permits elimination of recitals that are appropriate for other classes of claimants. Most claimants using the form will be entitled to priority under § 507(a)(3) of the Code. If the claim as filed includes an amount not entitled to priority because, for example, not earned within the applicable 90 day period, reference to payroll records will ordinarily permit determination of the amount of the priority, if any, to which the claimant is entitled. If such records are unavailable, the claimant may be required to supply additional information as a condition to allowance of the claim with priority.

Form No. 21.—Proof of Multiple Claims for Wages, Salary, or Commissions

[*Caption as in Form No. 2*]

PROOF OF MULTIPLE CLAIMS FOR WAGES, SALARY, OR COMMISSIONS

1. The undersigned, _____, whose address is *_____, is the agent of the claimants listed in the statement appended to this proof of claim and is authorized to make this proof of claims on their behalf.

3. The claimants demand priority to the extent permitted by 11 U.S.C. § 507(a)(3) and (4).

4. The claimants have received no payment, no security, and no check or other evidence of this debt except as follows:_____

_____

_____

Dated: _____

Signed: _____

Penalty for Presenting Fraudulent Claim. Fine of not more than $5,000 or imprisonment for not more than 5 years or both—Title 18, U.S.C., § 152.

Statement of Wage Claims

Name, Address, & Social Security Numbers	Dates services rendered, rates of pay, and fringe benefits	Contributions to employee benefit plans	Amounts Claimed

* State mailing address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is an alternative for Form No. 20 provided for use when there are numerous claimants for wages, salary, or commissions against a debtor's estate and they wish to have their proofs of claim executed and filed by a common agent. Use of the form should not only simplify the filing procedure for the claimants but facilitate the handling of the claims by the court.

Form No. 22.—Order Appointing Interim Trustee and Fixing Amount of Bond

[*Caption as in Form No. 1*]

ORDER APPOINTING INTERIM TRUSTEE AND FIXING AMOUNT OF BOND

(1) _____, of *_____, is hereby appointed interim trustee of the estate of the above-named debtor.

(2) [*If blank, bond has not been authorized or filed*] The amount of the bond of the interim trustee is fixed at $_____.

Dated: _____

BY THE COURT

_____,

Bankruptcy Judge.

* State mailing address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is for use only in a chapter 7 case. Pursuant to § 701 of the Code, the court is to appoint an interim trustee promptly after the order for relief. The interim trustee becomes the trustee if no trustee is elected. The interim trustee is to be disinterested as defined in § 101(13) and a member of the panel of private trustees established under 28 U.S.C. § 604(f). If the chapter 7 case was converted from chapter 11 or 13 the court may appoint as interim trustee the person serving as trustee in the prior case. Section 322(b) requires the court to determine the amount of the bond and sufficiency of the surety. See Form Nos. 23 and 25.

Form No. 23.—Order Approving Election of Trustee and Fixing Amount of Bond

[*Caption as in Form No. 2*]

ORDER APPROVING ELECTION OF TRUSTEE AND FIXING AMOUNT OF BOND

(1) _____, of *_____, is hereby approved as the elected [*or* is hereby appointed] trusteee of the estate of the above-named debtor.

(2) The amount of the bond of the trustee is fixed at $_____ [*or* A blanket bond has been authorized and filed].

Dated: _____

BY THE COURT

_____,

Bankruptcy Judge.

* State mailing address.

NOTES OF ADVISORY COMMITTEE ON RULES

Creditors may elect a trustee pursuant to § 702 of the Code. If none is elected the interim trustee becomes the trustee.

Form No. 24.—Notice to Trustee of Selection and of Time Fixed for Filing a Complaint Objecting to Discharge of Debtor

[*Caption as in Form No. 2*]

NOTICE TO TRUSTEE OF SELECTION AND OF TIME FIXED FOR FILING A COMPLAINT OBJECTING TO DISCHARGE OF DEBTOR

To _____, of *_____:

You are hereby notified of your election [*or* appointment] as trustee of the estate of the above-named debtor. The amount of your bond has been fixed at $_____. You are required to notify _____, Bankruptcy Judge, at _____, in writing within five days following receipt of this notice of your acceptance or rejection of the office. If you accept, your bond must be filed with the court on or before _____.

[*If appropriate*] You are further notified that _____ has been fixed as the last day for the filing by you or any other party in interest of a complaint objecting to the discharge of the debtor.

Dated: _____

_____

Clerk of the Bankruptcy Court.

* State mailing address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is to be used in giving the notice required by Rule 2008. If a blanket bond has been authorized pursuant to Rule 2010(a), the second sentence of the form and the last sentence of the first paragraph may be deleted.

Form No. 25.—Bond and Order Approving Bond of Trustee

[*Caption as in Form No. 2*]

BOND AND ORDER APPROVING BOND OF TRUSTEE

We, _____, of *_____, as principal, and _____, of *_____, as surety, bind ourselves to the United States in the sum of $_____ for the faithful performance by the undersigned principal of his official duties as trustee of the estate of the above-named debtor.

Dated: _____

_____

Principal

_____

Surety

The bond filed by _____ of *_____ as trustee of the estate of the above-named debtor is hereby approved.

Dated: _____

BY THE COURT

_____,

Bankruptcy Judge.

* State mailing address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form may be used in an individual case under § 322(a) of the Code, or, by modification of the caption, the reference in the bond to debtor, and, where necessary, the reference to the principal, it may be adapted for use in a series of cases when a blanket bond is given pursuant to Rule 2010(a). Unless otherwise provided by local rule, the completed bond is to be filed with the court in accordance with § 322(a).

Form No. 26.—Certificate of Retention of Debtor in Possession

[*Caption as in Form No. 1*]

CERTIFICATE OF RETENTION OF DEBTOR IN POSSESSION

I hereby certify that the above-named debtor continues in possession of its estate as debtor in possession, no trustee having been appointed.

Dated: _____

_____,

Clerk of the Bankruptcy Court.

NOTES OF ADVISORY COMMITTEE ON RULES

This form may be used in chapter 11 reorganization cases. Usually, a trustee will not be appointed in which event the debtor is automatically continued in possession pursuant to § 1101(a) of the Code.

When evidence of debtor in possession status is required, this certificate may be used in accordance with Rule 2011.

Form No. 27.—Discharge of Debtor

[*Caption as in Form No. 1*]

DISCHARGE OF DEBTOR

It appearing that the person named above has filed a petition commencing a case under title 11, United States Code on _____, and an order for relief was entered under chapter 7 and that no complaint objecting to the discharge of the debtor was filed within the time fixed by the court [*or* that a complaint objecting to discharge of the debtor was filed and, after due notice and hearing, was not sustained]; it is ordered that

1. The above-named debtor is released from all dischargeable debts.

2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:

(a) debts dischargeable under 11 U.S.C. § 523;

(b) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from

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discharge under clauses (2), (4) and (6) of 11 U.S.C. § 523(a);

(c) debts determined by this court to be discharged.

3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void by paragraph 2 above are enjoined from instituting or continuing any action or employing any process or engaging in any act to collect such debts as personal liabilities of the above-named debtor.

Dated: _____

BY THE COURT

_____

Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of former Official Form No. 24. It takes into account the features of § 523 of the Code which in turn, were derived from the 1970 amendments to the Bankruptcy Act.

Form No. 28.—Order and Notice for Hearing on Disclosure Statement

[*Caption as in Form No. 1*]

ORDER AND NOTICE FOR HEARING ON DISCLOSURE STATEMENT

To the debtor, its creditors, and other parties in interest:

A disclosure statement and a plan under chapter 11 [*or* chapter 9] of the Bankruptcy Code having been filed by _____ on _____,

it is ordered and notice is hereby given, that:

1. The hearing to consider the approval of the disclosure statement shall be held at _____, on _____, at _____ o'clock __ m.

2. _____ is fixed as the last day for filing and serving in accordance with Rule 3017(a) written objections to the disclosure statement.

3. Within _____ days after entry of this order, the debtor in possession [*or* trustee *or* debtor *or*_____, proponent of the plan] shall transmit the disclosure statement and plan to the debtor, trustee, each committee appointed pursuant to § 1102 of the Code, the Securities and Exchange Commission and any party in interest who has requested or requests in writing a copy of the disclosure statement and plan.

4. Requests for copies of the disclosure statement and plan shall be mailed to the debtor in possession [*or* trustee *or* debtor *or* _____] at *_____.

Dated: _____

BY THE COURT

_____

Bankruptcy Judge.

*State mailing address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new and is related to Rule 3017(a). Section 1125 of the Code requires court approval of a disclosure statement before votes may be solicited for or against a plan in either chapter 11, reorganization or chapter 9, municipality cases. Before the court may approve a disclosure statement it must find that it contains adequate information to enable creditors whose votes will be solicited to be able to make an informed judgment about the plan.

Objections may be filed to the disclosure statement. Rule 3017(a) specifies that the court may fix a time for filing of objections or they can be filed at any time prior to approval of the statement.

Rule 3017(a) also specifies the persons who are to receive copies of the statement and plan prior to the hearing. These documents will not be sent to all parties in interest because at this stage of the case it could be unnecessarily expensive and confusing. However, any party in interest may request copies. The request should be made in writing (Rule 3017(a)), and sent to the person mailing the statement and plan which, as the form indicates, would usually be the proponent of the plan.

Form No. 29.—Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof

[*Caption as in Form No. 1*]

ORDER APPROVING DISCLOSURE STATEMENT AND FIXING TIME FOR FILING ACCEPTANCES OR REJECTIONS OF PLAN, COMBINED WITH NOTICE THEREOF

A disclosure statement under chapter 11 of the Bankruptcy Code having been filed by _____, on _____ [*if appropriate*, and by _____, on _____], referring to a plan under chapter 11 of the Code filed by _____, on _____ [*if appropriate*, and by _____, on _____ respectively] [*if appropriate*, as modified by a modification filed on _____]; and

It having been determined after hearing on notice that the disclosure statement [*or* statements] contain[s] adequate information;

It is ordered, and notice is hereby given, that:

A. The disclosure statement filed by _____ dated _____ [*if appropriate*, and by _____, dated _____] is [are] approved.

B. _____ is fixed as the last day for filing written acceptances or rejections of the plan [*or* plans] referred to above.

C. Within _____ days after the entry of this order, the plan [*or* plans] [*or* a summary *or* summaries thereof approved by the court], [*if appropriate* a summary approved by the court of its opinion, if any, dated _____, approving the disclosure statement [*or* statements]], the disclosure statement [*or* statements] and a ballot conforming to Official Form No. 29 shall be transmitted by mail to creditors, equity security holders and other parties in interest as provided in Rule 3017(d).

D. If acceptances are filed for more than one plan, preferences among the plans so accepted may be indicated.

[*If appropriate*] E. _____ is fixed for the hearing on confirmation of the plan [*or* plans].

[*If appropriate*] F. _____ is fixed as the last day for filing and serving pursuant to Rule 3020(b)(1) written objections to confirmation of the plan.

Dated: _____

BY THE COURT

_____

Bankruptcy Judge.

[If the court directs that a copy of the opinion should be transmitted in lieu of or in addition to the summary thereof, the appropriate change should be made in paragraph C of this order.]

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. As provided in § 1125 of the Code, a disclosure statement must be approved by the court prior to the solicitation of votes to a plan. This form may be used for such approval, to give notice of the time fixed for filing acceptances or rejections and the time fixed for the hearing on confirmation if such a time has been fixed.

Form No. 30.—Ballot for Accepting or Rejecting Plan

[Caption as in Form No. 1]

BALLOT FOR ACCEPTING OR REJECTING PLAN

Filed by _____ on _____.

The plan referred to in this ballot can be confirmed by the court and thereby made binding on you if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each class and the holders of two-thirds in amount of equity security interests in each class voting on the plan. In the event the requisite acceptances are not obtained, the court may nevertheless confirm the plan if the court finds that the plan accords fair and equitable treatment to the class rejecting it. To have your vote count you must complete and return this ballot.

[If equity security holder] The undersigned, the holder of *[state number]* _____ shares of *[describe type]* _____ stock of the above-named debtor, represented by Certificate(s) No. _____, registered in the name of _____.

[If bondholder, debenture holder, or other debt security holder] The undersigned, the holder of *[state unpaid principal amount]* $ _____ of *[describe security]* _____ of the above-named debtor, with a stated maturity date of _____ *[if applicable* registered in the name of _____*]* *[if applicable* bearing serial number(s) _____*]*

[If holder of general claim] The undersigned, a creditor of the above-named debtor in the unpaid principal amount of $_____,

[Check One Box]

☐ Accepts
☐ Rejects

the plan for the reorganization of the above-named debtor.

[If more than one plan is accepted, the following may but need not be completed.] The undersigned prefers the plans accepted in the following order: *[Identify plans]*

1. _____
2. _____

Dated: _____

Print or type name: _____

Signed: _____

[If appropriated] By: _____

as: _____

Address: _____

_____

Return this ballot on or before _____

to:

Name: _____

Address: _____

NOTES OF ADVISORY COMMITTEE ON RULES

This form may be modified as necessary to include identification of as many plans as may have been transmitted on which a vote will be taken.

The form can also be modified to take account of the types of parties who will vote as among equity security holders (see § 101(15) of the Code for definition of equity security), security holders (see § 101(35) for definition of security), secured creditors and unsecured creditors.

Before the form is transmitted, the blanks identifying the plan and the name and address of the person to whom it should be returned should be completed for the information of creditors and equity security holders.

Form No. 31.—Order Confirming Plan

[Caption as in Form No. 1]

ORDER CONFIRMING PLAN

The plan under chapter 11 of the Bankruptcy Code filed by _____, on _____ *[if appropriate,* as modified by a modification filed on _____,*]* or a summary thereof having been transmitted to creditors and equity security holders; and

It having been determined after hearing on notice that:

1. The plan has been accepted in writing by the creditors and equity security holders whose acceptance is required by law; and

2. The provisions of chapter 11 of the Code have been complied with; that the plan has been proposed in good faith and not by any means forbidden by law; and

3. Each holder of a claim or interest has accepted the plan *[or* will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under chapter 7 of the Code on such date*]* *[or* The plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted the plan*]*; and

4. All payments made or promised by the debtor or by a person issuing securities or acquiring property under the plan or by any other person for services or for costs and expenses in, or in connection with, the plan and incident to the case, have been fully disclosed to the court and are reasonable or, if to be fixed after confirmation of the plan, will be subject to the approval of the court; and

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5. The identity, qualifications, and affiliations of the persons who are to be directors or officers, or voting trustees, if any, of the debtor [and an affiliate of the debtor participating in a joint plan with the debtor] [*or* a successor to the debtor under the plan], after confirmation of the plan, have been fully disclosed, and the appointment of such persons to such offices, or their continuance therein, is equitable, and consistent with the interests of the creditors and equity security holders and with public policy; and

6. The identity of any insider that will be employed or retained by the debtor and his compensation have been fully disclosed; and

7. [*If applicable*] Any regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan [*or* any rate change is expressly conditioned on approval of any regulatory agency having jurisdiction over the rates of the debtor; and]

8. [*If appropriate*] Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan;]:

It is ordered that:

The plan filed by _____, on _____, a copy of which plan is attached hereto, is confirmed.

Dated: _____

BY THE COURT

_____

Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

The order of confirmation specifies those matters heard and determined by the court at the hearing on confirmation which are required by the Code in order for a plan to be confirmed.

In the case of an individual chapter 11 debtor, Form No. 27 may be adapted for use together with this form.

Form No. 32.—Notice of Filing Final Account

[*Caption as in Form No. 1*]

NOTICE OF FILING FINAL ACCOUNT[S] OF TRUSTEE, OF HEARING ON APPLICATIONS FOR COMPENSATION [AND OF HEARING ON ABANDONMENT OF PROPERTY BY THE TRUSTEE]

To the creditors:

The final report[s] and account[s] of the trustee in this case having been filed,

Notice is hereby given, that there will be a hearing held at _____, _____, on _____, at _____, o'clock ___m., for the purpose [*as appropriate*] of examining and passing on the report[s] and account[s], acting on applications for compensation, and transacting such other business as may properly come before the court. Attendance by creditors is welcomed but not required.

The following applications for compensation have been filed:

Applicants	*Commission or Fees*	*Expenses*
_____	$_____	$_____
Interim Trustee		
_____	$_____	$_____
Trustee		
_____	$_____	$_____
Attorney for debtor		
_____	$_____	$_____
Attorney for interim trustee		
_____	$_____	$_____
Attorney for trustee		
_____	$_____	$_____
Attorney for petitioning creditors		
_____	$_____	$_____

Creditors may be heard before the applications are determined.

The account of the trustee shows total receipts of $_____ and total disbursements of $_____. The balance on hand is $_____.

In addition to expenses of administration as may be allowed by the court, liens and priority claims totalling $_____, must be paid in advance of any dividend to general creditors.

Claims of general creditors totalling $_____ have been allowed.

[*If appropriate*] The trustee's application to abandon the following property will be heard and acted on:

_____

_____

The debtor has [not] been discharged.

Dated: _____

BY THE COURT

_____,

Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is adapted from former Official Form No. 29 which is an adaptation of a form which has been made available to bankruptcy judges by the Administrative Office of the United States Courts and used for a number of years.

Form No. 33.—Final Decree

[*Caption as in Form No. 1*]

FINAL DECREE

The estate of the above-named debtor having been fully administered [*if appropriate* and the deposit required by the plan having been distributed] It is ordered that:

1. [*If applicable*] _____ is hereby discharged as trustee of the estate of the above-named debtor and the bond is cancelled.

2. [Add provisions by way of injunction or otherwise as may be equitable.]

3. The chapter 7 [*or* 9 *or* 11 *or* 13] case of the above-named debtor is closed.

Dated: _____

BY THE COURT

_____,

Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is to be used in conjunction with Rule 3022. The final decree may discharge the trustee if one was appointed and if the trustee had not been discharged at an earlier time.

Section 350 of the Code requires the court to close the case after an estate has been fully administered and the trustee discharged. That section is applicable to chapter 7, 9, 11 and 13 cases and this form may be adapted to the circumstances of the particular case.

Form No. 34.—Caption of Adversary Proceedings

UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF _____

In re Case No. ____ _____, *Debtor,* _____, *Plaintiff,* v. _____, *Defendant.*	Adv. Pro. No. ____

COMPLAINT [OR OTHER DESIGNATION]

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 7010 requires the caption of a pleading in an adversary proceeding to conform substantially to this form.

Form No. 35.—Notice of Appeal to a District Court or Bankruptcy Appellate Panel from a Judgment of a Bankruptcy Court Entered in an Adversary Proceeding

UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF _____

In re Case No. ____ _____, *Debtor,* _____, *Plaintiff,* v. _____, *Defendant.*	Adv. Pro. No. ____

NOTICE OF APPEAL

_____, the plaintiff [*or* defendant *or* other party] appeals to the district court [or the bankruptcy appellate panel], from the final judgment [*or* final order *or* final decree (describe it)] of the bankruptcy court entered in this adversary proceeding on the _____ day of _____. The parties to the judgment [*or* order *or* decree] appealed from and the names and addresses of their respective attorneys are as follows:

_____ _____

_____

Dated: _____

Signed: _____,
Attorney for Appellant.

Address: _____

NOTES OF ADVISORY COMMITTEE ON RULES

This form is an adaptation of the suggested form of notice of appeal which accompanies the Federal Rules of Appellate Procedure.

If the appeal does not arise in an adversary proceeding the caption should conform to that in Official Form No. 2. This form may be modified for an appeal from an interlocutory order. See Rule 8001(b).

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TITLE 12—BANKS AND BANKING

Chap. Sec.
40. International Lending Supervision 3901

CHAPTER 2—NATIONAL BANKS

SUBCHAPTER I—ORGANIZATION AND GENERAL PROVISIONS

§ 24. Corporate powers of associations

Upon duly making and filing articles of association and an organization certificate a national banking association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

[See main edition for text of pars. First to Sixth]

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this chapter. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock; *Provided*, That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on August 23, 1935. As used in this section the term "investment securities" shall mean marketable obligations, evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969 [D.C. Code, § 1-2458], or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the Federal Home Loan Banks, or obligations which are insured by the Secretary of Housing and Urban Development under title XI of the National Housing Act [12 U.S.C. 1749aaa et seq.] or obligations which are insured by the Secretary of Housing and Urban Development (hereinafter in this sentence referred to as the "Secretary") pursuant to section 207 of the National Housing Act [12 U.S.C. 1713], if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States, or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association, or the Government National Mortgage Association, or mortgages, obligations or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1454 or 1455], or obligations of the Federal Financing Bank or obligations of the Environmental Financing Authority, or obligations or other instruments or securities of the Student Loan Marketing Association, or such obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949 [42 U.S.C. 1460(h)]) as are secured by an agreement between the local public agency and the Secretary in which the local public agency agrees to borrow from said Secretary, and said Secretary agrees to lend to said local public agency, monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said

agreement are required to be used for such payments, or such obligations of a public housing agency (as defined in the United States Housing Act of 1937, as amended [42 U.S.C. 1437 et seq.]) as are secured (1) by an agreement between the public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Secretary if such contract shall contain the covenant by the Secretary which is authorized by subsection (g) of section 6 of the United States Housing Act of 1937, as amended [42 U.S.C. 1437d(g)], and if the maximum sum and the maximum period specified in such contract pursuant to said subsection 6(g) [42 U.S.C. 1437d(g)] shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations, or (3) by a pledge of both annual contributions under an annual contributions contract containing the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of 1937 [42 U.S.C. 1437d(g)], and a loan under an agreement between the local public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which (together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations) will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity: *Provided,* That in carrying on the business commonly known as the safe-deposit business the association shall not invest in the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business in an amount in excess of 15 per centum of the capital stock of the association actually paid in and unimpaired and 15 per centum of its unimpaired surplus. The limitations and restrictions herein contained as to dealing in and underwriting investment securities shall not apply to obligations issued by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank or the Inter-American Investment Corporation,[1] or obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes, which are at the time eligible for purchase by a national bank for its own account, nor to bonds, notes and other obligations issued by the Tennessee Valley Authority or by the United States Postal Service: *Provided,* That no association shall hold obligations issued by any of said organizations as a result of underwriting, dealing, or purchasing for its own account (and for this purpose obligations as to which it is under commitment shall be deemed to be held by it) in a total amount exceeding at any one time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968 [42 U.S.C. 3931 et seq.], and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act [42 U.S.C. 3937(a) or 3937(c)]. Notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock issued by any State housing corporation incorporated in the State in which the association is located and may make investments in loans and commitments for loans to any such corporation: *Provided,* That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the association exceed at any time 5 per centum of its capital stock actually paid in and unimpaired plus 5 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. However, unless the association owns at least 80 per centum of the stock of such agricultural credit corporation the amount invested by the association at any one time in the stock of such corporation shall not exceed 20 per centum of the unimpaired capital and surplus of the association: *Provided further,* That notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation or a holding company which owns or controls such an insured bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions and such bank or company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and employees, but in no event shall the

[1] So in original.

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total amount of such stock held by the association in any bank or holding company exceed at any time 10 per centum of the association's capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company. The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or (B) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both.

[See main edition for text of pars. Eighth and Ninth]

(As amended Oct. 3, 1984, Pub. L. 98-440, title I, § 105(c), 98 Stat. 1691; Oct. 12, 1984, Pub. L. 98-473, title I, § 101(1) [title I, § 101], 98 Stat. 1884, 1885.)

REFERENCES IN TEXT

Section 110 of the Housing Act of 1949 [42 U.S.C. 1460], referred to in par. Seventh, was omitted from the Code pursuant to section 5316 of Title 42, The Public Health and Welfare, which terminated authority to make grants or loans under title I of that Act [42 U.S.C. 1450 et seq.] after Jan. 1, 1975.

CODIFICATION

Amendment by Pub. L. 98-473 is based on section 211(a) of title II of S. 2416, as introduced in the Senate on Mar. 13, 1984, which was enacted into permanent law by section 101(1) of Pub. L. 98-473.

AMENDMENTS

1984—Par. Seventh. Pub. L. 98-473 added reference to the Inter-American Investment Corporation.

Pub. L. 98-440 added provision that the limitations and restrictions contained in this paragraph as to an association purchasing investment securities for its own account shall not apply to securities offered and sold pursuant to section 15 U.S.C. 77d(5), or that are mortgage related securities (as defined in 15 U.S.C. 78c(a)(41)), subject to such regulations as the Comptroller of the Currency may prescribe.

SUBCHAPTER XIV—BANK CONSERVATION ACT

§ 209. Conservators subject to certain sections of title 18

REFERENCES IN TEXT

Section 216 of title 18, referred to in text, was repealed by Pub. L. 98-473, title II, § 1107(b), Oct. 12, 1984, 98 Stat. 2146.

CHAPTER 3—FEDERAL RESERVE SYSTEM

SUBCHAPTER X—POWERS AND DUTIES OF MEMBER BANKS

§ 371c. Banking affiliates

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 504, 601, 1820, 1828, 1841, 1843, 3905 of this title.

SUBCHAPTER XI—DEPOSITARIES AND FISCAL AGENTS

§ 393. Federal reserve banks as depositaries for Farm Credit System

[See main edition for text]

(Dec. 23, 1913, ch. 6, § 15 (par.), as added Mar. 4, 1923, ch. 252, title IV, § 406, 42 Stat. 1480; amended Dec. 10, 1971, Pub. L. 92-181, title V, § 5.41(b), formerly § 5.27(b), 85 Stat. 625, renumbered § 5.41(b), Dec. 23, 1985, Pub. L. 99-205, title II, § 205(a)(2), 99 Stat. 1703.)

SUBCHAPTER XIV—BANK RESERVES

§ 461. Reserve requirements

(a) Establishment of applicable definitions, payment of interest, obligations as deposits, and regulations

The Board is authorized for the purposes of this section to define the terms used in this section, to determine what shall be deemed a payment of interest, to determine what types of obligations, whether issued directly by a member bank or indirectly by an affiliate of a member bank or by other means, and, regardless of the use of the proceeds, shall be deemed a deposit, and to prescribe such regulations as it may deem necessary to effectuate the purposes of this section and to prevent evasions thereof.

[See main edition for text of (b) and (c); credits]

CODIFICATION

Subsec. (a) is set out in this supplement to correct typographical error appearing in the main edition.

CHAPTER 4—TAXATION

SUBCHAPTER I—FEDERAL RESERVE BANKS

§ 531. Exemption from taxation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 134.

CHAPTER 6—FOREIGN BANKING

SUBCHAPTER I—ESTABLISHMENT BY NATIONAL BANKS OF FOREIGN BRANCHES AND INVESTMENTS IN BANKS DOING FOREIGN BUSINESS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 36, 461, 618, 1818, 1841, 1843, 3101, 3204, 3902 of this title; title 15 section 19.

SUBCHAPTER II—ORGANIZATION OF CORPORATIONS TO DO FOREIGN BANKING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1818, 1841, 1843, 3103, 3204, 3902 of this title; title 15 sections 77kkk, 4001.

CHAPTER 6A—EXPORT-IMPORT BANK OF THE UNITED STATES

SUBCHAPTER III—TIED AID CREDIT EXPORT SUBSIDIES

Sec.

635o. Congressional statement of purpose.
635p. Presidential mandate to negotiate; objectives.
635q. Establishment of tied aid credit program in United States Export-Import Bank.
(a) Establishment and elements of program; cooperation with Agency for International Development and private institutions and entities.
(b) Purpose of program.
(c) Fund.
(d) Availability of concessional financing or grants.
635r. Establishment of tied aid credit program in Agency for International Development.
(a) Establishment and elements of program.
(b) Combination of funds with financing by Export-Import Bank or private commercial financing.
(c) Limitation on use of Agency funds; authorization for establishment of fund.
(d) Use of Economic Support Funds.
635s. Implementation.
635t. Definitions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 22 sections 2371, 2394, 2398.

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 635a-3, 635m of this title; title 22 sections 2184, 2291.

§ 635. Powers and functions of Bank

(a) General banking business; use of mails; publication of documents, reports, contracts, etc.; use of assets and allocated or borrowed money; payment of dividends; medium-term financing; dissemination of information

(1) There is created a corporation with the name Export-Import Bank of the United States, which shall be an agency of the United States of America. The objects and purposes of the bank shall be to aid in financing and to facilitate exports and imports and the exchange of commodities and services between the United States or any of its Territories or insular possessions and any foreign country or the agencies or nationals thereof. In connection with and in furtherance of its objects and purposes, the bank is authorized and empowered to do a general banking business except that of circulation; to receive deposits; to purchase, discount, rediscount, sell, and negotiate, with or without its endorsement or guaranty, and to guarantee notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to guarantee, insure, coinsure, and reinsure against political and credit risks of loss; to purchase, sell, and guarantee securities but not to purchase with its funds any stock in any other corporation except that it may acquire any such stock through the enforcement of any lien or pledge or otherwise to satisfy a previously contracted indebtedness to it; to accept bills and drafts drawn upon it; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to perform any act herein authorized in participation with any other person, including any individual, partnership, corporation, or association; to adopt, alter, and use a corporate seal, which shall be judicially noticed; to sue and to be sued, to complain and to defend in any court of competent jurisdiction; to represent itself or to contract for representation in all legal and arbitral proceedings outside the United States; and the enumeration of the foregoing powers shall not be deemed to exclude other powers necessary to the achievement of the objects and purposes of the bank. The bank shall be entitled to the use of the United States mails in the same manner and upon the same conditions as the executive departments of the Government. The Bank is authorized to publish or arrange for the publication of any documents, reports, contracts, or other material necessary in connection with or in furtherance of its objects and purposes without regard to the provisions of section 501 of title 44 whenever the Bank determines that publication in accordance with the provisions of such section would not be practicable. The bank is authorized to use all of its assets and all moneys which have been or may hereafter be allocated to or borrowed by it in the exercise of its functions. Net earnings of the bank after reasonable provision for possible losses shall be used for payment of dividends on capital stock. Any such dividends shall be deposited into the Treasury as miscellaneous receipts.

(2) In order for the Bank to be competitive in all of its financing programs with countries whose exports compete with United States exports, the Bank shall establish a program that—

(A) provides medium-term financing where necessary to be fully competitive—

(i) at rates of interest to the customer which are equal to rates established in international agreements; and

(ii) in amounts up to 85 percent of the total cost of the exports involved; and

(B) enables the Bank to cooperate fully with the Secretary of Commerce and the Administrator of the Small Business Administration to develop a program for purposes of disseminating information (using existing private institutions) to small business concerns regarding the medium-term financing provided under this paragraph.

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(b) Guarantees, insurance, and extension of credit functions; competitive with Government-supported rates and terms and conditions of foreign exporting countries; survey and report; interest rates; private capital encouragement; national interest determinations; delivery of United States services in international commerce; small business concern encouragement; coverage of losses by Foreign Credit Insurance Association; loans to Union of Soviet Socialist Republics for fossil fuel research, etc.; nuclear safeguards violations resulting in limitations on exports and credit; defense article credit sales to less developed countries; amount outstanding; supplementation of Commodity Credit Corporation programs; prohibitions respecting Republic of South Africa; limitations on authority of Bank

(1)(A) It is the policy of the United States to foster expansion of exports of manufactured goods, agricultural products, and other goods and services, thereby contributing to the promotion and maintenance of high levels of employment and real income and to the increased development of the productive resources of the United States. To meet this objective in all its programs, the Export-Import Bank is directed, in the exercise of its functions, to provide guarantees, insurance, and extensions of credit at rates and on terms and other conditions which are fully competitive with the Government-supported rates and terms and other conditions available for the financing of exports of goods and services from the principal countries whose exporters compete with United States exporters. The Bank shall, in cooperation with the export financing instrumentalities of other governments, seek to minimize competition in government-supported export financing and shall, in cooperation with other appropriate United States Government agencies, seek to reach international agreements to reduce government subsidized export financing. The Bank shall, on a [1] annual basis, report to the appropriate committees of Congress its actions in complying with these directives. In this report the Bank shall include a survey of all other major export-financing facilities available from other governments and government-related agencies through which foreign exporters compete with the United States exporters and indicate in specific terms the ways in which the Bank's rates, terms, and other conditions compare with those offered from such other governments directly or indirectly. Further, the Bank shall at the same time survey a representative number of United States exporters and United States commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with United States exporters. The results of this survey shall be included as part of the annual report required by this subparagraph. The Bank shall also include in the annual report a description of each loan by the Bank involving the export of any product or service related to the production, refining or transportation of any type of energy or the development of any energy resource with a statement assessing the impact, if any, on the availability of such products, services, or energy supplies thus developed for use within the United States.

(B) It is further the policy of the United States that loans made by the Bank in all its programs shall bear interest at rates determined by the Board of Directors, consistent with the Bank's mandate to support United States exports at rates and on terms and conditions which are fully competitive with exports of other countries, and consistent with international agreements. For the purpose of the preceding sentence, rates and terms and conditions need not be equivalent to those offered by foreign countries, but should be established so that the effect of such rates, terms, and conditions for all the Bank's programs, including those for small businesses and for medium-term financing, will be to neutralize the effect of such foreign credit on international sales competition. The Bank shall consider its average cost of money as one factor in its determination of interest rates, where such consideration does not impair the Bank's primary function of expanding United States exports through fully competitive financing. It is also the policy of the United States that the Bank in the exercise of its functions should supplement and encourage, and not compete with, private capital; that the Bank shall accord equal opportunity to export agents and managers, independent export firms, export trading companies, and small commercial banks in the formulation and implementation of its programs; that the Bank should give emphasis to assisting new and small business entrants in the agricultural export market, and shall, in cooperation with other relevant Government agencies, including the Commodity Credit Corporation, develop a program of education to increase awareness of export opportunities among small agribusinesses and cooperatives; that loans, so far as possible consistent with the carrying out of the purposes of subsection (a) of this section, shall generally be for specific purposes, and, in the judgment of the Board of Directors, offer reasonable assurance of repayment; and that in authorizing any loan or guarantee, the Board of Directors shall take into account any serious adverse effect of such loan or guarantee on the competitive position of United States industry, the availability of materials which are in short supply in the United States, and employment in the United States, and shall give particular emphasis to the objective of strengthening the competitive position of United States exporters and thereby of expanding total United States exports. Only in cases where the President determines that such action would be in the national interest where such action would clearly and importantly advance United States policy in such areas as international terrorism, nuclear proliferation, environmental protection and human rights, should the Export-Import Bank deny applications for credit for nonfinancial or noncommercial considerations.

[See main edition for text of (C)]

[1] So in original. Probably should be "an".

(D)(i) It is further the policy of the United States to foster the delivery of United States services in international commerce. In exercising its powers and functions, the Bank shall give full and equal consideration to making loans and providing guarantees for the export of services (independently, or in conjunction with the export of manufactured goods, equipment, hardware or other capital goods) consistent with the Bank's policy to neutralize foreign subsidized credit competition and to supplement the private capital market.

(ii) The Bank shall include in its annual report a summary of its programs regarding the export of services.

(E)(i)(I) It is further the policy of the United States to encourage the participation of small business in international commerce.

(II) In exercising its authority, the Bank shall develop a program which gives fair consideration to making loans and providing guarantees for the export of goods and services by small businesses.

(ii) It is further the policy of the United States that the Bank shall give due recognition to the policy stated in section 631(a) of title 15 that "the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise".

(iii) In furtherance of this policy, the Board of Directors shall designate an officer of the Bank who—

(I) shall be responsible to the President of the Bank for all matters concerning or affecting small business concerns; and

(II) among other duties, shall be responsible for advising small business concerns of the opportunities for small business concerns in the functions of the Bank and for maintaining liaison with the Small Business Administration and other departments and agencies in matters affecting small business concerns.

(iv) The Director appointed to represent the interests of small business under section 635a(c) of this title shall ensure that the Bank carries out its responsibilities under clauses (ii) and (iii) of this subparagraph and that the Bank's financial and other resources are, to the maximum extent possible, appropriately used for small business needs.

(v) To assure that the purposes of clauses (i) and (ii) of this subparagraph are carried out, the Bank shall make available, from the aggregate loan, guarantee, and insurance authority available to it, an amount to finance exports by small business concerns (as defined under section 632 of title 15) which shall be not less than—

(I) 6 per centum of such authority for fiscal year 1984;

(II) 8 per centum of such authority for fiscal year 1985; and

(III) 10 per centum of such authority for fiscal year 1986 and thereafter.

(vi) The Bank shall utilize the amount set aside pursuant to clause (v) of this subparagraph to offer financing for small business exports on terms which are fully competitive with regard to interest rates and with regard to the portion of financing which may be provided, guaranteed, or insured. Financing under this clause (vi) shall be available without regard to whether financing for the particular transaction was disapproved by any other Federal agency.

(vii)(I) The Bank shall utilize a part of the amount set aside pursuant to clause (v) to provide lines of credit or guarantees to consortia of small or medium size banks, export trading companies, State export finance agencies, export financing cooperatives, small business investment companies (as defined in section 662 of title 15), or other financing institutions or entities in order to finance small business exports.

(II) Financing under this clause (vii) shall be made available only where the consortia or the participating institutions agree to undertake processing, servicing, and credit evaluation functions in connection with such financing.

(III) To the maximum extent practicable, the Bank shall delegate to the consortia the authority to approve financing under this clause (vii).

(IV) In the administration of the program under this clause (vii), the Bank shall provide appropriate technical assistance to participating consortia and may require such consortia periodically to furnish information to the Bank regarding the number and amount of loans made and the creditworthiness of the borrowers.

(viii) In order to assure that the policy stated in clause (i) is carried out, the Bank shall promote small business exports and its small business export financing programs in cooperation with the Secretary of Commerce, the Office of International Trade of the Small Business Administration, and the private sector, particularly small business organizations, State agencies, chambers of commerce, banking organizations, export management companies, export trading companies, and private industry.

(F) Consistent with international agreements, the Bank shall urge the Foreign Credit Insurance Association to provide coverage against 100 per centum of any loss with respect to exports having a value of less than $100,000.

[*See main edition for text of* (2)]

(3) Except as provided by the fourth sentence of this paragraph, no loan or financial guarantee or general guarantee or insurance facility or combination thereof (i) in an amount which equals or exceeds $100,000,000, (ii) in an amount which equals or exceeds $25,000,000 for the export of goods or services involving research, exploration, or production of fossil fuel energy resources in the Union of Soviet Socialist Republics, or (iii) for the export of technology, fuel, equipment, materials, or goods or services to be used in the construction, alteration, operation, or maintenance of nuclear power, enrichment, reprocessing, research, or heavy water production facilities, shall be finally approved by the Board of Directors of the Bank, unless in each case the Bank has submitted to the Congress with respect to such loan, financial guarantee, or combination thereof, a de-

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tailed statement describing and explaining the transaction, at least 25 days of continuous session of the Congress prior to the date of final approval. For the purpose of the preceding sentence, continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 25 day period referred to in such sentence. Such statement shall contain—

(A) in the case of a loan or financial guarantee—

(i) a brief description of the purposes of the transaction;

(ii) the identity of the party or parties requesting the loan or financial guarantee;

(iii) the nature of the goods or services to be exported and the use for which the goods or services are to be exported; and

(iv) in the case of a general guarantee or insurance facility—

(I) a description of the nature and purpose of the facility;

(II) the total amount of guarantees or insurance; and

(III) the reasons for the facility and its methods of operation; and

[*See main edition for text of* (*B*)]

If the Bank submits a statement to the Congress under this paragraph and either House of Congress is in an adjournment for a period which continues for at least ten days after the date of submission of the statement, then any such loan or guarantee or combination thereof may, subject to the second sentence of this paragraph, be finally approved by the Board of Directors upon the termination of the twenty-five-day period referred to in the first sentence of this paragraph or upon the termination of a thirty-five-calendar-day period (which commences upon the date of submission of the statement), whichever occurs sooner.

(4) The Secretary of State shall report to the appropriate committees of Congress and to the Board of Directors of the Export-Import Bank if the Secretary determines that any country that has agreed to International Atomic Energy Agency nuclear safeguards materially violates, abrogates, or terminates, after October 26, 1977, such safeguards or that any country that has entered into an agreement for cooperation concerning the civil use of nuclear energy with the United States materially violates, abrogates, or terminates, after October 26, 1977, any guarantee or other undertaking to the United States made in such agreement or that any country that is not a nuclear-weapons state (as defined in article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons) detonates, after October 26, 1977, a nuclear explosive device. The Secretary shall specify which country or countries the Secretary has determined to have so acted, and the Board shall not give approval to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to such country unless the President determines that it is in the national interest for the Bank to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to such country and such determination has been reported to the Congress not less than twenty-five days of continuous session of the Congress prior to the date of such approval. For the purpose of the preceding sentence, continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the twenty-five day period referred to in such sentence.

[*See main edition for text of* (*5*) *to* (*9*)]

(10)(A) The Bank shall not, without a specific authorization by law, guarantee, insure, or extend credit (or participate in the extension of credit) to—

(i) assist specific countries with balance of payments financing; or

(ii) assist (as the primary purpose of any such guarantee, insurance, or credit) any country in the management of its international indebtedness, other than its outstanding obligations to the Bank.

(B) Nothing contained in subparagraph (A) shall preclude guarantees, insurance, or credit the primary purpose of which is to support United States exports.

[*See main edition for text of* (*c*)]

(d) Equal and nondiscriminatory opportunities for domestic companies to bid for insurance

(1) In carrying out its responsibilities under this subchapter, the Bank shall work to ensure that United States companies are afforded an equal and nondiscriminatory opportunity to bid for insurance in connection with transactions assisted by the Bank.

(2) In furtherance of such effort, the Chairman of the Bank shall review Bank policies and programs in regard to this issue, and in coordination with the United States Trade Representative and the appropriate agencies of the Department of State, the Department of the Treasury, and the Department of Commerce, undertake actions designed to promote equal and nondiscriminatory opportunities to bid for insurance in connection with all aspects of international trade activities.

(3) The Bank shall report to the Committee or Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than May 15, 1984, regarding—

(A) the existing obstacles to equal and nondiscriminatory bidding for insurance related to transactions assisted by the Bank;

(B) the efforts that the Bank has taken in addressing such problems; and

(C) recommendations for such legislative or administrative actions as the Bank considers necessary.

(As amended Nov. 30, 1983, Pub. L. 98-181, title VI, §§ 612, 616(a), 617, 618(a), (c), 619(b)-(d),

620(a), 622, 97 Stat. 1255, 1257, 1258, 1260, 1261.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-181, § 616(a)(1), substituted "the exchange of commodities and services" for "the exchange of commodities".

Subsec. (a)(2). Pub. L. 98-181, § 622, added par. (2).

Subsec. (b)(1)(A). Pub. L. 98-181, §§ 612(a), 616(a)(2), in second sentence inserted "in all its programs" after "To meet this objective", inserted "fully" after "other conditions which are", and substituted "exports of goods and services" for "exports".

Subsec. (b)(1)(B). Pub. L. 98-181, §§ 612(b), (c), 618(a)(1), substituted provisions that loans under this section shall bear interest at rates consistent with the Bank's mandate to support exports at rates and on terms and conditions which are fully competitive with exports of other countries, and consistent with international agreements, and that such rates, terms and conditions need not be equivalent to those offered by foreign countries, but should be established so as to neutralize the effect of such foreign credit on international sales competition, and that the Board shall consider its average cost of money in determination of interest rates, where such consideration does not impair the Bank's function of expanding exports through fully competitive financing for provisions that loans made by the Bank had to be at interest at rates determined by the Board of Directors of the Bank, taking into consideration the average cost of money to the Bank as well as the Bank's mandate to support United States exports at rates and on terms and conditions which were competitive with exports of other countries; inserted "export trading companies," after "independent export firms,"; and struck out provision which required the Bank to give due recognition to the policy stated in section 631(a) of Title 15 that the government should aid, consel, assist, and protect the interests of small business in order to preserve free competitive enterprise, and that in furtherance of this policy the Board of Directors had to designate an officer of the Bank to handle small business concerns, including advising small businessmen and maintaining liasion with the Small Business Administration and other departments and agencies in matters affecting small business concerns.

Subsec. (b)(1)(D). Pub. L. 98-181, § 616(a)(3), added subpar. (D).

Subsec. (b)(1)(E). Pub. L. 98-181, § 618(a)(2), added subpar. (E).

Subsec. (b)(1)(F). Pub. L. 98-181, § 618(c), added subpar. (F).

Subsec. (b)(3). Pub. L. 98-181, § 619(b), substituted "no loan or financial guarantee or general guarantee or insurance facility" for "no loan or financial guarantee" in provisions preceding subpar. (A).

Subsec. (b)(3)(A). Pub. L. 98-181, § 619(c), inserted language limiting existing provisions to loans or financial guarantees, designated existing provisions as cls. (i), (ii), and (iii), and added cl. (iv).

Subsec. (b)(4). Pub. L. 98-181, § 620(a), substituted "the Secretary" for "he" before "determines that any country" in first sentence, and before "has determined to have so acted" in second sentence.

Subsecs. (7) to (10). Pub. L. 98-181, § 619(d), redesignated second par. (7) and par. (8), as added by Pub. L. 95-630, as pars. (8) and (9), respectively, and added par. (10).

Subsec. (d). Pub. L. 98-181, § 617, added subsec. (d).

SHORT TITLE OF 1983 AMENDMENT

Section 601 of title VI of Pub. L. 98-181 provided that: "This title [enacting sections 635i-1, 635i-2, and 635o-635t of this title and section 1671g of Title 19, Customs Dudties, amending sections 635, 635a, 635a-2, 635a-3, 635a-4, 635b, 635e, 635f and 635g of this title and sections 1671a and 1671b of Title 19, and enacting provisions set out as notes under sections 635a and 635o of this title] may be cited as the 'Export-Import Bank Act Amendments of 1983'."

For short title of part C (§§ 641-647) of title VI of Pub. L. 98-181, which enacted subchapter III (§ 635o et seq.) of this chapter and section 1671g of Title 19 and amended sections 1671a and 1671b of Title 19, as the "Trade and Development Enhancement Act of 1983", see Short Title note set out under section 635o of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 635a, 635g, 635i, 635j, 635m of this title; title 22 sections 2184, 2357.

§ 635a. Management of Bank

[See main edition for text of (a) and (b)]

(c) Board of Directors; composition; oath; terms; duties; quorum; bylaws

(1) There shall be a Board of Directors of the Bank consisting of the President of the Export-Import Bank of the United States, who shall serve as Chairman, the First Vice President who shall serve as Vice Chairman, and three additional persons appointed by the President of the United States by and with the advice and consent of the Senate.

(2) Of the five members of the Board, not more than three shall be members of any one political party.

(3) Omitted

(4) Before entering upon his duties, each of the directors shall take an oath faithfully to discharge the duties of his office.

(5) The directors, in addition to their duties as members of the Board, shall perform such additional duties and may hold such other offices in the administration of the Bank as the President of the Bank may from time to time prescribe.

(6) A majority of the Board of Directors shall constitute a quorum.

(7) The Board of Directors shall adopt, and may from time to time amend, such bylaws as are necessary for the proper management and functioning of the Bank, and shall, in such bylaws, designate the vice presidents and other officers of the Bank and prescribe their duties.

(8)(A) The terms of the directors, including the President and the First Vice President of the Bank, appointed under this section shall be four years, except that—

(i) during their terms of office, the directors shall serve at the pleasure of the President of the United States;

(ii) the term of any director appointed after November 30, 1983, to serve before January 20, 1985, shall expire on January 20, 1985;

(iii) of the directors first appointed to serve beginning on or after January 21, 1985, two directors (other than the President and First Vice President of the Bank) shall be appointed for terms of two years, as designated by the President of the United States at the time of their appointment; and

(iv) any director first appointed to serve for a term beginning on any date after January 21, 1985, shall serve only for the remainder of the period for which such director would have been appointed if such director's term

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had begun on January 21, 1985. If such term would have expired before the date on which such director's term actually begins, the term of such director shall be the four-year period, or remainder thereof, as if such director had been preceded by a director whose term had begun on January 21, 1985.

(B) Of the five members of the Board appointed by the President, not less than one such member shall be selected from among the small business community and shall represent the interests of small business.

(C) Any person chosen to fill a vacancy shall be appointed only for the unexpired term of the director whom such person succeeds.

(D) Any director whose term has expired may be reappointed.

(d) Advisory Committee; appointment; composition; meetings; advice to Bank; report to Congress

(1)(A) There is established an Advisory Committee to consist of twelve members who shall be appointed by the Board of Directors on the recommendation of the President of the Bank.

(B) Such members shall be broadly representative of production, commerce, finance, agriculture, labor, services, and State government.

(2) Not less than three members appointed to the Advisory Committee shall be representative of the small business community.

(3) The Advisory Committee shall meet at least once each quarter.

(4) The Advisory Committee shall advise the Bank on its programs, and shall submit, with the report specified in section 635(b)(1)(A) of this title, its own comments to the Congress on the extent to which the Bank is meeting its mandate to provide competitive financing to expand United States exports, and any suggestions for improvements in this regard.

(e) Conflicting personal interests

No director, officer, attorney, agent, or employee of the Bank shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting such individual's personal interests, or the interests of any corporation, partnership or association in which such individual is directly or indirectly personally interested.

(As amended Nov. 30, 1983, Pub. L. 98-181, title VI, §§ 613, 614(a), 620(b), 97 Stat. 1255, 1261.)

CODIFICATION

Provisions of subsecs. (b) and (c)(3) of this section, which prescribed the annual compensation of the President, the First Vice President, and other members of the Board of Directors, were omitted to conform to the provisions of the Executive Schedule. See sections 5314 and 5315 of Title 5, Government Organization and Employees.

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-81, § 614(a), designated first through seventh sentences as pars. (1) through (7), respectively, substituted "The" for "Terms of the directors shall be at the pleasure of the President of the United States, and the" at beginning of par. (5) as so designated, and added par. (8).

Subsec. (d). Pub. L. 98-181, § 613, amended subsec. (d) generally. Prior to amendment subsec. (d) read: "There shall be an Advisory Committee of nine members, appointed by the Board of Directors on the recommendation of the President of the Bank, who shall be broadly representative of production, commerce, finance, agriculture and labor. The Advisory Committee shall meet one or more times per year, on the call of the President of the Bank, to advise with the Bank on its program. Members, not otherwise in the regular full-time employ of the United States, may be compensated at rates not exceeding the per diem equivalent of the rate for grade 18 of the General Schedule (5 U.S.C. 5332) for each day spent in travel or attendance at meetings of the Committee, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for individuals in the Government service employed intermittently."

Subsec. (e). Pub. L. 98-181, § 620(b), substituted "such individual's" for "his" and "such individual" for "he".

APPOINTMENT OF MEMBER OF BOARD TO REPRESENT INTERESTS OF SMALL BUSINESS COMMUNITY

Section 614(b) of Pub. L. 98-181 provided that: "In order to carry out the amendment made by subsection (a) regarding section 3(c)(8)(B) of the Export-Import Bank Act of 1945 [subsec. (c)(8)(B) of this section], the first member, other than a member who will serve as Chairman or Vice Chairman of the Bank, appointed by the President of the United States to the Board of Directors of the Export-Import Bank of the United States after the date of the enactment of this section [Nov. 30, 1983] shall be selected from among the small business community and shall represent the interests of small business."

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 635 of this title.

§ 635a-2. Implementation of regulations and procedures to lessen adverse effect of loans and guarantees on industries in United States; report by United States International Trade Commission

The Bank shall implement such regulations and procedures as may be appropriate to insure that full consideration is given to the extent to which any loan or financial guarantee is likely to have an adverse effect on industries, including agriculture, and employment in the United States, either by reducing demand for goods produced in the United States or by increasing imports to the United States. To carry out the purposes of this subsection,[3] the Bank shall re-

[3] So in original. Probably should be "section,".

quest, and the United States International Trade Commission shall furnish, a report assessing the impact of the Bank's activities on industries and employment in the United States. Such report shall include an assessment of previous loans or financial guarantees and shall provide recommendations concerning general areas which may adversely affect domestic industries, including agriculture, and employment. After October 1, 1983, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(As amended Pub. L. 98-181, title VI, § 632, Nov. 30, 1983, 97 Stat. 1262.)

AMENDMENTS

1983—Pub. L. 98-181 added provision that after October 1, 1983, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

§ 635a-3. Export-Import Bank financing to match foreign financing

(a) Noncompetitive financing; inquiry by Secretary; notification of foreign country and prospective parties to transaction

(1) Upon receipt of information that foreign sales to the United States are being offered involving foreign official export credits which exceed limits under existing standstills, minutes, or practices to which the United States and other major exporting countries have agreed, the Secretary of the Treasury shall immediately conduct an inquiry to determine whether "noncompetitive financing" is being offered. The inquiry, and where appropriate, the determination and authorization to the Export-Import Bank of the United States referred to in this section shall be completed and made within 60 days of the receipt of such information.

(2) If the Secretary determines that such foreign "noncompetitive" financing is being offered, the Secretary shall request the immediate withdrawal of such financing by the foreign official export credit agency involved.

[*See main edition for text of (3)*]

(b) Issuance of authorization to Bank to provide guarantees, insurance, and credits to competing United States sellers

The Secretary of the Treasury shall only issue such authorization to the Bank to provide guarantees, insurance and credits to competing United States sellers, if the Secretary determines that:

(1) the availability of foreign official noncompetitive financing is likely to be a significant factor in the sale, and

(2) the foreign noncompetitive financing has not been withdrawn on the date the Bank is authorized to provide competitive financing.

(c) Provision of financing by Bank pursuant to authorization

[*See main edition for text of (c)*]

(As amended Pub. L. 98-181, title VI, §§ 631, 633, Nov. 30, 1983, 97 Stat. 1262, 1263.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-181, § 631(1), added provision that the inquiry, and where appropriate, the determination and authorization to the Export-Import Bank of the United States referred to in this section shall be completed and made within 60 days of the receipt of such information.

Subsec. (a)(2). Pub. L. 98-181, § 633(b), substituted "the Secretary shall request" for "he shall request".

Subsec. (b). Pub. L. 98-181, § 633(a), subsituted "if the Secretary determines that" for "if he determines that" in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98-181, § 631(2), substituted "significant factor" for "determining factor".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 19 section 1671g.

§ 635a-4. Guarantees for export accounts receivable and inventory

The Export-Import Bank of the United States is authorized and directed to establish a program to provide guarantees for loans extended by financial institutions or other public or private creditors to export trading companies as defined in section 1843(c)(14)(F)(i) of this title, or to other exporters, when such loans are secured by export accounts receivable, inventories of exportable goods, accounts receivable from leases, performance contracts, grant commitments, participation fees, member dues, revenue from publications, or such other collateral as the Board of Directors may deem appropriate, and when in the judgment of the Board of Directors—

[*See main edition for text of (1) and (2)*]

The Board of Directors shall attempt to insure that a major share of any loan guarantees ultimately serves to promote exports from small, medium-size, and minority businesses or agricultural concerns. Guarantees provided under the authority of this section shall be subject to limitations contained in annual appropriations Acts.

(As amended Pub. L. 98-181, title VI, § 616(b), Nov. 30, 1983, 97 Stat. 1257.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "export accounts receivable, inventories of exportable goods, accounts receivable from leases, performance contracts, grant commitments, participation fees, member dues, revenue from publications, or such other collateral as the Board of Directors may deem appropriate," for "export accounts receivable or inventories of exportable goods".

§ 635b. Capitalization of Bank; method of capital stock payments; public-debt transactions; issuance of stock certificates

The Export-Import Bank of the United States shall have a capital stock of $1,000,000,000 subscribed by the United States. Payment for $1,000,000 of such capital stock shall be made by the surrender to the Bank for cancellation of the common stock issued prior to July 31, 1945, by the Bank and purchased by the United States. Payment for $174,000,000 of such capital stock shall be made by the surrender to the Bank for cancellation of the pre-

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ferred stock heretofore issued by the Bank and purchased by the Reconstruction Finance Corporation. Payment for the $825,000,000 balance of such capital stock shall be subject to call at any time in whole or in part by the Board of Directors of the Bank. For the purpose of making payments of such balance, the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued after July 31, 1945, under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include such purpose. Payment under this section of the subscription of the United States to the Bank and repayments thereof shall be treated as public-debt transactions of the United States. Certificates evidencing stock ownership of the United States shall be issued by the Bank to the President of the United States, or to such other person or persons as the President may designate from time to time, to the extent of the common and preferred stock surrendered and other payments made for the capital stock of the Bank under this section.

(As amended Nov. 30, 1983, Pub. L. 98-181, title VI, § 620(c), 97 Stat. 1261.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "the President" for "he" before "may designate".

§ 635e. Restrictions on amount outstanding; effectiveness of spending authority; limitations on amount and purposes of loans and financial guarantees for exports to Union of Soviet Socialist Republics; Presidential increase of limitations

(a) [*See main edition for text of (1)*]

(2)(A)(i) Not later than March 31 of each fiscal year, the President of the United States shall determine whether the authority available to the Bank for such fiscal year will be sufficient to meet the Bank's needs, particularly those needs arising from—

(I) increases in the level of exports unforeseen at the time of the original budget request for such fiscal year;

(II) any increased foreign export credit subsidies; or

(III) the lack of progress in negotiations to reduce or eliminate export credit subsidies.

(ii) Not later than April 15 of each year, the President of the United States shall transmit to the Congress a report on such determination.

(B)(i) If the President of the United States finds that the amount of direct loan authority or guarantee authority available to the Bank for the fiscal year involved exceeds the amount which will be necessary to carry out the Bank's functions consistent with the availability of qualified applications and limitations imposed by law during such year, the President of the United States shall promptly transmit to the Congress a request for legislation to eliminate the amount of such excess direct loan, loan guarantee, or insurance authority.

(ii) The Bank shall continue to make remaining amounts of its authority available for the fiscal year involved, in accordance with its practices and the requirements of this subchapter, unless otherwise directed pursuant to law.

(b) After January 4, 1975, the Bank shall not approve any loans or financial guarantees, or combination thereof, in connection with exports to the Union of Soviet Socialist Republics in an aggregate amount in excess of $300,000,000. No such loan or financial guarantee, or combination thereof, shall be for the purchase, lease, or procurement of any product or service for production (including processing and distribution) of fossil fuel energy resources. Not more than $40,000,000 of such aggregate amount shall be for the purchase, lease, or procurement of any product or service which involves research or exploration of fossil fuel energy resources. The President may establish a limitation in excess of $300,000,000 if the President determines that such higher limitation is in the national interest and if the President reports such determination to the Congress together with the reasons therefor, including the amount of such proposed increase which would be available for the export of products and services for research, exploration, and production (including processing and distribution) of fossil fuel energy resources in the Union of Soviet Socialist Republics, and if, after the receipt of such report together with the reasons, the Congress adopts a concurrent resolution approving such determination.

(As amended Nov. 30, 1983, Pub. L. 98-181, title VI, §§ 615, 620(d), 97 Stat. 1256, 1261.)

AMENDMENTS

1983—Subsec. (a)(2). Pub. L. 98-181, § 615, amended par. (2) generally, substituting provisions requiring a Presidential determination, not later than March 31 of each fiscal year, as to whether the authority available to the Bank for such fiscal year will be sufficient to meet the Bank's needs, requiring the President to transmit to Congress a report on such determination no later than April 15 of each year, and establishing procedures if the direct loan or guarantee authority available exceeds the amount necessary, for provision limiting gross obligations for the principal amount of direct loans authorized by the Bank during fiscal years 1982 and 1983 to $10,478,000,000, and designating specified amounts thereof for each fiscal year.

Subsec. (b). Pub. L. 98-181, § 620(d), substituted "the President" for "he" before "determines that such higher limitation" and "reports such determination".

§ 635f. Termination date of Bank's functions; exceptions; liquidation

Export-Import Bank of the United States shall continue to exercise its functions in connection with and in furtherance of its objects and purposes until the close of business on September 30, 1986, but the provisions of this section shall not be construed as preventing the bank from acquiring obligations prior to such date which mature subsequent to such date or from assuming prior to such date liability as guarantor, endorser, or acceptor of obligations which mature subsequent to such date or from issuing, either prior or subsequent to such date, for purchase by the Secretary of the Treasury or any other purchasers, its notes, debentures, bonds, or other obligations which mature subsequent to such date or from continuing as a corporate agency of the United States and exercising any of its functions subsequent to such date

for purposes of orderly liquidation, including the administration of its assets and the collection of any obligations held by the bank.

(As amended Oct. 1, 1983, Pub. L. 98-109, § 6, 97 Stat. 746; Nov. 1, 1983, Pub. L. 98-143, 97 Stat. 916; Nov. 30, 1983, Pub. L. 98-181, title VI, § 611, 97 Stat. 1254.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "September 30, 1986" for "November 18, 1983".

Pub. L. 98-143 substituted "November 18, 1983" for "October 31, 1983".

Pub. L. 98-109 substituted "October 31, 1983" for "September 30, 1983".

§ 635g. Report to Congress; time for submission; contents

(a) Annual submission of report

[*See main edition for text of (a)*]

(b) Actions taken by Bank to aid small business

The report shall contain a description of actions taken by the Bank in pursuance of the policy of aiding, counseling, assisting, and protecting, insofar as is possible, the interests of small business concerns and of the activities of the member of the Board appointed to represent the interest of small business. In addition, the Bank shall include in the report a description of specific activities and programs undertaken by it to achieve the policy of section 3261 of title 22, and section 2151q of title 22, as required by section 635(b)(1)(C) of this title.

(c) Report on allocation of sums set aside for small business exports

(1) The Bank shall include in its annual report to the Congress a report on the allocation of the sums set aside for small business exports pursuant to section 635(b)(1)(E) of this title.

(2) Such report shall specify—

(A) the total number and dollar volume of loans made from the sums set aside;

(B) the number and dollar volume of loans made through the consortia program under section 635(b)(1)(E)(vii) of this title;

(C) the amount of guarantees and insurance provided for small business exports;

(D) the number of recipients of financing from the sums set aside who have not previously participated in the Bank's programs;

(E) the number of commitments entered into in amounts less than $500,000; and

(F) any recommendations for increasing the participation of banks and other institutions in the programs authorized under section 635(b)(1)(E) of this title.

(3) For the purpose of this subsection, the Bank's report shall be transmitted to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives.

(d) Actions taken by Bank to aid industries, preserve and create highly skilled jobs, and enhance opportunity for business growth and expansion; comments of Advisory Committee

(1) The report shall include a detailed description of all actions which have been taken by the Bank or which will be taken by the Bank—

(A) to maintain the competitive position of key linkage industries in the United States;

(B) to support industries which are engaged in the export of high value added products;

(C) to support industries which are engaged in the development of new capital goods technology;

(D) to preserve and create high skilled jobs in the United States economy; and

(E) to enhance the opportunity for growth and expansion of small businesses and entrepreneurial enterprises.

(2) Such report shall include the comments of the Advisory Committee regarding the objectives specified in paragraph (1).

(As amended Nov. 30, 1983, Pub. L. 98-181, title VI, §§ 618(b), 623, 97 Stat. 1259, 1262.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-181, § 618(b)(1), inserted "and of the activities of the member of the Board appointed to represent the interests of small business".

Subsec. (c). Pub. L. 98-181, § 618(b)(2), added subsec. (c).

Subsec. (d). Pub. L. 98-181, § 623, added subsec. (d).

§ 635i-1. Special facilities in support of United States exports

The Bank is authorized to establish general facilities consisting of guarantees and insurance in support of export transactions to Brazil in the aggregate amount of $1,500,000,000 and to Mexico in the aggregate amount of $500,000,000. No such guarantees may be made, or insurance issued, after March 31, 1985.

(July 31, 1945, ch. 341, § 13, as added Nov. 30, 1983, Pub. L. 98-181, title VI, § 619(a), 97 Stat. 1260.)

§ 635i-2. Capital level of Bank

After fiscal year 1983, if at the end of any fiscal quarter the value of the total capital stock and retained earnings of the Bank falls below 50 per centum of the value of the total capital stock and retained earnings of the Bank at the end of fiscal year 1983, the Board of Directors shall notify the Congress of the decrease in the level of the capital stock of the Bank not later than thirty days after the end of the fiscal quarter involved and the Congress shall take appropriate action.

(July 31, 1945, ch. 341, § 14, as added Nov. 30, 1983, Pub. L. 98-181, title VI, § 621, 97 Stat. 1261.)

SUBCHAPTER III—TIED AID CREDIT EXPORT SUBSIDIES

§ 635o. Congressional statement of purpose

The purpose of this subchapter is—

(1) to expand employment and economic growth in the United States by expanding United States exports to the markets of the developing world;

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(2) to stimulate the economic development of countries in the developing world by improving their access to credit for the importation of United States products and services for developmental purposes;

(3) to neutralize the predatory financing engaged in by many nations whose exports compete with United States exports, and thereby restore export competition to a market basis; and

(4) to encourage foreign governments to enter into effective and comprehensive agreements with the United States to end the use of tied aid credits for exports, and to limit and govern the use of export credit subsidies generally.

(Pub. L. 98–181, title VI, § 642, Nov. 30, 1983, 97 Stat. 1263.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this part", meaning part C (§§ 641–647) of title VI of Pub. L. 98–181, Nov. 30, 1983, 97 Stat. 1263, known as the Trade and Development Enhancement Act of 1983, which enacted this subchapter and section 1671g of Title 19, Customs Duties, and amended sections 1671a and 1671b of Title 19. For complete classification of this Act to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 641 of part C (§§ 641–647) of title VI of Pub. L. 98–181 provided that: "This part [enacting this subchapter and section 1671g of Title 19, Customs Duties, and amended sections 1671a and 1671b of Title 19] may be referred to as the 'Trade and Development Enhancement Act of 1983'."

§ 635p. Presidential mandate to negotiate; objectives

The President shall vigorously pursue negotiations to limit and set rules for the use of tied aid for exports. The negotiating objectives of the United States should include reaching agreements—

(1) to define the various forms of tied aid credit, particularly mixed credits under the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development (hereinafter in this subchapter referred to as the "Arrangement");

(2) to phase out the use of government-mixed credits by a date certain;

(3) to set rules governing the use of public-private cofinancing, or other forms of mixed financing, which may have the same result as government-mixed credits of drawing on concessional development assistance to produce subsidized export financing;

(4) to raise the threshold for notification of the use of tied aid credit to a 50 per centum level of concessionality;

(5) to improve notification procedures so that advance notification must be given on all uses of tied aid credit; and

(6) to prohibit the use of tied aid credit for production facilities for goods which are in structural oversupply in the world.

(Pub. L. 98–181, title VI, § 643, Nov. 30, 1983, 97 Stat. 1263.)

§ 635q. Establishment of tied aid credit program in United States Export-Import Bank

(a) Establishment and elements of program; cooperation with Agency for International Development and private institutions and entities

(1) The Chairman of the Export-Import Bank of the United States shall establish, within the Export-Import Bank of the United States, a program of tied aid credits for United States exports.

(2) The program shall be carried out in cooperation with the Agency for International Development and with private financial institutions or entities, as appropriate.

(3) The program may include—

(A) the combined use of the credits, loans, or guarantees offered by the Export-Import Bank of the United States with concessional financing or grants offered by the Agency for International Development, by methods including the blending of the financing of, or parallel financing by, the Bank and the Agency for International Development; and

(B) the combined use of credits, loans, or guarantees offered by the Bank, with financing offered by private financial institutions or entities, by methods including the blending of the financing of, or parallel financing by, the Bank and private institutions or entities.

(b) Purpose of program

The purpose of the tied aid credit program under this section is to offer or arrange for financing for the export of United States goods and services which is substantially as concessional as foreign financing for which there is reasonable proof that such foreign financing is being offered to, or arranged for, a bona fide foreign competitor for a United States export sale.

(c) Fund

The Chairman of the Bank is authorized to establish a fund, as necessary, for carrying out the tied aid credit program described in this section.

(d) Availability of concessional financing or grants

Concessional financing or grants offered by the Agency for International Development for the purposes of the mixed financing program established under this section shall be made available in accordance with the provisions of subsections (c) and (d) of section 635r of this title.

(Pub. L. 98–181, title VI, § 644, Nov. 30, 1983, 97 Stat. 1264.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 635s of this title.

§ 635r. Establishment of tied aid credit program in Agency for International Development

(a) Establisment and elements of program

The Administrator of the Agency for International Development shall establish within the Agency a program of tied aid credits for United States exports. The program shall be carried

out in cooperation with the Export-Import Bank of the United States and with private financial institutions or entities, as appropriate. The program may include—

(1) the combined use of the credits, loans, or guarantees offered by the Bank with concessional financing or grants offered by the Agency for International Development, by methods including the blending of the financing of, or parallel financing by, the Bank and the Agency for International Development; and

(2) the combination of concessional financing or grants offered by the Agency for International Development with financing offered by private financial institutions or entities, by methods including the blending of the financing of, or parallel financing by, the Agency for International Development and private institutions or entities.

(b) Combination of funds with financing by Export-Import Bank or private commercial financing

These funds may be combined with financing by the Export-Import Bank of the United States or private commercial financing in order to offer, or arrange for, financing for the exportation of United States goods and services which is substantially as concessional as foreign financing for which there is reasonable proof that such foreign financing is being offered to, or arranged for, a bona fide foreign competitor for a United States export sale.

(c) Limitation on use of Agency funds; authorization for establishment of fund

(1) Funds of the agency [1] for International Development which are used to carry out a tied aid credit program authorized by subsections (a) and (b) of this section shall be offered only to finance United States exports which can reasonably be expected to contribute to the advancement of the development objectives of the importing country or countries, and shall be consistent with the economic, security, and political criteria used to establish country allocations of Economic Support Funds.

(2) The Administrator of the Agency for International Development is authorized to establish a fund, as necessary, for carrying out a tied aid credit financing program as described in this section.

(d) Use of Economic Support Funds

The Administrator of the Agency for International Development may draw on Economic Support Funds allocated for Commodity Import Programs to finance a tied aid credit activity.

(Pub. L. 98-181, title VI, § 645, Nov. 30, 1983, 97 Stat. 1264.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 635q, 635s of this title.

§ 635s. Implementation

(a)(1) [2] The National Advisory Council on International Monetary and Financial Policies shall coordinate the implementation of the tied aid credit programs authorized by sections 635q and 635r of this title.

(2) No financing may be approved under the tied aid credit programs authorized by section 635q or 635r of this title without the unanimous consent of the members of the National Advisory Council on International Monetary and Financial Policies.

(Pub. L. 98-181, title VI, § 646, Nov. 30, 1983, 97 Stat. 1265.)

§ 635t. Definitions

For purposes of this subchapter—

(1) the term "tied aid credit" means credit—

(A) which is provided for development aid purposes;

(B) which is tied to the purchase of exports from the country granting the credit;

(C) which is financed either exclusively from public funds, or, as a mixed credit, partly from public and partly from private funds; and

(D) which has a grant element, as defined by the Development Assistance Committee of the Organization for Economic Cooperation and Development, greater than zero percent;

(2) the term "government-mixed credits" means the combined use of credits, insurance, and guarantees offered by the Export-Import Bank of the United States with concessional financing or grants offered by the Agency for International Development to finance exports;

(3) the term "public-private cofinancing" means the combined use of either official development assistance or official export credit with private commercial credit to finance exports;

(4) the term "blending of financings" means the use of various combinations of official development assistance, official export credit, and private commercial credit, integrated into a single package with a single set of financial terms, to finance exports;

(5) the term "parallel financing" means the related use of various combinations of separate lines of official development assistance, official export credits, and private commercial credit, not combined into a single package with a single set of financial terms, to finance exports; and

(6) the term "Bank" means the Export-Import Bank of the United States.

(Pub. L. 98-181, title VI, § 647, Nov. 30, 1983, 97 Stat. 1265.)

CHAPTER 7A—AGRICULTURAL MARKETING

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1150a of this title; title 15 sections 78*l*, 632.

§ 1141j. Miscellaneous provisions

CROSS REFERENCES

Small Business Administration disaster loans, eligibility of small agricultural cooperatives acting as asso-

[1] So in original. Probably should be "Agency".

[2] So in original. Section enacted without a subsec. (b).

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citations pursuant to this chapter, see section 632(j) of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 504; title 7 sections 499e, 2302; title 15 section 632; title 26 section 3131; title 28 section 2412; title 29 section 203; title 42 sections 410, 8802; title 49 sections 10526, 10529, 10562.

CHAPTER 11—FEDERAL HOME LOAN BANKS

§ 1422. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 248, 461 of this title; title 18 sections 215, 1344.

§ 1425a. Liquidity requirements

[See main edition for text of (a)]

(b) Minimum and maximum amounts; rules and regulations

(1) Any institution which is a member or which is an insured institution as defined in section 1724(a) of this title shall maintain the aggregate amount of its assets of the following types at not less than such amount as, in the opinion of the Board, is appropriate:

[See main edition for text of (A) to (C)]

(D) to such extent as the Board may so approve, shares or certificates of any open-end management investment company which is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] and the portfolio of which is restricted by such investment company's investment policy, changeable only if authorized by shareholder vote, solely to any of the obligations or other investments enumerated in subparagraphs (A) through (C), (F), and (G);

[See main edition for text of (E) to (G), (2); (c) to (f)]

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 207, 98 Stat. 2235.)

AMENDMENTS

1984—Subsec. (b)(1)(D). Pub. L. 98-479 substituted "subparagraphs (A) through (C), (F), and (G)" for "subparagraphs (A) through (C)".

§ 1428a. Federal Savings and Loan Advisory Council; creation; composition and duties

COMPENSATION, SUBSISTENCE AND TRAVEL EXPENSES

Provisions authorizing compensation for members and alternates of the Federal Savings and Loan Advisory Council, subject to section 7 of the Federal Advisory Committee Act set out in the Appendix to Title 5, Government Organization and Employees, and entitling them to reimbursement from the Board, as approved by the Board, for transportation expenses incurred in attending meetings of or concerned with the work of such Council and authorizing, in lieu of subsistence, per diem not to exceed the dollar amount set forth in section 5703 of Title 5 were contained in the following appropriation acts:

Nov. 25, 1985, Pub. L. 99-160, title III, § 301, 99 Stat. 938.

July 18, 1984, Pub. L. 98-371, title III, § 301, 98 Stat. 1235.

July 12, 1983, Pub. L. 98-45, title III, § 301, 97 Stat. 237.

§ 1431. Powers and duties of banks

[See main edition for text of (a) to (i)]

(j) Audits

Notwithstanding the provisions of section 9105(a)(1)(B) of title 31, audits by the General Accounting Office of the financial transactions of a Federal Home Loan Bank shall not be limited to periods during which Government capital has been invested therein. The provisions of sections 9107(c)(2) and 9108(d)(1) of title 31 shall not apply to any Federal Home Loan Bank.

[See main edition for text of (k); credits]

CODIFICATION

In subsecs. (i) (first par.) and (j), "chapter 31 of title 31" was substituted for "the Second Liberty Bond Act", and "section 9105(a)(1)(B) of title 31" and "sections 9107(c)(2) and 9108(d)(1) of title 31" were substituted for "the first sentence of section 202 of the Government Corporation Control Act [31 U.S.C. 857]" and "the first sentence of subsection (d) of section 303 of the Government Corporation Control Act [31 U.S.C. 868(d)]", respectively, on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Subsec. (j) is set out in this supplement to correct an error appearing in the main edition.

§ 1437. Federal Home Loan Bank Board; powers and duties; independent agency; report to Congress

(a) The board shall supervise the Federal Home Loan Banks created by this chapter, shall perform the other duties specifically prescribed by this chapter, and shall have power to adopt, amend, and require the observance of such rules, regulations, and orders as shall be necessary from time to time for carrying out the purposes of the provisions of this chapter. Notwithstanding any other provision of law, the Board may from time to time make such provision as it deems appropriate authorizing the performance by any officer, employee, agent, or administrative unit thereof of any function of the Board (including any function of the Federal Savings and Loan Insurance Corporation), except with regard to promulgation of rules and regulations in accordance with section 553 of title 5, and adjudications subject to section 554 of title 5. The board shall have power to suspend or remove any director, officer, employee, or agent of any Federal Home Loan Bank, the cause of such suspension or removal to be communicated in writing forthwith to such director, officer, employee, or agent, and to such Federal Home Loan Bank. Upon the expiration of the term of office of a member of the Board, such member may continue to serve until a successor has been appointed and qualified.

[See main edition for text of (b)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title VII, § 702(b), 97 Stat. 1267.)

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AMENDMENTS

1983—Subsec. (a). Pub. L. 98-181 added provision that upon the expiration of the term of office of a member of the Board, such member may continue to serve until a successor has been appointed and qualified.

CHAPTER 11A—FEDERAL HOME LOAN MORTGAGE CORPORATION

§ 1451. Definitions

As used in this chapter—

[*See main edition for text of (a) to (c)*]

(d) The term "mortgage" includes such classes of liens as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located or a manufactured home that is personal property under the laws of the State in which the manufactured home is located together with the credit instruments, if any, secured thereby, and includes interests in mortgages.

[*See main edition for text of (e) to (g)*]

(h) The term "residential mortgage" means a mortgage which (1) is a mortgage on real estate, in fee simple or under a leasehold having such term as may be prescribed by the Corporation, upon which there is located a structure or structures designed in whole or in part for residential use, or which comprises or includes one or more condominium units or dwelling units (as defined by the Corporation) and (2) has such characteristics and meets such requirements as to amount, term, repayment provisions, number of families, status as a lien on such real estate, and otherwise, as may be prescribed by the Corporation. The term "residential mortgage" also includes a loan or advance of credit insured under title I of the National Housing Act [12 U.S.C. 1702 et seq.] whose original proceeds are applied for in order to finance energy conserving improvements, or the addition of a solar energy system, to residential real estate. The term "residential mortgage" also includes a loan or advance of credit for such purposes, or made by a public utility and purchased by the Corporation pursuant to the first sentence of section 1454(a)(1) of this title, not having the benefit of such insurance and includes loans made where the lender relies for purposes of repayment primarily on the borrower's general credit standing and forecast of income, with or without other security. The term "residential mortgage" is also deemed to include a secured loan or advance of credit the proceeds of which are intended to finance the rehabilitation, renovation, modernization, refurbishment, or improvement of properties as to which the Corporation may purchase a "residential mortgage" as defined under the first sentence of this subsection. Such term shall also include other secured loans that are secured by a subordinate lien against a property as to which the Corporation may purchase a residential mortgage as defined under the first sentence of this subsection. A "secured loan or advance of credit" is one in which a security interest is taken in the rehabilitated, renovated, modernized, refurbished, or improved property. Such term shall also include a mortgage, lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of title 26, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation. The term "residential mortgage" also includes a loan or advance of credit secured by a mortgage or other lien on a manufactured home that is the principal residence of the borrower, without regard to whether the security property is real, personal, or mixed.

(i) The term "conventional mortgage" means a mortgage other than a mortgage as to which the Corporation has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

[*See main edition for text of (j) and (k)*]

(*l*) The term "mortgage insurance program" includes, in the case of a residential mortgage secured by a manufactured home, any manufactured home lending program under title I of the National Housing Act [12 U.S.C. 1702 et seq.].

(As amended Pub. L. 98-440, title II, §§ 202, 203(b)(1), 204, Oct. 3, 1984, 98 Stat. 1693-1695.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsecs. (h) and (*l*), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title I of the National Housing Act is classified generally to subchapter I (§ 1702 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-440, § 202(a), added reference to a manufactured home that is personal property under the laws of the State in which the manufactured home is located.

Subsec. (h). Pub. L. 98-440, § 203(b)(1), substituted "status as a lien" for "status as a first lien" and "Such term shall also include other secured loans that are secured by a subordinate lien against a property as to which the Corporation may purchase a residential mortgage as defined under the first sentence of this subsection" for "The maximum principal obligation of loans purchased by virtue of the preceding sentence shall not exceed the dollar limits prescribed by the Federal Home Loan Bank Board with respect to similar types of loans made by Federal savings and loan associations".

Pub. L. 98-440, § 202(b), added provision that the term "residential mortgage" also includes a loan or advance of credit secured by a mortgage or other lien on a manufactured home that is the principal residence of the borrower, without regard to whether the security property is real, personal, or mixed.

Subsec. (i). Pub. L. 98-440, § 204, substituted "any of its agencies or instrumentalities" for "a State or an agency or instrumentality of either".

Subsec. (*l*). Pub. L. 98-440, § 202(c), added subsec. (*l*).

§ 1452. Federal Home Loan Mortgage Corporation

[See main edition for text of (a) to (c)]

(d) Exemption from Federal, State, and local taxation; exception; applicability of other provisions

The Corporation, including its franchise, activities, capital, reserves, surplus, and income, shall be exempt from all taxation now or hereafter imposed by any territory, dependency, or possession of the United States or by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

[See main edition for text of (e) and (f)]

(As amended Pub. L. 98-369, div. A, title I, § 177(a), July 18, 1984, 98 Stat. 709.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369 struck out "by the United States," before "by any territory", substituted "possession of the United States" for "possession thereof," and struck out "The provisions of this subsection shall be applicable without regard to any other law, including without limitation on the generality of the foregoing section 3301 of title 26, except laws hereafter enacted by Congress expressly in limitation of this subsection."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369, effective Jan. 1, 1985, see section 177(d) of Pub. L. 98-369, set out as a note under section 172 of Title 26, Internal Revenue Code.

§ 1454. Purchase and sale of mortgages; residential mortgages; conventional mortgages; terms and conditions of sale or other disposition; authority to enter into, perform, and carry out transactions

(a) *[See main edition for text of (1)]*

(2) No conventional mortgage secured by a property comprising one- to four-family dwelling units shall be purchased under this section if the outstanding principal balance of the mortgage at the time of purchase exceeds 80 per centum of the value of the property securing the mortgage, unless (A) the seller retains a participation of not less than 10 per centum in the mortgage; (B) for such period and under such circumstances as the Corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the Corporation in the event that the mortgage is in default; or (C) that portion of the unpaid principal balance of the mortgage which is in excess of such 80 per centum is guaranteed or insured by a qualified insurer as determined by the Corporation. The Corporation shall not issue a commitment to purchase a conventional mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (A) of such sentence. The Corporation may purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration, or any other seller currently engaged in mortgage lending or investing activities. With respect to any transaction in which a seller contemporaneously sells mortgages originated more than one year old prior to the date of sale to the Corporation and receives in payment for such mortgages securities representing undivided interests only in those mortgages, the Corporation shall not impose any fee or charge upon an eligible seller which is not a member of a Federal Home Loan Bank which differs from that imposed upon an eligible seller which is such a member. The Corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the Corporation. Such limitations shall not exceed $93,750 for a mortgage secured by a single-family residence, $120,000 for a mortgage secured by a two-family residence, $145,000 for a mortgage secured by a three-family residence, and $180,000 for a mortgage secured by a four-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 1981. Each such adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the national average one-family house price in the monthly survey of all major lenders conducted by the Federal Home Loan Bank Board. With respect to mortgages secured by property comprising five or more family dwelling units, such limitations shall not exceed 125 per centum of the dollar amounts set forth in section 207(c)(3) of the National Housing Act [12 U.S.C. 1713(c)(3)], except that such limitations may be increased by the Corporation (taking into account construction costs) to not to exceed 240 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban Development determines under such section that cost levels require any increase in the dollar amount limitations under such section. The foregoing limitations may be increased by not to exceed 50 per centum with respect to properties located in Alaska, Guam, and Hawaii.

[See main edition for text of (3)]

(4)(A) The Corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in (i) until October 1, 1987, residential mortgages that are secured by a subordinate lien against a one- to four-family residence that is the principal residence of the mortgagor; and (ii) until October 1, 1985, residential mortgages that are secured by a subordinate lien against a property comprising five or more family dwelling units. If the Corporation shall have purchased, serviced, sold, or otherwise dealt with any other outstanding mortgage secured by the same residence, the

aggregate original amount of such other mortgage and the mortgage authorized to be purchased, serviced, sold, or otherwise dealt with under this paragraph shall not exceed the applicable limitation determined under paragraph (2).

(B) The Corporation shall establish limitations governing the maximum original principal obligation of such mortgages. In any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of such mortgage secured by a subordinate lien and not merely with respect to the interest purchased by the Corporation. Such limitations shall not exceed (i) with respect to mortgages described in subparagraph (A)(i), 50 per centum of the single-family residence mortgage limitation determined under paragraph (2); and (ii) with respect to mortgages described in subparagraph (A)(ii), the applicable limitation determined under paragraph (2).

(C) No subordinate mortgage against a one- to four-family residence shall be purchased by the Corporation if the total outstanding indebtedness secured by the property as a result of such mortgage exceeds 80 per centum of the value of such property unless (i) that portion of such total outstanding indebtedness that exceeds such 80 per centum is guaranteed or insured by a qualified insurer as determined by the Corporation; (ii) the seller retains a participation of not less than 10 per centum in the mortgage; or (iii) for such period and under such circumstances as the Corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the Corporation in the event that the mortgage is in default. The Corporation shall not issue a commitment to purchase a subordinate mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (iii) of such sentence.

[*See main edition for text of* (b)]

(As amended Pub. L. 98-440, title II, §§ 201(b), 203(b)(2), 205(b), 206(b), Oct. 3, 1984, 98 Stat. 1693-1696.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-440, § 205(b), which directed the insertion of "secured by a property comprising one- to four-family dwelling units" after "mortgages" where first appearing in first sentence was executed by inserting that phrase after "No conventional mortgage" as the probable intent of Congress.

Pub. L. 98-440, § 201(b), substituted "The Corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the Corporation" for "The Corporation shall establish limitations governing the maximum principal obligation of conventional mortgages purchased by it".

Pub. L. 98-440, § 206(b), added provision that the limitations set forth in section 1713(c)(3) of this title may be increased by the Corporation (taking into account construction costs) to not to exceed 240 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban Development determines under such section that cost levels required any increase in the dollar amount limitations under such section.

Subsec. (a)(4). Pub. L. 98-440, § 203(b)(2), added par. (4).

§ 1455. Obligations and securities of the Corporation

[*See main edition for text of* (a) *to* (e)]

(f) Preferred stock

The Corporation may have preferred stock on such terms and conditions as the Board of Directors shall prescribe. Any preferred stock shall not affect the status of the capital stock issued under section 1453 of this title as nonvoting common stock, and shall not be entitled to vote with respect to the election of any member of the Board of Directors. Such preferred stock, or any class thereof, may have such terms as would be required for listing of preferred stock on the New York Stock Exchange, except that this sentence does not apply to any preferred stock, or class thereof, the initial sale of which is made directly or indirectly by the Corporation exclusively to any Federal Home Loan Bank or Banks.

(g) Securities exempt from regulation

All securities issued or guaranteed by the Corporation (other than securities guaranteed by the Corporation that are backed by mortgages not purchased by the Corporation) shall, to the same extent as securities that are direct obligations of or obligations guaranteed as to principal or interest by the United States, be deemed to be exempt securities within the meaning of the laws administered by the Securities and Exchange Commission.

(h) Securities backed by mortgages not purchased by Corporation

The Corporation may not guarantee mortgage-backed securities or mortgage related payment securities backed by mortgages not purchased by the Corporation.

(As amended Pub. L. 98-35, § 5, May 26, 1983, 97 Stat. 198; Pub. L. 98-440, title II, §§ 210, 211, Oct. 3, 1984, 98 Stat. 1697.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-440, § 211, added provisions that preferred stock shall not be entitled to vote with respect to the election of any member of the Board of Directors and that such preferred stock, or any class thereof, may have such terms as would be required for listing of preferred stock on the New York Stock Exchange, except for any preferred stock, or class thereof, the initial sale of which is made directly or indirectly by the Corporation exclusively to any Federal Home Loan Bank or Banks.

Subsec. (h). Pub. L. 98-440, § 210, added subsec. (h).

1983—Subsec. (g). Pub. L. 98-35 added subsec. (g).

§ 1457. Prohibited activities; penalties for violations by organizations, officers and members of organizations, and individuals; extension of provisions of title 18

[*See main edition for text of* (a) *to* (e)]

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(f) The terms "obligation or other security" and "obligations or other securities", wherever used (with or without the words "of the United States") in sections 471 to 476, both inclusive, and section 492 of such title 18, are extended to include any obligation or other security of or issued by the Corporation. Any reference in sections 474, 494, 495, and 642 of such title 18 to the United States, except in a territorial sense, or to the Secretary of the Treasury is hereby extended to include the Corporation. Section 477 of such title 18 is extended to apply with respect to section 476 of such title as extended by the first sentence of this subsection, and for this purpose the term "United States" as used in such section 476 shall include the Corporation.

(As amended Pub. L. 98-479, title II, § 204(h), Oct. 17, 1984, 98 Stat. 2233.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-479 substituted "United States" for "United States Code" before ", except in a territorial sense".

CHAPTER 12—FEDERAL SAVINGS AND LOAN ASSOCIATIONS

§ 1464. Thrift institutions

[*See main edition for text of (a) and (b)*]

(c) Investment authority

An association may to such extent, and subject to such rules and regulations as the Board may prescribe from time to time, invest in, sell, or otherwise deal with the following loans, or other investments:

(1) Loans or investments without percentage of assets limitation

Without limitation as a percentage of assets, the following are permitted:

[*See main edition for text of (A) to (R)*]

(S) Mortgage backed securities

Investments in securities that—

(i) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or

(ii) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both.

[*See main edition for text of (2) to (5)*]

(d) Proceedings to enforce compliance with law and regulations; cease and desist proceedings; temporary cease-and-desist orders; suspension or removal of directors or officers; appointment and removal of conservator or receiver; hearings and judicial review; regulations for reorganization, dissolutions, etc.; penalties; definitions; application to other institutions

[*See main edition for text of (1) to (5)*]

(6)(A) The grounds for the appointment of a conservator or receiver for an association shall be one or more of the following: (i) insolvency in that the assets of the association are less than its obligations to its creditors and others, including its members; (ii) substantial dissipation of assets or earnings due to any violation or violations of law, rules, or regulations, or to any unsafe or unsound practice or practices; (iii) an unsafe or unsound conditions to transact business; (iv) willful violation of a cease-and-desist order which has become final; (v) concealment of books, papers, records, or assets of the association or refusal to submit books, papers, records, or affairs of the association for inspection to any examiner or to any lawful agent of the Board. The Board shall have exclusive power and jurisdiction to appoint a conservator or receiver. If, in the opinion of the Board, a ground for the appointment of a conservator or receiver as herein provided exists, the Board is authorized to appoint ex parte and without notice a conservator or receiver for the association. In the event of such appointment, the association may, within thirty days thereafter, bring an action in the United States district court for the judicial district in which the home office of such association is located, or in the United States District Court for the District of Columbia, for an order requiring the Board to remove such conservator or receiver, and the court shall upon the merits dismiss such action or direct the Board to remove such conservator or receiver. Upon the commencement of such an action, the court having jurisdiction of any other action or proceeding authorized under this subsection to which the association is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

[*See main edition for text of (B) to (D), (7) to (15); (e) to (r)*]

(As amended Oct. 3, 1984, Pub. L. 98-440, title I, § 105(a), 98 Stat. 1691; Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(9), 98 Stat. 3357.)

REFERENCES IN TEXT

The Housing and Urban Development Act of 1968, as amended, referred to in subsec. (c)(1)(N), (O), is Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 476, as amended. Title IX of the Housing and Urban Development Act of 1968, as amended, is classified principally to chapter 49 (§ 3931 et seq.) of Title 42, The Public Health and Welfare. Title IV of the Housing and Urban Development Act, which was classified to chapter 48 (§ 3901 et seq.) of Title 42, was repealed, with certain exceptions which were omitted from the Code, by Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1701 of this title and Tables.

AMENDMENTS

1984—Subsec. (c)(1)(S). Pub. L. 98-440 added subpar. (S).

Subsec. (d)(6)(A). Pub. L. 98-620 struck out provision that such proceedings had to be given precedence over other cases pending in such courts, and had to be in every way expedited.

1982—Subsec. (o). Pub. L. 97-320, §§ 112, 141(a)(2), added subsec. (o), and provided that subpars. (F) and

(G) of par. (2) of subsec. (o) are repealed Apr. 15, 1986. See Effective and Termination Dates of 1982 Amendment note set out below.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENT

Section 141 of Pub. L. 97-320, as amended by Pub. L. 99-120, § 6(a), Oct. 8, 1985, 99 Stat. 504, provided that:

"(a) Effective on April 15, 1986—

"(1) section 13(c)(5) of the Federal Deposit Insurance Act [section 1823(c)(5) of this title], as added by section 111 of this Act, shall be repealed;

"(2) subparagraphs (F) and (G) of section 5(o)(2) of the Home Owners' Loan Act of 1933 [section 1464(o)(2) of this title], as added by section 112 of this Act, shall be repealed;

"(3) the provision of law amended by section 116 of this Act [section 1823(f) of this title] shall be amended to read as it would without such amendment;

"(4) the provisions of law amended by subsections (a) [section 1843(c)(8) of this title] and (c) [section 1842(d) of this title] of section 118 shall be amended to read as they would without such amendments;

"(5) the provision of law amended by section 121 of this Act [section 1464(p) of this title] shall be amended to read as it would without such amendment;

"(6) the provisions of law amended by subsections (d) through (g) of section 122 of this Act [section 1729(c), (d) of this title] shall be amended to read as they would without such amendments;

"(7) the provisions of law amended by section 123 of this Act [section 1730a(e)(2), (m) of this title] shall be amended to read as they would without such amendments; and

"(8) the provisions of law amended by sections 131 [section 1785(h), (i) of this title] and 132 [section 1786(b)(2), (h)–(p) of this title] shall be amended to read as they would without such amendments.

"(b) The repeal or termination by subsection (a) of any amendment made by this Act shall have no effect on any action taken or authorized while such amendment was in effect."

CHAPTER 13—NATIONAL HOUSING

Sec.

1701g-5a. Transfer of New Communities Fund assets and liabilities.

1701g-5b. Liquidation of New Communities Program; cancellation of debt.
- (a) Law applicable.
- (b) Availability of revolving fund moneys for administrative and other expenses.
- (c) Issuance of obligations to Secretary of the Treasury.
- (d) Cancellation of obligations.

1701p-1. Periodic report on residential mortgage delinquencies and foreclosures.

1701r-1. Pet onwership in assisted rental housing for the elderly or handicapped.
- (a) Restrictions on ownership.
- (b) Rules and regulations.
- (c) Removal of pets constituting a nuisance.
- (d) "Federally assisted rental housing for the elderly or handicapped" defined.

1701z-10a. Biennial survey of economic and housing market conditions.

SUBCHAPTER II—MORTGAGE INSURANCE

Sec.

1709-1. Repealed.

1715z-12. Single-family mortgage insurance on Hawaiian home lands.
- (a) One- to four-family residence; eligibility.
- (b) Construction advances.
- (c) "Native Hawaiian" and "Hawaiian home lands" defined.

1715z-13. Single family mortgage insurance on Indian reservations.
- (a) One- to four-family residence; eligibility.
- (b) Construction advances; percentage limitation on amount of principal obligation; pledge of income from tribal resources or assets.
- (c) Lack of tribal or trust fund income.
- (d) Availability of tribal eviction procedures.
- (e) Assumption of mortgage.
- (f) Availability of status and payment history of loans; entitlement to benefit of insurance; reinstatement of loan upon cure of default; garnishment proceedings; foreclosure proceedings.
- (g) Premium charge for insurance; report to Congress.
- (h) "Indian tribe" and "trust or otherwise restricted land" defined.

1715z-14. Reinsurance contracts.
- (a) Demonstration mortgage reinsurance program; areas; number of mortgages.
- (b) One- to four-family dwellings; requirements for private mortgage insurance companies.
- (c) Required contract provisions.
- (d) Mortgages offered for inclusion by Secretary.

1715z-15. Limitation on prepayment of mortgages on multifamily rental housing.
- (a) Acceptance of offer to prepay; qualifications.
- (b) Existing right to prepay; priority for additional assistance.
- (c) Responsibilities of owner receiving additional assistance.
- (d) "Lower income families" defined.

1715z-16. Adjustable rate single family mortgages.
- (a) One- to four-family dwellings; maximum term of mortgage; adjustments in effective rate of interest.
- (b) Written explanation of mortgage features.
- (c) Number of mortgages and loans.

1715z-17. Shared appreciation mortgages for single family housing.
- (a) One- to four-family dwellings; requirements.
- (b) Payment of mortgagee's share of net appreciated value; "net appreciated value" defined.
- (c) Entitlement of mortgagee upon default.

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Sec.
(d) Inapplicability of State constitution, statute, etc., limiting or prohibiting increases in outstanding loan balance.
(e) Encouraged use of insurance by low and moderate income families.
(f) Consumer protections and disclosure requirements.
(g) Number of mortgages and loans.
1715z-18. Shared appreciation mortgages for multi-family housing.
(a) Five or more family units; requirements.
(b) Payment of mortgagee's share of net appreciated value; term of mortgage; repayment; "net appreciated value" defined.
(c) Entitlement of mortgagee upon default.
(d) Maximum percentage of net appreciated value; disclosure requirements.
(e) Inapplicability of State constitution, statute, etc., limiting or prohibiting increases in outstanding loan balance.
(f) Number of dwelling units.

SUBCHAPTER III—NATIONAL MORTGAGE ASSOCIATIONS

1720. Repealed.
1723e, 1723f. Repealed.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1454, 1464, 1701r-1, 1701z-7, 1701z-11, 1709a, 1715z-1a, 2710, 3802 of this title; title 7 section 1933; title 11 section 362; title 15 section 77ddd; title 38 section 1804; title 40 section 474; title 40 App. section 213; title 42 sections 1490a, 2322, 3012; title 48 section 1425.

§ 1701. Short title

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-440, § 1, Oct. 3, 1984, 98 Stat. 1689, provided: "That this Act [enacting section 77r-1 of Title 15, Commerce and Trade, and amending sections 24, 1451, 1454, 1455, 1464, 1717, 1723, 1723a, 1723c, and 1757 of this title and sections 78c, 78g, 78h, and 78k of Title 15] may be cited as the 'Secondary Mortgage Market Enhancement Act of 1984'."

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98-181, § 1(a), Nov. 30, 1983, 97 Stat. 1155, provided that: "Titles I through XI of this Act [enacting sections 635l-1, 635l-2, 635o to 635t, 1701g-5b, 1701p-1, 1701r-1, 1701z-10a, 1715z-12 to 1715z-18, and 3901 to 3912 of this title, section 1671g of Title 19, Customs Duties, sections 276c-3, 283z-3, 285x, 285y, 286b-2, 286e-11, 286y, 286z, 286aa to 286gg, and 290g-12 of Title 22, Foreign Relations and Intercourse, and sections 1437o to 1437q, 1490k to 1490o, and 3542 of Title 42, The Public Health and Welfare, amending sections 635, 635a, 635a-2, 635a-3, 635a-4, 635b, 635e, 635f, 635g, 1437, 1701j-2, 1701j-3, 1701q, 1701s, 1701x, 1701z-1, 1703, 1706d, 1706e, 1707, 1709, 1710, 1713, 1715e, 1715h, 1715k, 1715l, 1715n, 1715u, 1715v, 1715w, 1715y, 1715z, 1715z-1, 1715z-1a, 1715z-5, 1715z-6, 1715z-7, 1715z-9, 1715z-10, 1721, 1735, 1735b, 1735c, 1735f-4, 1735f-8, 1735f-9, 1748h-1, 1748h-2, 1749bb, 1749aaa, 1749bbb to 1749bbb-2, 1749bbb-5 to 1749bbb-20, 1812, 2602, 2607, 2614, 2617, 2803, 2807, 2809, 2810, 3202, 3602, 3606, 3609, 3612, 3618, 3620, 3703, and 3804 of this title, sections 1671a and 1671b of Title 19, sections 262d, 286b, 286c, 286e-2, and 286q of Title 22, sections 1437a, 1437c, 1437d, 1437f, 1437g, 1437n, 1437l, 1439, 1452, 1452b, 1456, 1471, 1472, 1474, 1476, 1479 to 1481, 1483 to 1487, 1490, 1490a, 1490c, 1490e, 1490f, 1490j, 1500c-2, 2414, 3103, 3936, 4003, 4011 to 4020, 4022 to 4025, 4026, 4027, 4041, 4051 to 4054, 4055, 4056, 4071, 4072, 4081 to 4084, 4101 to 4107, 4121 to 4123, 4127, 4128, 5301, 5302 to 5308, 5312, 5316, 5318, 6872, 8007, 8010, and 8107 of Title 42, and section 2166 of the Appendix to Title 50, War and National Defense, repealing sections 1709-1, 1720, and 1723e of this title, section 484b of Title 40, Public Buildings, Property, and Works, and sections 1482, 1490g, 1490i, 1500c, 3901, 3902 to 3906, 3908, 3909, 3911, 3914, 4511 to 4524, and 4528 to 4532 of Title 42, enacting provisions set out as notes under sections 635, 635a, 635o, 1701q, 1701z-6, 1709, 1713, 1715z-14, 1720, 2602, 3620, and 3901 of this title, section 484b of Title 40, and sections 602, 1436a, 1437a, 1437f, 1441, 1472, 1490a, 3901, 4015, 4122, 4518, 5316, and 5318 of Title 42, amending provisions set out as notes under section 5301 of Title 42, and repealing provisions set out as notes under sections 1709-1 and 1723 of this title and sections 1437a and 3901 of Title 42] may be cited as the 'Domestic Housing and International Recovery and Financial Stability Act'."

Pub. L. 98-181, § 1(b), Nov. 30, 1983, 97 Stat. 1155, provided that: "Titles I through V of this Act [enacting sections 1701g-5b, 1701p-1, 1701r-1, 1701z-10a, and 1715z-12 to 1715z-18 of this title and sections 1437o to 1437q, 1490k to 1490o, and 3542 of Title 42, The Public Health and Welfare, amending sections 1701j-2, 1701j-3, 1701q, 1701s, 1701x, 1701z-1, 1703, 1706d, 1706e, 1707, 1709, 1710, 1713, 1715e, 1715h, 1715k, 1715l, 1715n, 1715u, 1715v, 1715w, 1715y, 1715z, 1715z-1, 1715z-1a, 1715z-5, 1715z-6, 1715z-7, 1715z-9, 1715z-10, 1721, 1735, 1735b, 1735c, 1735f-4, 1735f-8, 1735f-9, 1748h-1, 1748h-2, 1749bb, 1749aaa, 1749bbb to 1749bbb-2, 1749bbb-5 to 1749bbb-20, 2602, 2607, 2614, 2617, 3602, 3606, 3609, 3612, 3618, 3620, 3703, and 3804 of this title, and sections 1437a, 1437c, 1437d, 1437f, 1437g, 1437n, 1437l, 1439, 1452, 1452b, 1456, 1471, 1472, 1474, 1476, 1479 to 1481, 1483 to 1487, 1490, 1490a, 1490c, 1490e, 1490f, 1490j, 1500c-2, 2414, 3103, 3936, 4003, 4011 to 4020, 4022 to 4025, 4026, 4027, 4041, 4051 to 4054, 4055, 4056, 4071, 4072, 4081 to 4084, 4101 to 4107, 4121 to 4123, 4127, 4128, 5301, 5302 to 5308, 5312, 5316, 5318, 6872, 8007, 8010, and 8107 of Title 42, repealing sections 1709-1, 1720, and 1723e of this title, section 484b of Title 40, Public Buildings, Property, and Works, and sections 1482, 1490g, 1490i, 1500c, 3901, 3902 to 3906, 3908, 3909, 3911, 3914, 4511 to 4524, and 4528 to 4532 of Title 42, enacting provisions set out as notes under sections 1701q, 1701z-6, 1709, 1713, 1715z-14, 1720, 2602, and 3620 of this title, section 484b of Title 40, and sections 602, 1436a, 1437a, 1437f, 1441, 1472, 1490a, 3901, 4015, 4122, 4518, 5316, and 5318 of Title 42, amending provisions set out as notes under section 5301 of Title 42, and repealing provisions set out as notes under sections 1709-1 and 1723 of this title and sections 1437a and 3901 of Title 42] may be cited as the 'Housing and Urban-Rural Recovery Act of 1983'."

§ 1701c. Secretary of Housing and Urban Development

In carrying out his functions, powers, and duties—

(a) Employment of personnel; delegation of functions

The Secretary of Housing and Urban Development may appoint such officers and employees as he may find necessary, which appointments shall be subject to the civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5. The Secretary may make such expenditures as may be necessary to carry out his

functions, powers, and duties, and there are authorized to be appropriated to the Secretary, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out such functions, powers, and duties and for administrative expenses in connection therewith. The Secretary, without in any way relieving himself from final responsibility, may delegate any of his functions and powers to such officers, agents, or employees as he may designate, may authorize such successive redelegations of such functions and powers, as he may deem desirable, and may make such rules and regulations as may be necessary to carry out his functions, powers, and duties.

(b) Additional powers and duties of Secretary and Federal Home Loan Bank Board

The Secretary of Housing and Urban Development and the Federal Home Loan Bank Board (which term as used in this section shall also include and refer to the Federal Savings and Loan Insurance Corporation, the Home Owners' Loan Corporation, and the Chairman of the Federal Home Loan Bank Board), respectively, may, in addition to and not in derogation of any powers and authorities conferred elsewhere in this Act.

(1) with the consent of the agency or organization concerned, accept and utilize equipment, facilities, or the services of employees of any State or local public agency or instrumentality, educational institution, or nonprofit agency or organization and, in connection with the utilization of such services, may make payments for transportation while away from their homes or regular places of business and per diem in lieu of subsistence en route and at place of such service, in accordance with the provisions of section 5703 of title 5;

(2) utilize, contract with and act through, without regard to section 5 of title 41, any Federal, State, or local public agency or instrumentality, educational institution, or nonprofit agency or organization with the consent of the agency or organization concerned, and any funds available to said officers for carrying out their respective functions, powers, and duties shall be available to reimburse or pay any such agency or organization; and, whenever in the judgment of any such officer necessary, he may make advance, progress, or other payments with respect to such contracts without regard to the provisions of subsections (a) and (b) of section 3324 of title 31;

[See main edition for text of (3); (c)]

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, §§ 202(b), 203(c), 98 Stat. 2228, 2229.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-479, § 202(b)(1), substituted "chapter 51 and subchapter III of chapter 53 of title 5" for "the Classification Act of 1949, as amended".

Subsec. (b)(1). Pub. L. 98-479, § 202(b)(2), substituted "section 5703 of title 5" for "5 U.S.C. 73b-2".

Subsec. (b)(2). Pub. L. 98-479, § 203(c), substituted "subsections (a) and (b) of section 3324 of title 31" for "section 3648 of the Revised Statutes [31 U.S.C. 529]".

§ 1701g-5. Revolving fund in connection with liquidating programs

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701g-5a, 1701g-5b of this title; title 42 sections 1585, 5317.

§ 1701g-5a. Transfer of New Communities Fund assets and liabilities

The Secretary shall transfer all assets and liabilities of the fund established pursuant to section 717 of the Housing and Urban Development Act of 1970, as amended (42 U.S.C. 4518), to the Revolving fund (liquidating programs) established pursuant to title II of the Independent Offices Appropriation Act, 1955, as amended (12 U.S.C. 1701g-5).

(Pub. L. 98-45, title I, § 101, July 12, 1983, 97 Stat. 223.)

REFERENCES IN TEXT

Section 717 of the Housing and Urban Development Act of 1970, as amended (42 U.S.C. 4518), referred to in text, was repealed by Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239, but remaining in effect until completion of the transfer required in title I of the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984.

The Independent Offices Appropriation Act, 1955, as amended, referred to in text, is act June 24, 1954, ch. 359, 68 Stat. 272, as amended. Provisions of title II of this Act relating to the establishment of the revolving fund (liquidating programs) are classified to section 1701g-5 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984, and not as part of the National Housing Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1701g-5b of this title.

§ 1701g-5b. Liquidation of New Communities Program; cancellation of debt

(a) Law applicable

In order to provide for the management and orderly liquidation of the assets, and discharge the liabilities, acquired or incurred in connection with the new communities program authorized pursuant to title IV of the Housing and Urban Development Act of 1968 [42 U.S.C. 3901 et seq.] and title VII of the Housing and Urban Development Act of 1970 [42 U.S.C. 4501 et seq.] (hereafter referred to in this section as "title IV" and "title VII", respectively), the liquidation of the new communities program shall be carried out pursuant to the provisions of law applicable to the revolving fund (liquidating programs) established pursuant to title II of the Independent Offices Appropriations Act, 1955 [12 U.S.C. 1701g-5], upon the transfer by the Secretary of Housing and Urban Development (hereafter in this section referred to as the "Secretary") of the assets and liabilities of the fund authorized under section 717 of title VII [42 U.S.C. 4518] to such revolving fund, as required in title I of the Department of Hous-

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ing and Urban Development-Independent Agencies Appropriation Act, 1984 [12 U.S.C. 1701g-5a]. The Secretary shall report to the Congress not less than sixty days prior to taking any action with respect to the disposition of real property (other than a purchase money mortgage) which involves any further potential liability of or assistance from the Department of Housing and Urban Development with respect to any property so transferred.

(b) Availability of revolving fund moneys for administrative and other expenses

In carrying out the purposes of subsection (a) of this section, all moneys in the revolving fund (liquidating programs) shall be available for necessary administrative and other expenses of servicing and liquidating obligations guaranteed pursuant to section 403 and section 713 of title IV and title VII, respectively [42 U.S.C. 3902, 4514], including costs of services (including legal services) performed on a contract or fee basis, and to discharge any other liability acquired or incurred in connection with the new communities program. Notwithstanding any other provision of law relating to the acquisition, handling, improvement, or disposal of real and other property by the United States, the Secretary of Housing and Urban Development shall also have power, for the protection of the interests of the revolving fund (liquidating programs), to pay out of any moneys in such fund all expenses or charges in connection with the acquisition, handling, improvement, or disposal of any property, real or personal, acquired by the Secretary either prior or subsequent to November 30, 1983, as a result of recoveries under security, subrogation, or other rights in connection with the new communities program.

(c) Issuance of obligations to Secretary of the Treasury

After making the transfer required in title I of the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984 [12 U.S.C. 1701g-5a], the Secretary of Housing and Urban Development may issue obligations to the Secretary of the Treasury in an amount sufficient to enable the Secretary of Housing and Urban Development to satisfy any guarantee made pursuant to section 403 or 713 of title IV or title VII, respectively [42 U.S.C. 3902, 4514], and otherwise carry out the functions authorized by this section. The obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations so issued, and for that purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include purchases of obligations issued under this subsection.

(d) Cancellation of obligations

Upon the transfer required in title I of the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984 [12 U.S.C. 1701g-5a], each obligation issued by the Secretary of Housing and Urban Development to the Secretary of the Treasury pursuant to section 407(a) or 717(b) of title IV or title VII, respectively [42 U.S.C. 3906(a), 4518(b)], together with any promise to repay the principal and unpaid interest which has accrued on each obligation, and any other term or condition specified by each such obligation, is canceled.

(Pub. L. 98-181, title IV, § 474(a)-(d), Nov. 30, 1983, 97 Stat. 1238, 1239.)

REFERENCES IN TEXT

The Housing and Urban Development Act of 1968, referred to in subsec. (a), is Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 476, as amended. Title IV of the Housing and Urban Development Act, which was classified to chapter 48 (§ 3901 et seq.) of Title 42, The Public Health and Welfare, was repealed, with certain exceptions which were omitted from the Code, by Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239. Sections 403 and 407 of the Housing and Urban Development Act of 1968 were classified to sections 3902 and 3906, respectively, of Title 42, and were repealed by section 474(e) of Pub. L. 98-181. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1701 of this title and Tables.

The Housing and Urban Development Act of 1970, referred to in subsec. (a), is Pub. L. 91-609, Dec. 31, 1970, 84 Stat. 1770, as amended. Title VII of the Housing and Urban Development Act of 1970, known as the Urban Growth and New Community Development Act of 1970, is classified principally to chapter 59 (§ 4501 et seq.) of Title 42. Sections 713 and 717 of the Housing and Urban Development Act of 1970 were classified to sections 4514 and 4518, respectively, of Title 42, and were repealed by Pub. L. 98-181, title IV, § 474(e), Nov. 30, 1983, 97 Stat. 1239. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 1701 of this title and Tables.

The Independent Offices Appropriation Act, 1955, as amended, referred to in subsec. (a), is act June 24, 1954, ch. 359, 68 Stat. 272, as amended. Provisions of title II of this Act relating to the establishment of the revolving fund (liquidating programs) are classified to section 1701g-5 of this title. For complete classification of this Act to the Code, see Tables.

The Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1984, referred to in subsecs. (a), (c), and (d), is Pub. L. 98-45, July 12, 1983, 97 Stat. 219. Provisions of title I of this Act requiring the transfer of assets and liabilities to the revolving fund (liquidating programs) are classified to section 1701g-5a of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Housing and Urban-Rural Recovery Act of 1983 and also as part of the Domestic Housing and International Recovery and Financial Stability Act, and not as part of the National Housing Act which comprises this chapter.

§ 1701h. Advisory committees; payment of transportation and other expenses

The Secretary of Housing and Urban Development is authorized to establish such advisory committee or committees as he may deem necessary in carrying out any of his functions, powers, and duties under this or any other Act or authorization. Persons serving without com-

pensation as members of any such committee may be paid transportation expenses and not to exceed $25 per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 202(c), 98 Stat. 2228.)

AMENDMENTS

1984—Pub. L. 98-479 substituted "section 5703 of title 5" for "section 5 of the Act of August 2, 1946 (5 U.S.C. 73b-2)".

§ 1701j-2. National Institute of Building Sciences

[*See main edition for text of* (a) *to* (g)]

(h) Authorization of appropriations

There is authorized to be appropriated to the Institute not to exceed $5,000,000 for the fiscal year 1975, and $5,000,000 for the fiscal year 1976, and $5,000,000 for each of the fiscal years 1977 and 1978, and any amounts not appropriated in fiscal years 1977 and 1978 may be appropriated in any fiscal year through 1984 (with not more than $500,000 to be appropriated for each of the fiscal years 1982, 1983, and 1984 and with each appropriation to be available until expended), to provide the Institute with initial capital adequate for the exercise of its functions and responsibilities during such years; and thereafter the Institute shall be financially self-sustaining through the means described in subsection (f) of this section. In addition to the amounts authorized to be appropriated under the first sentence of this section, there is authorized to be appropriated to the Institute to carry out the provisions of this section not to exceed $250,000 for fiscal year 1984. Any amount appropriated under the preceeding [1] sentence shall be made available for expenditure or obligation by the Institute only to the extent of an equal amount received by the Institute after November 30, 1983, from persons or entities other than the Federal Government.

[*See main edition for text of* (i)]

(As amended Pub. L. 98-181, title IV, § 462, Nov. 30, 1983, 97 Stat. 1232.)

AMENDMENTS

1983—Subsec. (h). Pub. L. 98-181 added provisions relating to the appropriation of not to exceed $250,000 for fiscal 1984, such amount to be made available for expenditure only to the extent of an equal amount received from persons or entities other than the Federal Government.

NATIONAL INSTITUTE OF BUILDING SCIENCES TRUST FUND; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 98-396, title I, § 101, Aug. 22, 1984, 98 Stat. 1384, provided that: "There is appropriated out of funds not otherwise appropriated, the sum of $5,000,000 to a 'National Institute of Building Sciences Trust Fund' which is hereby established in the Treasury of the United States: *Provided*, That the Secretary shall invest such funds in U.S. Treasury special issue securities at a fixed rate of ten per centum per annum, that such interest shall be credited to the Trust Fund on a quarterly basis, and that the Secretary shall make quarterly disbursements from such interest to the National Institute of Building Sciences: *Provided further*, That the total amount of such payment during any fiscal year may not exceed $500,000 or the amount equivalent to non-Federal funds received by the Institute during the preceding fiscal year, whichever is less: *Provided further*, That any amount of interest not used for any such annual payment shall be paid into the general fund of the Treasury: *Provided further*, That the appropriation of $5,000,000 made in this paragraph shall revert to the Treasury, on October 1, 1989, and the National Institute of Building Sciences Trust Fund shall terminate following the final quarterly disbursement of interest provided for in this paragraph."

§ 1701j-3. Preemption of due-on-sale prohibitions

[*See main edition for text of* (a) *to* (c)]

(d) Exemption of specified transfers or dispositions

With respect to a real property loan secured by a lien on residential real property containing less than five dwelling units, including a lien on the stock allocated to a dwelling unit in a cooperative housing corporation, or on a residential manufactured home, a lender may not exercise its option pursuant to a due-on-sale clause upon—

[*See main edition for text of* (1) *to* (9); (e) *to* (g)]

(As amended Pub. L. 98-181, title IV, § 473, Nov. 30, 1983, 97 Stat. 1237.)

AMENDMENTS

1983—Subsec. (d). Pub. L. 98-181 substituted "With respect to a real property loan secured by a lien on residential real property containing less than five dwelling units, including a lien on the stock allocated to a dwelling unit in a cooperative housing corporation, or on a residential manufactured home, a lender" for "A lender".

§ 1701p-1. Periodic report on residential mortgage delinquencies and foreclosures

As soon as practicable following November 30, 1983, the Secretary of Housing and Urban Development, with the cooperation of the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Comptroller of the Currency, shall develop a method of accurately reporting to the Congress on a periodic basis with respect to residential mortgage delinquencies and foreclosures. Each such report shall include information with respect to the number of residential mortgage foreclosures, and the number of sixty- and ninety-day residential mortgage delinquencies, in the Nation and in each State.

(Pub. L. 98-181, title IV, § 469, Nov. 30, 1983, 97 Stat. 1237.)

CODIFICATION

Section was enacted as part of the Housing and Urban-Rural Recovery Act of 1983 and also as part of the Domestic Housing and International Recovery and Financial Stability Act, and not as part of the National Housing Act which comprises this chapter.

[1] So in original. Probably should be "preceding".

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§ 1701q. Loans for housing and related facilities for elderly or handicapped families

(a) Purpose; authorization; amount; terms and conditions; revolving fund; issuance of obligations; aggregate amount; purchase and sale by Secretary of Treasury; public debt transactions; availability of fund; servicing of mortgage loans; criteria for review of applications; technical and training assistance

[*See main edition for text of (1) and (2)*]

(3) A loan under this section may be in an amount not exceeding the total development cost (as defined in subsection (d)(3) of this section), as determined by the Secretary, except that in the case of other than a corporation, consumer cooperative or public body or agency the amount of the loan shall not exceed 90 per centum of the development cost, shall be secured in such manner and be repaid within such period, not exceeding fifty years, as may be determined by him; and shall bear interest at a rate which is not more than a rate determined by the Secretary of the Treasury taking into consideration the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt, computed at the end of the fiscal year next preceding the date on which the loan is made, adjusted to the nearest one-eighth of 1 per centum, plus an allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses under the program, except that such interest rate plus such allowance shall not exceed 9.25 per centum per annum.

(4) [*See main edition for text of (A)*]

(B)(i) To carry out the purposes of this section, the Secretary is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount not to exceed $1,475,000,000, which amount shall be increased to $2,387,500,000 on October 1, 1977, to $3,300,000,000 on October 1, 1978, to $3,827,500,000 on October 1, 1979, to $4,777,500,000 on October 1, 1980, to $5,752,500,000 on October 1, 1981, to $6,400,000,000 on October 1, 1983, and to such sum as may be approved in an appropriation Act on October 1, 1984, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average interest rate on all interest bearing obligations of the United States then forming a part of the public debt, computed at the end of the fiscal year next preceding the date on which the loan is made. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31; and the purposes for which securities may be issued under such chapter are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. The Secretary may not issue notes or other obligations to the Secretary of the Treasury pursuant to this section in an aggregate amount, exceeding $800,000,000 except as approved in appropriation Acts.

[*See main edition for text of (ii)*]

(C) Amounts in the fund shall be available to the Secretary for the purpose of making loans under this section and for paying interest on obligations issued under subparagraph (B). The aggregate loans made under this section shall not exceed the limits on such lending authority established in appropriation Acts, and not more than $666,400,000 may be approved in appropriation Acts for such loans with respect to fiscal year 1984.

[*See main edition for text of (5) to (7)*]

(b) Functions, powers, and duties of Secretary

In the performance of, and with respect to, the functions, powers, and duties vested in him by this section the Secretary shall (in addition to any authority otherwise vested in him) have the functions, powers, and duties set forth in section 402 (except subsection (c)(2))[1] of the Housing Act of 1950 [12 U.S.C. 1749a].

[*See main edition for text of (c) to (e)*]

(f) Assurance by Secretary of applicable State and local plans responding to Federal program requirements for assisted housing and related facilities

In carrying out the provisions of this section, the Secretary shall seek to assure, pursuant to applicable regulations, that housing and related facilities assisted under this section will be in appropriate support of, and supported by, applicable State and local plans which respond to Federal program requirements by providing an assured range of necessary services for individuals occupying such housing (which services may include, among others, health (including adult day health services), continuing education, welfare, informational, recreational, homemaker, counseling, and referral services, transportation where necessary to facilitate access to social services, and services designed to encourage and assist recipients to use the services and facilities available to them), including plans approved by the Secretary of Health and Human Services pursuant to section 134 of the Mental Retardation Facilities and Community Mental Health Center Construction Act of 1963 [42 U.S.C. 6063] or pursuant to title III of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq.].

[*See main edition for text of (g)*]

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[1] See References in Text note below.

(h) Loans for development of rental housing and facilities for handicapped

Of the amounts made available in appropriation Acts for loans pursuant to subsection (a)(4)(C) of this section for the fiscal year commencing on October 1, 1983, not less than $50,000,000 shall be available for loans for the development of rental housing and related facilities specifically designed to meet the needs of handicapped (primarily nonelderly) persons, and persons described in subparagraphs (B) and (C) of subsection (d)(4) of this section who have been released from residential health treatment facilities. The Secretary shall take such steps as may be necessary to assure that—

(1) funds made available pursuant to this subsection will be used to support innovative methods of meeting the needs of persons described in the first sentence of this subsection by providing a variety of housing options, ranging from small group homes to independent living complexes; and

(2) housing and related facilities assisted under this subsection will provide persons described in the first sentence of this section who are occupying units within such housing with an assured range of services specified under subsection (f) of this section and the opportunity for optimal independent living and participation in normal daily activities, and will facilitate access by such persons to the community at large and to suitable employment opportunities within such community.

(i) Efficiency units; escrow accounts; per unit cost limitations

(1) Unless otherwise requested by the sponsor, a maximum of 25 per centum of the units in a project financed under this section may be efficiency units, subject to a determination by the Secretary that such units are appropriate for the elderly or handicapped population residing in the vicinity of such project or to be served by such project.

(2) The Secretary may require a sponsor of a housing project financed with a loan under this section to deposit an amount not to exceed $10,000 in a special escrow account to assure the commitment and long-term management capabilities of such sponsor.

(3) In establishing per unit cost limitations for purposes of this section, the Secretary shall take into account design features necessary to meet the needs of elderly and handicapped residents, and such limitations shall reflect the cost of providing such features. The Secretary shall adjust the per unit cost limitations in effect on January 1, 1983, not less than once annually to reflect changes in the general level of construction costs.

(j) Prepayment of loans; conditions; sale of mortgages

(1) The Secretary may not approve the prepayment of any loan made under this section, or transfer such loan, unless such prepayment or transfer is made as part of a transaction that will ensure that the project involved will continue to operate until the original maturity date of such loan in a manner that will provide rental housing for the elderly and handicapped on terms at least as advantageous to existing and future tenants as the terms required by the original loan agreement entered into under this section and any other loan agreements entered into under other provisions of law.

(2) The Secretary may not sell any mortgage held by the Secretary as security for a loan made under this section.

(k) Selection of projects for loans; special design features and congregate space; site group homes and independent living facilities

(1) In the process of selecting projects for loans under this section, the Secretary shall assure the inclusion of special design features and congregate space if necessary to meet the special needs of elderly and handicapped residents.

(2) The Secretary shall encourage the provision of small and scattered site group homes and independent living facilities for nonelderly handicapped persons and families.

(l) Basis for selection of contractors

The basis for selection of a contractor to be employed in the development or construction of a project assisted under this section shall be determined by the project sponsor or borrower if the development cost of the project is less than $2,000,000, if the project rentals will be less than 110 per centum of the fair market rent applicable to projects financed under this section, or if the sponsor of the project is a labor organization. The Secretary shall not impose difference [3] requirements or standards with respect to construction change orders, increases in loan amount to cover change orders, errors in plans and specifications, and use of contingency funds, because of the method of contractor selection used by the sponsor or borrower.

(m) Independent funding by sponsor for amenities

Nothing in this section authorizes the Secretary to prohibit any sponsor from voluntarily providing funds from other sources for amenities and other features of appropriate design and construction suitable for inclusion in such project if the cost of such amenities is (1) not financed with the loan, and (2) not taken into account in determining the amount of Federal subsidy or of the rent contribution of tenants.

(Pub. L. 86-372, title II, § 202, Sept. 23, 1959, 73 Stat. 667; Pub. L. 87-70, title II, § 201, June 30, 1961, 75 Stat. 162; Pub. L. 87-723, § 3, Sept. 28, 1962, 76 Stat. 670; Pub. L. 88-158, Oct. 24, 1963, 77 Stat. 278; Pub. L. 88-560, title II, §§ 201, 203(a)(2), Sept. 2, 1964, 78 Stat. 783, 784; Pub. L. 89-117, title I, § 105(a), (b)(1), formerly § 105, Aug. 10, 1965, 79 Stat. 457, renumbered Pub. L. 89-754, title X, § 1001(1), (2), Nov. 3, 1966, 80 Stat. 1284; Pub. L. 90-19, § 16(a), May 25, 1967, 81 Stat. 25; Pub. L. 90-448, title XVII, § 1706, Aug. 1, 1968, 82 Stat. 605; Pub. L. 91-152, title II, § 218, Dec. 24, 1969, 83 Stat. 390; Pub. L. 93-383, title II, § 210(a)-(f), Aug. 22, 1974, 88 Stat. 669-671; Pub. L. 94-375, § 11, Aug. 3, 1976,

[3] So in original. Probably should be "different".

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90 Stat. 1074; Pub. L. 95-128, title II, § 202, Oct. 12, 1977, 91 Stat. 1129; Pub. L. 95-557, title II, § 205, Oct. 31, 1978, 92 Stat. 2090; Pub. L. 96-153, title III, § 306(a)-(d), Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96-399, title III, § 319, Oct. 8, 1980, 94 Stat. 1646; Pub. L. 97-35, title III, § 336, Aug. 13, 1981, 95 Stat. 414; Pub. L. 98-181, title II, § 223(a)(1), (b)-(e), Nov. 30, 1983, 97 Stat. 1189, 1190; Pub. L. 98-479, title I, § 102(c), title II, §§ 201(e), 203(h), Oct. 17, 1984, 98 Stat. 2222, 2228, 2230.)

REFERENCES IN TEXT

Subsection (c)(2) of section 402 of the Housing Act of 1950 [12 U.S.C. 1749a(c)(2)], referred to in subsec. (b), was repealed and subsec. (c)(3) was redesignated (c)(2) by Pub. L. 98-479, title II, § 201(d)(1), Oct. 17, 1984, 98 Stat. 2228.

AMENDMENTS

1984—Subsec. (a)(4)(B)(i). Pub. L. 98-479, § 203(h), substituted "chapter 31 of title 31" for "the Second Liberty Bond Act" and "such chapter" for "that Act".

Pub. L. 98-479, § 102(c)(1), substituted "October 1, 1984" for "October 1, 1985".

Subsec. (f). Pub. L. 98-479, § 201(e), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (h)(1). Pub. L. 98-479, § 102(c)(2)(A), added "and" at the end.

Subsec. (h)(2). Pub. L. 98-479, § 102(c)(2)(B), substituted a period for "; and" at the end.

Subsec. (l). Pub. L. 98-479, § 102(c)(3), inserted "The Secretary shall not impose difference requirements or standards with respect to construction change orders, increases in loan amount to cover change orders, errors in plans and specifications, and use of contingency funds, because of the method of contractor selection used by the sponsor or borrower."

1983—Subsec. (a)(3). Pub. L. 98-181, § 223(a)(1), added ", except that such interest rate plus such allowance shall not exceed 9.25 per centum per annum".

Subsec. (a)(4)(B)(i). Pub. L. 98-181, § 223(b), struck out "and" after "1980" and added ", to $6,400,000,000 on October 1, 1983, and to such sum as may be approved in an appropriation Act on October 1, 1985,".

Subsec. (a)(4)(C). Pub. L. 98-181, § 223(c), substituted "$866,400,000" and "1984" for "$850,848,000" and "1983", respectively.

Subsec. (h). Pub. L. 98-181, § 223(d)(1), (2), in provisions preceding par. (1), substituted "1983" for "1978", and added ", and persons described in subparagraphs (B) and (C) of subsection (d)(4) of this section who have been released from residential health treatment facilities".

Subsec. (h)(1). Pub. L. 98-181, § 223(d)(3), (5), substituted "persons described in the first sentence of this subsection" for "handicapped persons", and struck out "and" at the end.

Subsec. (h)(2). Pub. L. 98-181, § 223(d)(4), (6), substituted "persons described in the first sentence of this subsection who are" for "handicapped persons", and substituted "such community; and" for "such community".

Subsecs. (i) to (m). Pub. L. 98-181, § 223(e), added subsecs. (i) to (m).

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Section 223(a)(2) of Pub. L. 98-181, as amended by Pub. L. 99-120, § 5(b), Oct. 8, 1985, 99 Stat. 504; Pub. L. 99-156, § 5(b), Nov. 15, 1985, 99 Stat. 817; Pub. L. 99-219, § 5(b), Dec. 26, 1985, 99 Stat. 1732, provided that: "The amendment made by paragraph (1) [amending subsec. (a)(3) of this section] shall apply only with respect to loan agreements entered into after September 30, 1982, and not later than March 17, 1986."

HOUSING FOR THE ELDERLY OR HANDICAPPED FUND

Pub. L. 99-160, title I, § 101, Nov. 25, 1985, 99 Stat. 911, provided: "That, notwithstanding section 202(a)(3) of the Housing Act of 1959 [12 U.S.C. 1701q(a)(3)], loans made in fiscal year 1986 shall bear an interest rate which does not exceed 9.25 per centum, including the allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses under the program."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 98-371, title I, § 101, July 18, 1984, 98 Stat. 1216.

Pub. L. 98-45, title I, § 101, as added Pub. L. 98-181, title I, Nov. 30, 1983, 97 Stat. 1153.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701r-1, 1701s, 1701z-11, 1701z-13, 1715*l*, 1715v, 1715z-1, 1715z-15 of this title; title 42 sections 1436b, 1437c, 1437f, 1438, 1439, 3013, 8002, 8008, 8009, 8231.

§ 1701r-1. Pet ownership in assisted rental housing for the elderly or handicapped

(a) Restrictions on ownership

No owner or manager of any federally assisted rental housing for the elderly or handicapped may—

(1) as a condition of tenancy or otherwise, prohibit or prevent any tenant in such housing from owning common household pets or having common household pets living in the dwelling accommodations of such tenant in such housing; or

(2) restrict or discriminate against any person in connection with admission to, or continued occupancy of, such housing by reason of the ownership of such pets by, or the presence of such pets in the dwelling accommodations of, such person.

(b) Rules and regulations

(1) Not later than the expiration of the twelve-month period following November 30, 1983, the Secretary of Housing and Urban Development and the Secretary of Agriculture shall each issue such regulations as may be necessary to ensure (A) compliance with the provisions of subsection (a) of this section with respect to any program of assistance referred to in subsection (d) of this section that is administered by such Secretary; and (B) attaining the goal of providing decent, safe, and sanitary housing for the elderly or handicapped.

(2) Such regulations shall establish guidelines under which the owner or manager of any federally assisted rental housing for the elderly or handicapped (A) may prescribe reasonable rules for the keeping of pets by tenants in such housing; and (B) shall consult with the tenants of such housing in prescribing such rules. Such rules may consider factors such as density of tenants, pet size, types of pets, potential financial obligations of tenants, and standards of pet care.

(c) Removal of pets constituting a nuisance

Nothing in this section may be construed to prohibit any owner or manager of federally assisted rental housing for the elderly or handicapped, or any local housing authority or other appropriate authority of the community where

such housing is located, from requiring the removal from any such housing of any pet whose conduct or condition is duly determined to constitute a nuisance or a threat to the health or safety of the other occupants of such housing or of other persons in the community where such housing is located.

(d) "Federally assisted rental housing for the elderly or handicapped" defined

For purposes of this section, the term "federally assisted rental housing for the elderly or handicapped" means any rental housing project that—

(1) is assisted under section 1701q of this title; or

(2) is assisted under the United States Housing Act of 1937 [42 U.S.C. 1435 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], or title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], and is designated for occupancy by elderly or handicapped families, as such term is defined in section 1701q(d)(4) of this title.

(Pub. L. 98–181, title II, § 227, Nov. 30, 1983, 97 Stat. 1195.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (d)(2), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The National Housing Act, referred to in subsec. (d)(2), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in subsec. (d)(2), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

CODIFICATION

Section was enacted as part of the Housing and Urban-Rural Recovery Act of 1983 and also as part of the Domestic Housing and International Recovery and Financial Stability Act, and not as part of the National Housing Act which comprises this chapter.

§ 1701s. Rent supplement payments for qualified lower income families

[See main edition for text of (a) to (d)]

(e) Criteria and procedure for determining eligibility and rental charges; certificates as to facts concerning applicant; recertification of income; agreements for services required in selection of tenants; delegation of authority to issue certificates

(1) For purposes of carrying out the provisions of this section, the Secretary shall establish criteria and procedures for determining the eligibility of occupants and rental charges, including criteria and procedures with respect to periodic review of tenant incomes and periodic adjustment of rental charges. The Secretary shall issue, upon the request of a housing owner, certificates as to the following facts concerning the individuals and families applying for admission to, or residing in, dwellings of such owner:

(A) the income of the individual or family; and

(B) whether the individual or family was occupying substandard housing, was paying more than 50 per centum of family income for rent, or was involuntarily displaced at the time it was seeking assistance under this section.

[See main edition for text of (2) to (4)]

(f) Authority of Secretary

The Secretary is authorized to make such rules and regulations, to enter into such agreements, and to adopt such procedures as he may deem necessary or desirable to carry out the provisions of this section. Nothing contained in this section shall affect the authority of the Secretary of Housing and Urban Development with respect to any housing assisted under this section, section 221(d)(3), section 231(c)(3), or section 236 of the National Housing Act [12 U.S.C. 1715*l*(d)(3), 1715v(c)(3), 1715z–1], or section 1701q of this title, including the authority to prescribe occupancy requirements under other provisions of law or to determine the portion of any such housing which may be occupied by qualified tenants. To ensure that qualified tenants occupying that number of units with respect to which assistance was being provided under this section immediately prior to November 30, 1983, receive the benefit of assistance contracted for under this section, the Secretary shall offer annually to amend contracts entered into with owners of projects assisted under this section but not subject to mortgages insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.] to provide sufficient payments to cover 90 per centum of the necessary rent increases and changes in the incomes of qualified tenants, subject to the availability of authority for such purpose under section 1437c(c) of title 42. The Secretary shall take such actions as may be necessary to ensure that payments, including payments that reflect necessary rent increases and changes in the incomes of tenants, are made on a timely basis for all units covered by contracts entered into under this section.

[See main edition for text of (g)]

(h) Additional definition of housing owner; restrictions on payments

(1) For the purpose of assisting housing under this section on an experimental basis, subject to the limitations of this subsection, the term "housing owner" (in addition to the meaning prescribed in subsection (b) of this section) includes—

[See main edition for text of (A) to (C)]

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(D) a private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, which is assisted under section 236 of the National Housing Act [12 U.S.C. 1715z-1] and which has been approved for receiving the benefits of this section: *Provided*, That payments shall not be made with respect to more than 20 per centum of the dwelling units in any property so financed, except that the foregoing limitation may be increased to 40 per centum of the dwelling units in any such property if the Secretary determines that such increase is necessary and desirable in order to provide additional housing for individuals and families meeting the requirements of subsection (c) of this section.

[*See main edition for text of (2); (i)*]

(j) Additional available assistance authority

Notwithstanding the provisions of subsection (a) of this section and any other provision of law, the Secretary may utilize additional authority under section 1437c(c) of title 42 made available by appropriation Acts on or after October 1, 1979, to supplement assistance authority available under this section. The Secretary shall utilize, to the extent necessary after September 30, 1984, any authority under this section that is recaptured either as the result of the conversion of housing projects covered by assistance under this section to contracts for assistance under section 1437f of title 42 or otherwise (1) for the purpose of making assistance payments, including amendments as provided in subsection (g) of this section, with respect to housing projects assisted under this section, but not subject to mortgages insured under the National Housing Act [12 U.S.C. 1701 et seq.], that remain covered by assistance under this section; and (2) if not required to provide assistance under this section, and notwithstanding any other provision of law, for the purpose of contracting for assistance payments under section 236(f)(2) of the National Housing Act [12 U.S.C. 1715z-1(f)(2)].

(As amended Pub. L. 98-181, title II, §§ 203(b)(3), 219, Nov. 30, 1983, 97 Stat. 1178, 1187; Pub. L. 98-479, title I, § 102(d), title II, § 204(e), Oct. 17, 1984, 98 Stat. 2222, 2233.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsecs. (f) and (j) is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended which is classified principally to this chapter (§ 1701 et seq.). Title II of the National Housing Act is classified generally to subchapter II (§ 1707 et seq.) of this chapter. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-479, § 102(d), struck out "up to" before "90 per centum" in next to last sentence.

Subsec. (h)(1)(D). Pub. L. 98-479, § 204(e), substituted "dividend" for "divided" before "legal entity".

1983—Subsec. (e)(1)(B). Pub. L. 98-181, § 203(b)(3), added ", was paying more than 50 per centum of family income for rent,".

Subsec. (f). Pub. L. 98-181, § 219(a), added provision relating to the offer annually to amend contracts to ensure that qualified tenants receive the benefit of assistance contracted for under this section.

Subsec. (j). Pub. L. 98-181, § 219(b), added provision relating to the utilization by the Secretary of any authority under this section that is recaptured.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1715*l*, 1715z, 1715z-1a, 1715z-15 of this title; title 42 sections 1436a, 1436b, 1439; title 31 section 1305.

§ 1701x. Assistance with respect to housing for low- and moderate-income families

(a) Authorization to provide information, advice, and technical assistance; scope of assistance; authorization of appropriations

[*See main edition for text of (1) and (2)*]

(3) There is authorized to be appropriated for the purposes of this subsection, without fiscal year limitation, such sums as may be necessary; except that for the fiscal year 1984, there are authorized to be appropriated not to exceed $3,500,000 for such purposes. Any amounts so appropriated shall remain available until expended.

(b) Loans to nonprofit organizations or public housing agencies; purpose and terms; repayment; authorization of appropriations; deposit of appropriations in Low and Moderate Income Sponsor Fund

(1) The Secretary is authorized to make loans to nonprofit organizations or public housing agencies for the necessary expenses, prior to construction, in planning, and obtaining financing for, the rehabilitation or construction of housing for low or moderate income families under section 1715z of this title or any other federally assisted program. Such loans shall be made without interest and shall not exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing prior to the availability of financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering and architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. The Secretary shall require repayment of loans made under this subsection, under such terms and conditions as he may require, upon completion of the project or sooner, and may cancel any part or all of a loan if he determines that it cannot be recovered from the proceeds of any permanent loan made to finance the rehabilitation or construction of the housing.

[*See main edition for text of (2) to (4)*]

(As amended Pub. L. 98-181, title IV, § 465, Nov. 30, 1983, 97 Stat. 1236; Pub. L. 98-479, title II, § 204(f), Oct. 17, 1984, 98 Stat. 2233.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-479 substituted "architectural" for "architechtual".

1983—Subsec. (a)(3). Pub. L. 98-181 substituted "1984" for "1982", and "$3,500,000" for "$4,000,000".

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§ 1701z-1. Research and demonstrations; authorization of appropriations; continuing availability of funds

The Secretary of Housing and Urban Development is authorized and directed to undertake such programs of research, studies, testing, and demonstration relating to the mission and programs of the Department as he determines to be necessary and appropriate. There are authorized to be appropriated for activities under this title [12 U.S.C. 1701z-1 et seq.] not to exceed $19,000,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985. Of the amount appropriated under the preceding sentence for fiscal year 1984, not less than $2,000,000 shall be provided for implementation of a research program to be developed in consultation with public housing agencies, which program shall identify current problems of public housing management, specific solutions to such problems, and incentives to encourage implementation of such solutions. All funds so appropriated shall remain available until expended unless specifically limited.

(As amended Pub. L. 98-181, title IV, § 466(a), Nov. 30, 1983, 97 Stat. 1236.)

AMENDMENTS

1983—Pub. L. 98-181 substituted provisions relating to appropriations for fiscal years 1984 and 1985 and the expenditure of not less than $2,000,000 for a public housing management research program for provisions authorizing appropriations of $65,000,000 for fiscal 1977, $60,000,000 for fiscal 1978, $62,000,000 for fiscal 1979, $50,300,000 for fiscal 1980, $51,000,000 for fiscal 1981 and $35,000,000 for fiscal 1982.

§ 1701z-2. Advanced technologies, methods, and materials for housing construction, rehabilitation, and maintenance

[*See main edition for text of* (a) *to* (d)]

(e) Contracts or grants; authority; advance and progress payments; work limitation

The Secretary is authorized to carry out the functions authorized in section 1701z-1 of this title either directly or, without regard to section 5 of title 41, by contract or by grant. Advance and progress payment may be made under such contracts or grants without regard to the provisions of subsections (a) and (b) of section 3324 of title 31 and such contracts or grants may be made for work to continue for not more than four years from the date thereof.

[*See main edition for text of* (f) *and* (g)]

(As amended Pub. L. 98-479, title II, § 203(k), Oct. 17, 1984, 98 Stat. 2231.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-479 substituted "subsections (a) and (b) of section 3324 of title 31" for "section 3648 of the Revised Statutes [31 U.S.C. 529]".

§ 1701z-3. Experimental housing allowance payment program

[*See main edition for text of* (a)]

(b) Termination date of payments; termination date for contracts; contracts for performance of administrative functions

(1) No housing allowance payments shall be made after July 1, 1985. After January 1, 1975, the Secretary shall not enter into contracts under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] to carry out the purposes of this section. The Secretary may contract with public or private agencies for the performance of administrative functions in connection with the programs authorized by this section.

(2) Notwithstanding the provisions of paragraph (1), the Secretary shall, to the extent approved in appropriation Acts, extend the annual contributions contracts for the experimental housing allowance supply program through September 30, 1989, on the same terms and conditions as the original contracts, for the sole purpose of providing assistance for homeowners participating in such program on June 1, 1983. In extending such contracts, the Secretary may, to the extent approved in appropriation Acts, use authority available under section 5(c) of the United States Housing Act of 1937 [42 U.S.C. 1437c(c)].

[*See main edition for text of* (c)]

(As amended Pub. L. 98-35, § 6(a), May 26, 1983, 97 Stat. 198.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-35 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 6(b) of Pub. L. 98-35 provided that: "The amendments made by this section [amending this section] shall become effective on October 1, 1983."

§ 1701z-4. Abandoned properties demonstration project

REFERENCES IN TEXT

Sections 1456, 1460, and 1466 of title 42, referred to in subsec. (e), were omitted from the Code pursuant to section 5316 of Title 42, The Public Health and Welfare, which terminated authority to make grants or loans under those sections after Jan. 1, 1975.

§ 1701z-6. Special housing need research and demonstration authority

DEMONSTRATION PROJECT FOR ASSISTANCE TO UNITS OF GENERAL LOCAL GOVERNMENT TO ENCOURAGE UPGRADING OF LOWER INCOME FAMILY HOUSING

Pub. L. 98-181, title II, § 225, Nov. 30, 1983, 97 Stat. 1191, provided that:

"(a) The Congress finds that—

"(1) the Department of Health and Human Services spends in excess of $5,000,000,000 annually for housing in the form of allowances for shelter for public assistance recipients;

"(2) States administering the Department of Health and Human Services public assistance program often specify shelter allowances that have little relationship to the cost or the quality of the housing in which public assistance recipients live;

"(3) at least 30 per centum of public assistance recipients live in substandard housing;

"(4) the older rental buildings in which many public assistance recipients live are in those neigh-

borhoods that need the assistance of the programs of the Department of Housing and Urban Development for preservation and rehabilitation; and

"(5) there is the potential for improving housing for many lower income families by coordinating State and local government efforts in order to assure that families receiving public assistance payments from the Department of Health and Human Services are able to live in decent, safe, and sanitary housing.

"(b) The purpose of this section, therefore, is to provide assistance to units of general local government and their designated agencies in order to develop a program that will—

"(1) encourage the upgrading of housing occupied primarily by lower income families, including families receiving assistance under the aid for families with dependent children program established under title IV of the Social Security Act [42 U.S.C. 601 et seq.]; and

"(2) provide for better coordination at the local level of the efforts to assist families receiving public assistance from the Department of Health and Human Services so that these families will be able to occupy affordable housing that is decent, safe, and sanitary and that, if necessary, is rehabilitated with funds provided by the Department of Housing and Urban Development.

"(c) The Secretary of Housing and Urban Development (hereafter referred to in this section as the 'Secretary') shall, to the extent approved in appropriation Acts, establish and maintain a demonstration project to carry out the purpose described in subsection (b).

"(d) In carrying out such project, the Secretary shall make grants to units of general local government, or designated agencies thereof, to carry out administrative plans approved by the Secretary in accordance with subsection (e), and the Secretary may make grants to States to provide technical assistance for the purpose of assisting such units of general local government to develop and carry out such plans.

"(e)(1) Grants may be made to States and units of general local government and agencies thereof that apply for them in a manner and at a time determined by the Secretary and that, in the case of units of general local government and their agencies, are selected on the basis of an administrative plan described in such application.

"(2) No such administrative plan shall be selected by the Secretary unless it sets forth a plan for local government activities that are designed to—

"(A) require or encourage owners of rental housing occupied by lower income families to bring such housing into compliance with local housing codes;

"(B) provide technical assistance, loans, or grants to assist owners described in subparagraph (A) to undertake cost-effective improvements of such housing;

"(C) work with the State to establish and implement a schedule of local shelter allowances for recipients of assistance under title IV of the Social Security Act [42 U.S.C. 601 et seq.] based on building quality that will be applicable to buildings involved in this program; and

"(D) coordinate local housing inspection, housing rehabilitation loan or grant assistance, rental assistance, and social service programs for the purpose of improving the quality and affordability of housing for lower income families.

"(3) Funds received from any grant made by the Secretary to a unit of general local government shall be made available for use according to the administrative plans and may be used for—

"(A) technical assistance or financial assistance to property owners to upgrade housing projects described in paragraph (2)(A) of this subsection;

"(B) temporary rental assistance to families who live in buildings assisted under this program and who are eligible for, but are not receiving, assistance under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], except that such families shall not include families receiving assistance under title IV of the Social Security Act [42 U.S.C. 601 et seq.], and the amount of such rental assistance may not exceed 20 per centum of each grant received under this section;

"(C) housing counseling and referral and other housing related services;

"(D) expenses incurred in administering the program carried out with funds received under this section, except that such expenses may not exceed 10 per centum of the grant received under this section; and

"(E) other appropriate activities that are consistent with the purposes of this section and that are approved by the Secretary.

"(f) Any recipient of a grant from the Secretary under this section shall agree to—

"(1) contribute to the program an amount equal to 15 per centum of the funds received from the Secretary under this section, and the Secretary shall permit the recipient to meet this requirement by the contribution of the value of services carried out specifically in connection with the program assisted under this section;

"(2) permit the Secretary and the General Accounting Office to audit its books in order to assure that the funds received under this section are used in accordance with the section; and

"(3) other terms and conditions prescribed by the Secretary for the purpose of carrying out this section in an effective and efficient manner.

"(g) In making grants available under this section, the Secretary shall select as recipients at least 20 units of general local government (or their designated agencies). The selection of proposals for funding shall be based on criteria that result in a selection of projects that will enable the Secretary to carry out the purpose of this section in an effective and efficient manner and provide a sufficient amount of data necessary to make an evaluation of the demonstration project carried out under this section.

"(h)(1) Not later than June 1, 1984, the Secretary shall transmit to the Congress an interim report on the implementation of the demonstration under this section.

"(2) The Secretary shall transmit, not later than October 1, 1985, to both Houses of the Congress a detailed report concerning the findings and conclusions that have been reached by the Secretary as a result of carrying out this section, along with any legislative recommendations that the Secretary determines are necessary.

"(i) To carry out this section, there are authorized to be appropriated not to exceed $10,000,000 during fiscal year 1984, and not to exceed $15,000,000 during fiscal year 1985, to remain available until expended."

Public Housing Child Care Demonstration Program

Pub. L. 98-181, title II, § 222, Nov. 30, 1983, 97 Stat. 1188, provided that:

"(a) The Secretary of Housing and Urban Development (hereinafter referred to as the 'Secretary') shall carry out a demonstration program to determine the feasibility of using public housing facilities in the provision of child care services for lower income families who reside in public housing. The Secretary shall design such program to determine the extent to which the availability of child care services in lower income housing projects facilitates the employability of the heads of such families and their spouses.

"(b) To carry out the demonstration under this section, the Secretary shall authorize the use of public housing agency facilities located in areas where—

"(1) the units of general local government have indicated that funds under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] will be made available to make minor renovations to the facilities to make them suitable

for use as child care facilities, and to support child care services in such facilities;

"(2) the public housing agency does not have a child care services program in operation prior to the demonstration program under this section;

"(3) the proposed child care services program will serve preschool children during the day, elementary school children after school, or both, in order to permit eligible persons who head the families of such children to obtain, retain, or train for employment;

"(4) the proposed child care services program of such public housing agency is designed, to the extent practicable, to involve the participation of the parents of children benefiting from such program, and to employ in part-time positions elderly individuals who reside in the lower income housing project involved; and

"(5) the proposed child care services program of such public housing agency will comply with all applicable State and local laws, regulations, and ordinances.

"(c) The Secretary shall conduct periodic evaluations of each child care services demonstration carried out under this section for purposes of determining the effectiveness of such demonstration in providing child care services and permitting eligible persons who head lower income families and their spouses residing in public housing to obtain, retain, or train for employment.

"(d) Nothing in this section may be construed as authorizing the Secretary to establish any health, safety, educational, or other standards with respect to child care services or facilities assisted with grants received under this section.

"(e) Not later than the expiration of the two-year period following the date of enactment of this Act [Nov. 30, 1983], the Secretary shall prepare and submit to the Congress a detailed report setting forth the findings and conclusions of the Secretary as a result of carrying out the demonstration program established in this section. Such report shall include any recommendations of the Secretary with respect to the establishment of a permanent program of using public housing facilities to be used in providing child care services in lower income housing projects."

PUBLIC HOUSING SECURITY

Pub. L. 95-557, title II, § 207, Oct. 31, 1978, 92 Stat. 2093, as amended by Pub. L. 96-399, title II, § 209(d), Oct. 8, 1980, 94 Stat. 1635; Pub. L. 98-479, title II, § 201(i), Oct. 17, 1984, 98 Stat. 2228, provided that:

[*See main edition for text of* (*a*) *and* (*b*)]

"(c) [*See main edition for text of* (*1*) *and* (*2*)]

"(3) In selecting the anticrime and security methods, concepts and techniques to be demonstrated under this section, the Secretary shall consider the improvement of physical security equipment or dwelling units in those projects, social and environmental design improvements, tenant awareness and volunteer programs, tenant participation and employment in providing security services, and such other measures as deemed necessary or appropriate by the Secretary. Particular attention shall be given to comprehensive community anticrime and security plans submitted by public housing authorities which (i) provide for coordination between public housing management and local law enforcement officials, or (ii) coordinate resources available to the community through programs funded by the Law Enforcement Assistance Administration, the Department of Health and Human Services, the Department of Labor, the Community Services Administration, and ACTION, or other Federal or State agencies.

[*See main edition for text of* (*4*) *to* (*6*); (*d*) *to* (*f*)]

§ 1701z-10a. Biennial survey of economic and housing market conditions

The Secretary shall, not less than biennially, survey national, regional, and local economic and housing market conditions in a manner that provides data comparable to the data collected in such survey conducted in 1981.

(Pub. L. 91-609, title V, § 512, as added Pub. L. 98-181, title IV, § 466(b), Nov. 30, 1983, 97 Stat. 1236.)

CODIFICATION

Section was enacted as part of the Housing and Urban Development Act of 1970, and not as part of the National Housing Act which comprises this chapter.

§ 1701z-13. Solar energy for single-family and multifamily housing units

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Report to Congress

The Secretary shall, in conjunction with the Secretary of Energy, transmit to the Congress, within eighteen months after October 31, 1978, a report setting forth—

[*See main edition for text of* (*1*) *and* (*2*)]

(As amended Pub. L. 98-479, title II, § 204(n)(3), Oct. 17, 1984, 98 Stat. 2234.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-479 substituted "conjunction" for "conjuction" in provisions preceding par. (1).

SUBCHAPTER I—HOUSING RENOVATION AND MODERNIZATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1451, 1709-1a, 1717, 1731a, 1735f-8, 1743, 2810 of this title; title 38 section 1828.

§ 1702. Administrative provisions

The powers conferred by this chapter shall be exercised by the Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary"). In order to carry out the provisions of this subchapter and subchapters II, III, V, VI, VII, VIII, IX-A, IX-B, and X of this chapter, the Secretary may establish such agencies, accept and utilize such voluntary and uncompensated services, utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, and appoint such other officers and employees as he may find necessary, and may prescribe their authorities, duties, responsibilities, and tenure and fix their compensation. The Secretary may delegate any of the functions and powers conferred upon him under this subchapter and subchapters II, III, V, VI, VII, VIII, IX-A, IX-B, and X of this chapter to such officers, agents, and employees as he may designate or appoint, and may make such expenditures (including expenditures for personal services and rent at the seat of government and

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elsewhere, for law books and books of reference, and for paper, printing, and binding) as are necessary to carry out the provisions of this subchapter and subchapters II, III, V, VI, VII, VIII, IX-A, IX-B, and X of this chapter, without regard to any other provisions of law governing the expenditure of public funds. All such compensation, expenses, and allowances shall be paid out of funds made available by this chapter: *Provided*, That notwithstanding any other provisions of law except provisions of law hereafter enacted expressly in limitation hereof, all expenses of the Department of Housing and Urban Development in connection with the examination and insurance of loans or investments under any subchapter of this chapter all properly capitalized expenditures, and other necessary expenses not attributable to general overhead in accordance with generally accepted accounting principles shall be considered nonadministrative and payable from funds made available by this chapter, except that, unless made pursuant to specific authorization by the Congress therefor, expenditures made in any fiscal year pursuant to this proviso, other than the payment of insurance claims and other than expenditures (including services on a contract or fee basis, but not including other personal services) in connection with the acquisition, protection, completion, operation, maintenance, improvement, or disposition of real or personal property of the Department acquired under authority of this chapter, shall not exceed 35 per centum of the income received by the Department of Housing and Urban Development from premiums and fees during the preceding fiscal year. The Secretary shall, in carrying out the provisions of this subchapter and subchapters II, III, V, VI, VII, VIII, IX-A, IX-B, and X of this chapter, be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal.

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 202(a)(1), 98 Stat. 2228.)

AMENDMENTS

1984—Pub. L. 98-479 struck out "without regard to the provisions of other laws applicable to the employment or compensation of other officers or employees of the United States" at end of second sentence.

§ 1703. Insurance of financial institutions

(a) The Secretary is authorized and empowered upon such terms and conditions as he may prescribe, to insure banks, trust companies, personal finance companies, mortgage companies, building and loan associations, installment lending companies and other such financial institutions, which the Secretary finds to be qualified by experience or facilities and approves as eligible for credit insurance, against losses which they may sustain as a result of loans and advances of credit, and purchases of obligations representing loans and advances of credit, made by them on and after July 1, 1939, and not later than March 17, 1986, for the purpose of (i) financing alterations, repairs, and improvements upon or in connection with existing structures or manufactured homes, and the building of new structures, upon urban, suburban, or rural real property (including the restoration, rehabilitation, rebuilding, and replacement of such improvements which have been damaged or destroyed by earthquake, conflagration, tornado, hurricane, cyclone, flood, or other catastrophe), by the owners thereof or by lessees of such real property under a lease expiring not less than six months after the maturity of the loan or advance of credit; and for the purpose of (ii) financing the purchase of a manufactured home to be used by the owner as his principal residence or financing the purchase of a lot on which to place such home and paying expenses reasonably necessary for the appropriate preparation of such lot, including the installation of utility connections, sanitary facilities, and paving, and the construction of a suitable pad, or financing only the acquisition of such a lot either with or without such preparation by an owner of a manufactured home; and for the purpose of financing the preservation of historic structures, and, as used in this section, the term "historic structures" means residential structures which are registered in the National Register of Historic Places or which are certified by the Secretary of the Interior to conform to National Register criteria; and the term "preservation" means restoration or rehabilitation undertaken for such purposes as are approved by the Secretary in regulations issued by him, after consulting with the Secretary of the Interior. In no case shall the insurance granted by the Secretary under this section to any such financial institution on loans, advances of credit, and purchases made by such financial institution for such purposes on and after July 1, 1939, exceed 10 per centum of the total amount of such loans, advances of credit, and purchases: *Provided*, That with respect to any loan, advance of credit, or purchase made after August 2, 1954, the amount of any claim for loss on any such individual loan, advance of credit or purchase paid by the Secretary under the provisions of this section to a lending institution shall not exceed 90 per centum of such loss.

After August 2, 1954, (i) the Secretary shall not enter into contracts for insurance pursuant to this section except with lending institutions which are subject to the inspection and supervision of a governmental agency required by law to make periodic examinations of their books and accounts, and which the Secretary finds to be qualified by experience or facilities to make and service such loans, advances or purchases, and with such other lending institutions which the Secretary approves as eligible for insurance pursuant to this section on the basis of their credit and their experience or facilities to make and service such loans, advances or purchases; (ii) only such items as substantially protect or improve the basic livability or utility of properties shall be eligible for financing under this section, and therefore the Secretary shall from time to time declare ineligible for financing under this section any item, product, alteration, repair, improvement, or class thereof which he determines would not substantially protect or improve the basic livability or utility of such properties, and he may also declare ineligible

for financing under this section any item which he determines is especially subject to selling abuses; and (iii) the Secretary is authorized and directed, by such regulations or procedures as he shall deem advisable, to prevent the use of any financial assistance under this section (1) with respect to new residential structures (other than manufactured homes) that have not been completed and occupied for at least six months, or (2) which would, through multiple loans, result in an outstanding aggregate loan balance with respect to the same structure exceeding the dollar amount limitation prescribed in this subsection for the type of loan involved: *Provided*, That this clause (iii) may in the discretion of the Secretary be waived with respect to the period of occupancy or completion of any such new residential structures. The Secretary is hereby authorized and directed, with respect to manufactured homes to be financed under this section, to (i) prescribe minimum property standards to assure the livability and durability of the manufactured home and the suitability of the site on which the manufactured home is to be located; and (ii) obtain assurances from the borrower that the manufactured home will be placed on a site which complies with the standards prescribed by the Secretary and with local zoning and other applicable local requirements.

The insurance authority provided under this section may be made available with respect to any existing manufactured home that has not been insured under this section if such home was constructed in accordance with the standards issued under the National Manufactured Housing Construction and Safety Standards Act of 1974 [42 U.S.C. 5401 et seq.] and it meets standards similar to the minimum property standards applicable to existing homes insured under subchapter II of this chapter.

Alterations, repairs, and improvements upon or in connection with existing structures may include the provision of fire safety equipment, energy conserving improvements, or the installation of solar energy systems. As used in this section—

(1) the term "fire safety equipment" means any device or facility which is designed to reduce the risk of personal injury or property damage resulting from fire and is in conformity with such criteria and standards as shall be prescribed by the Secretary;

(2) the term "energy conserving improvements" means the purchase and installation of weatherization materials as defined in section 6862(9) of title 42; and

(3) the term "solar energy system" means any addition, alteration, or improvement to an existing or new structure which is designed to utilize wind energy or solar energy either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types to reduce the energy requirements of that structure from other energy sources, and which is in conformity with such criteria and standards as shall be prescribed by the Secretary in consultation with the Secretary of Energy.

(b)(1) No insurance shall be granted under this section to any such financial institution with respect to any obligation representing any such loan, advance of credit, or purchase by it if the amount of such loan, advance of credit, or purchase exceeds—

[*See main edition for text of* (A) *and* (B)]

(C) $40,500 if made for the purpose of financing the purchase of a manufactured home;

(D) $54,000 if made for the purpose of financing the purchase of a manufactured home and a suitably developed lot on which to place the home;

(E) $13,500, if made for the purpose of financing the purchase, by an owner of a manufactured home which is the principal residence of that owner, of a suitably developed lot on which to place that manufactured home, and if the owner certifies that he or she will place the manufactured home on the lot acquired with such loan within six months after the date of such loan;

[*See main edition for text of* (F) *and* (G)]

(2) Because of prevailing higher costs, the Secretary may, by regulation, in Alaska, Guam, or Hawaii, increase any dollar amount limitation on manufactured homes or manufactured home lot loans contained in this subsection by not to exceed 40 per centum. In other areas, the maximum dollar amounts specified in subsections (b)(1)(D) and (b)(1)(E) of this section may be increased on an area-by-area basis to the extent the Secretary deems necessary, but not to exceed the percentage by which the maximum mortgage amount of a one-family residence in the area is increased by the Secretary under section 1709(b)(2) of this title.

[*See main edition for text of* (3) *and* (4)]

(5) No insurance shall be granted under this section to any such financial institution with respect to any obligation representing any such loan, advance of credit, or purchase by it unless the obligation has such maturity, bears such insurance premium charges, and contains such other terms, conditions, and restrictions as the Secretary shall prescribe, in order to make credit available for the purpose of this subchapter. Any such obligation with respect to which insurance is granted under this section shall bear interest at such rate as may be agreed upon by the borrower and the financial institution.

(6) [*See main edition for text of* (A) *and* (B)]

(C) The owner-occupant of a manufactured home or a home and lot which was purchased without assistance under this section but which otherwise meets the requirements of this section may refinance such home or home and lot under this section if the home was constructed in accordance with standards established under section 604 of the National Manufactured Housing Construction and Safety Standards Act of 1974 [42 U.S.C. 5403].

[*See main edition for text of* (c) *to* (h)]

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(As amended May 26, 1983, Pub. L. 98-35, § 1(a), 97 Stat. 197; Oct. 1, 1983, Pub. L. 98-109, § 1(a), 97 Stat. 745; Nov. 30, 1983, Pub. L. 98-181, title IV, §§ 401(a), 404(b)(1), 415-417, 97 Stat. 1207, 1208, 1212; Oct. 8, 1985, Pub. L. 99-120, § 1(a), 99 Stat. 502; Nov. 15, 1985, Pub. L. 99-156, § 1(a), 99 Stat. 815; Dec. 26, 1985, Pub. L. 99-219, § 1(a), 99 Stat. 1730.)

REFERENCES IN TEXT

The National Manufactured Housing Construction and Safety Standards Act of 1974, referred to in subsec. (a), is title VI of Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 700, as amended, which is classified generally to chapter 70 (§ 5401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5401 of Title 42 and Tables.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-219 substituted "not later than March 17, 1986" for "prior to December 16, 1985".

Pub. L. 99-156 substituted "December 16, 1985" for "November 15, 1985".

Pub. L. 99-120 substituted "November 15, 1985" for "October 1, 1985".

1983—Subsec. (a). Pub. L. 98-181, § 415, inserted new undesignated par. authorizing insurance be made available to existing manufactured homes not insured under this section if such homes were constructed in accordance with the standards issued under the National Manufactured Housing Construction and Safety Standards Act of 1974 and meet standards similar to the minimum property standards applicable to existing homes issued under subchapter II of this chapter.

Pub. L. 98-181, § 401(a), substituted "October 1, 1985" for "December 1, 1983".

Pub. L. 98-109 substituted "December 1, 1983" for "October 1, 1983".

Pub. L. 98-35 substituted "October 1, 1983" for "May 21, 1983".

Subsec. (b)(1)(C). Pub. L. 98-181, § 416(a)(1), substituted "$40,500" for "$22,500 ($35,000 in the case of a manufactured home composed of two or more modules)".

Subsec. (b)(1)(D). Pub. L. 98-181, § 416(a)(2), substituted "$54,000" for "$35,000 ($47,500 in the case of a manufactured home composed of two or more modules)".

Subsec. (b)(1)(E). Pub. L. 98-181, § 416(a)(3), substituted "$13,500" for "such an amount as may be necessary, but not exceeding $12,500,".

Subsec. (b)(2). Pub. L. 98-181, § 416(b), substituted provision authorizing the Secretary, in other areas, to increase the maximum dollar amounts specified in subsec. (b)(1)(D) and (E) on an area-by-area basis as deemed necessary, but not to exceed the percentage by which the maximum mortgage amount of a one-family residence in the area is increased by the Secretary under section 1709(b)(2) of this title for provision which authorized the Secretary, by regulation, in other areas where needed to meet the higher costs of land acquisition, etc., in connection with the purchase of a manufactured home or lot, to increase any dollar amount limitation otherwise applicable by an additional $7,500.

Subsec. (b)(5). Pub. L. 98-181, § 404(b)(1), amended par. (5) generally, substituting provision that any obligation with respect to which insurance is granted under this section bear interest at such rate as agreed upon by the borrower and the financial institution for provision that any such obligation bear interest and insurance premium charges as do not exceed an amount determined by a specified formula.

Subsec. (b)(6)(C). Pub. L. 98-181, § 417, added subpar. (C).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1706d, 1709, 1713, 1715e, 1715h, 1715k, 1715*l*, 1715t, 1715v, 1715w, 1715y, 1715z, 1715z-5, 1715z-6, 1715z-7, 1717, 1735c 1749aaa, 3602 of this title; title 15 section 78c; title 42 sections 1437*f*, 1471, 8231.

§ 1705. Allocation of funds

For the purposes of carrying out the provisions of this subchapter and subchapters II and III of this chapter the President, in his discretion, is authorized to provide such funds or any portion thereof by allotment to the Secretary from any funds that are available, or may hereafter be made available, to the President for emergency purposes.

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(1), 98 Stat. 2231.)

AMENDMENTS

1984—Pub. L. 98-479 substituted "such" for "suuch".

§ 1706d. Applicability of sections 1703 and 1706c to States, Territories, and Possessions

The provisions of sections 1703 and 1706c of this title shall be applicable in the several States and Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 407(a), 97 Stat. 1211.)

AMENDMENTS

1983—Pub. L. 98-181 inserted "American Samoa," after "Pacific Islands,".

§ 1706e. Urban homestead program of unit of general local government, State, or designated public agency

(a) Transfer by Secretary of real property; payment; criteria

Notwithstanding any other provision of law, the Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") is authorized to transfer without payment to a unit of general local government or a State, or a public agency designated by a unit of general local government or a State, any real property—

[*See main edition for text of* (1) *and* (2)]

(3) which is not occupied by a person legally entitled to reside there;

[*See main edition for text of* (4) *and* (5)]

(b) Approval by Secretary; criteria

For the purposes of subsections (a) and (c) of this section, the Secretary shall approve an urban homestead program carried out by a unit of general local government or a State or a public agency designated by a unit of general local government or a State, which provides for—

[*See main edition for text of* (1) *and* (2)]

(3) an agreement whereby the individual or family to whom such property is conveyed agrees to—

(A) occupy such property as a principal residence for a period of not less than 5 years, except under such emergency standards as may be prescribed by the Secretary;

(B) repair all defects in the property that pose a substantial danger to health and safety within 1 year of the date of such initial conveyance;

(C) make such repairs and improvements to the property as may be necessary to meet applicable local standards for decent, safe, and sanitary housing within 3 years after the date of initial conveyance; and

[*See main edition for text of* (D), (4)]

(5) the conveyance from the unit of general local government or State or the public agency designated by the unit of general local government or State of fee simple title to such property without consideration upon compliance with the agreement;

(6) a coordinated approach toward neighborhood improvement through the homestead program and the upgrading of community services and facilities; and

(7) an equitable procedure for selecting the recipients of such properties that—

(A) gives a special priority to applicants—

(i) whose current housing fails to meet standards of health and safety, including overcrowding;

(ii) who currently pay in excess of 30 percent of their income for shelter; and

(iii) who have little prospect of obtaining improved housing within the foreseeable future through means other than homesteading;

(B) excludes applicants who are currently homeowners; and

(C) takes into account the capacity of the applicant to contribute a substantial amount of labor to the rehabilitation process, or to obtain assistance from private sources, community organizations, or other sources.

The Secretary may approve such other programs as he determines to reasonably fulfill these criteria.

(e) Agreements by Secretary for technical assistance

The Secretary is authorized to enter into agreements with units of general local government or States or public agencies designated by units of general local government or State to provide technical assistance for the administration of urban homestead programs which meet the requirements of subsection (b) or (h) of this section and to individuals and families who are participants in such programs.

[*See main edition for text of* (d) *and* (e)]

(f) List of all unoccupied residential properties owned by Secretary, Secretary of Agriculture, and Administrator of Veterans' Affairs; request for by unit of general local government, State, or designated public agency where property located

In order to facilitate planning for purposes of this section, the Secretary, the Secretary of Agriculture, and the Administrator of Veterans' Affairs shall, upon request of a unit of general local government or a State or a public agency designated by a unit of general local government or a State, provide a listing of all unoccupied residential properties to which the Secretary, the Secretary of Agriculture, or the Administrator holds title and which are located within the geographic jurisdiction of such unit, State, or agency. Such listing shall be accessible to the public during ordinary business hours at the offices of such unit of general local government, State, or public agency.

[*See main edition for text of* (g)]

(h) Multifamily homestead program, conveyance of property on demonstration basis

(1) The Secretary may, on a demonstration basis during fiscal years 1984 and 1985, convey to any unit of general local government or public agency designated by such unit of general local government any real property—

(A) to which the Secretary holds title; and

(B) that the Secretary determines to be suitable for a multifamily homesteading program that complies with the requirements of paragraph (2);

for such consideration, if any, as may be agreed upon between the Secretary and such unit of general local government or public agency.

(2) Any multifamily homesteading program carried out by any unit of general local government or public agency designated by any such unit of general local government shall be considered a multifamily homesteading program that complies with the requirements of this subsection if the Secretary determines that such program contains adequate assurances that—

(A) the primary use of all homestead properties following conversion or rehabilitation shall be residential; and

(B) not less than 75 percent of the residential occupants of homestead properties following conversion or rehabilitation shall be lower income families.

(3) As used in this subsection and subsection (i) of this section the term "lower income families" has the meaning given such term in section 1437a(b)(2) of title 42.

(i) Single family homestead program; feasibility of assistance to State or local governments or their agencies

(1) The Secretary shall use not more than $1,000,000 of the amounts appropriated under this section for each of the fiscal years 1984 and 1985 to undertake a program to demonstrate the feasibility of providing assistance to State or local governments or their agencies for the purchase of any real property that—

(A) is improved by one- to four-family residence;

(B) is not occupied by a person legally entitled to reside there;

(C) is designated by a State or general unit of local government for use in a single family homestead program; and

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(D) will be conveyed to lower income families under such program upon condition that each such family agrees—

(i) to occupy the property as a principal residence for a period of not less than 5 years, except under such emergency standards as may be prescribed by the Secretary;

(ii) to repair all defects in the property that pose a substantial danger to health or safety within 1 year of the date of the initial conveyance; and

(iii) to make such repairs and improvements to the property as may be necessary to meet applicable local standards for decent, safe, and sanitary housing within 3 years after the date of the initial conveyance.

(2) The Secretary shall give a preference to demonstrations under this subsection involving the acquisition of properties that become available in satisfaction of public liens such as tax liens.

(j) Continuing evaluation of demonstration programs; report to Congress

The Secretary shall conduct a continuing evaluation of the demonstration programs carried out under subsections (h) and (i) of this section and shall transmit to the Congress a report not later than December 31, 1985, containing a summary of his evaluation of all such programs and his recommendations for the future conduct of such programs.

(k) Authorization of appropriations

To reimburse the housing loan funds for properties transferred pursuant to this section, and to carry out the provisions of subsections (c), (g), (h), and (i) of this section, there are authorized to be appropriated not to exceed $12,000,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985. Any amounts so appropriated shall remain available until expended.

(As amended Pub. L. 98-181, title I, § 122, Nov. 30, 1983, 97 Stat. 1170; Pub. L. 98-479, title I, § 101(a)(14), Oct. 17, 1984, 98 Stat. 2220.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-479 added ", State," after "government" in last sentence.

1983—Subsec. (a)(3). Pub. L. 98-181, § 122(b), added "by a person legally entitled to reside there".

Subsec. (b)(3)(A). Pub. L. 98-181, § 122(c)(1), substituted "5 years, except under such emergency standards as may be prescribed by the Secretary" for "three years".

Subsec. (b)(3)(B). Pub. L. 98-181, § 122(c)(2), substituted provisions relating to repair of all defects that pose a substantial danger to health and safety within 1 year of date of initial conveyance for provisions relating to repair required to meet minimum health and safety standards for occupancy prior to occupancy.

Subsec. (b)(3)(C). Pub. L. 98-181, § 122(c)(3), substituted "3 years after the date of initial conveyance" for "eighteen months after occupying the property".

Subsec. (b)(7). Pub. L. 98-181, § 122(d), added par. (7).

Subsec. (c). Pub. L. 98-181, § 122(f)(1), substituted "subsection (b) or (h)" for "subsection (b)".

Subsec. (f). Pub. L. 98-181, § 122(e), added reference to Secretary of Agriculture wherever appearing, substituted "residential property" for "one- to four-family residences", and added provision relating to the accessibility of such listings to the public during business hours at the office of such unit of general local government or public agency.

Subsec. (h). Pub. L. 98-181, § 122(f)(2), (3), added subsec. (h) and redesignated former subsec. (h) as (k).

Pub. L. 98-181, § 122(a), added reference to subsecs. (h) and (i), and substituted provision authorizing appropriations of not to exceed $12,000,000 for fiscal 1984 and such sums as may be necessary for 1985 for provisions authorizing appropriations of not to exceed $5,000,000 for 1975, $6,250,000 for 1976, $15,000,000 for 1977, $15,000,000 for 1978, $26,000,000 for 1979 and $13,467,000 for 1983.

Subsecs. (i) to (k). Pub. L. 98-181, § 122(f)(2), (3), added subsecs. (i) and (j) and redesignated former subsec. (h) as (k).

SUBCHAPTER II—MORTGAGE INSURANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1701s, 1701x, 1702, 1703, 1705, 1709-1a, 1715f, 1731a, 1735f-2, 1735f-6, 1735f-8, 1735f-9, 1735f-10, 1743, 1748b, 2803, 2810, 3701, 3702, 3706 of this title; title 38 section 1828; title 42 sections 1472, 1479, 3535, 5403.

§ 1707. Definitions

As used in section 1709 of this title—

[*See main edition for text of* (a) *to* (c)]

(d) The term "State" includes the several States, and Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 407(b), 97 Stat. 1211.)

AMENDMENTS

1983—Subsec. (d). Pub. L. 98-181 inserted "American Samoa," after "Pacific Islands,".

§ 1709. Insurance of mortgages

[*See main edition for text of* (a)]

(b) Eligibility for insurance; mortgage limits

To be eligible for insurance under this section a mortgage shall—

(1) Have been made to, and be held by, a mortgagee approved by the Secretary as responsible and able to service the mortgage properly.

(2) Involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed $67,500 in the case of property upon which there is located a dwelling designed principally for a one-family residence; or $76,000 in the case of a two-family residence (whether or not such one- or two-family residence may be intended to be rented temporarily for school purposes); or $92,000 in the case of a three-family residence, or $107,000 in the case of a four-family residence; except that the Secretary may increase the preceding maximum dollar amounts on an area-by-area basis to the extent the Secretary deems necessary, after taking into consideration the extent to which

moderate and middle income persons have limited housing opportunities in the area due to high prevailing housing sales prices, but in no case may such limits, as so increased, exceed the lesser of (A) 133⅓ per centum of the dollar amount specified, or (B) in the case of a one-family residence, 95 per centum of the median one-family house price in the area, as determined by the Secretary; in the case of a two-family residence, 107 per centum of such median price; in the case of a three-family residence, 130 per centum of such median price; or in the case of a four-family residence, 150 per centum of such median price; and (except as otherwise provided in this paragraph) not to exceed an amount equal to the sum of (i) 97 per centum of $25,000 of the appraised value of the property, as of the date the mortgage is accepted for insurance, and (ii) 95 per centum of such value in excess of $25,000. If the mortgage to be insured under this section covers property on which there is located a one- to four-family residence to be occupied as the principal residence of the owner, and the appraised value of the property, as of the date the mortgage is accepted for insurance, does not exceed $50,000, the principal obligation may be in an amount not to exceed 97 percent of such appraised value. If the mortgagor is a veteran, and the mortgage to be insured under this section covers property upon which there is located a dwelling designed principally for a one-family residence, the principal obligation may be in an amount equal to the sum of (i) 100 per centum of $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance, and (ii) 95 per centum of such value in excess of $25,000. Notwithstanding any other provision of this section, in any case where the dwelling is not approved for mortgage insurance prior to the beginning of construction, such mortgage shall not exceed 90 per centum of the entire appraised value of the property as of the date the mortgage is accepted for insurance, unless (i) the dwelling was completed more than one year prior to the application for mortgage insurance, or (ii) the dwelling was approved for guaranty, insurance, or a direct loan under chapter 37 of title 38 prior to the beginning of construction, or (iii) the dwelling is covered by a consumer protection or warranty plan acceptable to the Secretary and satisfies all requirements which would have been applicable if such dwelling had been approved for mortgage insurance prior to the beginning of construction. As used herein, the term "veteran" means any person who served on active duty in the armed forces of the United States for a period of not less than ninety days (or is certified by the Secretary of Defense as having performed extra-hazardous service), and who was discharged or released therefrom under conditions other than dishonorable. Notwithstanding any other provision of this paragraph, the amount which may be insured under this section may be increased by up to 20 percent if such increase is necessary to account for the increased cost of the residence due to the installation of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of this title) therein.

[*See main edition for text of* (3) *and* (4)]

(5) Bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee.

[*See main edition for text of* (6) *and* (7)]

(8) In the case of a mortgagor who is not the occupant of the property, have a principal obligation not in excess of an amount equal to the lesser of (A) the otherwise applicable maximum dollar amount prescribed under paragraph (2), or (B) 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance: *Provided*, That such 85 per centum limitation shall not be applicable if the mortgagor and mortgagee assume responsibility in a manner satisfactory to the Secretary for the reduction of the mortgage by an amount not less than 15 per centum of the outstanding principal amount thereof in the event the mortgaged property is not, prior to the due date of the eighteenth amortization payment of the mortgage, sold to a purchaser acceptable to the Secretary who is the occupant of the property and who assumes and agrees to pay the mortgage indebtedness.

[*See main edition for text of* (9)]

(c) Premium charges

The Secretary is authorized to fix premium charges for the insurance of mortgages under the separate sections of this subchapter but in the case of any mortgage such charge shall be not less than an amount equivalent to one-fourth of 1 per centum per annum nor more than an amount equivalent to 1 per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time, without taking into account delinquent payments or prepayments: *Provided*, That premium charges fixed for insurance (1) under section 1715z–10, 1715z–12, 1715z–16, 1715z–17, or 1715z–18 of this title, or any other financing mechanism providing alternative methods for repayment of a mortgage that is determined by the Secretary to involve additional risk, or (2) under subsections (n) and (k) of this section are not required to be the same as the premium charges for mortgages insured under the other provisions of this section, but in no case shall premium charges under subsection (n) or (k) of this section exceed 1 per centum per annum: *Provided*, That any reduced premium charge so fixed and computed may, in the discretion of the Secretary, also be made applicable in such manner as the Secretary shall prescribe to each insured mortgage outstanding under the section or sections involved at the time the reduced premium charge is fixed. Such premium charges shall be payable by the mortgagee, either in cash, or in debentures issued by the Secretary under this subchapter at par plus accrued interest, in such manner as may be pre-

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scribed by the Secretary: *Provided*, That debentures presented in payment of premium charges shall represent obligations of the particular insurance fund or account to which such premium charges are to be credited: *Provided further*, That the Secretary may require the payment of one or more such premium charges at the time the mortgage is insured, at such discount rate as he may prescribe not in excess of the interest rate specified in the mortgage. If the Secretary finds upon the presentation of a mortgage for insurance and the tender of the initial premium charge or charges so required that the mortgage complies with the provisions of this section, such mortgage may be accepted for insurance by endorsement or otherwise as the Secretary may prescribe; but no mortgage shall be accepted for insurance under this section unless the Secretary finds that the project with respect to which the mortgage is executed is economically sound. In the event that the principal obligation of any mortgage accepted for insurance is paid in full prior to the maturity date, the Secretary is further authorized in his discretion to require the payment by the mortgagee of an adjusted premium charge in such amount as the Secretary determines to be equitable, but not in excess of the aggregate amount of the premium charges that the mortgagee would otherwise have been required to pay if the mortgage had continued to be insured under this section until such maturity date; and in the event that the principal obligation is paid in full as herein set forth the Secretary is authorized to refund to the mortgagee for the account of the mortgagor all, or such portion as he shall determine to be equitable, of the current unearned premium charges theretofore paid: *Provided*, That with respect to mortgages (1) for which the Secretary requires, at the time the mortgage is insured, the payment of a single premium charge to cover the total premium obligation for the insurance of the mortgage, and (2) on which the principal obligation is paid before the number of years on which the premium with respect to a particular mortgage was based, or the property is sold subject to the mortgage or is sold and the mortgage is assumed prior to such time, the Secretary shall provide for refunds, where appropriate, of a portion of the premium paid and shall provide for appropriate allocation of the premium cost among the mortgagors over the term of the mortgage, in accordance with procedures established by the Secretary which take into account sound financial and actuarial considerations.

(d) Increase in maximum amount of mortgage

Notwithstanding any provision of this subchapter governing maximum mortgage amounts for insuring a mortgage secured by a one- to four-family dwelling, the maximum amount of the mortgage determined under any such provision may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured.

[*See main edition for text of* (e) *to* (g)]

(h) Disaster housing

Notwithstanding any other provision of this section, the Secretary is authorized to insure any mortgage which involves a principal obligation not in excess of the applicable maximum dollar limit under subsection (b) of this section and not in excess of 100 per centum of the appraised value of a property upon which there is located a dwelling designed principally for a single-family residence, where the mortgagor is the owner and occupant and establishes (to the satisfaction of the Secretary) that his home which he occupied as an owner or as a tenant was destroyed or damaged to such an extent that reconstruction is required as a result of a flood, fire, hurricane, earthquake, storm, riot or civil disorder, or other catastrophe which the President, pursuant to sections 5122(2) and 5141 of title 42, has determined to be a major disaster.

[*See main edition for text of* (i) *and* (j)]

(k) Rehabilitation of one- to four-family structures; definitions; eligibility; refinancing and extension; General Insurance Fund

[*See main edition for text of* (1) *and* (2)]

(3) To be eligible for insurance under this subsection, a rehabilitation loan shall—

[*See main edition for text of* (A)]

(B) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee;

[*See main edition for text of* (C) *and* (D), (4) *and* (5); (l) *and* (m)]

(n) Cooperative housing projects; definitions

(1) The Secretary is authorized to insure under this section any mortgage meeting the requirements of subsection (b) of this section, except as modified by this subsection. To be eligible, the mortgage shall involve a dwelling unit in a cooperative housing project which is covered by a blanket mortgage insured under this chapter or the construction of which was completed more than a year prior to the application for the mortgage insurance. The mortgage amount as determined under the other provisions of subsection (b) of this section shall be reduced by an amount equal to the portion of the unpaid balance of the blanket mortgage covering the project which is attributable (as of the date the mortgage is accepted for insurance) to such unit.

(2) For the purposes of this subsection—

(A) The terms "home mortgage" and "mortgage" include a first lien given (in accordance with the laws of the State where the property is located and accompanied by such security and other undertakings as may be required under regulations of the Secretary) to secure a loan made to finance the purchase of stock or membership in a cooperative ownership housing corporation the permanent occupancy of the dwelling units of which is restricted to members of such corporation, where the purchase of such stock or membership will entitle the purchaser to the permanent occupancy of one of such units.

[See main edition for text of (B) and (C); (o) and (p)]

(As amended July 30, 1983, Pub. L. 98–63, title I, § 101, 97 Stat. 321; Nov. 30, 1983, Pub. L. 98–181, title IV, §§ 404(b)(2), (3), 419, 423(a), (b)(1), 424(a), 425, 447, 97 Stat. 1209, 1212, 1216–1218, 1228; Oct. 17, 1984, Pub. L. 98–479, title II, § 204(a)(2), 98 Stat. 2232.)

AMENDMENTS

1984—Subsec. (n)(2)(A). Pub. L. 98–479 substituted "a" for "an" before "cooperative ownership".

1983—Subsec. (b)(2). Pub. L. 98–181, § 424(a), struck out "(except as provided in the next to the last sentence of this paragraph)" and inserted "(except as otherwise provided in this paragraph)" and added "If the mortgage to be insured under this section covers property on which there is located a one- to four-family residence to be occupied as the principal residence of the owner, and the appraised value of the property, as of the date the mortgage is accepted for insurance, does not exceed $50,000, the principal obligation may be in an amount not to exceed 97 percent of such appraised value."

Pub. L. 98–181, § 423(b)(1), struck out ": *Provided*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured" after "150 per centum of such median price".

Subsec. (b)(5). Pub. L. 98–181, § 404(b)(2), substituted provision that the interest rate be at such rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate, exclusive of premium charges for insurance and service charges if any, not exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such percentum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market.

Subsec. (b)(8). Pub. L. 98–181, § 425, substituted "the lesser of (A) the otherwise applicable maximum dollar amount prescribed under paragraph (2), or (B) 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance" for "85 per centum of the amount computed under the provisions of paragraph (2) of this subsection".

Subsec. (c). Pub. L. 98–181, § 447, inserted "(1) under section 1715z–10, 1715z–12, 1715z–16, 1715z–17, or 1715z–18 of this title, or any other financing mechanism providing alternative methods for repayment of a mortgage that is determined by the Secretary to involve additional risk, or (2)" after "fixed for insurance".

Subsec. (d). Pub. L. 98–181, § 423(a), added subsec. (d).

Subsec. (h). Pub. L. 98–63 substituted "the applicable maximum dollar limit under subsection (b) of this section" for "$14,400".

Subsec. (k)(3)(B). Pub. L. 98–181, § 404(b)(3), substituted provision that interest be at such a rate as agreed upon by the mortgagor and mortgagee for provision that interest be at a rate permitted by the Secretary for mortgages insured under this section, except that the Secretary could permit a higher rate with respect to the period beginning with the making of the loan and ending with the completion of the rehabilitation or such earlier time as determined by the Secretary.

Subsec. (n)(1). Pub. L. 98–181, § 419(1), inserted "or the construction of which was completed more than a year prior to the application for the mortgage insurance" after "under this chapter".

Subsec. (n)(2)(A). Pub. L. 98–181, § 419(2), struck out "nonprofit" before "cooperative".

EFFECTIVE DATE OF 1983 AMENDMENT

Section 424(b) of Pub. L. 98–181 provided that: "The amendment made by subsection (a) [amending subsec. (b)(2) of this section] shall take effect only if the Secretary finds and reports to the Congress that such amendment, taking into account the higher loan-to-value ratio resulting from the advance payment of mortgage insurance premiums, will not adversely affect the actuarial soundness of the Federal Housing Administration mortgage insurance program." [For finding and report by Secretary and rule implementing the amendments effective June 24, 1985, see 49 F.R. 39686 and 50 F.R. 19924.]

Section 423(c) of Pub. L. 98–181 provided that: "The amendments made by this section [amending sections 1709, 1715e, 1715*l*, 1715y, and 1715z of this title] shall take effect only if the Secretary of Housing and Urban Development determines that the program of advance payment of insurance premiums, with specific regard to the effect of the provisions authorized by the amendments made by such sections, is actuarially sound." [For determination by Secretary and rule implementing the amendments effective May 10, 1984, see 49 F.R. 12693.]

REPORT ON HOME EQUITY CONVERSION MORTGAGES FOR THE ELDERLY

Section 448 of Pub. L. 98–181 provided that:

"The Secretary of Housing and Urban Development shall evaluate the existing use of home equity conversion mortgages for the elderly and, not later than the expiration of the 1-year period following the date of the enactment of this Act [Nov. 30, 1983], submit to the Congress a report setting forth the results of such evaluation. Such report shall include—

"(1) an evaluation of whether the use of such mortgages improves the financial situation, or otherwise meets the special needs, of elderly homeowners;

"(2) an evaluation of any risks incurred by mortgagors as a result of the use of such mortgages, and any recommendations of the Secretary for appropriate safeguards to be included in such mortgages to minimize such risks;

"(3) an evaluation of the potential for acceptance of such mortgages in the private market; and

"(4) any recommendations of the Secretary for the establishment of a Federal program of insuring such mortgages."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1703, 1706c, 1707, 1708, 1710, 1711, 1712, 1713, 1715e, 1715k, 1715*l*, 1715m, 1715q, 1715u, 1715w, 1715x, 1715y, 1715z, 1715z–2, 1715z–3, 1715z–10, 1715z–13, 1715z–14, 1717, 1723h, 1735, 1735b, 1735c, 1748h–1, 1748h–2, 1750b, 2703 of this title; title 15 sections 77d, 78c; title 38 section 1803; title 42 sections 1490a, 1490k.

§ 1709–1. Repealed. Pub. L. 98–181, title IV, § 404(a), Nov. 30, 1983, 97 Stat. 1208

Section, Pub. L. 90–301, § 3(a), May 7, 1968, 82 Stat. 113; Pub. L. 90–448, title III, § 315, Aug. 1, 1968, 82 Stat. 512; Pub. L. 91–78, § 3, Sept. 30, 1969, 83 Stat. 125; Pub. L. 91–152, title IV, § 401, Dec. 24, 1969, 83 Stat. 394; Pub. L. 91–351, title VI, § 601, July 24, 1970, 84 Stat. 461; Pub. L. 92–213, § 1, Dec. 22, 1971, 85 Stat. 775; Pub. L. 92–335, § 1, July 1, 1972, 86 Stat. 405; Pub. L. 93–85, § 2, Aug. 10, 1973, 87 Stat. 220; Pub. L. 93–117, § 3, Oct. 2, 1973, 87 Stat. 422; Pub. L. 93–234, title II, § 208, Dec. 31, 1973, 87 Stat. 984; Pub. L. 93–383, title III, §§ 309(e), 317, Aug. 22, 1974, 88 Stat. 682, 685; Pub. L. 95–60, § 2, June 30, 1977, 91 Stat. 257; Pub. L. 95–80, § 2, July 31, 1977, 91 Stat. 339; Pub. L. 95–128, title III, § 302, Oct. 12, 1977, 91 Stat. 1131; Pub. L. 95–406, § 2, Sept. 30, 1978, 92 Stat. 880; Pub. L. 95–557, title III, § 302, Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96–71, § 2, Sept. 28, 1979, 93 Stat. 501; Pub. L. 96–105, § 2, Nov. 8, 1979, 93 Stat. 794; Pub. L. 96–153, title III, § 302, Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96–372, § 3, Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96–399, title III, §§ 302, 332, Oct. 8, 1980, 94 Stat. 1639, 1652; Pub. L. 97–35, title III,

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§ 332, Aug. 13, 1981, 95 Stat. 413; Pub. L. 97-289, § 2, Oct. 6, 1982, 96 Stat. 1231; Pub. L. 98-35, § 2, May 26, 1983, 97 Stat. 197; Pub. L. 98-109, § 2, Oct. 1, 1983, 97 Stat. 746, authorized the Secretary, until Dec. 1, 1983, to set the maximum interest rates for certain mortgage insurance programs, notwithstanding the authority of the Secretary of Housing and Urban Development to establish such rates, specified the criteria to be considered in establishing such rates, authorized the Secretary to provide that the interest rate applicable under section 1709(b) of this title be the negotiated interest rate specified in the commitment agreement, limited the amount of mortgages with such negotiated interest rates which may be insured and prohibited such negotiated interest rates with respect to mortgages subject to section 1715z-10 of this title.

MORTGAGE CREDIT INTEREST RATES

Section 4 of Pub. L. 90-301, as amended by Pub. L. 90-565, Oct. 12, 1968, 82 Stat. 1001; Pub. L. 91-9, Apr. 11, 1969, 83 Stat. 7; Pub. L. 91-38, July 1, 1969, 83 Stat. 43, which established a Commission to study mortgage interest rates and to make recommendations to assure the availability of an adequate supply of mortgage credit at a reasonable cost to the consumer, directed the Commission to make an interim report not later than July 1, 1969, and a final report of its study and recommendations not later than August 1, 1969, to enable the President, Congress, and the Secretary of Housing and Urban Development to take necessary action before October 1, 1969, when the authorization for the increase in interest rates above present statutory ceilings will expire, and provided that the Commission cease to exist sixty days after the submission of its final report, was repealed by Pub. L. 98-181, title IV, § 404(a), Nov. 30, 1983, 97 Stat. 1208.

§ 1710. Payment of insurance

(a) Conveyance, sale, and assignment by mortgagee; debentures and certificates of claim; cost of foreclosure; direct conveyances

In any case in which the mortgagee under a mortgage insured under section 1709 of this title shall have foreclosed and taken possession of the mortgaged property in accordance with regulations of, and within a period to be determined by the Secretary, or shall, with the consent of the Secretary, have otherwise acquired such property from the mortgagor after default, the mortgagee shall be entitled to receive the benefit of the insurance as hereinafter provided, upon (1) the prompt conveyance to the Secretary of title to the property which meets the requirements of rules and regulations of the Secretary in force at the time the mortgage was insured, and which is evidenced in the manner prescribed by such rules and regulations, and (2) the assignment to him of all claims of the mortgagee against the mortgagor or others, arising out of the mortgage transaction or foreclosure proceedings, except such claims as may have been released with the consent of the Secretary. The Secretary is also authorized, in accordance with such regulations as the Secretary may prescribe, to make the benefit of the insurance as hereinafter provided available to the mortgagee, notwithstanding any provision of this section requiring conveyance of title to the property to the Secretary, (1) upon sale of the insured property at foreclosure, where such sale is for at least the fair market value of the property (with appropriate adjustments), as determined by the Secretary, and (2) upon the assignment to the Secretary of all claims referred to in clause (2) of the preceding sentence. The payment of benefits under the preceding sentence may be made for any mortgage insured pursuant to a commitment to insure issued on or after November 30, 1983, and, with the approval of the mortgagee, for any mortgage insured pursuant to a commitment issued before November 30, 1983. Upon the conveyance and assignment referred to in the first sentence of this section or the sale and assignment referred to in the second sentence of this subsection, the obligation of the mortgagee to pay the premium charges for insurance shall cease and the Secretary shall, subject to the cash adjustment hereinafter provided, issue to the mortgagee debentures having a total face value equal to the value of the mortgage and (subject to subsection (e)(2) of this section) a certificate of claim, as hereinafter provided. For the purposes of this subsection, the value of the mortgage shall be determined, in accordance with rules and regulations prescribed by the Secretary, by adding to the amount of the original principal obligation of the mortgage which was unpaid on the date of the institution of foreclosure proceedings, or on the date of the acquisition of the property after default other than by foreclosure the amount of all payments which have been made by the mortgagee for taxes, ground rents, and water rates, which are liens prior to the mortgage, special assessments which are noted on the application for insurance or which become liens after the insurance of the mortgage, charges for the administration, operation, maintenance and repair of community-owned property or the maintenance and repair of the mortgaged property, the obligation for which arises out of a covenant filed for record and approved by the Secretary prior to the insurance of the mortgage, insurance on the mortgaged property, and any mortgage insurance premiums, and any tax imposed by the United States upon any deed or other instrument by which said property was acquired by the mortgagee and transferred or conveyed to the Secretary and by deducting from such total amount any amount received on account of the mortgage after either of such dates, any amount received as rent or other income from the property, less reasonable expenses incurred in handling the property, after either of such dates, and, in the case of insurance benefits paid in accordance with the second sentence of this section, any amount received upon the foreclosure sale of the property: *Provided*, That with respect to mortgages which are accepted for insurance under section 203(b)(2)(B) of this Act, and which are foreclosed before there shall have been paid on account of the principal obligation of the mortgage a sum equal to 10 per centum of the appraised value of the property as of the date the mortgage was accepted for insurance, there may be included in the debentures issued by the Secretary, on account of foreclosure costs actually paid by the mortgagee and approved by the Secretary an amount not in excess of 2 per centum of the unpaid principal of the mortgage as of the date of the institution of foreclosure proceedings, but in no event in excess of

$75: *And provided further,* That with respect to mortgages which are accepted for insurance under section 203(b)(2)(D) of this Act or under the second proviso of section 1713(c)(2) of this title, or under section 1715e of this title, or with respect to any mortgage accepted for insurance under section 1709 of this title on or after August 2, 1954, there may be included in the debentures issued by the Secretary on account of the cost of foreclosure (or of acquiring the property by other means) actually paid by the mortgagee and approved by the Secretary an amount, not in excess of two-thirds of such cost or $75 whichever is the greater: *And provided further,* That with respect to a mortgage accepted for insurance pursuant to a commitment issued on or after September 2, 1964, the Secretary may include in debentures or in the cash payment an amount not to exceed the foreclosure, acquisition, and conveyance costs actually paid by the mortgagee and approved by the Secretary: *And provided further,* That with respect to a mortgage accepted for insurance pursuant to a commitment issued prior to September 2, 1964, the Secretary may, with the consent of the mortgagee (in lieu of issuing a certificate of claim as provided in subsection (e) of this section), include in debentures or in the cash payment, in addition to amounts otherwise allowed for such costs, an amount not to exceed one-third of the total foreclosure, acquisition, and conveyance costs actually paid by the mortgagee and approved by the Secretary, but in no event may the total allowance for such costs exceed the amount actually paid by the mortgagee: *And provided further,* That with respect to mortgages to which the provisions of sections 532 and 536 of the Appendix to title 50 apply, and which are insured under section 1709 of this title, and subject to such regulations and conditions as the Secretary may prescribe, there shall be included in the debentures an amount which the Secretary finds to be sufficient to compensate the mortgagee for any loss which it may have sustained on account of interest on debentures by reason of its having postponed the institution of foreclosure proceedings or the acquisition of the property by other means during any part or all of the period of such military service and three months thereafter: *And provided further,* That where the claim is paid in cash there shall be included in the cash payment an amount equivalent to the compensation for loss of debenture interest that would be included in computing debentures if such claim were being paid in debentures: *And provided further,* That with respect to any mortgage covering a one-, two-, three-, or four-family residence insured under this chapter, if the Secretary finds, after notice of default, that the default was due to circumstances beyond the control of the mortgagor, he may, upon such terms and conditions as he may prescribe, (1) approve the request of the mortgagee for an extension of the time for the curing of the default and of the time for commencing foreclosure proceedings or for otherwise acquiring title to the mortgaged property to such time as the Secretary may determine is necessary and desirable to enable the mortgagor to complete the mortgage payments, including an extension of time beyond the stated maturity of the mortgage, and in the event of a subsequent foreclosure or acquisition of the property by other means the Secretary is authorized to include in the debentures an amount equal to any unpaid mortgage interest, or (2) approve a modification of the terms of the mortgage for the purpose of changing the amortization provisions by recasting, over the remaining term of the mortgage or over such longer period as may be approved by the Secretary, the total unpaid amount then due, as determined by the Secretary, with the modification to become effective currently or to become effective upon the termination of an agreed-upon extension of the period for curing the default; and the principal amount of the mortgage, as modified, shall be considered to be the "original principal obligation of the mortgage" as that term is used in this chapter for the purpose of computing the total face value of the debentures to be issued or the cash payment to be made by the Secretary to a mortgagee: *And provided further,* That, notwithstanding any requirement contained in this chapter that debentures may be issued only upon acquisition of title and possession by the mortgagee and its subsequent conveyance and transfer to the Secretary, and for the purpose of avoiding unnecessary conveyance expense in connection with payment of insurance benefits under the provisions of this chapter, the Secretary is authorized, subject to such rules and regulations as he may prescribe, to permit the mortgagee to tender to the Secretary a satisfactory conveyance of title and transfer of possession direct from the mortgagor or other appropriate grantor and to pay the insurance benefits to the mortgagee which it would otherwise be entitled to if such conveyance had been made to the mortgagee and from the mortgagee to the Secretary.

[*See main edition for text of (b) to (h)*]

(j) [2] Foreclosure; payment and cessation of obligation

In the event that any mortgagee under a mortgage insured under section 1709 of this title (other than a mortgagee receiving insurance benefits under the second sentence of subsection (a) of this section) forecloses on the mortgaged property but does not convey such property to the Secretary in accordance with this section, and the Secretary is given written notice thereof, or in the event that the mortgagor pays the obligation under the mortgage in full prior to the maturity thereof, and the mortgagee pays any adjusted premium charge required under the provisions of section 1709(c) of this title, and the Secretary is given written notice by the mortgagee of the payment of such obligation, the obligation to pay any subsequent premium charge for insurance shall cease, and all rights of the mortgagee and the mortgagor under this section shall terminate as of the date of such notice.

[*See main edition for text of (k)*]

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[2] So in original. There is no subsection "(i)".

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(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 426, 97 Stat. 1218.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-181, § 426(a), inserted provision authorizing the Secretary to make insurance available to the mortgagee upon sale of the insured property at foreclosure and assignment of all claims to the Secretary and provision relating to payment of benefits pursuant to a commitment to insure issued on or after Nov. 30, 1983, and substituted "any amount received as rent or other income from the property, less reasonable expenses incurred in handling the property, after either of such dates, and, in the case of insurance benefits paid in accordance with the second sentence of this section, any amount received upon the foreclosure sale of the property" for "and any amount received as rent or other income from the property, less reasonable expenses incurred in handling the property, after either of such dates".

Subsec. (j). Pub. L. 98-181, § 426(b), inserted "(other than a mortgagee receiving insurance benefits under the second sentence of subsection (a) of this section)" after "section 1709 of this title".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1706c, 1709, 1712, 1715e, 1715k, 1715*l*, 1715m, 1715u, 1715x, 1715y, 1715z-3, 1715z-13, 1715z-17, 1715z-18, 1748h-1, 1748h-2, 1750c of this title.

§ 1713. Rental housing insurance

(a) Definitions

As used in this section—

[*See main edition for text of (1) to (6)*]

(7) The term "State" includes the several States, and Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

(b) Insurance of additional mortgages

In addition to mortgages insured under section 1709 of this title, the Secretary is authorized to insure mortgages as defined in this section (including advances on such mortgages during construction) which cover property held by—

[*See main edition for text of (1)*]

(2) any other mortgagor approved by the Secretary. The Secretary may, in the Secretary's discretion, require any such mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation so as to provide reasonable rentals to tenants and a reasonable return on the investment. Any such regulations or restrictions shall continue for such period or periods as the Secretary, in the Secretary's discretion, may require, including until the termination of all obligations of the Secretary under the insurance and during such further period of time as the Secretary shall be the owner, holder, or reinsurer of the mortgage. The Secretary may make such contracts with and acquire, for not to exceed $100, such stock or interest in the mortgagor as he may deem necessary to render effective any such regulations or restrictions. The stock or interest acquired by the Secretary shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

The insurance of mortgages under this section is intended to facilitate particularly the production of rental accommodations, at reasonable rents, of design and size suitable for family living. The Secretary is, therefore, authorized in the administration of this section to take action, by regulation or otherwise, which will direct the benefits of mortgage insurance hereunder primarily to those projects which make adequate provision for families with children, and in which every effort has been made to achieve moderate rental charges.

Notwithstanding any other provisions of this section, the Secretary may not insure any mortgage under this section (except a mortgage with respect to a manufactured home park designed exclusively for occupancy by elderly persons) unless the mortgagor certifies under oath that in selecting tenants for the property covered by the mortgage he will not discriminate against any family by reason of the fact that there are children in the family, and that he will not sell the property while the insurance is in effect unless the purchaser so certifies, such certification to be filed with the Secretary. Violation of any such certification shall be a misdemeanor punishable by a fine of not to exceed $500.

(c) Eligibility for insurance; mortgage limits

To be eligible for insurance under this section a mortgage on any property or project shall involve a principal obligation in an amount—

[*See main edition for text of (1) to (3)*]

The mortgage shall provide for complete amortization by periodic payments (unless otherwise approved by the Secretary) within such term as the Secretary shall prescribe, and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release. No mortgage shall be accepted for insurance under this section or section 1715a [1] of this title unless the Secretary finds that the property or project, with respect to which the mortgage is executed, is economically sound. Such property or project may include five or more family units and may include such commercial and community facilities as the Secretary deems adequate to serve the occupants.

[*See main edition for text of (d) to (h)*]

(i) Debentures; execution; negotiability; terms; tax exemptions

Debentures issued under this section shall be executed in the name of the General Insurance Fund as obligor, shall be signed by the Secretary, by either his written or engraved signature, shall be negotiable, and shall be dated as of the date of default as determined in subsec-

[1] See References in Text note below.

tion (g) of this section, except that debentures issued pursuant to the provisions of section 1715k(f), section 1715*l*(g), and section 1715x of this title may be dated as of the date the mortgage is assigned (or the property is conveyed) to the Secretary and shall bear interest from such date. They shall bear interest at a rate established by the Secretary pursuant to section 1715*o* of this title payable semiannually on the 1st day of January and the 1st day of July of each year, and shall mature twenty years after the date thereof. Such debentures as are issued in exchange for mortgages insured after February 3, 1938, shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. They shall be paid out of the General Insurance Fund which shall be primarily liable therefor, and they shall be fully and unconditionally guaranteed as to principal and interest by the United States, and such guaranty shall be expressed on the face of the debentures. In the event the General Insurance Fund fails to pay upon demand, when due, the principal of or interest on any debentures so guaranteed, the Secretary of the Treasury shall pay to the holders the amount thereof which is authorized to be appropriated out of any money in the Treasury not otherwise appropriated, and thereupon, to the extent of the amount so paid, the Secretary of the Treasury shall succeed to all the rights of the holders of such debentures.

[*See main edition for text of (j) to (r)*]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, §§ 404(b)(4), 407(c), 431(a), 435, 446(a), 97 Stat. 1209, 1211, 1220, 1222, 1228; Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(3), 98 Stat. 2232.)

REFERENCES IN TEXT

Section 1720 of this title, referred to in subsec. (c)(3), was repealed by Pub. L. 98-181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

AMENDMENTS

1984—Subsec. (i). Pub. L. 98-479 substituted "section 1715k(f), section 1715*l*(g), and section 1715x of this title" for "section 1715k(f), 1715*l*(g), and section 1715x of this title".

1983—Subsec. (a)(7). Pub. L. 98-181, § 407(c), inserted "American Samoa," after "Pacific Islands,".

Subsec. (b). Pub. L. 98-181, § 431(a)(3), in first undesignated par. following par. (2) struck out "and directed" after "therefore, authorized".

Pub. L. 98-181, § 435, in second undesignated par. following par. (2) substituted "the Secretary may not insure any mortgage under this section (except a mortgage with respect to a manufactured home park designed exclusively for occupancy by elderly persons)" for "no mortgage shall be insured hereunder".

Subsec. (b)(2). Pub. L. 98-181, § 431(a)(1), (2), substituted provision permitting the Secretary discretionary authority to regulate rents and other charges for such period or periods as the Secretary, in his discretion, may require for provision which required the Secretary to regulate rents and other charges until the termination of all obligations of the Secretary under the insurance and during such further time as the Secretary was owner, holder, or reinsurer of the mortgage, and substituted "any such regulations and restrictions" for "the regulations and restrictions".

Subsec. (c). Pub. L. 98-181, § 446(a), which directed that "(unless otherwise approved by the Secretary)" be inserted after "periodic payments" in first undesignated par. of par. (3), was executed to the undesignated par. following par. (3) to reflect the probable intent of Congress.

Pub. L. 98-181, § 404(b)(4), which directed the substitution of provision that the interest rate for the mortgage be such a rate as agreed upon by the mortgagor and mortgagee for provision that the rate of interest, exclusive of premium charges for insurance, not exceed 5¼ per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annum not in excess of 6 per centum per annum as the Secretary finds necessary to meet the mortgage market in first undesignated par. of par. (3), was executed to the undesignated par. following par. (3) to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 431(c) of Pub. L. 98-181 provided that: "The amendments made in this section [amending sections 1713 and 1715y of this title] shall not apply with respect to mortgages insured by the Secretary of Housing and Urban Development before the date of the enactment of this Act [Nov. 30, 1983]."

REPEALS

Pub. L. 90-301, § 3(b), May 7, 1968, 82 Stat. 114, cited as a credit to this section, was repealed by Pub. L. 98-181, title IV, § 404(a), Nov. 30, 1983, 97 Stat. 1208.

LIMITATION ON NUMBER OF DWELLING UNITS WITH MORTGAGES NOT PROVIDING FOR COMPLETE AMORTIZATION

Section 446(f) of Pub. L. 98-181 provided that: "The aggregate number of dwelling units included in properties covered by mortgages insured pursuant to the authority granted in the amendments made by this section [amending sections 1713, 1715k, 1715*l*, and 1715v of this title] in any fiscal year may not exceed 10,000."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 1454, 1464, 1710, 1715c, 1715e, 1715k, 1715*l*, 1715r, 1715v, 1715w, 1715x, 1715y, 1715z-3, 1715z-6, 1715z-7, 1717, 1731b, 1735, 1743, 1744, 1748b, 1748h-2, 1749aa, 1749hh, 1749aaa-2, 1750g of this title; title 42 sections 1437*f*, 1437*o*, 1594a, 3535.

§ 1715b. Rules and regulations

REGULATIONS

Pub. L. 98-479, title I, § 104(f), Oct. 17, 1984, 98 Stat. 2226, provided that: "The Secretary of Housing and Urban Development shall, not later than October 31, 1984, issue regulations to carry out the amendments made to section 242 of the National Housing Act [12 U.S.C. 1715z-7] by section 436 of the Housing and Urban-Rural Recovery Act of 1983 [Pub. L. 98-181]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 sections 77d, 78c.

§ 1715c. Labor standards

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1715e, 1750b of this title; title 42 section 1437*o*.

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§ 1715d. Insurance of mortgages on property in Alaska, Guam, and Hawaii

If the Secretary of Housing and Urban Development finds that, because of higher costs prevailing in Alaska, Guam, or Hawaii, it is not feasible to construct dwellings or manufactured home courts or parks on property located in Alaska or in Guam or Hawaii without sacrifice of sound standards of construction, design, or livability, within the limitations as to maximum or maxima mortgage amounts provided in this chapter, the Secretary may, by regulations or otherwise, prescribe, with respect to dollar amount, a higher maximum or maxima for the principal obligation of mortgages insured under this chapter covering property located in Alaska or in Guam or Hawaii in such amounts as he shall find necessary to compensate for such higher costs but not to exceed, in any event, the maximum or maxima otherwise applicable (including increased mortgage amounts in geographical areas where cost levels so require) by more than one-half thereof. No mortgage with respect to a project or property in Alaska or in Guam or Hawaii shall be accepted for insurance under this chapter unless the Secretary finds that the project or property is an acceptable risk giving consideration to the acute housing shortage in Alaska or in Guam or Hawaii: *Provided*, That any such mortgage may be insured or accepted for insurance without regard to any requirement in any other section of this chapter that the Secretary find the project or property to be economically sound or an acceptable risk. Notwithstanding any of the provisions of this chapter or any other law, the Alaska Housing Authority or the Government of Guam or Hawaii or any agency or instrumentality thereof shall be eligible as mortgagor or mortgagee, as the case may be, for any of the purposes of mortgage insurance under the provisions of this chapter. Upon application by the mortgagee (1) where the mortgagor is regulated or restricted pursuant to the last sentence of this section or (2) where the Alaska Housing Authority or the Government of Guam or Hawaii or any agency or instrumentality thereof is the mortgagor or mortgagee, for the insurance of a mortgage under any provisions of this chapter, the Secretary is authorized to insure the mortgage (including advances thereon where otherwise authorized), and to make commitments for the insuring of any such mortgages prior to the date of their execution or disbursement thereon, under such provision (and this section) without regard to any requirement that the mortgagor shall be the owner and occupant of the property or shall have paid a prescribed amount on account of such property. Without limiting the authority of the Secretary under any other provision of law, the Secretary is authorized, with respect to any mortgagor in such case (except where the Alaska Housing Authority is the mortgagor or mortgagee), to require the mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods or operation to such an extent and in such manner as the Secretary determines advisable to provide reasonable rentals and sales prices and a reasonable return on the investment.

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(4), 98 Stat. 2232.)

AMENDMENTS

1984—Pub. L. 98-479 substituted "Insurance of mortgages on property in Alaska, Guam, and Hawaii" for "Construction of dwellings or mobile home courts or parks in Alaska, Guam, and Hawaii; increased maximum for mortgage insurance; conditions and limitations" in section catchline, and substituted "Notwithstanding" for "Nowithstanding" at beginning of third sentence.

§ 1715e. Cooperative housing insurance

[*See main edition for text of* (a)]

(b) Eligibility conditions for projects under subsection (a)(1) of this section

To be eligible for insurance under this section a mortgage on any property or project of a corporation or trust of the character described in paragraph (1) of subsection (a) of this section shall involve a principal obligation in an amount—

(1) Repealed. Pub. L. 93-383, title III, § 304(b), Aug. 22, 1974, 88 Stat. 678.

(2) not to exceed, for such part of the property or project as may be attributable to dwelling use (excluding exterior land improvements as defined by the Secretary), $19,500 per family unit without a bedroom, $21,600 per family unit with one bedroom, $25,800 per family unit with two bedrooms, $31,800 per family unit with three bedrooms, and $36,000 per family unit with four or more bedrooms, and not to exceed 98 per centum of the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed physical improvements are completed: *Provided*, That as to projects to consist of elevator-type structures the Secretary may, in his discretion, increase the dollar amount limitations per family unit to not to exceed $22,500 per family unit without a bedroom, $25,200 per family unit with one bedroom, $30,900 per family unit with two bedrooms, $38,700 per family unit with three bedrooms, and $43,758 per family unit with four or more bedrooms, as the case may be, to compensate for the higher costs incident to the construction of elevator-type structures of sound standards of construction and design: *Provided further*, That the Secretary may, by regulation, increase any of the foregoing dollar amount limitations contained in this paragraph by not to exceed 75 per centum in any geographical area where he finds that cost levels so require, except that, where the Secretary determines it necessary on a project by project basis, the foregoing dollar amount limitations contained in this paragraph may be exceeded by not to exceed 90 per centum (by not to exceed 140 per centum where the Secretary determines that a mortgage other than one purchased or to be purchased under section 1720 of this title by the Government National Mortgage Association in implementing its special assistance functions is involved) in such an area: *Provided further*, That in the case of a mortgagor of the character de-

scribed in paragraph (3) of subsection (a) of this section the mortgage shall involve a principal obligation in an amount not to exceed 90 per centum of the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed physical improvements are completed: *And provided further,* That upon the sale of a property or project by a mortgagor of the character described in paragraph (3) of subsection (a) of this section to a nonprofit cooperative ownership housing corporation or trust within two years after the completion of such property or project the mortgage given to finance such sale shall involve a principal obligation in an amount not to exceed the maximum amount computed in accordance with this subsection without regard to the preceding proviso.

[*See main edition for text of* (c)]

(d) Amortization; release from mortgage lien; individual insurance; commercial and community facilities

Any mortgage insured under this section shall provide for complete amortization by periodic payments within such term as the Secretary may prescribe but not to exceed 40 years from the beginning of amortization of the mortgage, and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the mortgage upon such terms and conditions as he may prescribe and the mortgage may provide for such release, and a mortgage on any project of a corporation or trust of the character described in paragraph (2) of subsection (a) of this section may provide that, at any time after the completion of the construction of the project, such mortgage may be replaced, in whole or in part, by individual mortgages covering each individual dwelling in the project in amounts not to exceed the unpaid balance of the blanket mortgage allocable to the individual property. Each such individual mortgage may be insured under this section. Property covered by a mortgage, insured under this section, on a property or project of a corporation or trust of the character described in paragraph (1) of subsection (a) of this section may include five or more family units and may include such commercial and community facilities as the Secretary deems adequate to serve the occupants. Property held by a corporation or trust of the character described in paragraph numbered (2) of subsection (a) of this section which is covered by a mortgage insured under this section may include such community facilities, and property held by a mortgagor of the character described in paragraph numbered (3) of subsection (a) of this section which is covered by a mortgage insured under this section may include such commercial and community facilities, as the Secretary deems adequate to serve the occupants.

[*See main edition for text of* (e) *to* (p)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, §§ 404(b)(5), 423(b)(2), 97 Stat. 1209, 1216.)

REFERENCES IN TEXT

Section 1720 of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 98-181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

AMENDMENTS

1983—Subsec. (b)(2). Pub. L. 98-181, § 423(b)(2), struck out ": *Provided further,* That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured" after "involved) in such area".

Subsec. (d). Pub. L. 98-181, § 404(b)(5), substituted provision that the interest rate for the mortgage be such a rate as agreed upon by the mortgagor and mortgagee for provision that the rate of interest, exclusive of premium charges for insurance, not exceed 5¼ per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annum not in excess of 6 per centum per annum as the Secretary finds necessary to meet the mortgage market.

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by section 423 of Pub. L. 98-181, see section 423(c) of Pub. L. 98-181, set out as a note under section 1709 of this title.

REPEALS

Pub. L. 90-301, § 3(c), May 7, 1968, 82 Stat. 114, cited as a credit to this section, was repealed by Pub. L. 98-181, title IV, § 404(a), Nov. 30, 1983, 97 Stat. 1208.

CROSS REFERENCES

Mortgages for one- to four-family dwellings, authority to increase maximum amount by amount of mortgage insurance premium paid at time insured, see section 1709 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1710, 1715c, 1715n, 1715q, 1715r, 1715y, 1715z, 1715z-6, 1717, 1731b, 1735c of this title; title 42 section 3535.

§ 1715h. General insurance authorization; termination date

Except with respect to the insurance of a loan or mortgage pursuant to section 1703, 1715l, 1715z, 1715z-1, 1715z-9, or 1715z-10 of this title or subchapter VIII, IX-A, or IX-B of this chapter (subject to any limitations thereunder on the time of such insurance), no loan or mortgage shall be insured under any provision of this chapter after March 17, 1986, except pursuant to a commitment to insure before that date.

(As amended May 26, 1983, Pub. L. 98-35, § 1(b), 97 Stat. 197; Oct. 1, 1983, Pub. L. 98-109, § 1(b), 97 Stat. 745; Nov. 30, 1983, Pub. L. 98-181, title IV, § 401(b), 97 Stat. 1207; Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(5), 98 Stat. 2232; Oct. 8, 1985, Pub. L. 99-120, § 1(b), 99 Stat. 502; Nov. 15, 1985, Pub. L. 99-156, § 1(b), 99 Stat. 815; Dec. 26, 1985, Pub. L. 99-219, § 1(b), 99 Stat. 1730.)

AMENDMENTS

1985—Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

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1984—Pub. L. 98-479 added references to sections 1715z-9 and 1715z-10 of this title.

1983—Pub. L. 98-181 substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

§ 1715k. Rehabilitation and neighborhood conservation housing insurance

[*See main edition for text of* (a) *to* (c)]

(d) Eligibility for insurance; conditions; limits

To be eligible for insurance under this section a mortgage shall meet the following conditions:

[*See main edition for text of* (1) *and* (2)]

(3) The mortgage shall—

[*See main edition for text of* (A)]

(B)(i) Repealed. Pub. L. 93-383, title III, § 304(d), Aug. 22, 1974, 88 Stat. 678.

(ii) not exceed 90 per centum of the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed improvements are completed (the replacement cost of the property or project may include the land, the proposed physical improvements, utilities within the boundaries of the property or project, architect's fees, taxes, and interest during construction, and other miscellaneous charges incident to construction and approved by the Secretary, and shall include an allowance for builder's and sponsor's profit and risk of 10 per centum of all of the foregoing items except the land unless the Secretary, after certification that such allowance is unreasonable, shall by regulation prescribe a lesser percentage: *Provided*, That in the case of properties other than new construction, the foregoing limitations upon the amount of the mortgage shall be based upon the sum of the estimated cost of repair and rehabilitation and the Secretary's estimate of the value of the property before repair and rehabilitation rather than upon the Secretary's estimate of the replacement cost: *Provided further*, That the mortgage may involve the financing of the purchase of property which has been rehabilitated by a local public agency with Federal assistance pursuant to section 110(c)(8) of the Housing Act of 1949 [42 U.S.C. 1460(c)(8)], and, in such case the foregoing limitations upon the amount of the mortgage shall be based upon the appraised value of the property as of the date the mortgage is accepted for insurance;

[*See main edition for text of* (iii) *and* (iv)]

(4) The mortgage shall provide for complete amortization by periodic payments within such terms as the Secretary may prescribe, but as to mortgages coming within the provisions of paragraph (3)(A) of this subsection not to exceed the maximum maturity prescribed by the provisions of section 1709(b)(3) of this title. The mortgage shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee and contain such terms and provisions with respect to the application of the mortgagor's periodic payment to amortization of the principal of the mortgage, insurance, repairs, alterations, payment of taxes, default reserves, delinquency charges, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters as the Secretary may in the Secretary's discretion prescribe.

[*See main edition for text of* (e) *to* (g)]

(h) Home improvement loans; eligibility; conditions; refinancing; premium charge; defaults; debentures; exception; limitation

[*See main edition for text of* (1)]

(2) To be eligible for insurance under this subsection a home improvement loan shall—

[*See main edition for text of* (i) *and* (ii)]

(iii) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee;

[*See main edition for text of* (iv *to* (vi), (3) *to* (11)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, §§ 404(b)(6), (7), 432(a), 446(c), 97 Stat. 1209, 1220, 1228.)

REFERENCES IN TEXT

The Housing Act of 1949, as amended, referred to in subsec. (d)(1)(A), (B)(ii), and (h)(1), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title I of the Housing Act of 1949, which was classified generally to subchapter II (§ 1450 et seq.) of chapter 8A of Title 42, The Public Health and Welfare, including sections 110, 111, and 117 [42 U.S.C. 1460, 1462, 1468], was omitted from the Code pursuant to section 5316 of Title 42 which terminated the authority to make loans or grants under such title I after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

Section 1720 of this title, referred to in subsec. (d)(3)(B)(iii), was repealed by Pub. L. 98-181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

AMENDMENTS

1983—Subsec. (d)(3)(B)(ii). Pub. L. 98-181, § 432(a), struck out proviso that in no case involving refinancing would the mortgage exceed the estimated cost of repair and rehabilitation and the amount, as determined by the Secretary, required to refinance existing indebtedness secured by the property or project.

Subsec. (d)(4). Pub. L. 98-181, § 404(b)(6), substituted provision that the interest rate be at such rate as agreed upon by the mortgagor and mortgagee for provision that the interest rate, exclusive of premium charges for insurance and service charges if any, not exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market.

Pub. L. 98-181, § 446(c), inserted "(unless otherwise approved by the Secretary)" after "periodic payments".

Subsec. (h)(2)(iii). Pub. L. 98-181, § 404(b)(7), substituted provision that the rate of interest be such rate as agreed upon by the mortgagor and mortgagee for

provision that the rate of interest not exceed the rate prescribed by the Secretary, but not in excess of 6 per centum per annum of the amount of the principal obligation outstanding at any time, and such other charges as approved by the Secretary.

LIMITATION ON NUMBER OF DWELLING UNITS WITH MORTGAGES NOT PROVIDING FOR COMPLETE AMORTIZATION

For limitation on the number of dwelling units with mortgages not providing for complete amortization pursuant to authority granted by amendment to subsec. (d)(4) by section 446 of Pub. L. 98-181, see section 446(f) of Pub. L. 98-181, set out as a note under section 1713 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1709, 1713, 1715c, 1715*l*, 1715o, 1715q, 1715r, 1715w, 1715z-2, 1715z-5, 1717, 1731b of this title; title 42 section 1437o.

§ 1715*l*. Housing for moderate income and displaced families

[See main edition for text of (a) to (c)]

(d) Eligibility for insurance; conditions; limits

To be eligible for insurance under this section, a mortgage shall—

(1) have been made to and be held by a mortgagee approved by the Secretary as responsible and able to service the mortgage properly;

(2) be secured by property upon which there is located a dwelling conforming to applicable standards prescribed by the Secretary under subsection (f) of this section, and meeting the requirements of all State laws, or local ordinances or regulations, relating to the public health or safety, zoning, or otherwise, which may be applicable thereto, and shall involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount (A) not to exceed (i) $31,000 (or $36,000, if the mortgagor's family includes five or more persons) in the case of a property upon which there is located a dwelling designed principally for a single-family residence, (ii) $35,000 in the case of a property upon which there is located a dwelling designed principally for a two-family residence, (iii) $48,600 in the case of a property upon which there is located a dwelling designed principally for a three-family residence, or (iv) $59,400 in the case of a property upon which there is located a dwelling designed principally for a four-family residence: *Provided*, That a mortgage secured by property upon which there is located a dwelling designed principally for a two-, three-, or four-family residence shall not be insured under this section except in the case of a dwelling for occupancy by the mortgagor: *Provided further*, That the Secretary may increase the foregoing amounts to not to exceed $36,000 (or $42,000 if the mortgagor's family includes five or more persons), $45,000, $57,600, and $68,400, respectively, in any geographical area where he finds that cost levels so require; and (B) not to exceed the appraised value of the property (as of the date the mortgage is accepted for insurance): *Provided further*, That (i) if the mortgagor is the owner and an occupant of the property at the time of insurance, (1) in the case of a displaced family, he shall have paid on account of the property at least $200 in the case of a single-family dwelling, $400 in the case of a two-family dwelling, $600 in the case of a three-family dwelling, and $800 in the case of a four-family dwelling, or (2) in the case of any other family, he shall have paid on account of the property at least 3 per centum of the Secretary's estimate of its acquisition cost (excluding the mortgage insurance premium paid at the time the mortgage is insured), in cash or its equivalent; which amount in either instance may include amounts to cover settlement costs and initial payments for taxes, hazard insurance, and other prepaid expenses; or (ii) in the case of repair and rehabilitation, the amount of the mortgage shall not exceed the sum of the estimated cost of repair and rehabilitation and the Secretary's estimate of the value of the property before repair and rehabilitation, except that in no case involving refinancing shall such mortgage exceed such estimated cost of repair and rehabilitation and the amount (as determined by the Secretary) required to refinance existing indebtedness secured by the property: *Provided further*, That nothing contained herein shall preclude the Secretary from issuing a commitment to insure, and insuring a mortgage pursuant thereto, where the mortgagor is not the owner and an occupant of the property, if the property is to be built or acquired and repaired or rehabilitated for sale, and the insured mortgage financing is required to facilitate the construction, or the repair or rehabilitation, of the dwelling and to provide financing pending the subsequent sale thereof to a qualified owner who is also an occupant thereof, but in such instances the mortgage shall not exceed 85 per centum of the appraised value: *Provided further*, That, if the mortgagor is the owner and an occupant of the property, such mortgagor shall to the maximum extent feasible be given the opportunity to contribute the value of his labor as equity in such dwelling; or

(3) if executed by a mortgagor which is a public body or agency (and, except with respect to a project assisted or to be assisted pursuant to section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f], which certifies that it is not receiving financial assistance from the United States exclusively pursuant to such Act [42 U.S.C. 1437 et seq.]) a cooperative (including an investor-sponsor who meets such requirements as the Secretary may impose to assure that the consumer interest is protected), or a limited dividend corporation (as defined by the Secretary), or a private nonprofit corporation or association, or other mortgagor approved by the Secretary, and regulated or supervised under Federal or State laws or by political subdivisions of States, or agencies thereof, or by the Secretary under a regulatory agreement or otherwise, as to rents, charges, and methods of operation, in such form and in such

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manner as in the opinion of the Secretary will effectuate the purposes of this section—

[*See main edition for text of (i) and (ii)*]

(iii) not exceed (1) in the case of new construction, the amount which the Secretary estimates will be the replacement cost of the property or project when the proposed improvements are completed (the replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Secretary), or (2) in the case of repair and rehabilitation, the sum of the estimated cost of repair and rehabilitation and the Secretary's estimate of the value of the property before repair and rehabilitation: *Provided*, That the mortgage may involve the financing of the purchase or property which has been rehabilitated by a local public agency with Federal assistance pursuant to section 110(c)(8) of the Housing Act of 1949 [42 U.S.C. 1460(c)(8)], and, in such case, the amount of the mortgage shall not exceed the appraised value of the property as of the date the mortgage is accepted for insurance: *Provided further*, That in the case of any mortgagor other than a nonprofit corporation or association, cooperative (including an investor-sponsor), or public body, or a mortgagor meeting the special requirements of subsection (e)(1) of this section, the amount of the mortgage shall not exceed 90 per centum of the amount otherwise authorized under this section: *Provided further*, That such property or project, when constructed, or repaired and rehabilitated, shall be for use as a rental or cooperative project, and low and moderate income families or displaced families shall be eligible for occupancy in accordance with such regulations and procedures as may be prescribed by the Secretary and the Secretary may adopt such requirements as he determines to be desirable regarding consultation with local public officials where such consultation is appropriate by reason of the relationship of such project to projects under other local programs; or

(4) if executed by a mortgagor and which is approved by the Secretary—

[*See main edition for text of (i) to (iii)*]

(iv) not exceed 90 per centum of the sum of the estimated cost of repair and rehabilitation and the Secretary's estimate of the value of the property before repair and rehabilitation if the proceeds of the mortgage are to be used for the repair and rehabilitation of a property or project: *Provided*, That the Secretary may, in his discretion, require the mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation, and for such purpose the Secretary may make such contracts with and acquire for not to exceed $100 such stock or interest in any such mortgagor as the Secretary may deem necessary to render effective such restrictions or regulations, with such stock or interest being paid for out of the General Insurance Fund and being required to be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance;

(5) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee; and contain such terms and provisions with respect to the application of the mortgagor's periodic payment to amortization of the principal of the mortgage, insurance, repairs, alterations, payment of taxes, default reserves, delinquency charges, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters as the Secretary may in his discretion prescribe: *Provided*, That a mortgage insured under the provisions of subsection (d)(3) of this section shall bear interest (exclusive of any premium charges for insurance and service charge, if any) at not less than the lower of (A) 3 per centum per annum, or (B) the annual rate of interest determined, from time to time by the Secretary of the Treasury at the request of the Secretary, by estimating the average market yield to maturity on all outstanding marketable obligations of the United States, and by adjusting such yield to the nearest one-eighth of 1 per centum, and there shall be no differentiation in the rate of interest charged under this proviso as between mortgagors under subsection (d)(3) of this section on the basis of differences in the types or classes of such mortgagors, and

(6) provide for complete amortization by periodic payments (unless otherwise approved by the Secretary) within such terms as the Secretary may prescribe, but as to mortgages coming within the provisions of subsection (d)(2) of this section not to exceed from the date of the beginning of amortization of the mortgage (i) 40 years in the case of a displaced family, (ii) 35 years in the case of any other family if the mortgage is approved for insurance prior to construction, except that the period in such case may be increased to not more than 40 years where the mortgagor is an owner-occupant of the property and is not able, as determined by the Secretary, to make the required payments under a mortgage having a shorter amortization period, and (iii) 30 years in the case of any other family where the mortgage is not approved for insurance prior to construction.

[*See main edition for text of (e)*]

(f) Compliance with standards; nondwelling facilities in projects in urban renewal areas; number of family units; premium charges; housing for low-income purchasers; expiration of mortgage insurance authority; definition of "family"; single occupants in subsection (d)(3) housing; use of certain housing facilities for classroom purposes

The property or project shall comply with such standards and conditions as the Secretary

may prescribe to establish the acceptability of such property for mortgage insurance and may include such commercial and community facilities as the Secretary deems adequate to serve the occupants: *Provided,* That in the case of any such property or project located in an urban renewal area, the provisions of section 1715k(d)(3)(B)(iv) of this title shall apply with respect to the nondwelling facilities which may be included in the mortgage: *Provided further,* That, in the case of a mortgage which bears interest at the below-market interest rate prescribed in the proviso of subsection (d)(5) of this section, the provisions of section 1715k(d)(3)(B)(iv) of this title shall only apply if the mortgagor waives the right to receive dividends on its equity investment in the portion thereof devoted to commercial facilities.

A property or project covered by a mortgage insured under the provisions of subsection (d)(3) or (d)(4) of this section shall include five or more family units: *Provided,* That such units, in the case of a project designed primarily for occupancy by displaced, elderly, or handicapped families, need not, with the approval of the Secretary, contain kitchen facilities, and such projects may include central dining and other shared facilities. The Secretary is authorized to adopt such procedures and requirements as he determines are desirable to assure that the dwelling accommodations provided under this section are available to displaced families. Notwithstanding any provision of this chapter, the Secretary, in order to assist further the provision of housing for low and moderate income families, in his discretion and under such conditions as he may prescribe, may insure a mortgage which meets the requirements of subsection (d)(3) of this section as in effect after June 30, 1961, or which meets the requirements of subsection (h), (i), or (j) of this section with no premium charge, with a reduced premium charge, or with a premium charge for such period or periods during the time the insurance is in effect as the Secretary may determine, and there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to reimburse the General Insurance Fund for any net losses in connection with such insurance. No mortgage shall be insured under this section after March 17, 1986, except pursuant to a commitment to insure before that date, or except a mortgage covering property which the Secretary finds will assist in the provision of housing for displaced families. Any person who is sixty-two years of age or over, or who is a handicapped person within the meaning of section 1701q of this title, or who is a displaced person, shall be deemed to be a family within the meaning of the terms "family" and "families" as those terms are used in this section. Low- and moderate-income persons who are less than 62 years of age shall be eligible for occupancy of dwelling units in a project financed with a mortgage insured under subsection (d)(3) of this section. In any case in which it is determined in accordance with regulations of the Secretary that facilities in existence or under construction on December 31, 1970, which could appropriately be used for classroom purposes are available in any such property or project and that public schools in the community are overcrowded due in part to the attendance at such schools of residents of the property or project, such facilities may be used for such purposes to the extent permitted in such regulations (without being subject to any of the requirements of the proviso in section 1715k(d)(3)(B)(iv) of this title except the requirement that the project be predominantly residential).

As used in this section the terms "displaced family", "displaced families", and "displaced person" shall mean a family or families, or a person, displaced from an urban renewal area, or as a result of governmental action, or as a result of a major disaster as determined by the President pursuant to the Disaster Relief Act of 1974 [42 U.S.C. 5121 et seq.].

(g) Entitlement of mortgagee to benefits; applicability of other provisions; debentures; definition of "going Federal rate"; transfer of original credit instrument

The mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided—

[*See main edition for text of (1) to (3)*]

(4)(A) in the event any mortgage insured under this section pursuant to a commitment to insure entered into before November 30, 1983, is not in default at the expiration of twenty years from the date the mortgage was endorsed for insurance, the mortgagee shall, within a period thereafter to be determined by the Secretary, have the option to assign, transfer, and deliver to the Secretary the original credit instrument and the mortgage securing the same and receive the benefits of the insurance as hereinafter provided in this paragraph, upon compliance with such requirements and conditions as to the validity of the mortgage as a first lien and such other matters as may be prescribed by the Secretary at the time the loan is endorsed for insurance. Upon such assignment, transfer, and delivery the obligation of the mortgagee to pay the premium charges for insurance shall cease, and the Secretary shall, subject to the cash adjustment provided herein, issue to the mortgagee debentures having a total face value equal to the amount of the original principal obligation of the mortgage which was unpaid on the date of the assignment, plus accrued interest to such date. Debentures issued pursuant to this paragraph shall be issued in the same manner and subject to the same terms and conditions as debentures issued under paragraph (1) of this subsection, except that the debentures issued pursuant to this paragraph shall be dated as of the date the mortgage is assigned to the Secretary, shall mature ten years after such date, shall bear interest from such date at the going Federal rate determined at the time of issuance. The term "going Federal rate" as used herein means the annual rate of interest which the Secretary of the Treasury shall specify as applicable to the six-month period (consisting of

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January through June or July through December) which includes the issuance date of such debentures, which applicable rate for each such six-month period shall be determined by the Secretary of the Treasury by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the month of May or the month of November, as the case may be, next preceding such six-month period, on all outstanding marketable obligations of the United States having a maturity date of eight to twelve years from the first day of such month of May or November (or, if no such obligations are outstanding, the obligation next shorter than eight years and the obligation next longer than twelve years, respectively, shall be used), and by adjusting such estimated average annual yield to the nearest one-eight of 1 per centum. The Secretary shall have the same authority with respect to mortgages assigned to him under this paragraph as contained in sections 1713(k) and 1713(*l*) of this title as to mortgages insured by the Secretary and assigned to him under section 1713 of this title.

(B) In processing a claim for insurance benefits under this paragraph, the Secretary may direct the mortgagee to assign, transfer, and deliver the original credit instrument and the mortgage securing it directly to the Government National Mortgage Association in lieu of assigning, transferring, and delivering the credit instrument and the mortgage to the Secretary. Upon the assignment, transfer, and delivery of the credit instrument and the mortgage to the Association, the mortgage insurance contract shall terminate and the mortgagee shall receive insurance benefits as provided in subparagraph (A). The Association is authorized to accept such loan documents in its own name and to hold, service, and sell such loans as agent for the Secretary. The mortgagor's obligation to pay a service charge in lieu of a mortgage insurance premium shall continue as long as the mortgage is held by the Association or by the Secretary. The Secretary shall have the same authority with respect to mortgages assigned to the Secretary or the Association under this subparagraph as provided by section 1715n(c) of this title.

[*See main edition for text of (h) to (k)*]

(As amended May 26, 1983, Pub. L. 98-35, § 1(c), 97 Stat. 197; Oct. 1, 1983, Pub. L. 98-109, § 1(c), 97 Stat. 745; Nov. 30, 1983, Pub. L. 98-181, title IV, §§ 401(c), 404(b)(8), 408, 409, 423(b)(3), 432(b), (c), 446(d), 97 Stat. 1207, 1209, 1211, 1217, 1220, 1228; Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(6), 98 Stat. 2232; Oct. 8, 1985, Pub. L. 99-120, § 1(c), 99 Stat. 502; Nov. 15, 1985, Pub. L. 99-156, § 1(c), 99 Stat. 815; Dec. 26, 1985, Pub. L. 99-219, § 1(c), 99 Stat. 1730.)

REFERENCES IN TEXT

Section 1720 of this title, referred to in subsec. (d)(3)(ii), (4)(ii) was repealed by Pub. L. 98-181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

Section 110 of the Housing Act of 1949 [42 U.S.C. 1460], referred to in subsec. (d)(3)(iii), was omitted from the Code pursuant to section 5316 of Title 42, The Public Health and Welfare, which terminated authority to make grants or loans under title I of that Act [42 U.S.C. 1450 et seq.] after Jan. 1, 1975.

CODIFICATION

In subsec. (g)(4)(A), "November 30, 1983," was substituted for "the effective date of this clause", meaning the date of enactment of Pub. L. 98-181.

AMENDMENTS

1985—Subsec. (f). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1984—Subsec. (d)(3)(iii). Pub. L. 98-479 substituted "rehabilitated" for "rehabilited" before "by a local public agency".

1983—Subsec. (d)(2)(A). Pub. L. 98-181, § 422(b)(3), struck out "; *Provided further*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured" before "; and (B)".

Subsec. (d)(3)(iii). Pub. L. 98-181, § 432(b), struck out proviso that in no case involving refinancing would the mortgage exceed the estimated cost of repair and rehabilitation and the amount, as determined by the Secretary, required to refinance existing indebtedness secured by the property or project, and substituted "*Provided*, That" for "*Provided further*, That".

Subsec. (d)(4)(iv). Pub. L. 98-181, § 432(c), struck out proviso that in no case involving refinancing would the mortgage exceed the estimated cost of repair and rehabilitation and the amount, as determined by the Secretary, required to refinance existing indebtedness secured by the property or project, and substituted "*Provided*, That" for "*Provided further*, That".

Subsec. (d)(5). Pub. L. 98-181, § 404(b)(8), substituted "at such rate as may be agreed upon by the mortgagor and the mortgagee" for "(exclusive of premium charges for insurance and service charge, if any) at not to exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time, or not to exceed such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market".

Subsec. (d)(6). Pub. L. 98-181, § 446(d), inserted "(unless otherwise approved by the Secretary)" after "periodic payments".

Subsec. (f). Pub. L. 98-181, § 401(c), substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

Subsec. (g)(4)(A). Pub. L. 98-181, §§ 408, 409, designated existing provision as subpar. (A) and inserted "pursuant to a commitment to insure entered into before November 30, 1983," after "this section".

Subsec. (g)(4)(B). Pub. L. 98-181, § 408, added subpar. (B).

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by section 423 of Pub. L. 98-181, see section 423(c) of Pub. L. 98-181, set out as a note under section 1709 of this title.

LIMITATION ON NUMBER OF DWELLING UNITS WITH MORTGAGES NOT PROVIDING FOR COMPLETE AMORTIZATION

For limitation on the number of dwelling units with mortgages not providing for complete amortization pursuant to authority granted by amendment to subsec. (d)(6) by section 446 of Pub. L. 98-181, see section 446(f) of Pub. L. 98-181, set out as a note under section 1713 of this title.

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CROSS REFERENCES

Mortgages for one- to four-family dwellings, authority to increase maximum amount by amount of mortgage insurance premium paid at time insured, see section 1709 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701s, 1701u, 1701z-4, 1713, 1715c, 1715h, 1715m, 1715n, 1715o, 1715r, 1715z, 1715z-1, 1715z-1a, 1715z-2, 1715z-6, 1715z-15, 1717, 1731b, 1735b of this title; title 26 section 1250; title 40 App. section 207; title 42 sections 1452b, 2982c, 8231.

§ 1715m. Mortgage insurance for servicemen

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1715q of this title; title 10 sections 2831, 2833.

§ 1715n. Miscellaneous mortgage insurance

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Insurance of mortgages executed in connection with purchase or refinancing of existing multifamily housing project; refinancing of existing debt of existing hospital, or purchase or refinancing of rental rehabilitated property; terms and conditions, etc.

[*See main edition for text of* (*1*)]

(2) In the case of the purchase or refinancing under this subsection of a multifamily housing project located in an older, declining urban area, the Secretary shall make available an amount not to exceed $30,000,000 of available purchase authority pursuant to section 1720 of this title to reduce interest rates on low- and moderate-income rental housing in projects having 100 units or less which otherwise could not support refinancing and moderate rehabilitation without causing excessive rent burdens on current tenants due to rent increases. The Secretary shall prescribe such terms and conditions as he deems necessary to assure that—

[*See main edition for text of* (*A*) *and* (*B*), (*3*) *and* (*4*)]

(5) In the case of any purchase or refinancing under this subsection involving property to be rehabilitated or developed under section 1437*o* of title 42, the Secretary may—

(A) include rehabilitation or development costs of not to exceed $20,000 per unit, except that the Secretary may increase such amount by not to exceed 25 per centum for specific properties where cost levels so require;

(B) permit subordinated liens securing up to the full amount of mortgage financing provided by State or local governments or agencies thereof; and

(C) pay such benefits in cash unless the mortgagee submits a written request for debenture payment.

(As amended Nov. 30, 1983, Pub. L. 98-181, title III, § 303(b), 97 Stat. 1207; Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(7), 98 Stat. 2232.)

REFERENCES IN TEXT

Section 1720 of this title, referred to in subsec. (f)(3), was repealed by Pub. L. 98-181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

AMENDMENTS

1984—Subsec. (f)(2). Pub. L. 98-479 in provisions preceding subpar. (A) added "a" before "multifamily".

1983—Subsec. (f)(5). Pub. L. 98-181 added par. (5).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1715z-3, 1715z-7, 1715z-9, 1735c of this title; title 42 sections 2331, 2362.

§ 1715u. Temporary mortgage assistance payments and acquisition of mortgages to avoid foreclosures

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Homeownership counseling

The Secretary shall provide homeownership counseling to persons assisted under this section.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 418, 97 Stat. 1212.)

AMENDMENTS

1983—Subsec. (d). Pub. L. 98-181 struck out ", to the extent practicable," after "Secretary shall".

§ 1715v. Insurance of mortgages for housing for elderly persons

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Eligibility for insurance; maximum amount of mortgage; terms and conditions

To be eligible for insurance under this section, a mortgage to provide housing for elderly persons shall—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) provide for a complete amortization by periodic payments (unless otherwise approved by the Secretary) within such terms as the Secretary shall prescribe;

(6) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee; and

[*See main edition for text of* (*7*); (*d*) *to* (*f*)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, §§ 404(b)(9), 446(e), 97 Stat. 1209, 1228.)

REFERENCES IN TEXT

Section 1720 of this title, referred to in subsec. (c)(2), was repealed by Pub. L. 98-181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

AMENDMENTS

1983—Subsec. (c)(5). Pub. L. 98-181, § 446(e), inserted "(unless otherwise approved by the Secretary)" after "periodic payments".

Subsec. (c)(6). Pub. L. 98-181, § 404(b)(9), substituted provision that the interest rate be at such a rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate, exclusive of premium charges for insurance, not exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annuam not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market.

REPEALS

Pub. L. 90-301, § 3(d), May 7, 1968, 82 Stat. 114, cited as a credit to this section, was repealed by Pub. L. 98-181, title IV, § 404(a), Nov. 30, 1983, 97 Stat. 1208.

LIMITATION ON NUMBER OF DWELLING UNITS WITH MORTGAGES NOT PROVIDING FOR COMPLETE AMORTIZATION

For limitation on the number of dwelling units with mortgages not providing for complete amortization pursuant to authority granted by amendment to subsec. (c)(5) by section 446 of Pub. L. 98-181, see section 446(f) of Pub. L. 98-181, set out as a note under section 1713 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701q, 1701s, 1715c, 1715q, 1715r, 1717 of this title; title 42 sections 3013, 3535.

§ 1715w. Mortgage insurance for nursing homes, intermediate care facilities, and board and care homes

(a) Purpose

The purpose of this section is to assist in the provision of facilities for either of the following purposes or for a combination of such purposes:

[*See main edition for text of (1)*]

(2) The development of intermediate care facilities and board and care homes for the care of persons who, while not in need of nursing home care and treatment, nevertheless are unable to live fully independently and who are in need of minimum but continuous care provided by licensed or trained personnel, including additional facilities for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day.

(b) Definitions

For the purposes of this section—

[*See main edition for text of (1)*]

(2) the term "intermediate care facility" means a proprietary facility or facility of a private nonprofit corporation or association licensed or regulated by the State (or, if there is no State law providing for such licensing and regulation by the State by the municipality or other political subdivision in which the facility is located) for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services; (3) a "nursing home" or "intermediate care facility" may include such additional facilities as may be authorized by the Secretary for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day; and *

(3) the term "mortgage" means a first mortgage on real estate in fee simple, or on the interest of either the lessor or lessee thereof (A) under a lease for not less than ninety-nine years which is renewable, or (B) under a lease having a period of not less than fifty years to run from the date the mortgage was executed. The term "first mortgage" means such classes of first liens as are commonly given to secure advances (including but not limited to advances during construction) on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby, and any mortgage may be in the form of one or more trust mortgages or mortgage indentures or deeds of trust, securing notes, bonds, or other credit instruments, and, by the same instrument or by a separate instrument, may create a security interest in initial equipment, whether or not attached to the realty. The term "mortgagor" shall have the meaning set forth in section 1713(a) of this title; and

(4) the term "board and care home" means any residential facility providing room, board, and continuous protective oversight that is regulated by a State pursuant to the provisions of section 1616(e) of the Social Security Act [42 U.S.C. 1382e(e)], so long as the home is located in a State that, at the time of an application is made for insurance under this section, has demonstrated to the Secretary that it is in compliance with the provisions of such section 1616(e).

[*See main edition for text of (c)*]

(d) Terms and conditions; limitation on maximum amount of mortgage; amortization; interest; certification from State agency

In order to carry out the purposes of this section, the Secretary is authorized to insure any mortgage which covers a new or rehabilitated nursing home, or intermediate care facility or combined nursing home and intermediate care facility or a board and care home, including equipment to be used in its operation, subject to the following conditions:

[*See main edition for text of (1) and (2)*]

(3) The mortgage shall—

[*See main edition for text of (A)*]

(B) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee.

(4)(A) With respect to nursing homes and intermediate care facilities and combined nursing home and intermediate care facilities, the Secretary shall not insure any mortgage under this section unless he has received, from the State agency designated in accordance with section 291d(a)(1) or section 300m of title 42 for the State in which is located the nursing home or intermediate care facility or combined nursing home and intermediate care facility covered by the mortgage, a

*So in original.

certification that (i) there is a need for such home or facility or combined home and facility, and (ii) there are in force in such State or in the municipality or other political subdivision of the State in which the proposed home or facility or combined home and facility is to be located reasonable minimum standards of licensure and methods of operation governing it. No such mortgage shall be insured under this section unless the Secretary has received such assurance as he may deem satisfactory from the State agency that such standards will be applied and enforced with respect to any home or facility or combined home and facility located in the State for which mortgage insurance is provided under this section.

(B) With respect to board and care homes, the Secretary shall not insure any mortgage under this section unless he has received from the appropriate State licensing agency a statement verifying that the State in which the home is or is to be located is in compliance with the provisions of section 1616(e) of the Social Security Act [42 U.S.C. 1382e(e)].

[See main edition for text of (e) to (h)]

(i) Fire safety equipment for nursing homes, intermediate care facilities, or board and care homes

(1) The Secretary is authorized upon such terms and conditions as he may prescribe to make commitments to insure and to insure loans made by financial institutions or other approved mortgagees to nursing homes and intermediate care facilities or to board and care homes to provide for the purchase and installation of fire safety equipment necessary for compliance with the 1967 edition of the Life Safety Code of the National Fire Protection Association (or any subsequent edition specified by the Secretary of Health and Human Services) or other such codes or requirements approved by the Secretary of Health and Human Services as conditions of participation for providers of services under title XVIII and title XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.] or as mandated by a State under the provisions of section 1616(e) of such Act [42 U.S.C. 1383e(e)].

(2) To be eligible for insurance under this subsection a loan shall—

[See main edition for text of (A) to (C)]

(D) be made by a financial institution or other mortgagee approved by the Secretary as eligible for insurance under section 1703 of this title or a mortgagee approved under section 1709(b)(1) of this title;

(E) comply with other such terms, conditions, and restrictions as the Secretary may prescribe; and

(F) in the case of board and care homes, be made with respect to such a home located in a State with respect to which the Secretary has received from the appropriate State licensing agency a statement verifying that the State in which the home is or is to be located is in compliance with the provisions of section 1616(e) of the Social Security Act [42 U.S.C. 1382e(e)]:

[See main edition for text of (3) and (4)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, §§ 404(b)(10), 437, 97 Stat. 1209, 1222, 1223; Oct. 17, 1984, Pub. L. 98-479, title I, § 104(a)(1), 98 Stat. 2224.)

AMENDMENTS

1984—Pub. L. 98-479 inserted reference to board and care homes in section catchline.

1983—Subsec. (a)(2). Pub. L. 98-181, § 437(a), inserted "and board and care homes" after "intermediate care facilities".

Subsec. (b)(4). Pub. L. 98-181, § 437(b), added par. (4).

Subsec. (d). Pub. L. 98-181, § 437(c)(1), in provisions preceding par. (1) inserted "or a board and care home" after "and intermediate care facility,".

Subsec. (d)(3)(B). Pub. L. 98-181, § 404(b)(10), substituted provision that the interest rate be at such a rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate, exclusive of premium charges for insurance, not exceed 5 per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annum not in excess of 6 per centum as the Secretary finds necessary to meet the mortgage market.

Subsec. (d)(4). Pub. L. 98-181, § 437(c)(2), designated existing provision as subpar. (A), and in subpar. (A) as so designated, substituted "With respect to nursing homes and intermediate care facilities and combined nursing home and intermediate care facilities, the" for "The" and "(i)" and "(ii)" for "(A)" and "(B)", respectively, and added subpar. (B).

Subsec. (g). Pub. L. 98-181, § 437(d), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (h). Pub. L. 98-181, § 437(e), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (i)(1). Pub. L. 98-181, § 437(f)(1), inserted "or to board and care homes" after "intermediate care facilities", "(or any subsequent edition specified by the Secretary of Health and Human Services)" after "Association", and "or as mandated by a State under provisions of section 1616(e) of such Act" after "Social Security Act", and substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (i)(2)(F). Pub. L. 98-181, § 437(f)(2), added subpar. (F).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1715c of this title; title 42 section 3013.

§ 1715y. Mortgage insurance for condominiums

[See main edition for text of (a) and (b)]

(c) Authorization; eligibility for insurance; conditions; limits

The Secretary is authorized, in his discretion and under such terms and conditions as he may prescribe (including the minimum number of family units in the project which shall be offered for sale and provisions for the protection of the consumer and the public interest), to insure any mortgage covering a one-family unit in a multifamily project and an undivided interest in the common areas and facilities which serve the project, if (1) the mortgage meets the requirements of this subsection and of section 1709(b) of this title, except as that section is modified by this subsection, and (2) at least 80 percent of the units in the project covered by mortgages insured under this subchapter are occupied by the mortgagors or comortgagors. Any project proposed to be constructed or reha-

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bilitated after June 30, 1961, with the assistance of mortgage insurance under this chapter, where the sale of family units is to be assisted with mortgage insurance under this subsection, shall be subject to such requirements as the Secretary may prescribe. To be eligible for insurance pursuant to this subsection, a mortgage shall (A) involve a principal obligation in an amount not to exceed the maximum principal obligation of a mortgage which may be insured in the area pursuant to section 1709(b)(2) of this title, and (B) have a maturity satisfactory to the Secretary, but not to exceed, in any event, thirty-five years from the date of the beginning of amortization of the mortgage. In determining the amount of a mortgage in the case of a nonoccupant mortgagor the reference to paragraph (2) of section 1709(b) of this title in section 1709(b)(8) of this title shall be construed to refer to the preceding sentence in this subsection. The mortgage shall contain such provisions as the Secretary determines to be necessary for the maintenance of common areas and facilities and the multifamily project. The mortgagor shall have exclusive right to the use of the one-family unit covered by the mortgage and, together with the owners of other units in the multifamily project, shall have the right to the use of the common areas and facilities serving the project and the obligation of maintaining all such common areas and facilities. The Secretary may require that the rights and obligations of the mortgagor and the owners of other dwelling units in the project shall be subject to such controls as he determines to be necessary and feasible to promote and protect individual owners, the multifamily project, and its occupants. For the purposes of this subsection, the Secretary is authorized in his discretion and under such terms and conditions as he may prescribe to permit one-family units and interests in common areas and facilities in multifamily projects covered by mortgages insured under any section of this chapter (other than section 1715e(a)(1) and (2) of this title) to be released from the liens of those mortgages.

(d) Blanket mortgages of multifamily projects; plan of family unit ownership; regulations; stock purchase and redemption

In addition to individual mortgages insured under subsection (c) of this section, the Secretary is authorized, in his discretion and under such terms and conditions as he may prescribe, to insure blanket mortgages (including advances on such mortgages during construction) which cover multifamily projects to be constructed or rehabilitated in cases where the mortgage is held by a mortgagor, approved by the Secretary, which—

[*See main edition for text of (1)*]

(2) may, in the Secretary's discretion, be regulated or restricted as to rents, charges, capital structure, rate of return, and methods of operation until the termination of all obligations of the Secretary under the insurance and during such further period of time as the Secretary shall be the owner, holder or reinsurer of the mortgage. The Secretary may make such contracts with and acquire for not to exceed $100 such stock or interest in such mortgagor as he may deem necessary to render effective any such regulation or restriction of such mortgagor. The stock or interest acquired by the Secretary shall be paid for out of the General Insurance Fund, and shall be redeemed by the mortgagor at par at any time upon the request of the Secretary after the termination of all obligations of the Secretary under the insurance.

[*See main edition for text of (e)*]

(f) Amortization of blanket mortgages of multifamily projects; interest; releases; extent of project

Any blanket mortgage insured under subsection (d) of this section shall provide for complete amortization by periodic payments within such terms as the Secretary may prescribe but not to exceed 40 years from the beginning of amortization of the mortgage, and shall bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee. The Secretary may consent to the release of a part or parts of the mortgaged property from the lien of the blanket mortgage upon such terms and conditions as he may prescribe and the blanket mortgage may provide for such release. The project covered by the blanket mortgage may include four or more family units and such commercial and community facilities as the Secretary deems adequate to serve the occupants.

[*See main edition for text of (g) to (j)*]

(k) Rental housing conversion

With respect to a unit in any project which was converted from rental housing, no insurance may be provided under this section unless (1) the conversion occurred more than one year prior to the application for insurance, (2) the mortgagor or comortgagor was a tenant of that rental housing, (3) the conversion of the property is sponsored by a bona fide tenants organization representing a majority of the households in the project, or (4) before April 20, 1984 (A) application was made to the Secretary for a commitment to insure a mortgage covering any unit in the project, (B) in the case of direct endorsement, the mortgagee received the case number assigned by the Secretary for any unit in the project, or (C) application was made for approval of the project for guarantee, insurance, or direct loan under chapter 37 of title 38.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, §§ 404(b)(11), 420, 423(b)(4), 431(b), 97 Stat. 1209, 1213, 1217, 1220; Oct. 17, 1984, Pub. L. 98-479, title I, § 104(a)(2), 98 Stat. 2224.)

REFERENCES IN TEXT

Section 1720 of this title, referred to in subsec. (e)(3), was repealed by Pub. L. 98-181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

AMENDMENTS

1984—Subsec. (k)(4). Pub. L. 98-479 added cl. (4).

1983—Subsec. (c). Pub. L. 98-181, § 423(b)(4), purported to amend cl. (A) of third sentence of subsec. (c) by striking out ": *Provided*, That the foregoing maxi-

mum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured", but this provision had been previously stricken by section 420(b) of Pub. L. 98-181. See second par. below and Effective Date of 1983 Amendment note below.

Pub. L. 98-181, § 420(a), in cl. (2) substituted provision that at least 80 percent of the units in the project covered by mortgages insured under this subchapter be occupied by mortgagors or comortgagors for provision that the project be covered by a mortgage insured under any section of this chapter, except section 1715e(a)(1) and (2) of this title, notwithstanding any requirements in such section that the project be constructed or rehabilitated for providing rental housing and providing that a one-family unit in a multifamily project involving eleven or less units, or twelve or more in the case of a multifamily project the construction of which was completed more than a year prior to application for mortgage insurance, be eligible for insurance without having been covered by a project mortgage, and struck out cl. (3), which provided that the mortgagor is acquiring, or has acquired, a family unit covered by a mortgage insured under this subsection for his own use and occupancy and will not own more than four one-family units covered by mortgages insured under this subsection.

Pub. L. 98-181, § 420(b), substituted in third sentence "(A) involve a principal obligation in an amount not to exceed the maximum principal obligation of a mortgage which may be insured in the area pursuant to section 1709(b)(2) of this title" for "(A) involve a principal obligation in an amount not to exceed $67,500, except that the Secretary may increase such maximum dollar amunt on an area-by-area basis to the extent the Secretary deems necessary, after taking into consideration the extent to which moderate and middle income persons have limited housing opportunities in the area due to high prevailing housing sales prices, but in no case may such limit, as so increased, exceed the lesser of 111 per centum of such amount or 95 per centum of the median one-family house price in the area, as determined by the Secretary: *Provided*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured; and not to exceed the sum of (i) 97 per centum (100 per centum if the mortgagor is a veteran as defined under section 1709(b)(2) of this title) of $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and (ii) 95 per centum of such value in excess of $25,000".

Subsec. (d)(2). Pub. L. 98-181, § 431(b), substituted "may, in the Secretary's discretion, be regulated or restricted" for "shall be regulated or restricted by the Secretary", and substituted "any such regulation or restriction" for "the regulation and restriction".

Subsec. (f). Pub. L. 98-181, § 404(b)(11), substituted provision that the interest rate for the mortgage be such a rate as agreed upon by the mortgagor and mortgagee for provision that the rate of interest, exclusive of premium charges for insurance, not exceed 5¼ per centum per annum on the amount of the principal obligation outstanding at any time, or not exceed such per centum per annum not in excess of 6 per centum per annum as the Secretary finds necessary to meet the mortgage market.

Subsec. (k). Pub. L. 98-181, § 420(c), added subsec. (k).

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by section 423 of Pub. L. 98-181, see section 423(c) of Pub. L. 98-181, set out as a note under section 1709 of this title.

Amendment by section 431(b) of Pub. L. 98-181 not to apply with respect to mortgages insured by the Secretary of Housing and Urban Development before Nov. 30, 1983, see section 431(c) of Pub. L. 98-181, set out as a note under section 1713 of this title.

REPEALS

Pub. L. 90-301, § 3(e), May 7, 1968, 82 Stat. 114, cited as a credit to this section, was repealed by Pub. L. 98-181, title IV, § 404(a), Nov. 30, 1983, 97 Stat. 1208.

CROSS REFERENCES

Mortgages for one- to four-family dwellings, authority to increase maximum amount by amount of mortgage insurance premium paid at time insured, see section 1709 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1715c, 1715q, 1715r, 1715z, 1715z-14, 1717 of this title; title 42 section 3535.

§ 1715z. Homeownership or membership in cooperative association for lower income families

[*See main edition for text of* (a) *and* (b)]

(c) Limitation on payments on behalf of mortgagor; occupancy of property; maximum amount of payment; recapture of amounts; determination, applicability, etc.

(1) Subject to the second sentence of this paragraph, the assistance payments to a mortgagee by the Secretary on behalf of a mortgagor shall be made during such time as the mortgagor shall continue to occupy the property which secures the mortgage: *Provided*, That assistance payments may be made on behalf of a homeowner who assumes a mortgage insured under subsection (i) or (j)(4) of this section with respect to which assistance payments have been made on behalf of the previous owner, if the homeowner is approved by the Secretary as eligible for receiving such assistance: *Provided further*, That the Secretary is authorized to continue making such assistance payments where the mortgage has been assigned to the Secretary. Assistance payments pursuant to any new contract entered into after September 30, 1983, that utilizes authority approved in appropriation Acts for any fiscal year beginning after such date may not be made for more than a 10-year period. The payment shall be in an amount not exceeding the lesser of—

[*See main edition for text of* (A) *and* (B), (2)]

(3)(A) There hereby is established in the Treasury of the United States a fund, which, to the extent approved in appropriation Acts, may be used by the Secretary for purposes of carrying out subparagraph (B). There shall be deposited into such fund (i) any amount recaptured under paragraph (2); (ii) any authority to make assistance payments under subsection (a) of this section that is committed for use in a contract but is unused because the mortgage, loan, or advance of credit involved is refinanced or because such assistance payments are terminated or suspended for other reasons before the original termination date of such contract; and (iii) any amount received under subparagraph (C).

(B) In the case of any homeowner whose assistance payments are terminated by reason of the 10-year limitation referred to in paragraph (1), and who is determined by the Secretary to be unable to assume the full payments due

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under the mortgage, loan, or advance of credit involved, the Secretary shall, to the extent of the availability of amounts in the fund established in subparagraph (A), contract to make, and make, continued assistance payments on behalf of such homeowner. Such continued assistance payments shall be made in an amount determined in accordance with the applicable provisions of paragraph (1) or subsection (a)(2)(B) of this section and for such period as the Secretary determines to be appropriate.

(C) Any amounts in such fund determined by the Secretary to be in excess of the amounts currently required to carry out the provisions of subparagraph (B) shall be invested by the Secretary in obligations of, or obligations guaranteed as to both principal and interest by, the United States or any agency of the United States.

[*See main edition for text of (d) to (g)*]

(h) Authorization of appropriations; aggregate amount of assistance payment contracts; maximum income limits of families; limitation on payments with respect to existing dwellings or dwelling units in existing projects and for approved substantial rehabilitation of dwellings or dwelling units in projects

(1) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, including such sums as may be necessary to make the assistance payments under contracts entered into under this section. The aggregate amount of outstanding contracts to make such payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contracts shall not exceed $75,000,000 per annum prior to July 1, 1969, which maximum dollar amount shall be increased by $125,000,000 on July 1, 1969, by $150,000,000 on July 1, 1970, by $200,000,000 on July 1, 1971, by such sums as may be approved in appropriation Acts after June 30, 1974, and prior to July 1, 1976, and by such sums as may be approved in an appropriation Act on or after October 1, 1983 (from the additional authority to enter into contracts made available on such date under the first sentence of section 1437c(c)(1) of title 42). The aggregate amount that may be obligated over the duration of the contracts entered into with the authority provided on or after October 1, 1983, may not exceed such sums of new budget authority as may be appropriated after November 30, 1983. The Secretary shall begin issuing new commitments and reservations to provide mortgage insurance and assistance payments under this section before the expiration of the 30-day period following the approval in any appropriation Act of budget authority for this section after November 30, 1983. Upon the expiration of one year following August 22, 1974, the Secretary shall not enter into new contracts for assistance payments under this section utilizing authority approved in appropriation Acts prior to July 1, 1974. The Secretary shall not enter into new contracts for assistance payments under this section after May 20, 1983, utilizing amounts approved in appropriation Acts before November 30, 1983, except (i) pursuant to a firm commitment issued on or before May 20, 1983, (ii) pursuant to other commitments issued by the Secretary prior to June 30, 1981, reserving funds for housing to be assisted under this section where such housing is included in a project pursuant to section 119 of the Housing and Community Development Act of 1974 [42 U.S.C. 5318], or (iii) pursuant to other commitments issued on or before September 30, 1981, where housing under this section is to be developed on land which was municipally owned on September 30, 1981, and where a local government contributes at least $1,000 per unit of funds obtained under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] and at least $2,000 per unit of additional funds to assist housing under this section. In no event may the Secretary enter into any new contract for assistance payments under this section after March 17, 1986.

[*See main edition for text of (2) to (4)*]

(i) Insurance of mortgages executed by mortgagors meeting eligibility requirements for assistance payments; issuance of commitment; eligibility requirements for insurance

[*See main edition for text of (1) and (2)*]

(3) A mortgage to be insured under this subsection shall—

(A) involve a single-family or a two-family dwelling which has been approved by the Secretary prior to the beginning of construction or substantial rehabilitation, or a three-family dwelling one of the units of which is to be occupied by the owner and which is approved by the Secretary prior to the beginning of substantial rehabilitation, or a one-family unit in a condominium project (together with an undivided interest in the common areas and facilities serving the project) which is released from a multi-family project, the construction or substantial rehabilitation of which has been completed within two years prior to the filing of the application for assistance payments with respect to such family unit and the unit has had no previous occupant other than the mortgagor: *Provided*, That the mortgage may involve an existing dwelling or a family unit in an existing condominium project which meets such standards as the Secretary may prescribe: *Provided further*, That the mortgage may involve an existing dwelling or a family unit in an existing condominium project if assistance payments have been made on behalf of the previous owner of the dwelling or family unit with respect to a mortgage insured under subsection (j)(4) of this section: *Provided further*, That the mortgage may involve a dwelling unit in an existing project covered by a mortgage insured under section 1715z-1 of this title or in an existing project receiving the benefits of financial assistance under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s];

(B) where it is to cover a one-family unit in a condominium project, have a principal obli-

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gation not exceeding $40,000 ($47,500 in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require), except that with respect to any family with five or more persons the foregoing limits shall be $47,500 and $55,000, respectively;

(C) involve, in the case of a dwelling unit other than a condominium or cooperative unit, a principal obligation including [1] such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed $40,000 ($47,500 in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require), except that with respect to any family with five or more persons the foregoing limits shall be $47,500 and $55,000, respectively;

(D) involve, in the case of a two-family or three-family dwelling, a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in an amount not to exceed $60,000 ($66,250 in any geographical area where the Secretary authorizes an increase on the basis of a finding that cost levels so require);

(E) be executed by a mortgagor who shall have paid in cash or its equivalent, on account of the property, at least an amount equal to 3 per centum of the Secretary's estimate of the cost of acquisition (excluding the mortgage insurance premium paid at the time the mortgage is insured); and

(F) bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary finds necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets.

(4) In insuring eligible mortgages under this subsection, the Secretary may not deny insurance on the basis that a mortgage involves a two- to three-family dwelling or is to be used to finance substantial rehabilitation rather than new construction.

(5) As a condition of insuring a mortgage on a two- to three-family dwelling, the Secretary shall require the mortgagor (A) not to discriminate against prospective tenants on the basis of their receipt of or eligibility for housing assistance under any Federal, State or local housing assistance program and (B) to agree that during the term of the mortgage each of the rental units shall be occupied by, or available for occupancy by, persons and families whose incomes do not exceed 100 per centum of the area median income.

[1] So in original. Probably should be preceded by an opening parenthesis.

(j) Insurance of mortgages executed by nonprofit organizations or public bodies or agencies; issuance of commitment; eligibility requirements for insurance; insurance of mortgages executed to finance sale of individual dwellings to lower income individuals or families; definitions; assistance payments to mortgagees on behalf of nonprofit organizations or public bodies and agencies

[*See main edition for text of (1)*]

(2) To be eligible for insurance under paragraph (1) of this subsection, a mortgage shall—

[*See main edition for text of (A) and (B)*]

(C) bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary determines is necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets;

[*See main edition for text of (D) and (E), (3) to (5)*]

(6) For purposes of this subsection, the terms "single-family dwelling" and "single-family dwellings" (except for purposes of paragraph (5)) shall include a two- to three-family dwelling which has been approved by the Secretary if one of the units is to be occupied by the owner.

[*See main edition for text of (7) and (8)*]

(9) In insuring eligible mortgages under this subsection, the Secretary may not deny insurance on the basis that a mortgage involves a two- to three-family dwelling or is to be used to finance substantial rehabilitation rather than new construction.

[*See main edition for text of (k) and (l)*]

(m) Termination date for insurance of mortgages

No mortgage shall be insured under this section after March 17, 1986, except pursuant to a commitment to insure before that date.

[*See main edition for text of (n) to (p)*]

(q) Periodic assistance payments for emergency stimulation of housing market; contracts, terms and conditions, eligibility, etc., for payments

(1) Notwithstanding any other provision of this section, except subsection (n), if the Secretary determines that there is a substantial need for emergency stimulation of the housing market, the Secretary is authorized to make and enter into contracts to make periodic assistance payments, to the extent of not to exceed 75 per centum of the authority available pursuant to subsection (h)(1) of this section, on behalf of homeowners, including owners of manufactured homes, to mortgagees or other lenders holding mortgages, loans, or advances of credit which meet the requirements of this subsection. The Secretary may establish such criteria, terms, and conditions relating to homeowners and mortgages, loans, or advances of

credit assisted under this subsection as the Secretary deems appropriate, consistent with the provisions of this subsection. The Secretary is authorized to insure a mortgage which meets the requirements of and is to be assisted under this subsection. The authority to enter into contracts to provide assistance payments and to insure mortgages under this subsection shall terminate on March 17, 1986, or at such earlier date as the Secretary may deem appropriate, upon a determination by the Secretary that the conditions which gave rise to the exercise of authority under this subsection are no longer present, except pursuant to a commitment entered into prior to such date.

[*See main edition for text of (2) to (15)*]

(As amended May 26, 1983, Pub. L. 98-35, § 1(d), 97 Stat. 197; Oct. 1, 1983, Pub. L. 98-109, § 1(d), 97 Stat. 745; Nov. 30, 1983, Pub. L. 98-181, title II, § 226, title IV, §§ 401(d), 404(b)(12), 423(b)(5), 97 Stat. 1194, 1207, 1209, 1217; Oct. 17, 1984, Pub. L. 98-479, title I, §§ 102(a)(1), 104(a)(3), title II, § 204(a)(8), 98 Stat. 2221, 2224, 2232; Oct. 8, 1985, Pub. L. 99-120, § 1(d), 99 Stat. 502; Nov. 15, 1985, Pub. L. 99-156, § 1(d), 99 Stat. 815; Dec. 26, 1985, Pub. L. 99-219, § 1(d), 99 Stat. 1730.)

REFERENCES IN TEXT

Section 1709-1 of this title, referred to in subsec. (q)(4)(B), was repealed by Pub. L. 98-181, title IV, § 404(a), Nov. 30, 1983, 97 Stat. 1208.

AMENDMENTS

1985—Subsecs. (h)(1), (m), (q)(1). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1984—Subsec. (h)(1). Pub. L. 98-479, § 102(a)(1), added "utilizing amounts approved in appropriation Acts before November 30, 1983," before "except (i)" and substituted "September 30, 1985" for "November 30, 1983" in last sentence.

Subsec. (i)(3)(C). Pub. L. 98-479, § 204(a)(8), substituted "Secretary" for "Seretary" before "authorizes an increase".

Subsec. (j)(2)(C). Pub. L. 98-479, § 104(a)(3), substituted "bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary determines is necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets" for "bear interest (exclusive of premium charges for insurance and service charge, if any) at not to exceed such per centum per annum (not in excess of 6 per centum), on the amount of the principal obligation outstanding at any time, as the Secretary finds necessary to meet the mortgage market".

1983—Subsec. (c)(1). Pub. L. 98-181, § 226(a), substituted "Subject to the second sentence of this paragraph, the" for "The", and added provision limiting to a 10-year period assistance payments pursuant to any new contract entered into after Sept. 30, 1983, utilizing authority approved in appropriation Acts for any fiscal year beginning after such date.

Subsec. (c)(3). Pub. L. 98-181, § 226(b), added par. (3).

Subsec. (h)(1). Pub. L. 98-181, § 226(c), struck out "and" after "on July 1, 1971", and added ", and by such sums as may be approved in an appropriation Act on or after October 1, 1983 (from the additional authority to enter into contracts made available on such date under the first sentence of section 1437c(c)(1) of title 42). The aggregate amount that may be obligated over the duration of the contracts entered into with the authority provided on or after October 1, 1983, may not exceed such sums of new budget authority as may be appropriated after November 30, 1983. The Secretary shall begin issuing new commitments and reservations to provide mortgage insurance and assistance payments under this section before the expiration of the 30-day period following the approval in any appropriation Act of budget authority for this section after November 30, 1983."

Pub. L. 98-109, § 1(d)(1), substituted "November 30, 1983" for "September 30, 1983".

Subsec. (i)(3)(A). Pub. L. 98-181, § 226(d)(1), substituted "three-family" for "two-family", and "involve a single-family or a two-family" for "involve a single-family".

Subsec. (i)(3)(B), (C). Pub. L. 98-181, § 423(b)(5)(A), (B), struck out ": *Provided*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured" after "$55,000, respectively".

Subsec. (i)(3)(D). Pub. L. 98-181, § 423(b)(5)(C), struck out ": *Provided*, That the foregoing maximum mortgage amounts may be increased by the amount of the mortgage insurance premium paid at the time the mortgage is insured" after "cost levels so require)".

Pub. L. 98-181, § 226(d)(2), inserted "or three-family" and substituted "$60,000" for "$55,000" and "$66,250" for "$61,250".

Subsec. (i)(3)(F). Pub. L. 98-181, § 404(b)(12), added subpar. (F).

Subsec. (i)(4), (5). Pub. L. 98-181, § 226(d)(3), added pars. (4) and (5).

Subsec. (j)(6). Pub. L. 98-181, § 226(e)(1), substituted "two- to three-family" for "two-family".

Subsec. (j)(9). Pub. L. 98-181, § 226(e)(2), added par. (9).

Subsec. (m). Pub. L. 98-181, § 401(d)(1), substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109, § 1(d)(2), substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35, § 1(d)(1), substituted "September 30, 1983" for "May 20, 1983".

Subsec. (q)(1). Pub. L. 98-181, § 401(d)(2), substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109, § 1(d)(3), substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35, § 1(d)(2), substituted "September 30, 1983" for "May 20, 1983".

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by section 423 of Pub. L. 98-181, see section 423(c) of Pub. L. 98-181, set out as a note under section 1709 of this title.

CROSS REFERENCES

Mortgages for one- to four-family dwellings, authority to increase maximum amount by amount of mortgage insurance premium paid at time insured, see section 1709 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701w, 1701x, 1715c, 1715h, 1715q, 1715z-2, 1715z-3, 1735b, 1735c of this title; title 31 section 1305; title 42 sections 1436a, 1436b, 1439, 1483, 1490a, 2982c, 3535.

§ 1715z-1. Rental and cooperative housing for lower income families

[*See main edition for text of (a) to (e)*]

(f) Establishment of basic and fair market rental charges; rental for dwelling units; separate utility metering; additional assistance payments for low-income tenants; limitations; amounts; approval of payments

[*See main edition for text of (1) and (2)*]

(3) The Secretary shall utilize amounts credited to the fund described in subsection (g) of this section for the sole purpose of carrying out the purposes of section 201 of the Housing and Community Development Amendments of 1978. No payments may be made from such fund unless approved in an appropriation Act. No amount may be so approved for any fiscal year beginning after September 30, 1985.

(4) To ensure that eligible tenants occupying that number of units with respect to which assistance was being provided under this subsection immediately prior to November 30, 1983, receive the benefit of assistance contracted for under paragraph (2), the Secretary shall offer annually to amend contracts entered into under this subsection with owners of projects assisted but not subject to mortgages insured under this section to provide sufficient payments to cover 90 per centum of the necessary rent increases and changes in the incomes of eligible tenants, subject to the availability of authority for such purpose under section 1437c(c) of title 42. The Secretary shall take such actions as may be necessary to ensure that payments, including payments that reflect necessary rent increases and changes in the incomes of tenants, are made on a timely basis for all units covered by contracts entered into under paragraph (2).

[*See main edition for text of (g) and (h)*]

(i) Authorization of appropriations; aggregate amount of contracts; contracts for assistance payments; income limitations; availability of amounts for projects approved prior to rehabilitation and projects for occupancy by elderly or handicapped families; definitions

(1) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section, including such sums as may be necessary to make interest reduction payments under contracts entered into by the Secretary under this section. The aggregate amount of outstanding contracts to make such payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contracts shall not exceed $75,000,000 per annum prior to July 1, 1969, which maximum dollar amount shall be increased by $125,000,000 on July 1, 1969, by $150,000,000 on July 1, 1970, by $200,000,000 on July 1, 1971 and by $75,000,000 on July 1, 1974. The Secretary shall utilize, to the extent necessary after September 30, 1984, any authority under this section that is recaptured either as the result of the conversion of housing projects covered by assistance under subsection (f)(2) of this section to contracts for assistance under section 1437f of title 42 or otherwise for the purpose of making assistance payments, including amendments as provided in subsection (h), with respect to housing projects assisted, but not subject to mortgages insured, under this section that remain covered by assistance under subsection (f)(2) of this section.

[*See main edition for text of (2) to (4)*]

(j) Insurance of mortgages; definitions; eligibility for insurance; mortgage requirements; property or project requirements; sale of individual dwelling units; release of mortgagor from liability or release of property from lien of mortgage

[*See main edition for text of (1) to (3)*]

(4) A mortgage to be insured under this subsection shall—

(A) be executed by a private mortgagor eligible under subsection (d)(3) or (e) of section 1715*l* of this title;

(B) bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary determines is necessary to meet the mortgage market, taking into consideration the yields on mortgages in the primary and secondary markets; and

(C) provide for complete amortization by periodic payments within such term as the Secretary may prescribe.

(5) The property or project shall—

[*See main edition for text of (A) to (C)*]

In any case in which it is determined in accordance with regulations of the Secretary that facilities in existence or under construction on December 31, 1970, which could appropriately be used for classroom purposes are available in any such property or project and that public schools in the community are overcrowded due in part to the attendance at such schools of residents of the property or project, such facilities may be used for such purposes to the extent permitted in such regulations (without being subject to any of the requirements of the first proviso in subparagraph (A) except the requirement that the project be predominantly residential).

[*See main edition for text of (6); (k) to (m)*]

(n) Termination date for insurance of mortgages

No mortgage shall be insured under this section after November 30, 1983, except pursuant to a commitment to insure before that date.

[*See main edition for text of (o) to (q)*]

(As amended May 26, 1983, Pub. L. 98-35, § 1(e), 97 Stat. 197; Oct. 1, 1983, Pub. L. 98-109, § 1(e), 97 Stat. 745; Nov. 30, 1983, Pub. L. 98-181, title II, §§ 217(c), 218, 97 Stat. 1186, 1187; Oct. 17, 1984, Pub. L. 98-479, title I, §§ 102(a)(2), 104(a)(4), title II, § 204(a)(9), 98 Stat. 2221, 2225, 2232.)

AMENDMENTS

1984—Subsec. (f)(4). Pub. L. 98-479, § 102(a)(2), struck out "up to" before "90 per centum".

Subsec. (j)(4)(B). Pub. L. 98-479, § 104(a)(4), substituted "bear interest at a rate not to exceed such percent per annum on the amount of the principal obligation outstanding at any time as the Secretary determines is necessary to meet the mortgage market, taking into consideration the yields on mortgages in

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the primary and secondary markets" for "bear interest (exclusive of premium charges for insurance and service charges, if any) at not to exceed such per centum per annum (not in excess of 6 per centum), on the amount of the principal obligation outstanding at any time, as the Secretary finds necessary to meet the mortgage market".

Subsec. (j)(5). Pub. L. 98-479, § 204(a)(9), substituted "of residents" for "or residents" in provision following subpar. (C).

1983—Subsec. (f)(3). Pub. L. 98-181, § 217(c), substituted "September 30, 1985" for "September 30, 1982".

Subsec. (f)(4). Pub. L. 98-181, § 218(a), added par. (4).

Subsec. (i)(1). Pub. L. 98-181, § 218(b), added provision relating to utilization by the Secreetary of any authority under this section that it recaptured.

Subsec. (n). Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701s, 1701u, 1715c, 1715h, 1715r, 1715z, 1715z-1, 1715z-1a, 1715z-2, 1715z-3, 1715z-6, 1715z-9, 1715z-15, 1717, 1735c of this title; title 26 section 1250; title 31 section 1305; title 42 sections 1436a, 1436b, 1439, 1483, 1490c, 2982c, 3535, 8231.

§ 1715z-1a. Operating assistance for troubled multifamily housing projects

(a) Purpose

The purposes of this section are to provide assistance to restore or maintain the financial soundness, to assist in the improvement of the management, and to maintain the low- to moderate-income character of certain projects assisted or approved for assistance under the National Housing Act [12 U.S.C. 1701 et seq.], the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], or the Housing and Urban Development Act of 1965, without regard to whether such projects are insured under the National Housing Act.

(b) Availability of financial assistance

The Secretary of Housing and Urban Development (hereinafter referred to in this section as the "Secretary") may make available, and contract to make available, to such extent and in such amounts as may be approved in appropriation Acts, financial assistance to owners of rental or cooperative housing projects meeting the requirements of this section. Such assistance shall be made on an annual basis and in accordance with the provisions of this section, without regard to whether such projects are insured under the National Housing Act [12 U.S.C. 1701 et seq.].

(c) Eligibility for financial assistance

A rental or cooperative housing project is eligible for assistance under this section only if such project—

(1)(A) is assisted under section 236 [12 U.S.C. 1715z-1] or the proviso of section 221(d)(5) of the National Housing Act [12 U.S.C. 1715*l*(d)(5)], or under section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s];

(B) is assisted under section 8 of the United States Housing Act of 1937 [42 U.S.C. 1437f] following conversion to such assistance from assistance under section 236 of the National Housing Act [12 U.S.C. 1715z-1] or section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s]; or

(C) met the criteria specified in subparagraph (A) of this paragraph before the acquisition of such project by the Secretary and has been sold by the Secretary, subject to a mortgage insured or held by the Secretary and subject to an agreement (in effect during the period of assistance under this section) which provides that the low- and moderate-income character of the project will be maintained; except that, with respect to projects sold after October 1, 1978, assistance shall be available for a period not to exceed three years; and

[*See main edition for text of (2); (d) to (i)*]

(j) Authorization of appropriations

There is authorized to be appropriated, for the purpose of providing financial assistance under this section, an amount (in addition to any amount appropriated for use under this section pursuant to section 236(f)(3) of the National Housing Act [12 U.S.C. 1715z-1(f)(3)]) not to exceed $74,000,000 for the fiscal year 1979, not to exceed $82,000,000 for the fiscal year 1980, not to exceed $31,100,000 for the fiscal year 1981, and not to exceed $4,000,000 for the fiscal year 1982. Any amounts appropriated under this section shall remain available until expended.

(As amended Pub. L. 98-181, title II, § 217(a), (b), Nov. 30, 1983, 97 Stat. 1186; Pub. L. 98-479, title II, § 204(n)(1), (2), Oct. 17, 1984, 98 Stat. 2234.)

REFERENCES IN TEXT

The National Housing Act, as amended, referred to in subsecs. (a), (b), (c)(1)(A), (d)(3), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (a), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The Housing and Urban Development Act of 1965, as amended, referred to in subsecs. (a), (c)(1)(A), (B), and (h), is Pub. L. 89-117, Aug. 10, 1965, 79 Stat. 451, as amended. Section 101 of the Act enacted section 1701s of this title and amended sections 1451 and 1465 of Title 42. For complete classification of this Act to the Code, see Short Title of 1965 Amendment note set out under section 1701 of this title and Tables.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-479, § 204(n)(1), substituted "A" for "a" in provisions before subpar. (A).

Subsec. (j). Pub. L. 98-479, § 204(n)(2), substituted "section 236(f)(3)" for "section 236(f)(3)(B)".

1983—Subsec. (a). Pub. L. 98-181, § 217(a)(1), (b)(1), added "without regard to whether such projects are insured under the National Housing Act", and substituted ", the United States Housing Act of 1937, or" for "or under".

Subsec. (b). Pub. L. 98-181, § 217(a)(2), added ", without regard to whether such projects are insured under the National Housing Act".

Subsec. (c)(1)(A). Pub. L. 98-181, § 217(a)(3), struck out "; except that, in the case of any such project which is not insured under the National Housing Act such assistance may not be provided before October 1, 1979" after "Act of 1965".

Subsec. (c)(1)(B), (C). Pub. L. 98-181, § 217(b)(2), added subpar. (B) and redesignated former subpar. (B) as (C).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1715z-1, 1715z-1b, 1715z-15 of this title.

§ 1715z-5. Purchase of fee simple title from lessors

(a) Authorization to insure loans for purpose of financing purchases

The Secretary is authorized, upon such terms and conditions as he may prescribe, to make commitments to insure and to insure loans made by financial institutions for the purpose of financing purchases by homeowners of the fee simple title to property on which their homes are located.

[*See main edition for text of* (b)]

(c) Eligibility for insurance

To be eligible for insurance under this section, a loan shall—

[*See main edition for text of* (1) *to* (3)]

(4) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee;

[*See main edition for text of* (5) *and* (6); (d)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 404(b)(13), 97 Stat. 1210; Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(10), 98 Stat. 2232.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-479 substituted "purchases" for "purchasers".

1983—Subsec. (c)(4). Pub. L. 98-181 substituted provision that the interest rate be such rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate not exceed such per centum per annum, not in excess of 6 per centum, on the amount of the principal obligation outstanding at any time, as the Secretary finds necessary to meet market conditions, and such other charges as approved by the Secretary.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1464 of this title.

§ 1715z-6. Supplemental loans for multifamily projects

(a) Authorization to insure; definition

With respect to a multifamily project, hospital, or group practice facility covered by a mortgage insured under any section or subchapter of this chapter or covered by a mortgage held by the Secretary, the Secretary is authorized, upon such terms and conditions as he may prescribe, to make commitments to insure, and to insure, supplemental loans (including advances during construction or improvement) made by financial institutions approved by the Secretary. As used in this section, "supplemental loan" means a loan, advance of credit, or purchase of an obligation representing a loan or advance of credit made for the purpose of financing improvements or additions to such project, hospital, or facility: *Provided*, That a loan involving a nursing home, hospital, or a group practice facility may also be made for the purpose of financing equipment to be used in the operation of such nursing home, hospital, or facility.

(b) Eligibility for insurance

To be eligible for insurance under this section, a supplemental loan shall—

(1) be limited to 90 per centum of the amount which the Secretary estimates will be the value of such improvements, additions, and equipment, except that such amount when added to the outstanding balance of the mortgage covering the project or facility, shall not exceed the maximum mortgage amount insurable under the section or subchapter pursuant to which the mortgage covering such project or facility is insured or an amount acceptable to the Secretary;

(2) have a maturity satisfactory to the Secretary;

(3) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee;

[*See main edition for text of* (4) *to* (5); (c) *to* (e)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 404(b)(14), 97 Stat. 1210; Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(11), (12), 98 Stat. 2232.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-479, § 204(a)(11), substituted "to make" for "to made".

Subsec. (b)(1). Pub. L. 98-479, § 204(a)(12), substituted "or facility" for "of facility" before "is insured".

1983—Subsec. (b)(3). Pub. L. 98-181 substituted provision that the interest rate be such a rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate, exclusive of premium charges for insurance and service charges, not exceed such per centum per annum, not in excess of 6 per centum, on the amount of the principal obligation outstanding at any time, as the Secretary finds necessary to meet market conditions.

§ 1715z-7. Mortgage insurance for hospitals

[*See main edition for text of* (a)]

(b) Definitions

For the purposes of this section—

(1) the term "hospital" means a facility—

[*See main edition for text of* (A) *and* (B)]

(C) which is a public facility, proprietary facility, or facility of a private nonprofit corporation or association, licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or

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other political subdivision in which the facility is located); and

[*See main edition for text of (2)*]

(c) Authorization to insure; prohibition of premiums on guarantees of principal and interest under title VII of the Public Health Service Act

The Secretary is authorized to insure any mortgage (including advances on such mortgage during construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and to make commitments for insurance of such mortgage prior to the date of its execution or disbursement thereon. No mortgage insurance premium shall be charged with respect to the amount of principal and interest guaranteed by the Department of Health and Human Services under title VII of the Public Health Service Act [42 U.S.C. 292 et seq.].

(d) Insurance of mortgages covering new or rehabilitated hospitals, including equipment; terms and conditions

In order to carry out the purpose of this section, the Secretary is authorized to insure any mortgage which covers a new or rehabilitated hospital, including equipment to be used in its operation, subject to the following conditions:

[*See main edition for text of (1) and (2)*]

(3) The mortgage shall—

(A) provide for complete amortization by periodic payments within such term as the Secretary shall prescribe; and

(B) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee.

[*See main edition for text of (4) and (5); (e)*]

(f) Encouragement of programs undertaking responsibility to provide comprehensive health care

The activities and functions provided for in this section shall be carried out by the agencies involved so as to encourage programs that undertake responsibility to provide comprehensive health care, including outpatient and preventive care, as well as hospitalization, to a defined population, and, in the case of public hospitals, to encourage programs that are undertaken to provide essential health care services to all residents of a community regardless of ability to pay.

[*See main edition for text of (g) and (h)*]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, §§ 404(b)(15), 436, 97 Stat. 1210, 1222; Oct. 17, 1984, Pub. L. 98-479, title II, §§ 201(a)(1), 204(a)(13), 98 Stat. 2227, 2232.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-479, § 201(a)(1), substituted "Health and Human Services" for "Health, Education, and Welfare".

Subsec. (d)(3)(A). Pub. L. 98-479, § 204(a)(13), substituted a semicolon for the comma at the end.

1983—Subsec. (b)(1)(C). Pub. L. 98-181, § 436(1), inserted "public facility," after "which is a".

Subsec. (d)(3)(B). Pub. L. 98-181, § 404(b)(15), substituted provision that the interest rate be such a rate as agreed upon by the mortgagor and the mortgagee for provision that the interest rate, exclusive of premium charges for insurance and service charges, not exceed such per centum per annum, not in excess of 6 per centum, on the amount of the principal obligation outstanding at any time, as the Secretary finds necessary to meet the mortgage market.

Subsec. (f). Pub. L. 98-181, § 436(2), inserted ", and in the case of public hospitals, to encourage programs that are undertaken to provide essential health care services to all residents of a community regardless of ability to pay" after "defined population".

CHANGE OF NAME

"Department of Health and Human Services" was substituted for "Department of Health, Education, and Welfare" in subsec. (d)(5)(A), (B) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

REGULATIONS

Secretary of Housing and Urban Development required to issue regulations implementing amendments to this section by section 436 of Pub. L. 98-181, not later than Oct. 31, 1984, see section 104(f) of Pub. L. 98-479, set out as a note under section 1715b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1715c, 1715n of this title.

§ 1715z-8. Mortgage assistance payments for middle-income families

[*See main edition for text of (a) to (c)*]

(d) Monthly mortgage payments as determining eligibility for interest subsidy payments; mortgage assistance payments for middle-income cooperative members; interest subsidy payments; applicability of provisions to cooperative mortgagors

[*See main edition for text of (1)*]

(2) In addition to the mortgages eligible for assistance under paragraph (1) of this subsection, the Secretary is authorized to make periodic assistance payments on behalf of cooperative members of middle income. Such assistance payments shall be accomplished through interest subsidy payments to the investor with respect to mortgages insured (subsequent to July 24, 1970) under section 1715e of this title which are executed by cooperatives, the membership in which is limited to middle-income families. For purposes of this paragraph—

(A) the term "mortgagor", when used in subsection (b) of this section in the case of a mortgage covering a cooperative housing project, means a member of the cooperative;

(B) the term "acquisition of the property", when used in subsection (b) of this section, means the family's application for a dwelling unit; and

(C) in the case of a cooperative mortgagor, subsection (c) of this section shall not apply and the interest subsidy payments shall cease when the mortgage is no longer held by the investor or the cooperative fails to limit membership to families whose incomes at the time of their application for a dwelling unit meets such requirements as are laid down by the

Secretary pursuant to subsection (b) of this section.

[*See main edition for text of* (e) *to* (i)]

(j) Insurance of mortgages executed by mortgagors meeting eligibility requirements for assistance payments; issuance of commitment; eligibility requirements for insurance

[*See main edition for text of* (1) *and* (2)]

(3) A mortgage to be insured under this section shall—

[*See main edition for text of* (i)]

(ii) involve a single-family dwelling whose appraised value, as determined by the Secretary, is not in excess of $20,000 (which amount may be increased by not more than 50 per centum in any geographical area where the Secretary authorizes an increase on the basis of a finding that the cost level so requires); and

[*See main edition for text of* (iii)]

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(14), (15), 98 Stat. 2232.)

AMENDMENTS

1984—Subsec. (d)(2). Pub. L. 98-479, § 204(a)(14), redesignated subpars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively.

Subsec. (j)(3)(ii). Pub. L. 98-479, § 204(a)(15), substituted "; and" for the period at the end.

§ 1715z-9. Co-insurance of eligible mortgage, advance, or loan

[*See main edition for text of* (a) *to* (c)]

(d) Termination date

No mortgage, advance, or loan shall be insured pursuant to this section after March 17, 1986, except pursuant to a commitment to insure made before that date.

[*See main edition for text of* (e)]

(f) Multifamily housing project; contract provisions; aggregate principal amount of all mortgages insured; loans on defaulted mortgages; insurance for state assisted projects and projects under construction; definitions; amount of reserves

(1) Where the mortgage covers a multifamily housing project, the co-insurance contract may provide that the mortgagee assume (i) the full amount of any loss on the insured mortgage up to an amount equal to a fixed percentage of the outstanding principal balance of the mortgage at the time of claim for insurance benefits, or (ii) the full amount of any losses on insured mortgages in a portfolio of mortgages approved by the Secretary up to an amount equal to a fixed percentage of the outstanding principal balance of all mortgages in such portfolio at the time of claim for insurance benefits on a mortgage in the portfolio, plus a share of any loss in excess of the amount under clause (i) or (ii), whichever is applicable.

[*See main edition for text of* (2) *to* (4)]

(5) As used in this subsection, the term "public housing agency" has the meaning given such term in section 1437a(b)(6) of title 42.

[*See main edition for text of* (6)]

(g) Redesignated (f)

(h) Acceptable coinsurance provisions for rental rehabilitation; termination date

Notwithstanding any other provision of this section, in the case of a mortgage insured under section 1715n(f) of this title secured by property which is to be rehabilitated or developed under section 1437o of title 42, such coinsurance may include provisions that—

(1) insurance benefits shall equal the sum of (A) 90 per centum of the mortgage on the date of institution of foreclosure proceedings (or on the date of acquisition of the property otherwise after default), and (B) 90 per centum of interest arrears on the date benefits are paid;

(2) the mortgagee shall remit to the Secretary, for credit to the General Insurance Fund, 90 per centum of any proceeds of the property, including sale proceeds, net of the mortgagee's actual and reasonable costs related to the property and the enforcement of security;

(3) payment of such benefits shall be made in cash unless the mortgagee submits a written request for debenture payment; and

(4) the underwriter of coinsurance may reinsure 10 per centum of the mortgage amount with a private mortgage insurance company or with a State mortgage insurance agency.

No commitment for insurance pursuant to this subsection may be issued after March 17, 1986.

(As amended May 26, 1983, Pub. L. 98-35, § 1(f), 97 Stat. 197; Oct. 1, 1983, Pub. L. 98-109, § 1(f), 97 Stat. 745; Nov. 30, 1983, Pub. L. 98-181, title III, § 303(a), title IV, §§ 401(e), 434, 97 Stat. 1206, 1207, 1222; Oct. 17, 1984, Pub. L. 98-479, title I, § 104(a)(5), 98 Stat. 2225; Oct. 8, 1985, Pub. L. 99-120, § 1(e), 99 Stat. 502; Nov. 15, 1985, Pub. L. 99-156, § 1(e), 99 Stat. 815; Dec. 26, 1985, Pub. L. 99-219, § 1(e), 99 Stat. 1730.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-219, § 1(e)(1), substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156, § 1(e)(1), substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120, § 1(e)(1), substituted "November 14, 1985" for "September 30, 1985".

Subsec. (h). Pub. L. 99-219, § 1(e)(2), substituted "after March 17, 1986" for "on or after December 16, 1985".

Pub. L. 99-156, § 1(e)(2), substituted "December 16, 1985" for "November 15, 1985".

Pub. L. 99-120, § 1(e)(2), substituted "November 15, 1985" for "October 1, 1985".

1984—Subsec. (d). Pub. L. 98-479 amended subsec. (d) generally, thereby striking out last sentence which provided: "The aggregate principal amount of mortgages and loans insured pursuant to this section in any fiscal year beginning on or after July 1, 1974, and ending prior to October 1, 1985, shall not exceed 20 per centum of the aggregate principal amount of all mortgages and loans insured under this subchapter during such fiscal year."

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1983—Subsec. (d). Pub. L. 98–181, § 401(e)(3), which directed that the last two sentences of subsec. (d) be struck out was executed by striking out last sentence which provided that the overall percentage limitation specified in the preceding sentence also apply separately within each of the categories of mortgages and loans covering one- to four-family dwellings and mortgages and loans covering projects with five or more dwelling units, as the probable intent of Congress, in view of the amendment to the next to last sentence by section 401(e)(2) of Pub. L. 98–181.

Pub. L. 98–181, § 401(e)(1), (2), substituted "September 30, 1985" for "November 30, 1983" and "October 1, 1985" for "December 1, 1983".

Pub. L. 98–109 substituted "November 30, 1983" for "September 30, 1983" and "December 1, 1983" for "October 1, 1983".

Pub. L. 98–35 substituted "September 30, 1983" for "May 20, 1983" and "October 1, 1983" for "May 21, 1983".

Subsec. (f)(1). Pub. L. 98–181, § 434(1), struck out "the mortgagee is a public housing agency or an insured depository institution and" after "Where". Notwithstanding the directory language that amendment be made to subsec. (g)(1), the amendment was executed to subsec. (f)(1) to reflect the probable intent of Congress and the intervening redesignation of subsec. (g) as (f) by Pub. L. 96–470.

Subsec. (f)(5). Pub. L. 98–181, § 434(2), substituted reference to section 1437a(b)(6) of title 42 for reference to section 1437a(6) of title 42 and struck out provision which defined the term "insured depository institution" as any savings bank, savings and loan association, commercial bank or other such depository institution whose deposits are insured by the Federal Deposit Insurance Corporation, by the Federal Savings and Loan Insurance Corporation, or by an agency or instrumentality of a State. Notwithstanding the directory language that amendment be made to subsec. (g)(5), the amendment was executed to subsec. (f)(5) to reflect the probable intent of Congress and the intervening redesignation of subsec. (g) as (f) by Pub. L. 96–470.

Subsec. (h). Pub. L. 98–181, § 303(a), added subsec. (h).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1715h of this title; title 42 section 1437f.

§ 1715z–10. Graduated payment and indexed mortgages

(a) Criteria; principal obligation limitation; termination date

The Secretary may insure under any provision of this subchapter mortgages and loans with provisions of varying rates of amortization corresponding to anticipated variations in family income or with monthly payments and outstanding balances adjusted by a percentage change in a selected price index to the extent he determines such mortgages or loans (1) have promise for expanding housing opportunities or meet special needs, (2) can be developed to include any safeguards for mortgagors or purchasers that may be necessary to offset special risks of such mortgages, and (3) have a potential for acceptance in the private market. Notwithstanding any other provision of this subchapter, except as provided in subsections (b) and (c) of this section, the principal obligation (including all interest to be deferred and added to principal) of a mortgage insured pursuant to this subsection may not exceed 97 per centum of the appraised value of the property covered by the mortgage as of the date the mortgage is accepted for insurance, or if the mortgagor is a veteran and the mortgage is to be insured in accordance with the provisions of section 1709 of this title, such higher percentage of appraised value as is provided for purposes of determining the maximum mortgage amount eligible for insurance under section 1709(b)(2) of this title in the case of veterans. A mortgage or loan may not be insured pursuant to this subsection after March 17, 1986, except pursuant to a commitment entered into prior to such date.

[*See main edition for text of* (b)]

(c) Mortgages with monthly adjustments based on selected price index; priority; regulations; number

Notwithstanding the provisions of subsection (a) of this section, the Secretary may insure under any provision of this subchapter a mortgage or loan that meets the requirements of the first sentence of subsection (a) of this section and that has provisions permitting adjustment of monthly payments and outstanding principal according to changes or percentages of changes in a selected price index if the Secretary determines—

(1) the principal obligation of the mortgage or loan initially does not exceed the percentage of the initial appraised value of the property specified in section 1709(b) of this title as of the date the mortgage or loan is accepted for insurance; and

(2) the monthly payments and principal obligation of the mortgage or loan thereafter will not at any time be increased at a rate greater than the percentage change in the price index stipulated in the initial mortgage or loan contract.

In carrying out this subsection, the Secretary shall give a priority to mortgages executed by mortgagors who, as determined by the Secretary, have not owned dwelling units within the preceding 3 years. The Secretary shall, not later than March 31, 1984, prescribe regulations establishing guidelines governing mortgages and loans described in this subsection and shall, to the extent practicable, conduct a demonstration program to insure mortgages and loans in accordance with this subsection during fiscal years 1984 and 1985. The aggregate number of mortgages and loans insured under this subsection, section 1715z–16 of this title, and section 1715z–17 of this title in any fiscal year may not exceed 10 percent of the aggregate number of mortgages and loans insured by the Secretary under this subchapter during the preceding fiscal year.

(d) Multifamily housing

(1) The Secretary may insure, under any provision of this subchapter relating to multifamily housing projects, mortgages and loans with provisions of varying rates of amortization corresponding to anticipated variations in project income, to the extent the Secretary determines such mortgages or loans (A) have promise for expanding housing opportunities or meet special needs; (B) can be developed to include any safeguards for mortgagors, tenants, or purchasers that may be necessary to offset special risks

of such mortgages; and (C) have a potential for acceptance in the private market.

(2) Notwithstanding any other provision of this subchapter, the principal obligation of a mortgage or loan insured pursuant to this subsection—

(A) may not exceed initially the percentage of the initial appraised value or replacement cost of the property involved that is required by the provision of this subchapter under which such property is insured; and

(B) thereafter (including all interest to be deferred and added to principal) may not at any time be scheduled to exceed 100 percent of the projected value of such property.

(3) For purposes of this subsection, the projected value of a property shall be calculated by the Secretary by increasing the initial appraised value of such property at a rate not in excess of 2.5 percent per annum.

(e) Inapplicability of State constitution, etc., provision limiting interest or requiring minimum amortization of principal

Any mortgage or loan insured pursuant to this section which contains or sets forth any graduated mortgage provisions (including but not limited to provisions for adding deferred interest to principal) which are authorized under this section and applicable regulations, or which have been insured on the basis of their being so authorized, shall not be subject to any State constitution, statute, court decree, common law or rule or public policy (1) limiting the amount of interest which may be charged, taken, received, or reserved, or the manner of calculating such interest (including but not limited to prohibitions against the charging of interest on interest), if such constitution, statute, court decree, common law, or rule would not apply to the mortgage or loan in the absence of such graduated payment mortgage provisions, or (2) requiring a minimum amortization of principal under the mortgage or loan.

(As amended May 26, 1983, Pub. L. 98-35, § 1(g), 97 Stat. 197; Oct. 1, 1983, Pub. L. 98-109, § 1(g), 97 Stat. 745; Nov. 30, 1983, Pub. L. 98-181, title IV, §§ 401(f), 441, 442, 97 Stat. 1208, 1223, 1224; Oct. 8, 1985, Pub. L. 99-120, § 1(f), 99 Stat. 502; Nov. 15, 1985, Pub. L. 99-156, § 1(f), 99 Stat. 815; Dec. 26, 1985, Pub. L. 99-219, § 1(f), 99 Stat. 1730.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1983—Subsec. (a). Pub. L. 98-181, § 441(a), inserted "or with monthly payments and outstanding balances adjusted by a percentage change in a selected price index" after "family income" and substituted "subsections (b) and (c) of this section" for "subsection (b) of this section".

Pub. L. 98-181, § 401(f), substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

Subsecs. (c) to (e). Pub. L. 98-181, §§ 441(b), 442, added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1709, 1715h, 1715z, 1715z-14, 1715z-16, 1715z-17 of this title.

§ 1715z-12. Single-family mortgage insurance on Hawaiian home lands

(a) One- to four-family residence; eligibility

The Secretary, subject to such conditions as the Secretary may prescribe, may insure under any provision of this subchapter that authorizes such insurance, a mortgage covering a property upon which there is located a one- to four-family residence, without regard to any limitation in this chapter relating to marketability of title or any other limitation in this chapter that the Secretary determines is contrary to promoting the availability of such insurance on Hawaiian home lands, if—

(1) the mortgage is executed by a native Hawaiian on property located within Hawaiian home lands covered under a homestead lease issued under section 207(a) of the Hawaiian Homes Commission Act, 1920, or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 5);

(2) the property will be used as the principal residence of the Mortgagor; [9] and

(3) the Department of Hawaiian Home Lands of the State of Hawaii (A) is a comortgagor; (B) guarantees to reimburse the Secretary for any mortgage insurance claim paid in connection with a property on Hawaiian home lands; or (C) offers other security acceptable to the Secretary.

(b) Construction advances

Notwithstanding any other provision of this chapter, the Secretary may, with respect to mortgages eligible for insurance under subsection (a) of this section, insure and make commitments to insure advances made during construction if the Secretary determines that the proposed construction is otherwise acceptable and that no feasible financing alternative is available.

(c) "Native Hawaiian" and "Hawaiian home lands" defined

For purposes of this section:

(1) The term "native Hawaiian" means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands before January 1, 1778.

(2) The term "Hawaiian home lands" means all lands given the status of Hawaiian home lands under section 204 of the Hawaiian Homes Commission Act, 1920, or under the corresponding provision of the Constitution of the State of Hawaii adopted under section 4 of the Act entitled "An Act to provide for

[9] So in original. Probably should be "mortgagor".

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the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat. 5).

(June 27, 1934, ch. 847, title II, § 247, as added Nov. 30, 1983, Pub. L. 98-181, title IV, § 421, 97 Stat. 1213.)

REFERENCES IN TEXT

The Hawaiian Homes Commission Act, 1920, referred to in subsecs. (a)(1) and (c)(2), is act July 9, 1921, ch. 42, 42 Stat. 108, as amended. Sections 204 and 207 of that Act were classified to sections 698 and 701 of Title 48, Territories and Insular Possessions, and were omitted from the Code.

Section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved Mar. 18, 1959 (73 Stat. 5), referred to in subsecs. (a)(1) and (c)(2), is section 4 of Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 5, which is set out as a note preceding section 491 of Title 48.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1709 of this title.

§ 1715z-13. Single family mortgage insurance on Indian reservations

(a) One- to four-family residence; eligibility

The Secretary, subject to such special conditions as the Secretary may prescribe, may insure under any provision of this subchapter that authorizes such insurance, a mortgage covering a property upon which there is located a one- to four-family residence, without regard to any limitation in this chapter relating to marketability of title or any other limitation in this chapter that the Secretary determines is contrary to promoting the availability of such insurance on Indian reservations if the mortgage (1) is executed by an Indian tribe and the property is located on trust or otherwise restricted lands; or (2) is executed by a member of an Indian tribe who will use the property as a principal residence and the property is on trust lands or otherwise restricted land.

(b) Construction advances; percentage limitation on amount of principal obligation; pledge of income from tribal resources or assets

Notwithstanding any other provision of this chapter, with respect to mortgages covering a property upon which there is located a one- to four-family residence—

(1) the Secretary may insure and make commitments to insure under this subchapter pursuant to this section advances made during construction where the Secretary determines that the proposed construction is otherwise acceptable and meets an applicable tribal or national model building code, and that no feasible financing alternative is available;

(2) the applicable percentage limitation on the amount of the principal obligation of a mortgage based on the appraised value or replacement cost, as appropriate, of a one- to four-family owner-occupied residence contained in this subchapter shall apply in the case of all mortgages insured pursuant to this section without regard to whether the residences are owner-occupied where the residences are owned by the tribe; and

(3)(A) the Secretary may require an Indian tribe, only as a condition of insurance made under this subchapter pursuant to this section, to pledge income from tribal resources or income from tribal assets not subject to a restriction by the Secretary of the Interior or pledge grants under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] or any other Federal grant program administered by the Secretary of Housing and Urban Development to be used to reimburse the Secretary for any mortgage insurance claims paid in connection with residences insured pursuant to this section; or

(B) in the case of an individual Indian mortgagor, the Secretary may require a pledge of his or her share of distributed income from tribal resources or income from tribal assets, excluding any Federal grants received by the tribe.

(c) Lack of tribal or trust fund income

The Secretary may not refuse to insure a mortgage under this section to an individual home purchaser because there is no distributed tribal or trust fund income attributable to that purchaser.

(d) Availability of tribal eviction procedures

Before making any commitment to insure a mortgage under this section with respect to property located on tribal or trust land, the Secretary shall require a showing by the tribe that it has adopted eviction procedures to be used in the event of a default.

(e) Assumption of mortgage

A mortgage insured under this section may be assumed, subject to credit approval by the lender and the consent of the tribe to an assumption of the existing lease or the grant of a new lease, without an adjustment of the interest rate. Any other sale of a property subject to a mortgage insured under this section may be made only if a new lease is granted, except that a sale following a foreclosure may be accompanied by an assumption of the lease with the consent of the tribe.

(f) Availability of status and payment history of loans; entitlement to benefit of insurance; reinstatement of loan upon cure of default; garnishment proceedings; foreclosure proceedings

(1) The Secretary shall make information regarding the status and payment history of loans insured under this section available to local credit bureaus and prospective creditors. Prior to accepting assignment of a mortgage, the Secretary shall require mortgagees to submit documentation that mortgagors have been counseled in a face-to-face interview, informed of the provisions of this subsection or other available assistance, and provided with the names and addresses of officials of the Department of Housing and Urban Development to whom further communications shall be addressed.

(2) Notwithstanding the requirement for conveyance of title under section 1710 of this title, a mortgagee under this section shall be entitled to receive the benefit of insurance under this section in the case of a mortgage which is more

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than 90 days in default upon conveyance of the lease agreement and the mortgage documents.

(3) In the event that any default is cured, the Secretary shall seek to reinstate the loan with the mortgagee or another mortgagee. For purposes of this paragraph, the Secretary may provide appropriate financial incentives to reinstate the loan commensurate with sound management of the insurance fund.

(4) If the Secretary determines that a mortgagor is not making a good-faith effort to cure a default, and that trust fund or tribal income is available under subsection (b)(3)(B) of this section, the Secretary shall commence proceedings for the garnishment of the mortgagor's distributed share of tribal or trust fund income in order to collect loan payments that are past due. Proceedings under this paragraph may be instituted in a tribal court, court of competent jurisdiction designated by the tribe, or Federal district court.

(5) If the Secretary determines such action is necessary to protect the insurance fund from undue loss, the Secretary may initiate foreclosure proceedings with respect to any mortgage acquired under this subsection. Such proceeding may take place in a tribal court, a court of competent jurisdiction, or Federal district court. Any such court shall have jurisdiction to convey to the Secretary the remaining life of a lease on the real property and to order eviction of the delinquent mortgagor.

(g) Premium charge for insurance; report to Congress

In the administration of this section, the Secretary shall establish a premium charge for insurance that will be sufficient to cover the full costs of the mortgage insurance program under this section, except that such charge may not exceed 3 percent per annum of the principal amount of the mortgage outstanding at any time. Not later than September 30, 1984, the Secretary shall determine and report to the Congress on the feasibility of eliminating any excess amount of the premium under this section over the premium under section 1709 of this title. In the event such premiums are not sufficient to cover the full costs of the mortgage insurance program under this section, the Secretary shall make recommendations to the Congress about changes to the program.

(h) "Indian tribe" and "trust or otherwise restricted land" defined

For purposes of this section:

(1) The term "Indian tribe" means any Indian or Alaska native tribe, band, nation, or other organized group or community of Indians or Alaska natives recognized as eligible for the services provided to Indians or Alaska natives by the Secretary of the Interior because of its status as such an entity, or that is an eligible recipient under chapter 67 of title 31.

(2) The term "trust or otherwise restricted land" means (A) that area of land, as defined by the Secretary of the Interior, over which an Indian tribe is recognized by the United States as having governmental jurisdiction; (B) land held in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation; or (C) land acquired by Alaska natives under the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.] or any other land acquired by Alaska natives pursuant to statute by virtue of their unique status as Alaska natives.

(June 27, 1934, ch. 847, title II, § 248, as added Nov. 30, 1983, Pub. L. 98-181, title IV, § 422, 97 Stat. 1214.)

REFERENCES IN TEXT

The Housing and Community Development Act of 1974, referred to in subsec. (b)(3)(A), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (h)(2), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§ 1715z-14. Reinsurance contracts

(a) Demonstration mortgage reinsurance program; areas; number of mortgages

The purpose of this section is to authorize a demonstration mortgage reinsurance program designed to test the feasibility of entering into reinsurance contracts with private mortgage insurers in order to reduce Government risk and administrative costs, and to speed mortgage processing. The Secretary shall limit the demonstration under this section to not more than two administrative regions of the Department of Housing and Urban Development, and shall assure that the program is in the financial interest of the Government and will not result in loss of employment by any employees of the Department of Housing and Urban Development before March 17, 1986. The aggregate number of mortgages insured under this section in any administrative region of the Department of Housing and Urban Development in any fiscal year may not exceed 10 percent of the aggregate number of mortgages and loans insured by the Secretary under this subchapter in such region during the preceding fiscal year.

(b) One- to four-family dwellings; requirements for private mortgage insurance companies

Notwithstanding any other provision of this chapter inconsistent with this section, the Secretary is authorized to provide mortgage insurance with respect to one- to four-family dwellings under sections 1709(b), 1715y, and 1715z-10 of this title through reinsurance contracts with private mortgage insurance companies which have been determined to be qualified insurers under section 1717(b)(2)(C) of this title. Such contracts shall require private mortgage insurance companies to—

(1) assume a percentage of loss on any mortgage insured pursuant to section 1709(b), 1715y, or 1715z-10 of this title covering a one- to four-family dwelling, which percentage of

loss shall be set forth in the reinsurance contract; and

(2) carry out (under appropriate delegation) such credit approval, appraisal, inspection, commitment, claims processing, property disposition, or other function as the Secretary pursuant to regulations, shall approve as consistent with the purposes of this section.

(c) Required contract provisions

Any contract of reinsurance under this section shall contain such provisions relating to the sharing of premiums on a sound actuarial basis, establishment of insurance reserves, manner of calculating claims on such insurance, conditions with respect to foreclosure, handling and disposition of property prior to claim or settlement, right of assignees, and other similar matters as the Secretary may prescribe pursuant to regulations. Pursuant to a contract under this section, a private mortgage insurance company shall endorse loans for insurance and take such other actions on behalf of the Secretary and in the Secretary's name as the Secretary may authorize.

(d) Mortgages offered for inclusion by Secretary

The Secretary shall require any private mortgage insurance company participating in the program under this section to provide reinsurance for those mortgages offered by the Secretary for inclusion in the program.

(June 27, 1934, ch. 847, title II, § 249, as added Nov. 30, 1983, Pub. L. 98-181, title IV, § 428(a), 97 Stat. 1219, and amended Oct. 8, 1985, Pub. L. 99-120, § 1(g), 99 Stat. 502; Nov. 15, 1985, Pub. L. 99-156, § 1(g), 99 Stat. 815; Dec. 26, 1985, Pub. L. 99-219, § 1(g), 99 Stat. 1730.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

EVALUATION OF REINSURANCE PROGRAM; REPORT TO CONGRESS

Section 428(b) of Pub. L. 98-181 provided that: "The Secretary of Housing and Urban Development shall evaluate the reinsurance program under section 249 of the National Housing Act [this section] and, not later than March 1, 1985, submit to the Congress a report setting forth the results of such evaluation. Such report shall include an evaluation of the possible effect of a reinsurance program on the characteristics of the pool of mortgages remaining wholly under the applicable insurance funds and the actuarial soundness of such funds under such conditions."

§ 1715z-15. Limitation on prepayment of mortgages on multifamily rental housing

(a) Acceptance of offer to prepay; qualifications

During any period in which an owner of a multifamily rental housing project is required to obtain the approval of the Secretary for prepayment of the mortgage, the Secretary shall not accept an offer to prepay the mortgage on such project unless—

(1) the Secretary has determined that such project is no longer meeting a need for rental housing for lower income families in the area or that the needs of lower income families in such project can more efficiently and effectively be met through other Federal housing assistance taking into account the remaining time the project could meet such needs;

(2) the Secretary (A) has determined that the tenants have been notified of the owner's request for approval of a prepayment; (B) has provided the tenants with an opportunity to comment on the owner's request; and (C) has taken such comments into consideration; and

(3) the Secretary has ensured that there is a plan for providing relocation assistance for adequate, comparable housing for any lower income tenant who will be displaced as a result of the prepayment and withdrawal of the project from the program.

(b) Existing right to prepay; priority for additional assistance

In the case of a project assisted under section 1715z-1 of this title or the proviso to section 1715*l*(d)(5) of this title, section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], or section 1701q of this title where the owner has the right to prepay the mortgage covering the assisted project without the Secretary's approval, the Secretary shall give a priority for additional assistance under section 1437f of title 42 and section 201 of the Housing and Community Development Amendments of 1978 [12 U.S.C. 1715z-1a] to tenants and applicants to become tenants of the project, if—

(1) funds to provide such additional assistance are available; and

(2) the Secretary determines that making such additional assistance available to the project is necessary to prevent the owner from prepaying the mortgage.

(c) Responsibilities of owner receiving additional assistance

Any owner of a multifamily rental housing project referred to in subsection (b) of this section who receives additional assistance under section 1437f of title 42 under the priority established in subsection (b) of this section shall—

(1) fully utilize the assistance which is available;

(2) grant a priority to applicants to become tenants who have the lowest incomes; and

(3) maintain the low-income character of the project for a period at least equal to the remaining term of the project mortgage to the extent that assistance is provided.

(d) "Lower income families" defined

For purposes of this section, the term "lower income families" has the meaning given such term in section 1437a(b)(2) of title 42.

(June 27, 1934, ch. 847, title II, § 250, as added Nov. 30, 1983, Pub. L. 98-181, title IV, § 433, 97 Stat. 1221.)

REFERENCES IN TEXT

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsec. (b), is section 101 of Pub. L. 89-117, title I, Aug. 10, 1965, 79 Stat. 451, as amended, which enacted section 1701s of this title and

amended sections 1451 and 1465 of Title 42, The Public Health and Welfare.

Section 201 of the Housing and Community Development Amendments of 1978, referred to in subsec. (b), is section 201 of Pub. L. 95-557, title II, Oct. 31, 1978, 92 Stat. 2084, which enacted section 1715z-1a of this title and amended section 1715z-1 of this title.

§ 1715z-16. Adjustable rate single family mortgages

(a) One- to four-family dwellings; maximum term of mortgage; adjustments in effective rate of interest

The Secretary may insure under any provision of this subchapter a mortgage involving property upon which there is located a dwelling designed principally for occupancy by one to four families, where the mortgage provides for periodic adjustments by the mortgagee in the effective rate of interest charged. Such interest rate adjustments may be accomplished through adjustments in the monthly payment amount, the outstanding principal balance, or the mortgage term, or a combination of these factors, except that in no case may any extension of a mortgage term result in a total term in excess of 40 years. Adjustments in the effective rate of interest shall correspond to a specified national interest rate index approved in regulations by the Secretary, information on which is readily accessible to mortgagors from generally available published sources. Adjustments in the effective rate of interest shall (1) be made on an annual basis; (2) be limited, with respect to any single interest rate increase, to no more than 1 percent on the outstanding loan balance; and (3) be limited to a maximum increase of 5 percentage points above the initial contract interest rate over the term of the mortgage.

(b) Written explanation of mortgage features

The Secretary shall issue regulations requiring that the mortgagee make available to the mortgagor, at the time of loan application, a written explanation of the features of the adjustable rate mortgage, including a hypothetical payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first 5 years of the mortgage term.

(c) Number of mortgages and loans

The aggregate number of mortgages and loans insured under this section, section 1715z-10(c) of this title, and section 1715z-17 of this title in any fiscal year may not exceed 10 percent of the aggregate number of mortgages and loans insured by the Secretary under this subchapter during the preceding fiscal year.

(June 27, 1934, ch. 847, title II, § 251, as added Nov. 30, 1983, Pub. L. 98-181, title IV, § 443, 97 Stat. 1225.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1709, 1715z-10, 1715z-17 of this title.

§ 1715z-17. Shared appreciation mortgages for single family housing

(a) One- to four-family dwellings; requirements

Notwithstanding any provision of this subchapter that is inconsistent with this section, the Secretary may insure, under any provision of this subchpater providing for insurance of mortgages on properties upon which there is located a dwelling designed principally for occupancy by one to four families, a mortgage secured by a first lien on such a property or on the stock allocated to a dwelling unit in a residential cooperative housing corporation, which—

(1) provides for the mortgagee to share in a predetermined percentage of the property's or stock's net appreciated value;

(2) bears interest at a rate which meets criteria prescribed by the Secretary;

(3) provides for amortization over a period of not to exceed 30 years, but the actual term of the mortgage (excluding any refinancing) may be not less than 10 nor more than 30 years, and contains such provisions relating to refinancing of the principal balance of the mortgage and any contingent deferred interest as the Secretary may provide; and

(4) meets such other conditions as the Secretary may require by regulation.

(b) Payment of mortgagee's share of net appreciated value; "net appreciated value" defined

The mortgagee's share of a property's or stock's net appreciated value shall be payable upon sale or transfer (as defined by the Secretary) of the property or stock or payment in full of the mortgage, whichever occurs first. For purposes of this section, the term "net appreciated value" means the amount by which the sales price of the property or stock (less the mortgagor's selling costs) exceeds the value of the property or stock at the time the commitment to insure is issued (with adjustments for capital improvements stipulated in the loan contract). If there has been no sale or transfer at the time the mortgagee's share of net appreciated value becomes payable, the sales price for purposes of this section shall be determined by means of an appraisal conducted in accordance with procedures approved by the Secretary and provided for in the mortgage.

(c) Entitlement of mortgagee upon default

In the event of a default, the mortgagee shall be entitled to receive the benefits of insurance in accordance with section 1710(a) of this title, but such insurance benefits shall not include the mortgagee's share of net appreciated value. The term "original principal obligation of the mortgage" as used in section 1710 of this title shall not include the mortgagee's share of net appreciated value.

(d) Inapplicability of State constitution, statute, etc., limiting or prohibiting increases in outstanding loan balance

Mortgages insured pursuant to this section which contain provisions for sharing appreciation or which otherwise require or permit increases in the outstanding loan balance which are authorized under this section or under applicable regulations shall not be subject to any State constitution, statute, court decree, common law, rule, or public policy limiting or prohibiting increases in the outstanding loan balance after execution of the mortgage.

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(e) Encouraged use of insurance by low and moderate income families

In carrying out the provisions of this section, the Secretary shall encourage the use of insurance under this section by low and moderate income tenants who would otherwise be displaced by the conversion of their rental housing to condominium or cooperative ownership.

(f) Consumer protections and disclosure requirements

The Secretary shall prescribe adequate consumer protections and disclosure requirements with respect to mortgages insured under this section, and may prescribe such other terms and conditions as may be appropriate to carry out the provisions of this section.

(g) Number of mortgages and loans

The aggregate number of mortgages and loans insured under this section, section 1715z-10(c) of this title, and section 1715z-16 of this title in any fiscal year may not exceed 10 percent of the aggregate number of mortgages and loans insured by the Secretary under this subchapter during the preceding fiscal year.

(June 27, 1934, ch. 847, title II, § 252, as added Nov. 30, 1983, Pub. L. 98-181, title IV, § 444, 97 Stat. 1225.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1709, 1715z-10, 1715z-16 of this title.

§ 1715z-18. Shared appreciation mortgages for multifamily housing

(a) Five or more family units; requirements

Notwithstanding any provision of this subchapter that is inconsistent with this section, the Secretary may insure, under any provision of this subchapter providing for insurance of mortgages on properties including 5 or more family units, a mortgage secured by a first lien on the property that (1) provides for the mortgagee to share in a predetermined percentage of the property's net appreciated value; and (2) meets such other conditions, including limitations on the rate of interest which may be charged, as the Secretary may require by regulation.

(b) Payment of mortgagee's share of net appreciated value; term of mortgage; repayment; "net appreciated value" defined

The mortgagee's share of a property's net appreciated value shall be payable upon maturity or upon payment in full of the loan or sale or transfer (as defined by the Secretary) of the property, whichever occurs first. The term of the mortgage shall not be less than 15 years, and shall be repayable in equal monthly installments of principal and fixed interest during the mortgage term in an amount which would be sufficient to retire a debt with the same principal and fixed interest rate over a period not exceeding 30 years. In the case of a mortgage which will not be completely amortized during the mortgage term, the principal obligation of the mortgage may not exceed 85 percent of the estimated value of the property or project. For purposes of this section, the term "net appreciated value" means the amount by which the sales price of the property (less the mortgagor's selling costs) exceeds the value (or replacement cost, as appropriate) of the property at the time the commitment to insure is issued (with adjustments for capital improvements stipulated in the loan contract). If there has been no sale or transfer at the time the mortgagee's share of net appreciated value becomes payable, the sales price for purposes of this section shall be determined by means of an appraisal conducted in accordance with procedures approved by the Secretary and provided for in the mortgage.

(c) Entitlement of mortgagee upon default

In the event of a default, the mortgagee shall be entitled to receive the benefits of insurance in accordance with section 1710 of this title, but such insurance benefits shall not include the mortgagee's share of net appreciated value. The term "original principal obligation of the mortgage" as used in section 1710(a) of this title shall not include the mortgagee's share of net appreciated value.

(d) Maximum percentage of net appreciated value; disclosure requirements

The Secretary shall establish by regulation the maximum percentage of net appreciated value which may be payable to a mortgagee as the mortgagee's share. The Secretary shall also establish disclosure requirements applicable to mortgagees making mortgage loans pursuant to this section, to assure that mortgagors are informed of the characteristics of such mortgages.

(e) Inapplicability of State constitution, statute, etc., limiting or prohibiting increases in outstanding loan balance

Mortgages insured pursuant to this section which contain provisions for sharing appreciation or which otherwise require or permit increases in the outstanding loan balance which are authorized under this section or under applicable regulations shall not be subject to any State constitution, statute, court decree, common law, rule, or public policy limiting or prohibiting increases in the outstanding loan balance after execution of the mortgage.

(f) Number of dwelling units

The number of dwelling units included in properties covered by mortgages insured pursuant to this section in any fiscal year may not exceed 5,000.

(June 27, 1934, ch. 847, title II, § 253, as added Nov. 30, 1983, Pub. L. 98-181, title IV, § 445, 97 Stat. 1226.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1709 of this title.

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SUBCHAPTER III—NATIONAL MORTGAGE ASSOCIATIONS

§ 1716. Declaration of purposes of subchapter

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1717, 1719, 1721 of this title; title 42 section 1591a.

§ 1716b. Partition of Federal National Mortgage Association into Federal National Mortgage Association and Government National Mortgage Association; assets and liabilities; operations

REFERENCES IN TEXT

Section 1720 of this title, referred to in text, was repealed by Pub. L. 98-181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

§ 1717. Federal National Mortgage Association and Government National Mortgage Association

[*See main edition for text of* (*a*)]

(b) Purchase and sale of insured and conventional mortgages; transactions in loans and advances of credit

[*See main edition for text of* (*1*)]

(2) For the purposes set forth in section 1716(a) of this title, and with the approval of the Secretary of Housing and Urban Development, the corporation is authorized, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in mortgages which are not insured or guaranteed as provided in paragraph (1) (such mortgages referred to hereinafter as "conventional mortgages"). No such purchase of a conventional mortgage secured by a property comprising one- to four-family dwelling units shall be made if the outstanding principal balance of the mortgage at the time of purchase exceeds 80 per centum of the value of the property securing the mortgage, unless (A) the seller retains a participation of not less than 10 per centum in the mortgage; (B) for such period and under such circumstances as the corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the corporation in the event that the mortgage is in default; or (C) that portion of the unpaid principal balance of the mortgage which is in excess of such 80 per centum is guaranteed or insured by a qualified insurer as determined by the corporation. The corporation shall not issue a commitment to purchase a conventional mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (A) of such sentence. The corporation may purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration, or any other seller currently engaged in mortgage lending or investing activities. For the purpose of this section, the term "conventional mortgages" shall include a mortgage, lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member of a cooperative housing corporation, as defined in section 216 of title 26, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation. The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the corporation. Such limitations shall not exceed $93,750 for a mortgage secured by a single-family residence, $120,000 for a mortgage secured by a two-family residence, $145,000 for a mortgage secured by a three-family residence, and $180,000 for a mortgage secured by a four-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 1981. Each such adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the national average one-family house price in the monthly survey of all major lenders conducted by the Federal Home Loan Bank Board. With respect to mortgages secured by property comprising five or more family dwelling units, such limitations shall not exceed 125 per centum of the dollar amounts set forth in section 1713(c)(3) of this title, except that such limitations may be increased by the corporation (taking into account construction costs) to not to exceed 240 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban Development determines under such section that cost levels require any increase in the dollar amount limitations under such section. The foregoing limitations may be increased by not to exceed 50 per centum with respect to properties located in Alaska, Guam, and Hawaii.

[*See main edition for text of* (*3*) *and* (*4*)]

(5)(A) The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in (i) until October 1, 1987, conventional mortgages that are secured by a subordinate lien against a one- to four-family residence that is the principal residence of the mortgagor; and (ii) until October 1, 1985, conventional mortgages that are secured by a subordinate lien against a property comprising five or more family dwelling units. If the corporation, pursuant to paragraphs (1) through (4), shall have purchased, serviced, sold, or otherwise dealt with any other outstanding mortgage secured by the same residence, the aggregate original amount of such other mortgage and the mortgage authorized to be purchased, serviced, sold, or otherwise dealt with under this paragraph shall not exceed the applicable limitation determined under paragraph (2).

(B) The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages described in subparagraph (A). In any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of such mortgage described in subparagraph (A) and not merely with respect to the interest purchased by the corporation. Such limitations shall not exceed (i) with respect to mortgages described in subparagraph (A)(i), 50 per centum of the single-family residence mortgage limitation determined under paragraph (2); and (ii) with respect to mortgages described in subparagraph (A)(ii), the applicable limitation determined under paragraph (2).

(C) No subordinate mortgage against a one- to four-family residence shall be purchased by the corporation if the total outstanding indebtedness secured by the property as a result of such mortgage exceeds 80 per centum of the value of such property unless (i) that portion of such total outstanding indebtedness that exceeds such 80 per centum is guaranteed or insured by a qualified insurer as determined by the corporation; (ii) the seller retains a participation of not less than 10 per centum in the mortgage; or (iii) for such period and under such circumstances as the corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the corporation in the event that the mortgage is in default. The corporation shall not issue a commitment to purchase a subordinate mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (ii) of such sentence.

(c) Administration of trusts; obligations of departments and agencies of the United States; exemption of interest income from taxation; authorization of appropriations for differential reimbursements

[*See main edition for text of (1)*]

(2) Subject to the limitations provided in paragraph (4) of this subsection, one or more trusts may be established as provided in this subsection by each of the following departments or agencies:

[*See main edition for text of (A)*]

(B) The Department of Education, but only with respect to loans made by the Secretary of Education for construction of academic facilities, and loans to help finance student loan programs.

[*See main edition for text of (C) to (F), concluding par., (3) to (5)*]

(June 27, 1934, ch. 847, title III, § 302, 48 Stat. 1254; May 28, 1935, ch. 150, § 31, 49 Stat. 300; Feb. 3, 1938, ch. 13, § 6, 52 Stat. 24; Mar. 28, 1941, ch. 31, § 6, 55 Stat. 62; July 1, 1948, ch. 784, § 1, 62 Stat. 1208; July 19, 1949, ch. 351, § 1, 63 Stat. 446; Oct. 25, 1949, ch. 729, § 1(3), 63 Stat. 905; Apr. 20, 1950, ch. 94, title I, § 117, 64 Stat. 57; July 14, 1952, ch. 723, § 3(b), 66 Stat. 602; June 30, 1953, ch. 170, § 13(b), 67 Stat. 125; Aug. 2, 1954, ch. 649, title II, § 201, 68 Stat. 613; Aug. 7, 1956, ch. 1029, title II, § 201, 70 Stat. 1096; Sept. 2, 1958, Pub. L. 85-857, § 13(g), 72 Stat. 1265; Sept. 23, 1959, Pub. L. 86-372, title III, § 301, 73 Stat. 669; June 30, 1961, Pub. L. 87-70, title I, § 102(c), title VI, §§ 602, 603(a), 75 Stat. 158, 176; Sept. 2, 1964, Pub. L. 88-560, title VII, §§ 701(a), 702, 78 Stat. 800, 802; Aug. 10, 1965, Pub. L. 89-117, title I, § 102(d), title II, § 201(b)(1), title VIII, §§ 802(a), 803, 804, title X, § 1004(a), 79 Stat. 454, 465, 493, 494, 501; May 24, 1966, Pub. L. 89-429, § 2, 80 Stat. 164; Nov. 3, 1966, Pub. L. 89-751, § 7, 80 Stat. 1236; Nov. 3, 1966, Pub. L. 89-754, title IV, § 405, 80 Stat. 1273; May 25, 1967, Pub. L. 90-19, § 1(a)(2), (3), (j)(1), 81 Stat. 17, 18; Aug. 1, 1968, Pub. L. 90-448, title VIII, §§ 802(c)-(g), 803, 82 Stat. 536, 537, 542; Dec. 24, 1969, Pub. L. 91-152, title I, § 114, 83 Stat. 385; June 30, 1970, Pub. L. 91-296, title II, § 202, 84 Stat. 350; July 24, 1970, Pub. L. 91-351, title II, § 201(a), title IV, § 402, 84 Stat. 450, 458; Dec. 31, 1970, Pub. L. 91-609, title IX, § 901(d), 84 Stat. 1807; Aug. 22, 1974, Pub. L. 93-383, title VIII, §§ 806(a)-(f), 807, 88 Stat. 727, 728; Dec. 26, 1974, Pub. L. 93-541, § 2, 88 Stat. 1739; Oct. 12, 1977, Pub. L. 95-128, title IV, § 408(a), 91 Stat. 1138; Oct. 31, 1978, Pub. L. 95-557, title I, § 101(c)(3), title III, § 318(a), 92 Stat. 2083, 2100; Nov. 9, 1978, Pub. L. 95-619, title II, § 246, 92 Stat. 3233; Dec. 21, 1979, Pub. L. 96-153, title III, § 317, 93 Stat. 1119; June 30, 1980, Pub. L. 96-294, title V, § 534(b), 94 Stat. 741; Oct. 8, 1980, Pub. L. 96-399, title III, §§ 309, 313(a), 339(a)(1), (b)(1), 94 Stat. 1641, 1644, 1657; Dec. 26, 1981, Pub. L. 97-110, title II, § 202(c), 95 Stat. 1514; Oct. 3, 1984, Pub. L. 98-440, title II, §§ 201(a), 203(a), 205(a), 206(a), 98 Stat. 1692, 1693, 1695; Oct. 17, 1984, Pub. L. 98-479, title II, §§ 201(b), 204(a)(16), 98 Stat. 2227, 2232.)

REFERENCES IN TEXT

Section 1720 of this title, referred to in subsecs. (a)(2)(A) and (b)(1), was repealed by Pub. L. 98-181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-479, § 204(a)(16), substituted "corporation" for "Corporation" in fourth sentence after "The".

Subsec. (b)(2). Pub. L. 98-440, §§ 201(a), 205(a), 206(a), in second sentence substituted "No such purchase of a conventional mortgage secured by a property comprising one- to four-family dwelling units" for "No such purchase of a conventional mortgage", in sixth sentence substituted "The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the corporation" for "The corporation shall establish limitations governing the maximum principal obligation of conventional mortgages purchased by it", and in penultimate sentence added provision that the limitations set forth in section 1713(c)(3) of this title may be increased by the corporation (taking into account construction costs) to not to exceed 240 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban

Development determines under such section that cost levels require any increase in the dollar amount limitations under such section.

Subsec. (b)(5). Pub. L. 98-440, § 203(a), added par. (5).

Subsec. (c)(2)(B). Pub. L. 98-479, § 201(b), substituted "Department of Education" for "Department of Health, Education, and Welfare" and "Secretary of Education" for "Commissioner of Education".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1715z-14, 1717a, 1723a, 1723c of this title; title 20 section 1132d-2; title 26 section 895; title 31 section 3101; title 42 sections 291j-7, 300q-2.

§ 1719. Secondary market operations

[See main edition for text of (a) and (b)]

(c) Purchase of obligations by Treasury; conditions and restrictions

The Secretary of the Treasury is authorized in his discretion to purchase any obligations issued pursuant to subsection (b) of this section, as now or hereafter in force, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include such purchases. The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if such purchase would increase the aggregate principal amount of his then outstanding holdings of such obligations under this subsection to an amount greater than $2,250,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the making of such purchase. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

[See main edition for text of (d) and (e)]

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 203(a)(1), 98 Stat. 2229.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-479 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as now or hereafter in force" in two places.

§ 1720. Repealed. Pub. L. 98-181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240

Section, acts June 27, 1934, ch. 847, title III, § 305, 48 Stat. 1254; July 1, 1948, ch. 784, § 1, 62 Stat. 1206; Apr. 20, 1950, ch. 94, title I, § 118, 64 Stat. 57; Aug. 2, 1954, ch. 649, title II, § 201, 68 Stat. 616; Aug. 11, 1955, ch. 783, title I, § 103, title IV, § 402, 69 Stat. 636, 651; Aug. 7, 1956, ch. 1029, title II, §§ 205-208, 70 Stat. 1096; Mar. 27, 1957, Pub. L. 85-10, § 2, 71 Stat. 8; July 12, 1957, Pub. L. 85-104, title II, §§ 204-207, 71 Stat. 298; Apr. 1, 1958, Pub. L. 85-364, §§ 2, 3(a), 4, 72 Stat. 73, 74; Sept. 23, 1959, Pub. L. 86-372, title III, §§ 303(a), 304, 73 Stat. 669; June 30, 1961, Pub. L. 87-70, title I, § 101(c), title VI, § 601(a), (b), 75 Stat. 153, 175, 176; Sept. 2, 1964, Pub. L. 88-560, title I, § 109(b), 78 Stat. 777; Aug. 10, 1965, Pub. L. 89-117, title VIII, § 801, 79 Stat. 493; May 24, 1966, Pub. L. 89-429, § 3(a), 80 Stat. 166; Sept. 10, 1966, Pub. L. 89-566, § 3, 80 Stat. 738; Nov. 3, 1966, Pub. L. 89-754, title III, § 310(d), title X, §§ 1005, 1020(c), 80 Stat. 1270, 1285, 1296; May 25, 1967, Pub. L. 90-19, § 1(a)(2), 81 Stat. 17; Aug. 1, 1968, Pub. L. 90-448, title II, § 201(g), title VIII, § 806, 82 Stat. 503, 544; Dec. 24, 1969, Pub. L. 91-152, § 2, title I, § 115, 83 Stat. 379, 385; July 24, 1970, Pub. L. 91-351, title IV, § 401, 84 Stat. 458; Oct. 31, 1978, Pub. L. 95-557, title III, § 318(b), 92 Stat. 2101; Oct. 8, 1980, Pub. L. 96-399, title III, § 338, 94 Stat. 1657; Aug. 13, 1981, Pub. L. 97-35, title III, § 333(a)(1), (2), 95 Stat. 413, related to the special assistance functions of the Government National Mortgage Association.

SAVINGS PROVISION

Section 483(b) of Pub. L. 98-181 provided that: "Any purchase or commitment to purchase any mortgage pursuant to section 305 or 313 of the Federal National Mortgage Association Charter Act [former sections 1720 and 1723e of this title] made before the date of the enactment of this Act [Nov. 30, 1983], and the servicing and disposition of any such mortgage, shall continue to be governed by the provisions of such sections as they existed immediately before the effective date of this section [Nov. 30, 1983]."

§ 1721. Management and liquidation functions of Government National Mortgage Association

[See main edition for text of (a) to (c)]

(d) Issuance of obligations sufficient to carry out functions; character; purchase

The Association may issue to the Secretary of the Treasury its obligations in an amount outstanding at any one time sufficient to enable the Association to carry out its functions under this section, such obligations to mature not more than five years from their respective dates of issue, to be redeemable at the option of the Association before maturity in such manner as may be stipulated in such obligations. Each such obligation shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of the obligation of the Association. The Secretary of the Treasury is authorized to purchase any obligations of the Association to be issued under this section, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include any purchases of the Association's obligations hereunder.

[See main edition for text of (e) and (f)]

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(g) Guarantee of principal and interest on trust certificates and other securities; fees and charges; subrogation; contract for extinguishment of right, title, or interest in mortgages; protection of interests; full faith and credit; commitments limited

[See main edition for text of (1)]

(2) Notwithstanding any other provision of law and subject only to the absence of qualified requests for guarantees, to the authority provided in this subsection, and to any funding limitation approved in appropriation Acts, the Association shall enter into commitments for each of the fiscal years 1984 and 1985 to issue guarantees under this subsection for each such fiscal year in an aggregate amount of $68,250,000,000.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 481, 97 Stat. 1239; Oct. 17, 1984, Pub. L. 98-479, title II, § 203(a)(2), 98 Stat. 2229.)

REFERENCES IN TEXT

Section 1720 of this title, referred to in subsec. (f), was repealed by Pub. L. 98-181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-479 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as now or hereafter in force" in two places.

1983—Subsec. (g)(2). Pub. L. 98-181 substituted "Notwithstanding any other provision of law and subject only to the absence of qualified requests for guarantees, to the authority provided in this subsection, and to any funding limitation approved in appropriation Acts, the Association shall enter into commitments for each of the fiscal years 1984 and 1985 to issue guarantees under this subsection for each such fiscal year in an aggregate amount of $68,250,000,000" for "During fiscal year 1982, the Association may not enter into commitments to issue guarantees under this subsection in an aggregate amount in excess of $69,542,000,000".

SPECIAL ASSISTANCE FUNCTIONS FUND; TRANSFER OF FUNDS

Pub. L. 98-371, title I, § 101, July 13, 1984, 98 Stat. 1218, provided that: "The Secretary shall transfer all assets acquired and liabilities incurred pursuant to section 305 of the Federal National Mortgage Association Charter Act, as amended (12 U.S.C. 1720), to the management and liquidating functions fund established pursuant to section 306 of such Act (12 U.S.C. 1721): *Provided*, That on October 1, 1984, each outstanding obligation issued by the Secretary of Housing and Urban Development to the Secretary of the Treasury pursuant to section 305(d) of such Act, together with any promise to repay the principal and unpaid interest which has accrued on each obligation, and any other term or condition specified by each such obligation, is canceled."

EMERGENCY MORTGAGE PURCHASE ASSISTANCE; TRANSFER OF FUNDS

For transfer of all assets acquired and liabilities incurred pursuant to section 1723e of this title to the management and liquidating functions fund established by this section, with provision for cancellation of obligations, see section 101 of Pub. L. 98-371, set out as a note under section 1723e of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 1455, 1464, 1715z-7, 1716b, 1717, 1722, 1757 of this title.

§ 1722. Benefits and burdens incident to administration of functions and operations under sections 1720 and 1721

REFERENCES IN TEXT

Section 1720 of this title, referred to in text, was repealed by Pub. L. 98-181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

§ 1723. Management

[See main edition for text of (a)]

(b) Federal National Mortgage Association

The Federal National Mortgage Association shall have a board of directors, which shall consist of eighteen persons, five of whom shall be appointed annually by the President of the United States, and the remainder of whom shall be elected annually by the common stockholders. The board shall at all times have as members appointed by the President at least one person from the homebuilding industry, at least one person from the mortgage lending industry, and at least one person from the real estate industry. Each member of the board of directors shall be appointed or elected for a term ending on the date of the next annual meeting of the stockholders, except that any such member may be removed from office by the President for good cause. Any elective seat on the board which becomes vacant after the annual election of the directors shall be filled by the board, but only for the unexpired portion of the term. Any appointive seat which becomes vacant shall be filled by appointment of the President, but only for the unexpired portion of the term. Within the limitations of law and regulation, the board shall determine the general policies which shall govern the operations of the corporation, and shall have power to adopt, amend, and repeal bylaws governing the performance of the powers and duties granted to or imposed upon it by law. The board of directors shall select and effect the appointment of qualified persons to fill the offices of president and vice president, and such other offices as may be provided for in the bylaws. Any member of the board who is a full-time officer or employee of the Federal Government shall not, as such member, receive compensation for his services.

(As amended Oct. 3, 1984, Pub. L. 98-440, title II, § 207, 98 Stat. 1696.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-440 substituted ", which shall consist of eighteen persons, five of whom" for "which shall consist of fifteen persons, one-third of whom".

§ 1723a. General powers of Government National Mortgage Association and Federal National Mortgage Association

[See main edition for text of (a)]

(b) Determination with respect to obligations and expenditures

Except as may be otherwise provided in this subchapter, in chapter 91 of title 31, or in other laws specifically applicable to Government cor-

porations, the Association shall determine the necessity for and the character and amount of its obligations and expenditures and the manner in which they shall be incurred, allowed, paid, and accounted for.

[*See main edition for text of* (c) *to* (g)]

(h) Regulatory power over Federal National Mortgage Association; approval for issuance of stock, obligations, securities, or other instruments; relation of mortgage purchases to national goal; audits; reports; transmittal to Congress

The Secretary of Housing and Urban Development shall have general regulatory power over the Federal National Mortgage Association and shall make such rules and regulations as shall be necessary and proper to insure that the purposes of this subchapter are accomplished. No stock, obligation, security, or other instrument shall be issued by the corporation before October 1, 1985, without the prior approval of the Secretary. The Secretary may require that a reasonable portion of the corporation's mortgage purchases be related to the national goal of providing adequate housing for low and moderate income families, but with reasonable economic return to the corporation. The Secretary may examine and audit the books and financial transactions of the corporation, and he may require the corporation to make such reports on its activities as he deems advisable. Pursuant to the authority provided in this subsection, the Secretary shall, not later than June 30 of each year, report to the Congress on the activities of the corporation under this subchapter.

(i) Request for approval or other action; approval; disapproval and report to Congress; extension; effect of inaction by Secretary

If the Federal National Mortgage Association submits to the Secretary of Housing and Urban Development, after October 3, 1984, a request for approval or other action under this subchapter, the Secretary shall, not later than the expiration of the forty-five-day period following the submission of such request, approve such request or transmit to the Congress a report explaining why such request has not been approved. Such period may be extended for an additional fifteen-day period if the Secretary requests additional information from the corporation. If the Secretary fails to transmit such report to the Congress within such forty-five-day period or sixty-day period, as the case may be, the corporation may proceed as if such request had been approved.

(As amended Oct. 3, 1984, Pub. L. 98-440, title II, §§ 208, 209, 213(a), 98 Stat. 1696, 1698; Oct. 17, 1984, Pub. L. 98-479, title II, § 203(a)(3), 98 Stat. 2229.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-479 substituted "chapter 91 of title 31" for "the Government Corporation Control Act".

Subsec. (h). Pub. L. 98-440, §§ 208, 213(a), substituted "issued by the corporation before October 1, 1985," for "issued by the Corporation" and substituted "shall, not later than June 30 of each year, report to the Congress on the activities of the corporation under this subchapter" for "shall conduct a review of the financial operations of the corporation and undertake a study of the extent to which the activities of the corporation meet the purposes of this subchapter. Such review and study shall be completed and transmitted to the Congress on or before July 1, 1978."

Subsec. (i). Pub. L. 98-440, § 209, added subsec. (i).

§ 1723c. Obligations, participations, or other instruments as lawful investments; acceptance as security; exempt securities; approval for issuance

All obligations, participations, or other instruments issued by either of the bodies corporate named in section 1717(a)(2) of this title shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority and control of the United States or any officer or officers thereof. All stock, obligations, securities, participations, or other instruments issued pursuant to this subchapter shall, to the same extent as securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission; but all such issuances by the Association and all issuances of stock, and debt obligations convertible into stock, by the corporation shall be made only with the approval of the Secretary of Housing and Urban Development.

(As amended Oct. 3, 1984, Pub. L. 98-440, title II, § 213(b), 98 Stat. 1698.)

AMENDMENTS

1984—Pub. L. 98-440 inserted "by the Association and all issuances of stock, and debt obligations convertible into stock, by the corporation".

§ 1723e. Repealed. Pub. L. 98-181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240

Section, acts June 27, 1934, ch. 847, title III, § 313, as added Oct. 18, 1974, Pub. L. 93-449, § 3(a), 88 Stat. 1364, and amended July 2, 1975, Pub. L. 94-50, title II §§ 201-206, 89 Stat. 254, 255; Aug. 3, 1976, Pub. L. 94-375, § 13(e)(1), 90 Stat. 1075; Oct. 12, 1977, Pub. L. 95-128, title IV, § 407(a)-(d), 91 Stat. 1137, 1138; Oct. 8, 1980, Pub. L. 96-399, title III, § 337(b), 94 Stat. 1655, related to the interim mortgage and security purchasing authority of the Association.

SAVINGS PROVISION

For continued application of former sections 1720 and 1723e of this title to any purchase or commitment to purchase any mortgage made pursuant to those sections before Nov. 30, 1983, and the servicing and disposition of any such mortgage, see section 483(b) of Pub. L. 98-181, set out as a note under section 1720 of this title.

EFFECTIVE DATE

Section 3(b) of Pub. L. 93-449, as amended by Pub. L. 94-50, title II, § 207, July 2, 1975, 89 Stat. 256; Pub. L. 94-375, § 13(d), Aug. 3, 1976, 90 Stat. 1075; Pub. L. 95-128, title IV, § 407(e), Oct. 12, 1977, 91 Stat. 1138; Pub. L. 95-406, § 3, Sept. 30, 1978, 92 Stat. 880; Pub. L. 95-557, title III, § 303, Oct. 31, 1978, 92 Stat. 2096; Pub. L. 96-71, § 3, Sept. 28, 1979, 93 Stat. 502; Pub. L. 96-105, § 3, Nov. 8, 1979, 93 Stat. 795; Pub. L. 96-153, title III, § 303, Dec. 21, 1979, 93 Stat. 1112; Pub. L. 96-372, § 4, Oct. 3, 1980, 94 Stat. 1364; Pub. L. 96-399, title III, § 337(a), Oct. 8, 1980, 94 Stat. 1655, which related to the effective date of former section 1723e of

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this title, was repealed by Pub. L. 98-181, title IV, § 483(a), Nov. 30, 1983, 97 Stat. 1240.

EMERGENCY MORTGAGE PURCHASE ASSISTANCE; TRANSFER OF FUNDS

Pub. L. 98-371, title I, § 101, July 18, 1984, 98 Stat. 1218, provided that: "The Secretary shall transfer all assets acquired and liabilities incurred pursuant to section 313 of the Federal National Mortgage Association Charter Act, as amended (12 U.S.C. 1723e), to the management and liquidating functions fund established pursuant to section 306 of such Act (12 U.S.C. 1721): *Provided*, That on October 1, 1984, each outstanding obligation issued by the Secretary of the Housing and Urban Development to the Secretary of the Treasury pursuant to section 313(c) of such Act, together with any promise to repay the principal and unpaid interest which has accrued on each obligation, and any other term or condition specified by each such obligation, is canceled."

§ 1723g. Authority of Solar Energy and Energy Conservation Bank to purchase loans and advances of credit for energy conservation improvements or solar energy systems

[See main edition for text of (a) and (b)]

(c) Issuance of obligations to Secretary of Treasury

The Bank may issue, to the extent and in such amounts as may be approved in appropriation Acts, to the Secretary of the Treasury its obligations in an amount outstanding at any one time sufficient to enable the Bank to carry out its functions under this section. Each such obligation shall mature at such time and be redeemable at the option of the Bank in such manner as may be determined by the Bank, and shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligation of the Bank. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Bank issued under this section, and for such purposes the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include any purchase of the Bank's obligations hereunder.

[See main edition for text of (d) to (h)]

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 203(a)(4), 98 Stat. 2229.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-479 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as now or hereafter in force" in two places.

§ 1723h. Authority of Solar Energy and Energy Conservation Bank to purchase mortgages secured by newly constructed homes with solar energy systems

[See main edition for text of (a) and (b)]

(c) Issuance of obligations to Secretary of Treasury

The Bank may issue, to the extent and in such amounts as may be approved in appropriation Acts, to the Secretary of the Treasury its obligations in an amount outstanding at any one time sufficient to enable the Bank to carry out its functions under this section. Each such obligation shall mature at such time and be redeemable at the option of the Bank in such manner as may be determined by the Bank, and shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligation of the Bank. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Bank issued under this section, and for such purposes the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include any purchase of the Bank's obligations hereunder.

[See main edition for text of (d) to (g)]

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 203(a)(5), 98 Stat. 2229.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-479 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as now or hereafter in force" in two places.

SUBCHAPTER IV—INSURANCE OF SAVINGS AND LOAN ACCOUNTS

§ 1729. Liquidation of insured institutions

REPEAL OF SUBSECTION (f)(5)

Section 206 of Pub. L. 97-320, as amended by Pub. L. 97-457, § 11, Jan. 12, 1983, 96 Stat. 2508; Pub. L. 99-120, § 6(b), Oct. 8, 1985, 99 Stat. 504, set out as a note under this section, provided that, on Apr. 15, 1986, subsection (f)(5) of this section is repealed, except that such repeal shall have no effect on any action taken or authorized pursuant to amendments made by title II of Pub. L. 97-320 by or for a qualified institution while such amendments were in effect and while net worth certificates issued pursuant to these amendments were outstanding.

EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENT

Effective Apr. 15, 1986, provisions of law amended by section 122(d)-(g) of Pub. L. 97-320 [amending subsecs. (c)(1)-(3) and (d) of this section] to read as they would without such amendments, and termination of amendment to have no effect on any action taken or authorized while such amendment was in effect, see section 141(a)(6), (b) of Pub. L. 97-320, as amended, set out as a note under section 1464 of this title.

Section 206 of Pub. L. 97-320, as amended by Pub. L. 97-457, § 11, Jan. 12, 1983, 96 Stat. 2508; Pub. L. 99-120, § 6(b), Oct. 8, 1985, 99 Stat. 504, provided that:

"(a) On April 15, 1986, section 406(f)(5) of the National Housing Act [subsec. (f)(5) of this section] and section 13(i) of the Federal Deposit Insurance Act [section 1823(i) of this title] are repealed.

"(b) The repeal by subsection (a) shall have no effect on any action taken or authorized pursuant to

the amendments made by this title [see Short Title of 1982 Amendments note set out under section 1811 of this title] by or for a qualified institution while such amendments were in effect and while net worth certificates issued pursuant to these amendments are outstanding."

§ 1730a. Regulation of holding companies

EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENT

Effective Apr. 15, 1986, provisions of law amended by section 123 of Pub. L. 97-320 [enacting subsec. (m) and amending subsec. (e)(2)] to read as they would without such amendments, and termination of amendment to have no effect on any action taken or authorized while such amendment was in effect, see section 141(a)(7), (b) of Pub. L. 97-320, as amended, set out as a note under section 1464 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1464, 1725, 1729, 1730, 2902, 3201, 3205 of this title; title 15 section 18a; title 18 section 215.

SUBCHAPTER V—MISCELLANEOUS

§ 1731a. Penalties

[*See main edition for text*]

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(17), 98 Stat. 2232.)

AMENDMENTS

1984—Pub. L. 98-479 substituted "Penalties" for "Denial of benefits in cases of abuses; determination by Secretary; notice and hearing" in section catchline.

§ 1731b. Prohibition against transient housing

[*See main edition for text*]

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(18), 98 Stat. 2232.)

PRIOR PROVISIONS

A prior section 513 of act June 27, 1934, was renumbered section 513A of act June 27, 1934, and is classified to section 1732 of this title.

AMENDMENTS

1984—Pub. L. 98-479 substituted "Prohibition against transient housing" for "Prohibition against use of insured multifamily housing for transient or hotel purposes" in section catchline.

§ 1732. Separability provision

[*See main edition for text*]

(June 27, 1934, ch. 847, title V, § 513A, formerly § 513, 48 Stat. 1265; renumbered Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(19), 98 Stat. 2232.)

REFERENCES IN OTHER LAWS

Pub. L. 98-479, title II, § 204(a)(19), Oct. 17, 1984, 98 Stat. 2232, provided in part that: "Any reference in any law, regulation, order, document, record, or other paper of the United States to the section redesignated in this paragraph [this section] hereby is deemed to refer to section 513A of the National Housing Act [this section]."

§ 1734. Amendment, extension, or increase of commitment amounts

[*See main edition for text*]

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(20), 98 Stat. 2232.)

AMENDMENTS

1984—Pub. L. 98-479 struck out "; mortgage conditions" after "amounts" in section catchline.

§ 1735. Payment of certain funds to Treasury

[*See main edition for text*]

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(21), 98 Stat. 2232.)

AMENDMENTS

1984—Pub. L. 98-479 inserted "Payment of certain funds to Treasury" as section catchline.

§ 1735b. Expenditures to correct or reimburse for structural or other major defects in mortgaged homes

(a) Prior to beginning of construction

The Secretary is authorized, with respect to any property improved by a one- to four-family dwelling that, before the beginning of construction, was approved for mortgage insurance under this chapter or for guaranty, insurance, or a direct loan under chapter 37 of title 38 and that the Secretary finds to have structural defects, to make expenditures for (1) correcting such defects, (2) paying the claims of the owner of the property arising from such defects, or (3) acquiring title to the property: *Provided*, That such authority of the Secretary shall exist only (A) if the owner has requested assistance from the Secretary not later than four years (or such shorter time as the Secretary may prescribe) after insurance of the mortgage, and (B) if the property is encumbered by a mortgage which is insured under this chapter after September 2, 1964.

[*See main edition for text of (b) to (e)*]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 427, 97 Stat. 1218.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-181 substituted "that, before the beginning of construction, was approved for mortgage insurance under this chapter or for guaranty, insurance, or a direct loan under chapter 37 of title 38 and that the Secretary finds" for "approved for mortgage insurance prior to the beginning of construction which he finds".

§ 1735c. General Insurance Fund

[*See main edition for text of (a) to (e)*]

(f) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to cover losses sustained by the General Insurance Fund.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 403, 97 Stat. 1208.)

AMENDMENTS

1983—Subsec. (f). Pub. L. 98-181 inserted "such sums as may be necessary" after "appropriated", and struck out "not to exceed $1,738,000,000, which amount shall be increased by $126,672,000 on October 1, 1981" after "Insurance Fund".

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§ 1735f-4. Minimum property standards

(a) To the maximum extent feasible, the Secretary of Housing and Urban Development shall promote the use of energy saving techniques through minimum property standards established by him for newly constructed residential housing, other than manufactured homes, subject to mortgages insured under this chapter. Such standards shall establish energy performance requirements that will achieve a significant increase in the energy efficiency of new construction. Such requirements shall be implemented as soon as practicable after November 9, 1978. Following November 30, 1983, the energy performance requirements developed and established by the Secretary under this subsection for newly constructed residential housing, other than manufactured homes, shall be at least as effective in performance as the energy performance requirements incorporated in the minimum property standards that were in effect under this subsection on September 30, 1982.

(b) The Secretary may require that each property, other than a manufactured home, subject to a mortgage insured under this chapter shall, with respect to health and safety, comply with one of the nationally recognized model building codes, or with a State or local building code based on one of the nationally recognized model building codes or their equivalent. The Secretary shall be responsible for determining the comparability of the State and local codes to such model codes and for selecting for compliance purposes an appropriate nationally recognized model building code where no such model code has been duly adopted or where the Secretary determines the adopted code is not comparable.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 405, 97 Stat. 1210; Oct. 17, 1984, Pub. L. 98-479, title I, § 104(a)(6), 98 Stat. 2225.)

AMENDMENTS

1984—Pub. L. 98-479 substituted "Minimum property standards" for "Promotion of energy saving techniques by Secretary of Housing and Urban Development of insured housing" in section catchline.

1983—Subsec. (a). Pub. L. 98-181 designated existing provision as subsec. (a), and in subsec. (a), as so designated, inserted ", other than manufactured homes," after "housing", inserted provision that the energy performance requirements developed for newly constructed residential housing, other than manufactured homes, be at least as effective in performance as the energy performance requirements incorporated in the minimum property standards in effect Sept. 30, 1982, and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 1479.

§ 1735f-5. Prohibition against discrimination on account of sex in extension of mortgage assistance; consideration of combined income of husband and wife for purpose of extending mortgage credit; definitions

(a) No federally related mortgage loan, or Federal insurance, guaranty, or other assistance in connection therewith (under this chapter or any other Act), shall be denied to any person on account of sex; and every person engaged in making mortgage loans secured by residential real property shall consider without prejudice the combined income of both husband and wife for the purpose of extending mortgage credit in the form of a federally related mortgage loan to a married couple or either member thereof.

[*See main edition for text of* (b)]

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(22), 98 Stat. 2233.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-479 designated first par. as subsec. (a).

§ 1735f-8. Time of payment of premium charges

In carrying out the provisions of subchapters I, II, IV, VII, VIII, IX-A, IX-B, and X of this chapter pertaining to the payment of loan or mortgage insurance premium charges by a financial institution, other morgagees, or agent thereof to the Federal Government in connection with a loan or mortgage insurance program established pursuant to any of these titles, the Secretary shall require that payment of such premiums be made (1) in the case of loans or mortgages respecting one- to four-family residences, promptly upon their receipt from the borrower, and (2) in any other case, promptly when due to the Secretary; except that the Secretary may approve payment of such premiums within twenty-four months of such receipt or due date, as appropriate, if the financial institution, mortgagee, or agent thereof pays interest, at a rate specified by the Secretary, to the insurance fund for the period beginning twenty days after receipt from the borrower or after the due date, as appropriate, and ending upon payment of the premiums to the Federal Government.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 406, 97 Stat. 1210.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "(1) in the case of loans or mortgages respecting one- to four-family residences, promptly upon their receipt from the borrower, and (2) in any other case, promptly when due to the Secretary" for "promptly upon their receipt from the borrower", and inserted "or due date, as appropriate," after "such receipt", and inserted "or after the due date, as appropriate," before "and ending".

§ 1735f-9. Amount of insured mortgages

Notwithstanding any other provision of law and subject only to the absence of qualified requests for insurance, to the authority provided in this chapter, and to any funding limitation approved in appropriation Acts, the Secretary shall enter into commitments during each of the fiscal years 1984 and 1985 to insure mortgages under this chapter with an aggregate principal amount of $50,900,000,000.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 402, 97 Stat. 1208; Oct. 17, 1984, Pub. L. 98-479, title I, § 104(a)(7), 98 Stat. 2225.)

AMENDMENTS

1984—Pub. L. 98-479 substituted "this chapter" for "subchapter II of this chapter" in two places.

1983—Pub. L. 98-181 substituted provision authorizing the Secretary, subject to certain qualifications, to enter into commitments during fiscal years 1984 and 1985 to insure mortgages under subchapter II of this chapter with an aggregate principal amount of $50,900,000,000 for provision which directed the Secretary, during fiscal year 1982, not to enter into commitments under this chapter to insure loans and mortgages with an aggregate principal amount in excess of $41,000,000,000.

SUBCHAPTER VI—WAR HOUSING INSURANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1702, 1715f, 1731a, 1743 of this title.

SUBCHAPTER VIII—ARMED SERVICES HOUSING MORTGAGE INSURANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1702, 1715f, 1715h, 1717, 1731a, 1735f-8, 1743 of this title; title 42 sections 1594, 1594a, 1594e, 1594f.

§ 1748h-1. Civilian employees of Armed Forces

[See main edition for text of (a) to (e)]

(f) Provisions of subchapter applicable; termination date

The provisions of sections 1748, 1748a, 1748b(c), 1748b(i), 1748b(j), 1748c(a), 1748c(b), and 1748f of this title and the provisions of section 1748b(a) of this title relating to the aggregate amount of all mortgages insured under this subchapter, shall be applicable to mortgages insured under this section. No more mortgages shall be insured under this section after March 17, 1986, except pursuant to a commitment to insure before such date.

[See main edition for text of (g)]

(As amended May 26, 1983, Pub. L. 98-35, § 1(h), 97 Stat. 197; Oct. 1, 1983, Pub. L. 98-109, § 1(h), 97 Stat. 745; Nov. 30, 1983, Pub. L. 98-181, title IV, § 401(g), 97 Stat. 1208; Oct. 8, 1985, Pub. L. 99-120, § 1(h)(1), 99 Stat. 503; Nov. 15, 1985, Pub. L. 99-156, § 1(h)(1), 99 Stat. 815; Dec. 26, 1985, Pub. L. 99-219, § 1(h)(1), 99 Stat. 1730.)

AMENDMENTS

1985—Subsec. (f). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1983—Subsec. (f). Pub. L. 98-181 substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1748h-3 of this title.

§ 1748h-2. Insurance of mortgages for defense housing for impacted areas

[See main edition for text of (a) to (j)]

(k) Aggregate amount of mortgages insured; termination date

The provisions of sections 1748, 1748a, 1748b(c), 1748b(i), 1748b(j), 1748c(a), 1748c(b), and 1748f of this title and the provisions of section 1748b(a) of this title relating to the aggregate amount of all mortgages insured under this subchapter shall be applicable to mortgages insured under this section. No more mortgages shall be insured under this section after March 17, 1986, except pursuant to a commitment to insure before such date.

(As amended May 26, 1983, Pub. L. 98-35, § 1(i), 97 Stat. 197; Oct. 1, 1983, Pub. L. 98-109, § 1(i), 97 Stat. 745; Nov. 30, 1983, Pub. L. 98-181, title IV, § 401(h), 97 Stat. 1208; Oct. 8, 1985, Pub. L. 99-120, § 1(h)(2), 99 Stat. 503; Nov. 15, 1985, Pub. L. 99-156, § 1(h)(2), 99 Stat. 816; Dec. 26, 1985, Pub. L. 99-219, § 1(h)(2), 99 Stat. 1731.)

AMENDMENTS

1985—Subsec. (k). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1983—Subsec. (k). Pub. L. 98-181 substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1715c, 1715r, 1748g, 1748h-3 of this title.

SUBCHAPTER IX—HOUSING FOR EDUCATIONAL INSTITUTIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1464 of this title; title 20 sections 1132d, 3446; title 31 section 1305.

§ 1749. Federal loans or grants

[See main edition for text of (a) to (d)]

(e) Notes and obligations; form; denominations, maturities, terms and interest rate; purchase and sale by Secretary of the Treasury

Notes or other obligations issued by the Secretary under this subchapter shall be in such forms and denominations, have such maturities, and be subject to such terms and conditions as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury. Such notes or other obligations issued to obtain funds for loan contracts entered into after August 11, 1955, shall bear interest at a rate determined by the Secretary of the Treasury which shall be not more than the lower of (1) 2¾ per centum per annum, or (2) the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the

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issuance by the Secretary and adjusted to the nearest one-eighth of 1 per centum. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations of the Secretary issued under this subchapter and for such purpose is authorized to use as a public-debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include any purchases of such notes and other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public-debt transactions of the United States.

[*See main edition for text of (f) and (g)*]

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 203(e)(1), 98 Stat. 2230.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-479 substituted "chapter 31 of title 31" for "the Second Liberty Bond Act, as amended" and "such chapter" for "such Act, as amended,".

§ 1749a. Powers and duties of Secretary

(a) Preparation and submission of budget; maintenance of accounts

In the performance of, and with respect to, the functions, powers, and duties vested in him by this subchapter, the Secretary, notwithstanding the provisions of any other law, shall—

(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31; and

(2) maintain a set of accounts which shall be audited by the Comptroller General in accordance with the provisions of chapter 35 of title 31: *Provided,* That such financial transactions of the Secretary as the making of loans and vouchers approved by the Secretary in connection with such financial transactions shall be final and conclusive upon all officers of the Government.

[*See main edition for text of (b)*]

(c) General functions of Secretary

In the performance of, and with respect to, the functions, powers, and duties vested in him by this subchapter, the Secretary, notwithstanding the provisions of any other law, may—

(1) prescribe such rules and regulations as may be necessary to carry out the purposes of this subchapter;

(2) sue and be sued;

(3) foreclose on any property or commence any action to protect or enforce any right conferred upon him by any law, contract, or other agreement, and bid for and purchase at any foreclosure or any other sale any property in connection with which he has made a loan pursuant to this subchapter. In the event of any such acquisition, the Secretary may, notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, remodel and convert, dispose of, lease and otherwise deal with, such property: *Provided,* That any such acquisition of real property shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property or impair the civil rights under the State or local laws of the inhabitants on such property;

(4) enter into agreements to pay annual sums in lieu of taxes to any State or local taxing authority with respect to any real property so acquired or owned;

(5) sell or exchange at public or private sale, or lease, real or personal property, and sell or exchange any securities or obligations, upon such terms as he may fix;

(6) obtain insurance against loss in connection with property and other assets held;

(7) subject to the specific limitations in this subchapter, consent to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, security, or any other term of any contract or agreement to which he is a party or which has been transferred to him pursuant to this subchapter;

(8) for the prepayment in full of a loan under this subchapter, provide a discount in an amount determined by the Secretary to be in the best financial interests of the Government, taking into account the yield on outstanding marketable obligations of the United States having maturities comparable to the remaining term of such loan, if (A) the prepayment is made from non-federal sources, (B) the Secretary has received satisfactory assurances that the housing or other educational facilities financed with the loan will continue to be used for purposes related to the educational institution for the original term of the loan, (C) the prepayment is made prior to October 1, 1986; and

(9) Redesignated (8)

(10) [1] include in any contract or instrument made pursuant to this subchapter such other covenants, conditions, or provisions as he may deem necessary to assure that the purposes of this subchapter will be achieved.

[*See main edition for text of (d)*]

(e) Applicability of other laws

The provisions of section 9107(a) of title 31, which are applicable to corporations or agencies subject to chapter 91 of such title, shall also be applicable to the activities of the Secretary under this subchapter.

[*See main edition for text of (f)*]

(Apr. 20, 1950, ch. 94, title IV, § 402, 64 Stat. 78; Sept. 23, 1959, Pub. L. 86-372, title VI, § 602, 73 Stat. 681; May 25, 1967, Pub. L. 90-19, § 8(a), (b), 81 Stat. 22; Jan. 2, 1975, Pub. L. 93-604, title

[1] So in original. Section 201(d)(1)(B) of Pub. L. 98-479 redesignated pars. (3) through (9) as (2) through (8), respectively, but did not provide for redesignation of par. (10) as (9).

VII, § 705(b), 88 Stat. 1964; Oct. 31, 1983, Pub. L. 98-139, title III, § 308, 97 Stat. 895; Oct. 17, 1984, Pub. L. 98-479, title II, §§ 201(d)(1), 203(e)(2)-(4), 204(d), 98 Stat. 2228, 2230, 2233; Nov. 8, 1984, Pub. L. 98-619, title III, § 308, 98 Stat. 3329; Dec. 12, 1985, Pub. L. 99-178, title III, § 307, 99 Stat. 1128.)

AMENDMENTS

1985—Subsec. (c)(8). Pub. L. 99-178 which directed the substitution of "1986" for "1985" in par. (9), was executed to par. (8) in view of the prior redesignation of par. (9) as (8) by Pub. L. 98-479.

1984—Subsec. (a)(1). Pub. L. 98-479, § 203(a)(2), substituted "chapter 91 of title 31" for "the Government Corporation Control Act, as amended".

Subsec. (a)(2). Pub. L. 98-479, § 204(d), substituted "Secretary" for "Administrator" in two places.

Pub. L. 98-479, § 203(e)(3), substituted "chapter 35 of title 31" for "the Accounting and Auditing Act of 1950".

Subsec. (c)(2). Pub. L. 98-479, § 201(d)(1), redesignated par. (3) as (2). Former par. (2), which read "consult with and secure the advice and recommendations of the Office of Education in the Department of Health, Education, and Welfare;" was struck out.

Subsec. (c)(3) to (7). Pub. L. 98-479, § 201(d)(1)(B), redesignated pars. (4) to (8) as (3) to (7), respectively.

Subsec. (c)(8). Pub. L. 98-619 which directed the substition of "1985" for "1984" in par. (9), was executed to par. (8) in view of the redesignation of par. (9) as (8) by Pub. L. 98-479.

Pub. L. 98-479, § 201(d)(1)(B), redesignated par. (9) as (8). Former par. (8) redesignated (7).

Subsec. (c)(9). Pub. L. 98-479, § 201(d)(1)(B), redesignated par. (9) as (8).

Subsec. (e). Pub. L. 98-479, § 203(e)(4), substituted "section 9107(a) of title 31" for "section 309 of the Independent Offices Appropriation Act, 1950 (63 Stat. 662)" and "chapter 91 of such title" for "the Government Corporation Control Act".

1983—Subsec. (c)(9), (10). Pub. L. 98-139 added par. (9) and redesignated former par. (9) as (10).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1701q, 1749bbb-17; title 42 sections 1452b, 3105, 4527; title 49 App. section 1608.

§ 1749c. Definitions

[See main edition for text of (a) to (e)]

(f) "Secretary" means the Secretary of Education.

[See main edition for text of (g) and (h)]

(Apr. 20, 1950, ch. 94, title IV, § 404, 64 Stat. 80; Aug. 11, 1955, ch. 783, title III, §§ 302, 303, 69 Stat. 645; July 12, 1957, Pub. L. 85-104, title VI, § 601(b), 71 Stat. 304; Sept. 23, 1959, Pub. L. 86-372, title VI, § 603(a), 73 Stat. 682; June 30, 1961, Pub. L. 87-70, title IV, § 403, 75 Stat. 173; Sept. 2, 1964, Pub. L. 88-560, title X, § 1002, 78 Stat. 806; Aug. 10, 1965, Pub. L. 89-117, title VI, §§ 603, 604(a), 79 Stat. 489; Nov. 3, 1966, Pub. L. 89-754, title X, § 1014(a), 80 Stat. 1292; May 25, 1967, Pub. L. 90-19, § 8(a), (c), 81 Stat. 22; Aug. 1, 1968, Pub. L. 90-448, title XVII, § 1705(g)(2)-(7), 82 Stat. 605; Oct. 17, 1984, Pub. L. 98-479, title II, § 201(d)(2), 98 Stat. 2228.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-479 substituted "Education" for "Housing and Urban Development".

§ 1749d. Cost of inspections and of providing representatives

REFERENCES IN TEXT

The Housing Act of 1949, as amended, referred to in text, is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title I of the Housing Act of 1949 which was classified generally to subchapter II (§ 1450 et seq.) of chapter 8A of Title 42, The Public Health and Welfare, was omitted from the Code pursuant to section 5316 of Title 42 which terminated the authority to make grants or loans under such chapter after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Housing Amendments of 1955, referred to in text, is act Aug. 11, 1955, ch. 783, 69 Stat. 645, as amended. Title II of the Housing Amendments of 1955 which was classified generally to chapter 8B (§ 1491 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

SUBCHAPTER IX-A—MORTGAGE INSURANCE FOR LAND DEVELOPMENT AND NEW COMMUNITIES

§ 1749bb. Insurance of mortgages

(a) Authorization; termination date

The Secretary is authorized (1) to insure, upon such terms and conditions as he may prescribe, any first mortgage (including advances on such mortgage) in accordance with the provisions of this subchapter, and (2) to make a commitment for the insurance of such mortgage prior to the date of execution of such mortgage or prior to the date of disbursement of the mortgage proceeds. No mortgage shall be insured under this subchapter after March 17, 1986, except pursuant to a commitment to insure issued before such date.

[See main edition for text of (b) and (c)]

(d) Maturity; interest; terms and provisions

The mortgage shall—

[See main edition for text of (1)]

(2) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee, except that the Secretary may agree to a reasonable extension of the term of a mortgage, the maturity of which is limited by this paragraph to not more than 10 years, if the Secretary determines that unusual or unforeseen circumstances make such extension necessary to avoid undue hardship to the mortgagor;

[See main edition for text of (3); (e)]

(As amended May 26, 1983, Pub. L. 98-35, § 1(j), 97 Stat. 197; Oct. 1, 1983, Pub. L. 98-109, § 1(j), 97 Stat. 745; Nov. 30, 1983, Pub. L. 98-181, title IV, §§ 401(i), 404(b)(16), 97 Stat. 1208, 1210; Oct. 8, 1985, Pub. L. 99-120, § 1(i), 99 Stat. 503; Nov. 15, 1985, Pub. L. 99-156, § 1(i), 99 Stat. 816; Dec. 26, 1985, Pub. L. 99-219, § 1(i), 99 Stat. 1731.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

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Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1983—Subsec. (a). Pub. L. 98-181, § 401(i), substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

Subsec. (d)(2). Pub. L. 98-181, § 404(b)(16), substituted provision that the rate of interest be such a rate as agreed upon by the mortgagor and the mortgagee and authorized the Secretary to agree to a reasonable extension of the mortgage term in order to avoid undue hardship to the mortgagor for provision that the interest rate be a rate satisfactory to the Secretary and be exclusive of premium charges for insurance and other fees and services approved by the Secretary.

§ 1749cc-1. New communities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1717, 1749bb of this title.

SUBCHAPTER IX-B—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES AND MEDICAL PRACTICE FACILITIES

§ 1749aaa. Insurance of mortgages

(a) Authority of Secretary; termination date

The Secretary is authorized (1) to insure mortgages (including advances on such mortgages during construction), upon such terms and conditions as he may prescribe, in accordance with the provisions of this subchapter, and (2) to make commitments for the insuring of such mortgages prior to the date of their execution or disbursement thereon. No mortgage shall be insured under this subchapter after March 17, 1986, except pursuant to a commitment to insure issued before that date.

[*See main edition for text of* (b)]

(c) Replacement cost of property; maturity; amortization; interest rate

The mortgage shall—

[*See main edition for text of* (1) *to* (3)]

(4) bear interest at such rate as may be agreed upon by the mortgagor and the mortgagee.

[*See main edition for text of* (d) *to* (f)]

(As amended May 26, 1983, Pub. L. 98-35, § 1(k), 97 Stat. 197; Oct. 1, 1983, Pub. L. 98-109, § 1(k), 97 Stat. 745; Nov. 30, 1983, Pub. L. 98-181, title IV, § 401(j), 97 Stat. 1208; Oct. 17, 1984, Pub. L. 98-479, title I, § 104(a)(8), 98 Stat. 2225; Oct. 8, 1985, Pub. L. 99-120, § 1(j), 99 Stat. 503; Nov. 15, 1985, Pub. L. 99-156, § 1(j), 99 Stat. 816; Dec. 26, 1985, Pub. L. 99-219, § 1(j), 99 Stat. 1731.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "November 14, 1985" for "September 30, 1985".

1984—Subsec. (c)(4). Pub. L. 98-479 substituted "at such rate as may be agreed upon by the mortgagor and the mortgagee," for "(exclusive of premium charges for insurance, and service charges if any) at a rate of not to exceed 5 per centum per annum of the amount of the principal obligation outstanding at any time, or not to exceed such rate (not in excess of 6 per centum per annum) as the Secretary finds necessary to meet the mortgage market."

1983—Subsec. (a). Pub. L. 98-181 substituted "September 30, 1985" for "November 30, 1983".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

§ 1749aaa-3. Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out this subchapter, after consulting with the Secretary of Health and Human Services with respect to any health or medical aspects of the program under this subchapter which may be involved in such regulations.

(June 27, 1934, ch. 847, title XI, § 1104, as added Nov. 3, 1966, Pub. L. 89-754, title V, § 502(a), 80 Stat. 1275, and amended Oct. 17, 1984, Pub. L. 98-479, title II, § 201(a)(2), 98 Stat. 2227.)

AMENDMENTS

1984—Pub. L. 98-479 substituted "Health and Human Services" for "Health, Education, and Welfare".

SUBCHAPTER IX-C—NATIONAL INSURANCE DEVELOPMENT PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1735d of this title; title 42 section 1452b.

§ 1749bbb. Program authority; termination date; report to the Congress

(a) The Director is authorized to establish and carry out the programs provided for in parts A, B, C, and D of this subchapter.

(b)(1) The powers of the Director under part B shall terminate on November 30, 1983, and part A shall terminate on September 30, 1985, and parts C and D shall terminate on March 17, 1986, except to the extent necessary—

(A) to continue reinsurance and direct insurance in accordance with the provisions of sections 1749bbb-9(b) and 1749bbb-10a(c) of this title until September 30, 1985, and September 30, 1986, respectively;

[*See main edition for text of* (B) *and* (C), (2)]

(3) The Administrator shall notify participating insurers under part B that the reinsurance authority of the Administrator under such part shall terminate on November 30, 1983.

(As amended May 26, 1983, Pub. L. 98-35, § 4(c), 97 Stat. 198; Oct. 1, 1983, Pub. L. 98-109, § 5(c), 97 Stat. 746; Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(a), (b)(1), 97 Stat. 1230; Oct. 12, 1984, Pub. L. 98-473, title I, § 113, 98 Stat. 1964; Oct. 8, 1985, Pub. L. 99-120, § 4(b), 99 Stat. 503; Nov. 15, 1985, Pub. L. 99-156, § 4(b), 99 Stat. 81C; Dec. 26, 1985, Pub. L. 99-219, § 4(b), 99 Stat. 1731.)

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AMENDMENTS

1985—Subsec. (b)(1). Pub. L. 99-219 substituted "March 17, 1986" for "December 15, 1985".

Pub. L. 99-156 substituted "December 15, 1985" for "November 14, 1985".

Pub. L. 99-120 substituted "part A" for "parts A, C, and D" and inserted "and parts C and D shall terminate on November 14, 1985,".

1984—Subsec. (b)(1). Pub. L. 98-473, § 113(1), substituted "September 30, 1985" for "September 30, 1984" in provisions preceding subpar. (A).

Subsec. (b)(1)(A). Pub. L. 98-473, § 113(2), inserted ", and September 30, 1986, respectively".

1983—Subsec. (a). Pub. L. 98-181, § 452(b)(1), substituted "Director" for "Secretary".

Subsec. (b)(1). Pub. L. 98-181, § 452(a)(1), (b)(1), substituted "part B shall terminate on November 30, 1983, and parts A, C, and D shall terminate on September 30, 1984" for "this subchapter shall terminate on November 30, 1983" and substituted "Director" for "Secretary".

Pub. L. 98-109 substituted "November 30, 1983" for "September 30, 1983".

Pub. L. 98-35 substituted "September 30, 1983" for "May 20, 1983".

Subsec. (b)(3). Pub. L. 98-181, § 452(a)(2), added par. (3).

§ 1749bbb-1. Advisory Board

(a) Establishment; membership; Chairman and Vice Chairman; term; vacancies

(1) There is established an Advisory Board (hereinafter called the "Board") consisting of nineteen members appointed by the Director. Members of the Board shall be selected from among representatives of the general public, the insurance industry, State and local governments including State insurance authorities, and the Federal Government. Of these members of the Board, not more than six shall be regular full-time employees of the Federal Government, and not less than four shall be representatives of the private insurance industry and not less than four shall be representatives of State insurance authorities.

(2) The Director shall designate a Chairman and a Vice Chairman of the Board.

[*See main edition for text of* (3) *and* (4)]

(b) Meetings

The Chairman shall preside at all meetings, and the Vice Chairman shall preside in the absence or disability of the Chairman. In the absence of both the Chairman and Vice Chairman, the Director may appoint any member to act as Chairman pro tempore. The Board shall meet at such times and places as it or the Director may fix and determine, but shall hold at least four regularly scheduled meetings a year. Special meetings may be held at the call of the Chairman or any three members of the Board, or at the call of the Director.

(c) Functions

The Board shall review general policies and shall advise the Director with respect thereto, and perform such other functions as are specified in this subchapter.

[*See main edition for text of* (d)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Subsecs. (a)(1), (2), (b), (c). Pub. L. 98-181, substituted "Director" for "Secretary" wherever appearing.

§ 1749bbb-2. Definitions

(a) When used in this subchapter, unless the context otherwise requires, the term—

(1) "affordable rate" means such premium rate as the Director determines would permit the purchase of a specific type of insurance coverage by a reasonably prudent person in similar circumstances with due regard to the costs and benefits involved;

(2) "crime insurance" means insurance against losses resulting from robbery, burglary, larceny, and similar crimes, and may include broad form personal theft insurance, mercantile open stock insurance, mercantile robbery and mercantile safe burglary insurance, storekeepers burglary and robbery insurance, office burglary and robbery insurance, and may include business interruption insurance as the Director may designate; the term does not include automobile insurance or losses resulting from embezzlement;

[*See main edition for text of* (3) *and* (4)]

(5) "essential property insurance" means insurance against direct loss to property as defined and limited in standard fire policies and extended coverage endorsement thereon, as approved by the State insurance authority, and insurance, for such types, classes, and locations of property against the perils of vandalism, malicious mischief, burglary, or theft, as the Director by rule shall designate. Such insurance shall not include automobile insurance and shall not include insurance on such types of manufacturing risks as may be excluded by the State insurance authority;

[*See main edition for text of* (6) *to* (8)]

(9) "losses resulting from riots or civil disorders" means losses resulting from riots or civil disorders under policies for standard lines of property insurance for which reinsurance is offered under section 1749bbb-7 of this title, as determined under regulations of the Director;

[*See main edition for text of* (10) *to* (12)]

(13) "standard line of property insurance" includes—

[*See main edition for text of* (A) *to* (J)]

(K) such other lines generally offered to the public which include protection against damage from riot or civil commotion as the Director by regulation may designate;

[*See main edition for text of* (14)]

(15) "urban area" includes any municipality or other political subdivision of a State, subject to population or other limitations defined in rules and regulations of the Director and such additional areas as may be designated by the State insurance authority;

(16) "year" means a calendar year, fiscal year of a company, or such other period of twelve months as may be designated by the Director; and

(17) "Director" means the Director of the Federal Emergency Management Agency.

(b) The Director is authorized to define, by rules and regulations, any technical or trade term, insofar as such definition is not inconsistent with the provisions of this subchapter.

(As amended Nov. 30, 1983, Pub. L. 98–181, title IV, § 452(b)(1), (2), 97 Stat. 1230.)

AMENDMENTS

1983—Subsec. (a)(1), (2), (5), (9), (13)(K), (15), (16). Pub. L. 98–181, § 452(b)(1), substituted "Director" for "Secretary".

Subsec. (a)(17). Pub. L. 98–181, § 452(b)(2), added par. (17).

Subsec. (b). Pub. L. 98–181, § 452(b)(1), substituted "Director" for "Secretary".

PART A—STATEWIDE PLANS TO ASSURE FAIR ACCESS TO INSURANCE REQUIREMENTS

§ 1749bbb–3. FAIR plans

[*See main edition for text of* (a)]

(b) Approval and administration of plans; provisions of plans

Such plans must be approved by, and administered under the supervision of, the State insurance authority, or be authorized or required by State law, and shall be designed to make essential property insurance more readily available in, but not necessarily limited to, urban areas. Such plans may vary in detail from State to State because of local conditions, but all plans shall contain provisions that—

[*See main edition for text of* (1) *to* (7)]

(8) the inspection facility shall submit to the State insurance authority and to the Director periodic reports setting forth information, by individual insurers, including the number of risks inspected under the plan, the number of risks accepted, the number of risks conditionally accepted and reinspections made, the number of risks declined, and such other information as the State insurance authority may request;

[*See main edition for text of* (9) *and* (10); (c)]

(As amended Nov. 30, 1983, Pub. L. 98–181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Subsec. (b)(8). Pub. L. 98–181 substituted "Director" for "Secretary".

§ 1749bbb–5. Industry cooperation

(a) Each insurer seeking reinsurance under this subchapter shall file a statement with the State insurance authority in each State in which it is participating in a plan under this part, pledging its full participation and cooperation in carrying out the plan, and shall file a copy of such statement with the Director.

[*See main edition for text of* (b)]

(As amended Nov. 30, 1983, Pub. L. 98–181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–181 substituted "Director" for "Secretary".

§ 1749bbb–6. Plan evaluation; modification or waiver of plan criteria

(a) In accordance with such rules and regulations as the Director may prescribe, each State insurance authority shall—

(1) transmit to the Director any proposed or adopted plan, or amendments thereto; and

(2) advise the Director, from time to time, concerning the operation of the plan, its effectiveness in providing essential property insurance, and the need to form a pool of insurers or adopt other programs to make essential property insurance more readily available in urban areas of the State.

(b) The Director may, after full consultation with the Board, by rules and regulations, modify the plan criteria set forth under this part, if he finds, on the basis of experience, that such action is necessary or desirable to carry out the purposes of this subchapter. The Director may also, with respect to any State, waive compliance with one or more of the plan criteria, upon certification by the State insurance authority that compliance is unnecessary or inadvisable under local conditions or State law.

(As amended Nov. 30, 1983, Pub. L. 98–181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Pub. L. 98–181 substituted "Director" for "Secretary" wherever appearing.

§ 1749bbb–6a. Office of Review and Compliance

The Director, through an Office of Review and Compliance under the Federal Insurance Administrator, shall periodically review each plan under this part and the methods and practices by which such plan is being actually carried out in the areas and communities where it is intended to operate, in order to assure that such plan is effectively making essential property insurance readily available in such areas and communities and is otherwise carrying out the purposes of this subchapter, and in order to identify any aspects of the operation or administration of such plan which may require revision, modification, or other action to carry out such purposes.

(As amended Nov. 30, 1983, Pub. L. 98–181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Pub. L. 98–181 substituted "Director" for "Secretary".

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PART B—REINSURANCE COVERAGE

§ 1749bbb-7. Reinsurance of losses from riots or civil disorders

(a) Authorization; lines of property insurance included

(1) The Director is authorized to offer to any insurer or pool, subject to the conditions set forth in section 1749bbb-9 of this title, reinsurance against property losses resulting from riots or civil disorders in any one or more States.

[*See main edition for text of* (2)]

(b) Temporary coverage

Reinsurance coverage under this section may be provided immediately following August 1, 1968, to any insurer or pool in any State on a temporary basis, and on such terms and conditions as may be agreed upon, and coverage under such terms and conditions may be bound with respect to any such insurer or pool by means of a written binder which shall remain in force not more than ninety days and shall expire at the earlier of either—

[*See main edition for text of* (1)]

(2) the effective date of any governing contract, agreement, treaty, or other arrangement entered into between the insurer or pool and the Director under section 1749bbb-8 of this title for the purpose of providing reinsurance coverage against losses resulting from riots or civil disorders.

[*See main edition for text of* (c)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Subsecs. (a)(1), (b)(2). Pub. L. 98-181 substituted "Director" for "Secretary".

§ 1749bbb-8. Reinsurance agreements and premiums

(a) Authorization to enter into contracts, agreements, treaties, or other arrangements for reinsurance coverage

During the first year following August 1, 1968, the Director is authorized to enter into any contract, agreement, treaty, or other arrangement with any insurer or pool for reinsurance coverage, in consideration of payment of such premiums, fees, or other charges by insurers or pools which the Director, after full consultation with the Board, deems to be adequate to obtain aggregate reinsurance premiums for deposit in the National Insurance Development Fund established under section 1749bbb-13 of this title in excess of the estimated amount of insured riot losses during the calendar year 1967, on the assumption that a substantial proportion of the property insurance written will be reinsured under this subchapter, and thereafter the Director may increase or decrease such premiums for reinsurance if it is found after full consultation with the Board and the National Association of Insurance Commissioners that such action is necessary or appropriate to carry out the purposes of this subchapter.

[*See main edition for text of* (b)]

(c) Terms and conditions of contracts, etc., uniformity of rates, terms and conditions

Such contracts, agreements, treaties, or other arrangements may be made without regard to section 1341(a) of title 31, and shall include any terms and conditions which the Director deems necessary to carry out the purposes of this subchapter. The premium rates, terms, and conditions of such contracts with insurers or pools, throughout the country, in any one year shall be uniform.

(d) Expiration date of contracts, etc.

Any contract, agreement, treaty, or other arrangement for reinsurance under this section shall be for a term expiring on April 30, 1969, and on April 30 each year thereafter, except that such term shall expire on September 30, beginning in either calendar year 1977 or 1978, as determined by the Director.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230; Oct. 17, 1984, Pub. L. 98-479, title II, § 203(i)(1), 98 Stat. 2230.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-479 substituted "section 1341(a) of title 31" for "section 3679(a) of the Revised Statutes of the United States (31 U.S.C. 665(a))". Directory language of Pub. L. 98-479 should have provided for amendment of section 1222(c) of act June 27, 1934 (the National Housing Act) rather than amendment of the Urban Property Protection and Reinsurance Act of 1968 (Pub. L. 90-448), which added this section.

1983—Subsecs. (a), (c), (d). Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 1749bbb-9. Conditions of reinsurance

(a) Subject to the provisions of subsection (b) of this section, reinsurance shall not be offered by the Director in a State or be applicable to insurance policies written in that State by an insurer—

(1) in any States which has not, after the close of the second full regular session of the appropriate State legislative body following August 1, 1968, adopted appropriate legislation, retroactive to August 1, 1968, under which the State, its political subdivisions, or a governmental corporation or fund established pursuant to State law, will reimburse the Director for any reinsured losses in that State in any reinsurance contract year, in an amount up to 5 per centum of the aggregate property insurance premiums earned in that State during the calendar year immediately preceding the end of the reinsurance contract year on those lines of insurance reinsured by the Director in that State during the contract year, to the extent that reinsured losses paid by the Director for such year exceed the total of (A) reinsurance premiums earned in that State during that reinsurance contract year plus (B) the excess of (i) the total premiums earned by the Director for reinsurance in that State during a preceding period measured from the end of the most recent reinsurance contract year with respect to which the Director was reimbursed for losses under this

subchapter over (ii) any amounts paid by the Director for reinsured losses that were incurred during such period;

(2) after thirty days following notification to the insurer that the Director finds (after consultation with the State insurance authority) that there has not been adopted by the State, or the property insurance industry in that State, a suitable program or programs, in addition to plans under part A, to make essential property insurance available without regard to environmental hazards, and that such action is necessary to carry out the purposes of this subchapter; except that this paragraph shall not become effective until two years after August 1, 1968, or at such earlier date as the Director, after consultation with the State insurance authority, may determine;

(3) after thirty days following notification to the insurer that the Director, or the State insurance authority, finds that such insurer is not fully participating—

(A) in the plan in the State;

(B) where it exists, in a pool; and

(C) where it exists, in any other program found by the Director to aid in making essential property insurance more readily available in the State:

Provided, That the Director shall not make any such finding with respect to any insurer unless (i) prior to making such finding the Director has requested and considered the views of the State insurance authority as to whether such finding should be made, or (ii) the Director has made such a request in writing to the State insurance authority and such authority has failed to respond thereto within a reasonable period of time after receiving such request;

[*See main edition for text of* (4)]

(5) upon receipt of notice from the insurer or pool that it desires to cancel its reinsurance agreement with the Director in the State.

[*See main edition for text of* (b)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 1749bbb-10. Recovery of premiums; jurisdiction; limitations

(a) The Director, in a suit brought in the appropriate United States district court, shall be entitled to recover from any insurer the amount of any unpaid premiums lawfully payable by such insurer to the Director.

(b) No action or proceeding shall be brought for the recovery of any premium due to the Director for reinsurance, or for the recovery of any premium paid to the Director in excess of the amount due to him, unless such action or proceeding shall have been brought within five years after the right accrued for which the claim is made, except that, where the insurer has made or filed with the Director a false or fraudulent annual statement, or other document with the intent to evade, in whole or in part, the payment of premiums, the claim shall not be deemed to have accrued until its discovery by the Director.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

PART C—FEDERAL INSURANCE AGAINST BURGLARY AND THEFT

§ 1749bbb-10a. Review and program authority

(a) Review of market availability

The Director shall conduct a continuing review of the market availability situation in each of the several States to determine whether crime insurance is available at affordable rates either through the normal insurance market or through a suitable program adopted under State law.

(b) Government crime insurance

Upon determining pursuant to subsection (a) of this section that, at any time on or after August 1, 1971, a critical market unavailability situation for crime insurance then exists in any State and has not been met through appropriate State action, the Director is authorized to make crime insurance available at affordable rates within such State through the facilities of the Federal Government. Such insurance shall be provided upon such terms and conditions, and subject to such deductibles and other restrictions and limitations, as the Director deems appropriate, but no such insurance shall be made available to a property which the Director determines to be uninsurable or to a property with respect to which reasonable protective measures to prevent loss, consistent with standards established by the Director, have not been adopted.

(c) Termination of insurance

Notwithstanding any other provision of this subchapter, direct insurance may be continued for the term of the policies written prior to the date of termination of the Director's direct insurance authority under this part, for as long as the insured pays the required direct insurance premiums; except that direct insurance under this part for any risk shall be terminated after notice whenever the Director determines that the standard lines of crime insurance otherwise have become available to such property at affordable rates.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing, and "Director's" for "Secretary's" in subsec. (c).

§ 1749bbb-10b. Use of existing facilities and services

In carrying out his responsibilities under this part, the Director may utilize—

[*See main edition for text of (1)*]

(2) such other officers and employees of any executive agency (as defined in section 105 of title 5) as the Director and the head of any such agency may from time to time agree upon, on a reimbursement or other basis, or

[*See main edition for text of (3)*]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), (3), 97 Stat. 1230.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing, and in par. (2) struck out "officers and employees of the Department of Housing and Urban Development, and" before "such other officers".

§ 1749bbb-10c. Affordable rates; establishment; factors considered; uniform national rates; periodic modification

In estimating the affordable rates for the various crime insurance coverages offered from time to time under this part, the Director shall consult with appropriate State insurance authorities and other knowledgeable persons and is authorized to take into consideration the nature and degree of the risks involved, the protective devices employed, the extent of anticipated losses, the prevailing rates for similar coverages in adjacent or comparable areas and territories, the economic importance of the various individual coverages and the type of property involved, and the relative abilities of the particular classes and types of insureds to pay the full estimated costs of such coverages. Nothing in this section shall be construed to prohibit or require either the adoption of uniform national rates or the periodic modification of currently estimated affordable rates for any particular line or subline of coverage, class, State, territory, or risk on the basis of additional information or actual loss experience.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary".

§ 1749bbb-10d. Reports on operations

The Director shall include at least biennially in his reports to the Congress on the program authorized by this subchapter full and complete information on his operations and activities under this part, together with such recommendations with respect thereto as he may deem appropriate.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director for "Secretary".

PART D—GENERAL PROVISIONS

§ 1749bbb-11. Submission of claims; judicial review; jurisdiction; limitations

(a) All reinsurance or direct insurance claims for losses under this subchapter shall be submitted by insurers or property owners in accordance with such terms and conditions as may be established by the Director.

(b)(1) Upon disallowance of any claim under color of reinsurance or direct insurance made available under this subchapter, or upon refusal of the claimant to accept the amount allowed upon any such claim, the claimant may institute an action against the Director on such claim in the United States district court for the district in which a major portion (in terms of value) of the claim arose.

[*See main edition for text of (2)*]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Subsecs. (a), (b)(1). Pub. L. 98-181 substituted "Director" for "Secretary".

§ 1749bbb-12. Fiscal intermediaries and servicing agents

(a) In order to provide for maximum efficiency in the administration of the reinsurance and direct insurance programs under this subchapter, and in order to facilitate the expeditious payment of any funds under such program, the Director may enter into contracts with any insurer, pool, or other person, for the purpose of providing for the performance of any or all of the following functions:

[*See main edition for text of (1) to (5)*]

(b)(1) Any such contract may require the insurer, pool, or other person, or any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in such amounts as the Director may deem appropriate.

[*See main edition for text of (2)*]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Subsecs. (a), (b)(1). Pub. L. 98-181 substituted "Director" for "Secretary".

§ 1749bbb-13. National Insurance Development Fund

(a) Establishment

To carry out the programs authorized under this subchapter, the Director is authorized to establish a National Insurance Development Fund (hereinafter called the "fund") which shall be available, without fiscal year limitations—

[*See main edition for text of (1) to (3)*]

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(b) Credits to fund

The fund shall be credited with—

[*See main edition for text of (1) to (5)*]

(6) funds borrowed by the Director under section 1735d(b) of this title and deposited in the fund.

(c) Investment in obligations issued or guaranteed by United States

If, after any amounts which may have been advanced to the fund from appropriations have been credited to the appropriation from which advanced (including interest thereon at the rate prescribed under section 1735d(b) of this title), the Director determines that the moneys of the fund are in excess of current needs, he may request the investment of such amounts as he deems advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States.

(d) Annual budget

An annual business-type budget for the fund shall be prepared, transmitted to the Congress, considered, and enacted in the manner prescribed by sections 9103 and 9104 of title 31 for wholly owned Government corporations.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230; Oct. 17, 1984, Pub. L. 98-479, title II, § 203(i)(2), 98 Stat. 2231.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-479 substituted "sections 9103 and 9104 of title 31" for "law (sections 102, 103, and 104 of the Government Corporation Control Act (31 U.S.C. 847-849))". Directory language of Pub. L. 98-479 should have provided for amendment of section 1243(d) of act June 27, 1934 (the National Housing Act) rather than amendment of the Urban Property Protection and Reinsurance Act of 1968 (Pub. L. 90-448), which added this section.

1983—Subsecs. (a), (b)(6), (c). Pub. L. 98-181, substituted "Director" for "Secretary".

§ 1749bbb-14. Records, annual statement, and audits

(a) Information reports for Director

Any insurer, pool, or property owner acquiring reinsurance or direct insurance under this subchapter shall furnish the Director with such summaries and analyses of information in its records as may be necessary to carry out the purposes of this subchapter, in such form as the Director, in cooperation with the State insurance authority, shall, by rules and regulations, prescribe. The Director shall make use of State insurance authority examination reports and facilities to the maximum extent feasible.

(b) Filing of annual statement

Any insurer or pool acquiring reinsurance under this subchapter shall file with the Director a true and correct copy of any annual statement, or amendment thereof, filed with the State insurance authority of its domiciliary State, at the time it files such statement or amendment with such State insurance authority.

(c) Recordkeeping requirements

Any insurer or other person executing any contract, agreement, or other appropriate arrangement with the Director under section 1749bbb-8 or 1749bbb-12 of this title shall keep reasonable records which fully disclose the total costs of the programs undertaken or the services being rendered, and such other records as will facilitate an effective audit of liability for reinsurance or direct insurance payments by the Director.

(d) Investigation and audit

The Director and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of investigation, audit, and examination to any books, documents, papers, and records of any insurer or other person that are pertinent to the costs of any program undertaken for, or services rendered to, the Director. Such audits shall be conducted to the maximum extent feasible in cooperation with the State insurance authorities and through the use of their examining facilities.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 1749bbb-15. Study of reinsurance and other programs; report to the President and Congress

(a) The Director is authorized and directed to conduct a study of reinsurance and other means to help assure—

[*See main edition for text of (1) and (2)*]

(b) The Director shall submit the results of this study, together with appropriate recommendations, to the President and Congress no later than June 30, 1970.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 1749bbb-16. Other studies; cooperation with State insurance authorities and private insurance industry

(a) The Director is authorized to undertake such studies as may be necessary to carry out the purposes of this subchapter including, but not limited to, inquiries concerning—

[*See main edition for text of (1) to (4)*]

(b) To such extent and under such circumstances as may be practicable and feasible, the Director shall conduct any study authorized under this section in cooperation with State insurance authorities and the private insurance industry.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

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§ 1749bbb-17. General powers of Director

In the performance of, and with respect to, the functions, powers, and duties vested in him by this subchapter, the Director shall (in addition to any authority otherwise vested in him) have the functions, powers, and duties (including the authority to issue rules and regulations) of the Secretary of Housing and Urban Development set forth in section 1749a, except subsections (c)(2), (d), and (f), of this title. Any rules or regulations of the Director shall only be issued after full consultation with the Board and after notice and hearing, if granted, as required by subchapter II of chapter 5, and chapter 7, of title 5.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), (4), 97 Stat. 1230; Oct. 17, 1984, Pub. L. 98-479, title II, § 202(a)(2), 98 Stat. 2228.)

REFERENCES IN TEXT

Subsection (c)(2) of section 1749a of this title, referred to in text, was repealed and subsec. (c)(3) was redesignated (c)(2) by Pub. L. 98-479, title II, § 201(d)(1), Oct. 17, 1984, 98 Stat. 2228.

AMENDMENTS

1984—Pub. L. 98-479 substituted "subchapter II of chapter 5, and chapter 7, of title 5" for "the Administrative Procedure Act".

1983—Pub. L. 98-181 substituted "Director" for "Secretary" in two places and inserted "of the Secretary of Housing and Urban Development" after "regulations)".

§ 1749bbb-18. Utilization of services and facilities of other agencies

The Director may, with the consent of the agency concerned, accept and utilize, on a reimbursable basis, the officers, employees, services, facilities, and information of any agency of the Federal Government, except that any such agency having custody of any data relating to any of the matters within the jurisdiction of the Director shall, to the extent permitted by law, upon request of the Director makes such data available to the Director.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary" wherever appearing.

§ 1749bbb-19. Advance payments

Any payments which are made under the authority of this subchapter may be made, after necessary adjustments on account of previously made underpayments or overpayments in advance or by way of reimbursement. Payments may be made in such installments and on such conditions as the Director may determine.

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Director" for "Secretary".

§ 1749bbb-20. Taxation

(a) The National Insurance Development Fund, including its reserves, surplus, and income, shall be exempt from all taxation now or hereafter imposed by the United States, or by any State, or any subdivision thereof, except that any real property acquired by the Director as a result of reinsurance shall be subject to taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed.

[*See main edition for text of* (b)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title IV, § 452(b)(1), 97 Stat. 1230.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-181 substituted "Director" for "Secretary".

SUBCHAPTER X—NATIONAL DEFENSE HOUSING INSURANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1702, 1715f, 1731a, 1735f-8, 1743 of this title; title 42 sections 1591, 1591a, 1591c.

§ 1750c. Mortgage insurance benefits

[*See main edition for text of* (a) *to* (c)]

(d) Debentures; execution; negotiability; terms; tax exemptions

The debentures issued under this section to any mortgagee shall be executed in the name of the General Insurance Fund as obligor, shall be signed by the Secretary by either his written or engraved signature, and shall be negotiable. All such debentures shall be dated as of the date foreclosure proceedings were instituted, or the property was otherwise acquired by the mortgagee after default, except that debentures issued pursuant to claims for insurance filed on or after September 2, 1964 shall be dated as of the date of default or as of such later date as the Secretary, in his discretion, may establish by regulation. The debentures shall bear interest from such date at a rate determined by the Secretary, with the approval of the Secretary of the Treasury, at the time the mortgage was accepted for insurance, but not to exceed 3 per centum per annum, payable semiannually on the 1st day of January and the 1st day of July of each year. Such debentures shall mature twenty years after the date thereof. Such debentures shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, or gift taxes) now or hereafter imposed by any Territory, dependency, or possession of the United States, or by the District of Columbia, or by any State, county, municipality, or local taxing authority, and shall be paid out of the General Insurance Fund, which shall be primarily liable therefor, and they shall be fully and unconditionally guaranteed as to principal and interest by the United States, and such guaranty shall be expressed on the face of the debentures. In the event that the General Insurance Fund fails to pay upon demand, when due, the principal of or interest

on any debentures issued under this subchapter, the Secretary of the Treasury shall pay to the holders the amount thereof which is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such debentures.

[*See main edition for text of (e) to (g)*]

(As amended Oct. 17, 1984, Pub. L. 98-479, title II, § 204(a)(23), 98 Stat. 2233.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-479 substituted "authorized" for "auhorized" in last sentence.

CHAPTER 14—FEDERAL CREDIT UNIONS

SUBCHAPTER III—CENTRAL LIQUIDITY FACILITY

Sec.
1795k. State and local tax exemption.
(a) Franchise, activities, etc., of Central Liquidity Facility; exception.
(b) Notes, bonds, debentures and other obligations of Central Liquidity Facility; exceptions.
(c) "State" defined; tax status.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2804 of this title; title 7 section 2019; title 15 sections 1607, 1681s, 1691c, 1692*l*, 1693*o*; title 18 section 709.

§ 1751. Short title

CROSS REFERENCES

Enforcement under this chapter by the National Credit Union Administration Board of requirements imposed under section 1601 et seq. of Title 15, Commerce and Trade, see section 1607 of Title 15.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1752. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 461 of this title; title 18 section 2113; title 26 sections 408, 501.

§ 1756a. Reimbursement of Administration personnel for use of private automobiles for examining, supervising, and servicing credit unions

[*See main edition for text*]

(July 22, 1942, ch. 516, § 1, 56 Stat. 700; 1947 Reorg. Plan No. 1, § 401, eff. July 1, 1947, 12 F.R. 4534, 61 Stat. 952; June 29, 1948, ch. 711, §§ 1, 2, 62 Stat. 1091; Mar. 10, 1970, Pub. L. 91-206, § 6, 84 Stat. 51.)

TRANSFER OF FUNCTIONS

The functions of Bureau of Federal Credit Unions under the jurisdiction of the Department of Health, Education and Welfare were transferred to the National Credit Union Administration by section 6 of Pub. L. 91-206, set out as a note under section 1752a of this title.

§ 1757. Powers

A Federal credit union shall have succession in its corporate name during its existence and shall have power—

[*See main edition for text of (1) to (4)*]

(5) to make loans, the maturities of which shall not exceed twelve years except as otherwise provided herein, and extend lines of credit to its members, to other credit unions, and to credit union organizations and to participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following:

(A) Loans to members shall be made in conformity with criteria established by the board of directors: *Provided*, That—

[*See main edition for text of (i)*]

(ii) a loan to finance the purchase of a mobile home, which shall be secured by a first lien on such mobile home, to be used by the credit union member as his residence, a loan for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member, or a second mortgage loan secured by a residential dwelling which is the residence of a credit union member, shall have a maturity not to exceed fifteen years unless such loan is insured or guaranteed as provided in subparagraph (iii);

[*See main edition for text of (iii) to (x), (B) to (E); (6) to (14)*]

(15) to invest in securities that—

(A) are offered and sold pursuant to section 77d(5) of title 15; or

(B) are mortgage related securities (as that term is defined in section 78c(a)(41) of title 15), subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both;

(16) to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.

(As amended Oct. 3, 1984, Pub. L. 98-440, title I, § 105(b), 98 Stat. 1691; Oct. 17, 1984, Pub. L. 98-479, title II, § 206, 98 Stat. 2234.)

AMENDMENTS

1984—Par. (5)(A)(ii). Pub. L. 98-479 added "a loan for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member,".

Pars. (15), (16). Pub. L. 98-440, § 105(b), added par. (15) and redesignated former par. (15) as (16).

§ 1773. District of Columbia credit unions; conversion to Federal status

Any credit union organized under the District of Columbia Credit Unions Act, as amended, may apply for conversion into a Federal credit union by filing with the National Credit Union Administration Board (in sections 1773 to 1775 of this title referred to as the Board), pursuant to a resolution adopted by a majority of its di-

rectors, an organization certificate meeting the requirements of section 1753 of this title.

(Pub. L. 88-395, § 1, Aug. 1, 1964, 78 Stat. 377; Pub. L. 91-206, § 3, Mar. 10, 1970, 84 Stat. 49; Pub. L. 95-630, title V, § 501, Nov. 10, 1978, 92 Stat. 3680.)

TRANSFER OF FUNCTIONS

"National Credit Union Administration Board" and "Board" were substituted for "Director of the Bureau of Federal Credit Unions" and "Director", respectively, pursuant to section 3 of Pub. L. 91-206 and section 501 of Pub. L. 95-630 [12 U.S.C. 1752a] which transferred the functions of the Bureau of Federal Credit Unions, and the Director thereof, to the National Credit Union Administration and vested the authority for management of the Administration in the National Credit Union Administration Board.

§ 1774. Approval of certificate; assets and obligations of applicant credit union

The Board shall approve any such organization certificate meeting such requirements. Upon such approval, the applicant credit union shall become a Federal credit union, and shall be vested with all of the assets and shall continue responsible for all of the obligations of such applicant credit union to the same extent as though the conversion had not taken place.

(Pub. L. 88-395, § 2, Aug. 1, 1964, 78 Stat. 377; Pub. L. 91-206, § 3, Mar. 10, 1970, 84 Stat. 49; Pub. L. 95-630, title V, § 501, Nov. 10, 1978, 92 Stat. 3680.)

TRANSFER OF FUNCTIONS

"Board", meaning the National Credit Union Administration Board, was substituted for "Director", meaning the Director of the Bureau of Federal Credit Unions, pursuant to section 3 of Pub. L. 91-206 and section 501 of Pub. L. 95-630 [12 U.S.C. 1752a] which transferred the functions of the Bureau of Federal Credit Unions, and the Director thereof, to the National Credit Union Administration and vested the authority for management of the Administration in the National Credit Union Administration Board.

§ 1775. Conditions upon conversion to Federal status

Any District of Columbia credit union converting into a Federal credit union in accordance with sections 1773 to 1775 of this title shall thereupon be subject to the limitations, vested with the powers, and charged with the liabilities conferred and imposed by this chapter upon credit unions organized thereunder, except that—

[*See main edition for text of (1) and (2)*]

(3) a credit union converting pursuant to sections 1773 to 1775 of this title shall submit proposed bylaws to the Board for the Board's approval after its conversion, but not later than thirty days following its next annual meeting or six months after August 1, 1964, whichever is later: *Provided*, That any existing bylaw inconsistent with any other requirements of this chapter shall be deemed null and void.

(Pub. L. 88-395, § 3, Aug. 1, 1964, 78 Stat. 377; Pub. L. 91-206, § 3, Mar. 10, 1970, 84 Stat. 49; Pub. L. 95-630, title V, § 501, Nov. 10, 1978, 92 Stat. 3680.)

TRANSFER OF FUNCTIONS

"Board" and "the Board's", meaning the National Credit Union Administration Board were substituted for "Director" and "his", respectively, meaning the Director of the Bureau of Federal Credit Unions in par. (3) pursuant to section 3 of Pub. L. 91-206 and section 501 of Pub. L. 95-630 [12 U.S.C. 1752a] which transferred the functions of the Bureau of Federal Credit Unions, and the Director thereof, to the National Credit Union Administration and vested the authority for management of the Administration in the National Credit Union Administration Board.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1773 of this title.

SUBCHAPTER II—SHARE INSURANCE

§ 1781. Insurance of member accounts

[*See main edition for text of (a)*]

(b) Application; agreement

Application for insurance of member accounts shall be made immediately by each Federal credit union and may be made at any time by a State credit union or a credit union operating under the jurisdiction of the Department of Defense. Applications for such insurance shall be in such form as the Board shall provide and shall contain an agreement by the applicant—

[*See main edition for text of (1) to (7)*]

(8) to pay and maintain its deposit and to pay the premium charges for insurance imposed by this subchapter; and

[*See main edition for text of (9); (c) and (d)*]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VIII, § 2801, 98 Stat. 1203.)

AMENDMENTS

1984—Subsec. (b)(8). Pub. L. 98-369 added provisions relating to payment and maintenance of the deposit.

§ 1782. Administration of insurance fund

[*See main edition for text of (a)*]

(b) Annual certified statements

(1) For each insurance year, each insured credit union which became insured prior to the beginning of that year shall file with the Board, at such time as the Board prescribes, a certified statement showing the total amount of insured shares in the credit union at the close of the preceding insurance year and both the amount of its deposit or adjustment thereof and the amount of the premium charge for insurance due to the fund for that year, both as computed under subsection (c) of this section.

(2) The certified statements required to be filed with the Board pursuant to this subsection shall be in such form and shall set forth such supporting information as the Board shall require.

(3) Each such statement shall be certified by the president of the credit union, or by any officer of the credit union designated by its board of directors, that to the best of his knowledge and belief that statement is true, correct, and

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complete and in accordance with this title and regulations issued thereunder.

(c) Deposit with National Credit Union Share Insurance Fund; amount, return, distribution, etc.

(1)(A)(i) Each insured credit union shall pay to and maintain with the National Credit Union Share Insurance Fund a deposit in an amount equaling 1 per centum of the credit union's insured shares.

(ii) The Board may, in its discretion, authorize insured credit unions to initially fund such deposit over a period of time in excess of one year if necessary to avoid adverse effects on the condition of insured credit unions.

(iii) The amount of each insured credit union's deposit shall be adjusted annually, in accordance with procedures determined by the Board, to reflect changes in the credit union's insured shares.

(B)(i) The deposit shall be returned to an insured credit union in the event that its insurance coverage is terminated, it converts to insurance coverage from another source, or in the event the operations of the fund are transferred from the National Credit Union Administration Board.

(ii) The deposit shall be returned in accordance with procedures and valuation methods determined by the Board, but in no event shall the deposit be returned any later than one year after the final date on which no shares of the credit union are insured by the Board.

(iii) The deposit shall not be returned in the event of liquidation on account of bankruptcy or insolvency.

(iv) The deposit funds may be used by the fund if necessary to meet its expenses, in which case the amount so used shall be expensed and shall be replenished by insured credit unions in accordance with procedures established by the Board.

(2) Each insured credit union, at such time as the Board prescribes, shall pay to the fund a premium charge for insurance equal to one-twelfth of 1 per centum of the total amount of the insured shares in such credit union at the close of the preceding insurance year.

(3) When, at the end of a given insurance year, any loans to the fund from the Federal Government and the interest thereon have been repaid and the equity of the fund exceeds the normal operating level, the Board shall effect for that insurance year a pro rata distribution to insured credit unions of an amount sufficient to reduce the equity in the fund to its normal operating level.

(d) Remedy for failure to report; penalty for failure to file certified statement or pay premium; dispute as to deposit or premium charge; prohibition on distribution of assets or dividends while in default

(1) Any insured credit union which fails to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by it in connection with determining the amount of its deposit or any premium charge for insurance may be compelled to make such report or to file such statement by mandatory injunction or other appropriate remedy in a suit brought for such purpose by the Board against the credit union and any officer or officers thereof. Any such suit may be brought in any court of the United States of competent jurisdiction in the district or territory in which the principal office of the credit union is located.

(2) Any insured credit union which willfully fails or refuses to file any certified statement or to pay its deposit or any premium charge for insurance required under this subchapter shall be subject to a penalty of not more than $100 for each day that such violation continues, which penalty the Board may recover for its use. The provisions of this paragraph shall not be applicable in any case in which the refusal to pay its deposit or the premium charge for insurance is due to a dispute between the insured credit union and the Board over the amount of its deposit or the premium charge due to the fund if the credit union deposits security satisfactory to the Board for payment of its deposit or the premium charge upon final determination of the issue.

(3) No insured credit union shall pay any dividends on its insured shares or distribute any of its assets while it remains in default in the payment of its deposit or any premium charge for insurance due to the fund. Any director or officer of any insured credit union who knowingly participates in the declaration or payment of any such dividend or in any such distribution shall, upon conviction, be fined not more than $1,000 or imprisoned not more than one year, or both. The provisions of this paragraph shall not be applicable in any case in which the default is due to a dispute between the credit union and the Board over the amount of its deposit or the premium charge due to the fund if the credit union deposits security satisfactory to the Board for payment of its deposit or the premium charge upon final determination of the issue.

(e) Recovery of unpaid deposit or premium; limitations

The Board, in a suit brought at law or in equity in any court of competent jurisdiction, shall be entitled to recover from any insured credit union the amount of any unpaid deposit or premium charge for insurance lawfully payable by the credit union to the fund, whether or not such credit union shall have made any report of condition under subsection (a) of this section or filed any certified statement required under subsection (b) of this section and whether or not suit shall have been brought to compel the credit union to make any such report or to file any such statement. No action or proceeding shall be brought for the recovery of any deposit or premium charge due to the fund, or for the recovery of any amount paid to the fund in excess of the amount due it, unless such action or proceeding shall have been brought within five years after the right accrued for which the claim is made. Where the insured credit union has made or filed with the Board a false or fraudulent certified statement with the intent to evade, in whole or in part, the payment of its deposit or any premium

charge, the claim shall not be deemed to have accrued until the discovery by the Board of the fact that the certified statement is false or fraudulent.

(f) Penalty for failure to comply with section; court determination of failure; remedies not exclusive

Should any Federal credit union fail to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed under subsection (b) of this section or to pay its deposit or any premium charge for insurance required to be paid under any provision of this subchapter, and should the credit union fail to correct such failure within thirty days after written notice has been given by the Board to an officer of the credit union, citing this subsection and stating that the credit union has failed to make any such report or file any such statement or pay any such deposit or premium charges as required by law, all the rights, privileges, and franchises of the credit union granted to it under subchapter I of this chapter shall be thereby forfeited. Whether or not the penalty provided in this subsection has been incurred shall be determined and adjudged by any court of the United States of competent jurisdiction in a suit brought for that purpose in the district or territory in which the principal office of such credit union is located, under direction of and by the Board in its own name, before the credit union shall be declared dissolved. The remedies provided in this subsection and in subsections (d) and (e) of this section shall not be construed as limiting any other remedies against any insured credit union but shall be in addition thereto.

(g) Records

Each insured credit union shall maintain such records as will readily permit verification of the correctness of its reports of condition, certified statements, and deposit and premium charges for insurance. However, no insured credit union shall be required to retain such records for such purpose for a period in excess of five years from the date of the making of any such report, the filing of any such statement, or the payment of any deposit or adjustment thereof or any premium charge, except that when there is a dispute between the insured credit union and the Board over the amount of any deposit or adjustment thereof or any premium charge for insurance the credit union shall retain such records until final determination of the issue.

(h) Definitions

For the purposes of this section—

(1) the term "insurance year" means the period beginning on January 1 and ending on the following December 31, both dates inclusive, unless otherwise prescribed by the Board;

(2) the term "normal operating level", when applied to the fund, means an amount equal to 1.3 per centum of the aggregate amount of the insured shares in all insured credit unions, or such lower level as the Board may determine; and

(3) the term "insured shares" when applied to this section includes share, share draft, share certificate and other similar accounts as determined by the Board, but does not include amounts in excess of the insured account limit set forth in section 1787(c)(1) of this title.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VIII, §§ 2802-2810, 98 Stat. 1204, 1205.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369, § 2802, in amending subsec. (b) generally, revised existing provisions into numbered pars. (1) to (3) and in par. (1) substituted "For each insurance year, each insured credit union which became insured prior to the beginning of that year shall file with the Board, at such time as the Board prescribes, a certified statement showing the total amount of insured shares in the credit union at the close of the preceding insurance year and both the amount of its deposit or adjustment thereof and the amount of the premium charge for insurance due to the fund for that year, both as computed under subsection (c) of this section." for "On or before January 31 of each insurance year, each insured credit union which became insured prior to the beginning of that year shall file with the Board a certified statement showing the total amount of the member accounts in the credit union at the close of the preceding insurance year and the amount of the premium charge for insurance due to the fund for that year, as computed under subsection (c) of this section."

Subsec. (c)(1). Pub. L. 98-369, § 2803(6), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 98-369, § 2803(3)-(5), substituted "Each insured credit union, at such time as the Board prescribes" for "Except as provided in paragraph (2) of this subsection, each insured credit union, on or before January 31 of each insurance year" and "insured shares" for "member accounts".

Pub. L. 98-369, § 2803(1), (2), redesignated par. (1) as (2). Former par. (2) which related to payment of a premium charge for insurance by each credit union in existence prior to Oct. 19, 1970, and insured under this subchapter after January 1 of any insurance, was struck out.

Subsec. (c)(3). Pub. L. 98-369, § 2804, amended par. (3) generally. Prior to amendment, par. (3) read as follows: "When any loans to the fund from the Federal Government and the interest thereon have been repaid and the amount in the fund equals or exceeds the normal operating level, the Board may reduce the premium charge for insurance, but not below the amount necessary, in its judgment, to maintain the fund at the normal operating level. Any such reduction shall be effective only so long as the amount in the fund equals or exceeds the normal operating level and no loan to the fund from the Federal Government is outstanding."

Subsec. (c)(4). Pub. L. 98-369, § 2805, struck out par. (4) which provided that "If in any year expenditures from the fund exceed the income of the fund, the Board may require each insured credit union to pay to the fund for such year, in addition to the regular premium charge for insurance payable under paragraph (1), (2), or (3) of this subsection, a special premium charge which shall not exceed an amount equal to the amount of the regular premium charge".

Subsec. (d)(1), (2). Pub. L. 98-369, § 2806(a)(1), added "its deposit or" wherever appearing.

Subsec. (d)(3). Pub. L. 98-369, § 2806(a), added "its deposit or" wherever appearing and substituted "insured shares" for "member accounts".

Subsec. (e). Pub. L. 98-369, § 2806(a)(1), (b)(1), (2), added "its deposit or" and "deposit or" wherever appearing.

Subsec. (f). Pub. L. 98-369, § 2806(a)(1), (b)(3), added "its deposit or" and "deposit or".

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Subsec. (g). Pub. L. 98-369, § 2807, added "and deposit" and "deposit or adjustment thereof or any" in two places.

Subsec. (h)(1). Pub. L. 98-369, § 2808, added ", unless otherwise prescribed by the Board".

Subsec. (h)(2). Pub. L. 98-369, § 2809, in amending par. (2) generally, substituted "fund, means an amount equal to 1.3 per centum of the aggregate amount of the insured shares in all insured credit unions, or such lower level as the Board may determine" for "Fund, means an amount equal to 1 per centum of the aggregate amount of the member accounts in all insured credit unions".

Subsec. (h)(3). Pub. L. 98-369, § 2810, amended par. (3) generally. Prior to amendment, par. (3) read as follows: "the term 'members accounts' when applied to the premium charge for insurance of accounts shall not include amounts received from other credit unions, the accounts of which are federally insured or insured or guaranteed by a fund established under State law or regulation for this purpose, in excess of the insured account limit set forth in section 1787(c)(1) of this title;".

§ 1783. National Credit Union Share Insurance Fund

[See main edition for text of (a)]

(b) Deposit of deposits and premium charges, fees and penalties

All deposits and premium charges for insurance paid pursuant to the provisions of section 1782 of this title and all fees for examinations and all penalties collected by the Board under any provision of this subchapter shall be deposited in the National Credit Union Share Insurance Fund. The Board shall report annually to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives with respect to the operating level of the fund. Such report shall also include the results of an independent audit of the fund.

[See main edition for text of (c) to (f)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VIII, § 2811, 98 Stat. 1206.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 added "deposits and" and provisions relating to annual reporting requirements by the Board.

§ 1785. Requirements governing insured credit unions

EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENT

Effective Apr. 15, 1986, provisions of law amended by section 131 of Pub. L. 97-320 to read as they would without such amendments, and termination of amendment to have no effect on any action taken or authorized while such amendment was in effect, see section 141(a)(8), (b) of Pub. L. 97-320 as amended, set out as a note under section 1464 of this title.

§ 1786. Termination of insured credit union status; cease and desist orders; removal or suspension from office; procedure

[See main edition for text of (a) to (c)]

(d) Continuation of insurance for one year; approval of conversion of status; procedure subsequent to approval; reduction of premium charges

(1) After the termination of the insured status of any credit union as provided under subsection (a)(1) or (b) of this section, insurance of its member accounts to the extent that they were insured on the effective date of such termination, less any amounts thereafter withdrawn which reduce the accounts below the amount covered by insurance on the effective date of such termination, shall continue for a period of one year, but no shares issued by the credit union or deposits made after the date of such termination shall be insured by the Board. The credit union shall continue to maintain its deposit with and pay premiums to the Board during such period as in the case of an insured credit union and the Board shall have the right to examine such credit union from time to time during the period during which such insurance continues. Such credit union shall, in all other respects, be subject to the duties and obligations of an insured credit union for the period of one year from the date of such termination. In the event that such credit union shall be closed for liquidation within such period of one year, the Board shall have the same powers and rights with respect to such credit union as in the case of an insured credit union. Notwithstanding the above, when an insured credit union's insured status is terminated and the credit union subsequently obtains comparable insurance coverage from another source, insurance of its accounts by the fund may cease immediately upon the effective date of such comparable coverage by mutual consent of the credit union and the Board.

[See main edition for text of (2) and (3); (e) to (p)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VIII, § 2812, 98 Stat. 1206.)

AMENDMENTS

1984—Subsec. (d)(1). Pub. L. 98-369 added "(1)" after "subsection (a)", "maintain its deposit with and", and provisions relating to termination of insured status and the obtaining of comparable insurance coverage from another source.

EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENT

Effective Apr. 15, 1986, provisions of law amended by section 132 of Pub. L. 97-320 to read as they would without such amendments, and termination of amendment to have no effect on any action taken or authorized while such amendment was in effect, see section 141(a)(8), (b) of Pub. L. 97-320, as amended, set out as a note under section 1464 of this title.

SUBCHAPTER III—CENTRAL LIQUIDITY FACILITY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1757 of this title; title 26 section 501.

§ 1795b. National Credit Union Administration Central Liquidity Facility; establishment; management; jurisdiction

There is created the National Credit Union Administration Central Liquidity Facility. The Central Liquidity Facility, an instrumentality of the United States, shall exist within the National Credit Union Administration and be

managed by the Board. The United States district court shall have original jurisdiction over any case to which the Board on behalf of the Facility is a party, without regard to the amount in controversy.

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VIII, § 2813(a)(1), 98 Stat. 1206.)

AMENDMENTS

1984—Pub. L. 98-369 added ", an instrumentality of the United States,".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Oct. 1, 1979, see section 2813(c) of Pub. L. 98-369, set out as an Effective Date note under section 1795k of this title.

§ 1795k. State and local tax exemption

(a) Franchise, activities, etc., of Central Liquidity Facility; exception

The Central Liquidity Facility, and its franchise, activities, capital reserves, surplus, and income, shall be exempt from all State and local taxation now or hereafter imposed, other than taxes on real property held by the Facility (to the same extent, according to its value, as other similar property held by other persons is taxed).

(b) Notes, bonds, debentures and other obligations of Central Liquidity Facility; exceptions

(1) Except as provided in paragraph (2), the notes, bonds, debentures, and other obligations issued on behalf of the Central Liquidity Facility and the income therefrom shall be exempt from all State and local taxation now or hereafter imposed.

(2) Any obligation described in paragraph (1) shall not be exempt from State or local gift, estate, inheritance, legacy, succession, or other wealth transfer taxes.

(c) "State" defined; tax status

For purposes of this section—

(1) the term "State" includes the District of Columbia; and

(2) taxes imposed by counties or municipalities, or any territory, dependency, or possession of the United States shall be treated as local taxes.

(June 26, 1934, ch. 750, title III, § 312, as added July 18, 1984, Pub. L. 98-369, div. B, title VIII, § 2813(a)(2), 98 Stat. 1206.)

EFFECTIVE DATE

Section 2813(c) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting this section and amending section 1795b of this title and section 501 of Title 26, Internal Revenue Code] shall take effect on October 1, 1979."

CHAPTER 16—FEDERAL DEPOSIT INSURANCE CORPORATION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 161, 222, 329, 1425b, 1470, 1841, 2216f, 2254, 3108 of this title; title 15 sections 78c, 78*l*, 78m.

§ 1812. Directors; appointment; term of office; chairman; vacancies; office or ownership of stock in banking institution forbidden

The management of the Corporation shall be vested in a Board of Directors consisting of three members, one of whom shall be the Comptroller of the Currency, and two of whom shall be citizens of the United States to be appointed by the President, by and with the advice and consent of the Senate. One of the appointive members shall be the Chairman of the Board of Directors of the Corporation and not more than two of the members of such Board of Directors shall be members of the same political party. Each such appointive member shall hold office for a term of six years. Each such appointive member may continue to serve after the expiration of his term until a successor has been appointed and qualified. In the event of a vacancy in the office of the Comptroller of the Currency, and pending the appointment of his successor, or during the absence or disability of the Comptroller, the Acting Comptroller of the Currency shall be a member of the Board of Directors in the place and stead of the Comptroller. In the event of a vacancy in the office of the Chairman of the Board of Directors, and pending the appointment of his successor, the Comptroller of the Currency shall act as Chairman. The members of the Board of Directors shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any insured bank, except that this restriction shall not apply to any member who has served the full term for which he was appointed. No member of the Board of Directors shall be an officer or director of any insured bank or Federal Reserve bank or hold stock in any insured bank; and before entering upon his duties as a member of the Board of Directors he shall certify under oath that he has complied with this requirement and such certification shall be filed with the secretary of the Board of Directors.

(As amended Nov. 30, 1983, Pub. L. 98-181, title VII, § 702(a), 97 Stat. 1267.)

AMENDMENTS

1983—Pub. L. 98-181 added provision that each such appointive member may continue to serve after the expiration of his term until a successor has been appointed and qualified.

§ 1813. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 265, 461, 1730a, 1817, 1823, 1828, 1832, 1842, 1861, 2012, 2072, 2122, 2804, 2902, 3102, 3104, 3902, 3909 of this title; title 11 section 109; title 29 section 1134; title 31 section 5312.

§ 1818. Termination of status as insured bank

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 92a, 375a, 1813, 1820, 1831b, 1831c, 1867, 2804, 2805, 3108, 3507, 3907, 3908, 3909 of this title; title 15 sections 57a, 78*o*-4, 78q-1, 1607, 1681s, 1691c, 1692*l*, 1693o.

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§ 1823. Corporation monies

[See main edition for text of (a) to (h)]

(i) Net worth certificates

(1) *[See main edition for text of (A) to (C)]*

(D) With respect to certificates held by it, the claim of the Corporation shall have a priority over any claim arising out of an equity interest in the institution in the event of a liquidation or reorganization, subject to the prior payment of all accounts, certificates of deposit, and debt obligations other than debt obligations subordinated to the claims of general creditors which were outstanding when any certificates were purchased, and over any right of equity holders to participate in future earnings. Issuance of net worth certificates in accordance with this subsection shall not constitute a default under the terms of any debt obligations subordinated to the claims of general creditors which were outstanding when such net worth certificates were issued.

[See main edition for text of (2) to (13)]

(As amended May 16, 1983, Pub. L. 98-29, § 1(a), 97 Stat. 189.)

REPEAL OF SUBSECTION (i)

Section 206 of Pub. L. 97-320, as amended by Pub. L. 97-457, § 11, Jan. 12, 1983, 96 Stat. 2508; Pub. L. 99-120, § 6(b), Oct. 8, 1985, 99 Stat. 504, set out as a note under section 1729 of this title, provided that, on Apr. 15, 1986, subsection (i) of this section is repealed, except that such repeal shall have no effect on any action taken or authorized pursuant to amendments made by title II of Pub. L. 97-320 by or for a qualified institution while such amendments were in effect and while net worth certificates issued pursuant to such amendments were outstanding.

AMENDMENTS

1983—Subsec. (i)(1)(D). Pub. L. 98-29 added provision that issuance of net worth certificates in accordance with this subsection shall not constitute a default under the terms of any debt obligations subordinated to the claims of general creditors which were outstanding when such net worth certificates were issued.

1982—Subsec. (c). Pub. L. 97-320, §§ 111, 141(a)(1), substituted provisions contained in numbered pars. (1) through (8) relating to the Corporation's authority to assist insured banks for prior provisions contained in a single undesignated paragraph authorizing the Corporation, in order to reopen a closed insured bank or, when the Corporation had determined that an insured bank was in danger of closing, in order to prevent such closing, in the discretion of its Board of Directors, to make loans to, or purchase the assets of, or make deposits in, such insured bank, upon such terms and conditions as the Board of Directors might prescribe, when in the opinion of the Board of Directors the continued operation of such bank was essential to provide adequate banking service in the community, with such loans and deposits to be in subordination to the rights of depositors and other creditors, and provided that par. (5) of the new provisions, relating to the deferring of State and local taxes during the period during which the bank has received assistance, is repealed Apr. 15, 1986. See Effective and Termination Dates of 1982 Amendment note set out below.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 1(b) of Pub. L. 98-29 provided that: "The amendment made by subsection (a) [amending this section] shall be deemed to have taken effect on the date of enactment of the Garn-St Germain Depository Institutions Act of 1982 [Oct. 15, 1982]."

EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENT

Effective Apr. 15, 1986, subsec. (c)(5) of this section as added by section 111 of Pub. L. 97-320 is repealed, and provisions of law amended by section 116 of Pub. L. 97-320 to read as they would without such amendments, and repeal or termination of amendment to have no effect on any action taken or authorized while such amendment was in effect, see section 141(a)(1), (3), (b) of Pub. L. 97-320, as amended, set out as a note under section 1464 of this title.

Section 206 of Pub. L. 97-320, as amended by Pub. L. 97-457, § 11, Jan. 12, 1983, 96 Stat. 2508; Pub. L. 99-120, § 6(b), Oct. 8, 1985, 99 Stat. 504, provided in part that on Apr. 15, 1986, subsec. (i) of this section is repealed, such repeal to have no effect on any action taken or authorized pursuant to the amendments made by title II of Pub. L. 97-320 by or for a qualified institution while such amendments were in effect and while net worth certificates issued pursuant to such amendments are outstanding, see section 206 of Pub. L. 97-320, set out as a note under section 1729 of this title.

CHAPTER 17—BANK HOLDING COMPANIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 304, 375b, 1818, 3101, 3106 of this title; title 15 section 80b-2; title 18 section 215; title 26 sections 246A, 1101, 1103, 6158.

§ 1841. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 72, 375b, 619, 1817, 1818, 1842, 1843, 1971, 3101, 3102 of this title; title 15 section 78c; title 26 sections 304, 1101, 1103.

§ 1842. Acquisition of bank shares or assets

EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENT

Effective Apr. 15, 1986, provisions of law amended by section 118(c) of Pub. L. 97-320 to read as they would without such amendments, and termination of amendment to have no effect on any action taken or authorized while such amendment was in effect, see section 141(a)(4), (b) of Pub. L. 97-320, as amended set out as a note under section 1464 of this title.

§ 1843. Interests in nonbanking organizations

EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENT

Effective Apr. 15, 1986, provisions of law amended by section 118(a) of Pub. L. 97-320 to read as they would without such amendments, and termination of amendment to have no effect on any action taken or authorized while such amendment was in effect, see section 141(a)(4), (b) of Pub. L. 97-320, as amended, set out as a note under section 1464 of this title.

CHAPTER 23—FARM CREDIT SYSTEM

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§ 2001. Congressional declaration of policy and objectives

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99-205, title IV, § 401, Dec. 23, 1985, 99 Stat. 1709, provided that: "The provisions of titles I, II, III, and VI of this Act [enacting sections 2152, 2161, 2199, 2200, 2216 to 2216k, 2219, 2219a, 2253, 2261 to 2273 of this title and provisions set out as notes under section 2001 of this title, amending sections 2002, 2012, 2013, 2031, 2033, 2034, 2051, 2052, 2054, 2072 to 2074, 2077, 2078, 2091, 2093 to 2096, 2098, 2122 to 2126, 2132 to 2134, 2151, 2153 to 2156, 2182, 2183, 2201, 2202, 2205, 2206, 2211 to 2213, 2221 to 2223, 2227, 2241 to 2246, 2248 to 2252, and 2254 of this title, and repealing sections 2152, 2247, and 2253 of this title] shall become effective thirty days after enactment [Dec. 23, 1985]."

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99-205, § 1, Dec. 23, 1985, 99 Stat. 1678, provided: "That this Act [enacting sections 2152, 2161, 2199, 2200, 2216 to 2216k, 2219, 2219a, 2253, 2261 to 2273 of this title and provisions set out as notes under sections 2001 and 2241 of this title, amending sections 2002, 2012, 2013, 2031, 2033, 2034, 2051, 2052, 2054, 2072 to 2074, 2077, 2078, 2091, 2093 to 2096, 2098, 2122 to 2126, 2132 to 2134, 2151, 2153 to 2156, 2182, 2183, 2201, 2202, 2205, 2206, 2211 to 2213, 2221 to 2223, 2227, 2241 to 2246, 2248 to 2252, and 2254 of this title, and repealing sections 2152, 2247, and 2253 of this title] may be cited as the 'Farm Credit Amendments Act of 1985'."

LOAN REVIEW BY LOCAL LENDING INSTITUTIONS

Pub. L. 99-205, title III, § 307, Dec. 23, 1985, 99 Stat. 1709, provided that: "Each local lending institution of the Farm Credit System established under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) shall—

"(1) review each loan that has been placed in nonaccrual status by such institution to determine whether such loan may be restructured based on changes in the circumstances of such institution as the result of this Act [see Short Title of 1985 Amendment note above] and the amendments made by this Act; and

"(2) notify in writing the borrower of each such loan of the provisions of this section."

NATIONAL COMMISSION ON AGRICULTURAL FINANCE

Pub. L. 99-205, title V, § 501, Dec. 23, 1985, 99 Stat. 1710, provided that:

"(a) The President shall appoint a National Commission on Agricultural Finance. Such Commission shall be comprised of 15 members, of whom 7 shall be appointed by the President and 4 each by the Speaker of the House of Representatives and the President pro tempore of the Senate. The Commission shall consist of representatives of the financial community, the agricultural sector, and government.

"(b) The National Commission on Agricultural Finance shall conduct a study of methods to ensure the availability of adequate credit to agricultural producers and agribusiness, taking into account the long-term financing needs of the agricultural economy; the roles of the commercial banks, the Farm Credit System, and the Farmers Home Administration in meeting those financial needs.

"(c) In conducting such study, the National Commission on Agricultural Finance shall—

"(1) evaluate the financial circumstances relative to both lenders and borrowers of farm credit;

"(2) evaluate the structure, performance, and conduct of private lenders—commercial bankers and the Farm Credit System—and public lenders;

"(3) explore the need for long-term assistance in stabilizing the value of agricultural assets; and

"(4) evaluate the effect on suppliers, producers, processors, and local communities when financial institutions fail.

"(d) Not later than one year after the date of enactment of this Act [Dec. 23, 1985], the Commission shall submit a report containing the results of the study required by this section, together with comments and recommendations for legislation providing for a sound, reasonable, and primarily self-supporting credit program for farmers and ranchers as the Commission considers appropriate, to Congress.

"(e) The Commission shall be comprised of volunteers and no Federal funds shall be expended by the Commission."

§ 2002. Farm Credit System

The Farm Credit System shall include the Federal land banks, the Federal land bank associations, the Federal intermediate credit banks, the production credit associations, the banks for cooperatives, and such other institutions as may be made a part of the System, all of which shall be chartered by and subject to the [1] regulation by the Farm Credit Administration.

(As amended Pub. L. 99-205, title II, § 205(c), Dec. 23, 1985, 99 Stat. 1703.)

AMENDMENTS

1985—Pub. L. 99-205 substituted "regulation by" for "supervision of".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2271 of this title.

SUBCHAPTER I—FEDERAL LAND BANKS AND ASSOCIATIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2156, 2181, 2216h of this title.

PART A—FEDERAL LAND BANKS

§ 2012. Corporate existence; general corporate powers

Each Federal land bank shall be a body corporate and, subject to regulation by the Farm Credit Administration, shall have power to—

[*See main edition for text of (1) to (16)*]

(17) Delegate to Federal land bank associations such functions as it may determine.

[*See main edition for text of (18)*]

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[1] So in original. Word "the" probably should not appear.

(19) Require Federal land bank associations to endorse notes and other obligations of its members to the bank.

(20) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the bank.

(21) Accept contributions to its capital from Federal land bank associations and account therefor as authorized by the Farm Credit Administration.

(22) As may be authorized by its board of directors and approved by the Farm Credit Administration, agree with other Farm Credit System institutions to share loan and other losses, whether to protect against capital impairment or for any other purpose.

(As amended Pub. L. 99-205, title II, § 205(d)(1), Dec. 23, 1985, 99 Stat. 1703.)

AMENDMENTS

1985—Pub. L. 99-205, § 205(d)(1)(A), substituted "regulation" for "supervision" in provision preceding par. (1).

Par. (17). Pub. L. 99-205, § 205(d)(1)(B), struck out "vested in or delegated to the bank' after "such functions".

Pars. (19) to (23). Pub. L. 99-205, § 205(d)(1)(C), (D), struck out par. (19) "Perform any function delegated to it by the Farm Credit Administration;" and redesignated pars. (20) to (23) as (19) to (22), respectively.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2013. Land bank stock

[See main edition for text of (a) to (c)]

(d) Nonvoting stock

Nonvoting stock may be issued to borrowers as patronage refunds, and may also be issued to Federal land bank associations in amounts that will permit the bank to extend financial assistance to eligible persons other than farmers, ranchers, and producers or harvesters of aquatic products. Nonvoting stock also may be issued to and shall be retired for other Farm Credit System institutions as may be authorized by its board of directors and approved by the Farm Credit Administration. Participation certificates with a face value of $5 each may be issued in lieu of nonvoting stock when the bylaws of the bank so provide.

(e) Dividends

Non-cumulative dividends may be payable on stock and participation certificates of the bank. The rate of dividends may be different between different classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the bank by such classes and issues, but otherwise dividends shall be without preference.

[See main edition for text of (f) and (g)]

(h) General direction by Farm Credit Administration

Nothing in this section limits the power of the Farm Credit Administration to provide general direction to Federal land banks with regard to the payment of dividends and patronage refunds.

(As amended Pub. L. 99-205, title II, § 205(d)(2), (3), title VI, § 601, Dec. 23, 1985, 99 Stat. 1703, 1711.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-205, § 205(d)(2), struck out "to the Governor of the Farm Credit Administration," after "may be issued" in first sentence.

Subsec. (e). Pub. L. 99-205, § 205(d)(3), struck out first sentence providing that dividends shall not be payable on any stock held by the Governor of the Farm Credit Administration, and struck out "other" before "stock and participation certificates" in second sentence.

Subsec. (h). Pub. L. 99-205, § 601, added subsec. (h).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

PART B—FEDERAL LAND BANK ASSOCIATIONS

§ 2031. Organizations; articles; charters; powers of Farm Credit Administration

Each Federal land bank association chartered under section 7 of the Federal Farm Loan Act, as amended, shall continue as a federally chartered instrumentality of the United States. A Federal land bank association may be organized by any group of ten or more persons desiring to borrow money from a Federal land bank, including persons to whom the Federal land bank has made a loan directly or through an agent and has taken as security real estate located in the territory proposed to be served by the association. The articles of association shall describe the territory within which the association proposes to carry on its operations. Proposed articles shall be forwarded to the Federal land bank for the district, accompanied by an agreement to subscribe on behalf of the association for stock of the land bank equal to not less than $5 nor more than $10 per $100 of the amount of the aggregate loans desired or held by the association members. Such stock may be paid for by surrendering for cancellation stock in the bank held by a borrower and the issuance of an equivalent amount of stock to such borrower in the association. The articles shall be accompanied by a statement signed by each of the members of the proposed association establishing his eligibility for, and that he has or desires a Federal land bank loan; that the real estate with respect to which he desires a loan is not being served by another Federal land bank association; and that he is or will become a stockholder in the proposed association. A copy of the articles of association shall be forwarded to the Farm Credit Administration with the recommendations of the bank concerning the need for the proposed association in order to adequately serve the credit needs of eligible persons in the proposed territory and a statement as to whether or not the territory includes any territory described in the charter of another Federal land bank association. The Farm Credit Administration for good cause

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shown may deny the charter applied for. Upon the approval of the proposed articles by the Farm Credit Administration and the issuance of such charter, the association shall become as of such date a federally chartered body corporate and an instrumentality of the United States. The Farm Credit Administration shall have power, in the terms of the charter, under rules and regulations prescribed by the Farm Credit Administration or by approving bylaws of the association, to provide for the organization of the association, the initial amount of stock of such association, the territory within which its operations may be carried on and to direct at any time changes in the charter of such association as the Farm Credit Administration finds necessary in accomplishing the purposes of this chapter.

(As amended Pub. L. 99-205, title II, § 205(d)(4), Dec. 23, 1985, 99 Stat. 1703.)

AMENDMENTS

1985—Pub. L. 99-205 substituted "Farm Credit Administration" for "Governor" in section catchline, struck out "the Governor of" before "the Farm Credit Administration" in seventh sentence, substituted "Farm Credit Administration" for "Governor" wherever appearing in eighth, ninth, and tenth sentences, and substituted "the Farm Credit Administration" for "him" and "he" in tenth sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2033. General corporate powers

Each Federal land bank association shall be a body corporate and, subject to supervision of the Federal land bank for the district and the regulation of the Farm Credit Administration, shall have the power to—

[See main edition for text of (1) to (11)]

(12) Upon agreement with the bank, take such additional actions with respect to applications and loans and perform such functions as are vested by law in the Federal land banks as may be agreed to or delegated to the association.

[See main edition for text of (13) to (21)]

(As amended Pub. L. 99-205, title II, § 205(d)(5), Dec. 23, 1985, 99 Stat. 1704.)

AMENDMENTS

1985—Pub. L. 99-205 inserted "the regulation" before "of the Farm Credit Administration" in provision preceding par. (1).

Par. (12). Pub. L. 99-205 which directed that the phrase "or delegated to" be struck out, was executed by striking out that phrase the first time it appeared before "the Federal land banks" as the probable intent of Congress.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2218 of this title.

§ 2034. Association stock; value of shares; voting; purchase

(a) The shares of stock in each Federal land bank association shall have a par value of $5 each. No person but borrowers from the bank shall become members and stockholders of the association. If an application for membership is approved and if the applied-for loan is granted, the member of the association shall subscribe to stock in the association in an amount not less than 5 per centum nor more than 10 per centum of the face amount of the loan as determined by the bank. Stock shall be paid for in cash by the time the loan is closed. The association shall then purchase a similar amount of stock in the land bank. Stock shall be retired and paid at book value not to exceed par, as determined by the association, upon the full repayment of the loan and if the loan is in default may be canceled for application on the loan, or under other circumstances, for other disposition, when approved by the bank and on written notice to the stockholder. The aggregate capital stock of each association shall be increased from time to time as necessary to permit the securing of requested loans from the bank for the association's members.

[See main edition for text of (b) and (c)]

(As amended Pub. L. 99-205, title III, § 304(a), Dec. 23, 1985, 99 Stat. 1708.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-205 inserted "and on written notice to the stockholder" in sixth sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

PART C—PROVISIONS APPLICABLE TO FEDERAL LAND BANKS AND FEDERAL LAND BANK ASSOCIATIONS

§ 2051. Land bank reserves; dividends and patronage refunds

(a) Federal land banks shall be required to carry a reserve account. Such reserve account shall be kept in accordance with standards set by the Farm Credit Administration.

(b) Any bank may declare a dividend or dividends, and pay patronage refunds, or do any of them, as provided in its bylaws, out of the whole or any part of net earnings which remain after (1) the maintenance of the reserve as required in subsection (a) hereof, and (2) the approval of the Farm Credit Administration.

(As amended Pub. L. 99-205, title II, § 205(d)(6), title VI, § 602, Dec. 23, 1985, 99 Stat. 1704, 1711.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-205, § 602, substituted provisions requiring Federal land banks to carry a reserve account kept in accordance with Administration standards for prior provisions which read: "Each Federal land bank shall, at the end of each fiscal year, carry to reserve account a sum of not less than 50 per centum of its net earnings for the year until said re-

serve account shall be equal at the end of such year, after restoring any impairment thereof, to the outstanding capital stock and participation certificates of the bank. Thereafter, a sum equal to 10 per centum of the year's net earnings shall be added to the reserve account until the account shall be equal to 150 per centum of the outstanding capital stock and participation certificates of the bank. Any amounts added to the reserve account in excess of 150 per centum of the outstanding capital stock and participation certificates may be withdrawn from such reserves with the approval of the Farm Credit Administration."

Subsec. (b). Pub. L. 99-205, § 205(d)(6), struck out cl. (2) "the payment of the franchise tax as required by section 2151 of this title for any year in which any stock in the bank is held by the Governor of the Farm Credit Adminisration," and redesignated cl. (3) as (2).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2052. Association reserves; dividends and patronage refunds

(a) Federal land bank associations shall be required to carry a reserve account. Such reserve account shall be kept in accordance with standards set by the Farm Credit Administration.

(b) Any association may declare a dividend or dividends and pay patronage refunds, or do any of them, as provided in its bylaws, out of the whole or any part of its net earnings available therefor which remain after (1) maintenance of the reserve required in subsection (a) of this section and (2) bank approval. All patronage refunds shall be paid on the proportionate patronage basis approved by the bank. Dividends shall be noncumulative, and the rate of dividends may be different between classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the Federal land bank by such classes and issues, but otherwise dividends shall be without preference. Nothing in this subsection limits the power of the Farm Credit Administration to provide general direction to Federal land bank associations with regard to the payment of dividends and patronage refunds.

[*See main edition for text of* (c)]

(As amended Pub. L. 99-205, title VI, § 603, Dec. 23, 1985, 99 Stat. 1711.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-205 substituted provisions requiring Federal land bank associations to carry a reserve account kept in accordance with Administration standards, for provisions which read: "Each Federal land bank association shall, out of its net earnings at the end of each fiscal year, carry to reserve account a sum not less than 10 per centum of such earnings until the reserve account shall equal 25 per centum of the outstanding capital stock and participation certificates of such association after restoring any impairment thereof. Thereafter, 5 per centum of the net earnings for the year shall be added to such reserve account until it shall equal 50 per centum of the outstanding capital stock and participation certificates of the association. Any amounts in the reserve account in excess of 50 per centum of the outstanding capital stock and participation certificates may be withdrawn with the approval of the Federal land bank."

Subsec. (b). Pub. L. 99-205 added provision that nothing in this subsection limits the power of the Farm Credit Administration to provide general direction to Federal land bank associations with regard to the payment of dividends and patronage refunds.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2054. Liens on stock and participation certificates

Each Federal land bank and each Federal land bank association shall have a first lien on the stock and participation certificates it issues, except on stock or participation certificates held by or [1] other Farm Credit System institutions, for the payment of any liability of the stockholder to the association or to the bank, or to both of them.

(As amended Pub. L. 99-205, title II, § 205(d)(7), Dec. 23, 1985, 99 Stat. 1704.)

AMENDMENTS

1985—Pub. L. 99-205 struck out "the Governor of the Farm Credit Administration" after "held by".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

SUBCHAPTER II—FEDERAL INTERMEDIATE CREDIT BANKS AND PRODUCTION CREDIT ASSOCIATIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2156, 2181, 2216h of this title.

PART A—FEDERAL INTERMEDIATE CREDIT BANKS

§ 2072. Corporate existence; general corporate powers

Each Federal intermediate credit bank shall be a body corporate and, subject to regulation by the Farm Credit Administration, shall have power to—

[*See main edition for text of* (1) *to* (13)]

(14) Delegate to the production credit associations such functions as it may determine.

[*See main edition for text of* (15) *to* (20)]

(21) Repealed. Pub. L. 99-205, title II, § 205(e)(1)(C), Dec. 23, 1985, 99 Stat. 1704.

(As amended Pub. L. 99-205, title II, § 205(e)(1), Dec. 23, 1985, 99 Stat. 1704.)

AMENDMENTS

1985—Pub. L. 99-205 substituted "regulation by" for "supervision of" in provision preceding par. (1).

Par. (14). Pub. L. 99-205 struck out "vested in or delegated to the intermediate credit bank" after "such functions".

Par. (21). Pub. L. 99-205 struck out par. (21) which read: "Perform any function delegated to it by the Farm Credit Administration."

[1] So in original. Word "or" probably should not appear.

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EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2073. Federal intermediate credit bank stock

[*See main edition for text of* (a) *to* (c)]

(d) Nonvoting stock

Nonvoting stock may be issued be issued to [1] and, notwithstanding the provisions of subsection (g) of this section, shall be retired for other Farm Credit System institutions as may be authorized by its board of directors and approved by the Farm Credit Administration. Nonvoting stock may also be issued to production credit associations in such amounts as will permit the association to extend financial assistance to eligible persons other than farmers, ranchers, and producers or harvesters of aquatic products. Participation certificates, with a face value of $5, may be issued in lieu of such nonvoting stock when the bylaws of the bank so provide.

[*See main edition for text of* (e)]

(f) Dividends

Noncumulative dividends may be payable on other capital and participation certificates in an amount not to exceed a per centum permitted under regulations of the Farm Credit Administration, in any year as determined by the board of directors. Such dividends may be in the form of stock and participation certificates or in cash. The rate of dividends may be different between different classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the bank by such classes and issues, but otherwise dividends shall be without preference. Federal intermediate credit banks shall be subject to the general direction of the Farm Credit Administration with regard to the payment dividends.

(g) Subscription of stock; allotment; proportion; additional participation certificates; retirement of stock and participation certificates

[*See main edition for text of first three pars.*]

The bank may retire stock at par and participation certificates at face amount under regulations of the Farm Credit Administration. Such other stock and participation certificates shall be retired without preference and in such manner that, unless otherwise approved by Farm Credit Administration, the oldest outstanding stock or certificates at any given time will be retired first. In case of liquidation or dissolution of any production credit association or other financing institution, the stock or participation certificates of the bank owned by such association or institution may be retired by the bank at the book value thereof, not exceeding par or face amount, as the case may be.

(h) Liens on stock and participation certificates

Except with regard to stock or participation certificates held by the Farm Credit Administration or other Farm Credit System institutions, each Federal intermediate credit bank shall have a first lien on all stock and participation certificates it issues and on all allocated reserves and other equities for any indebtedness of the holder of such capital investments to the bank.

[*See main edition for text of* (i)]

(As amended Pub. L. 99-205, title II, § 205(e)(2)-(5), title VI, § 604, Dec. 23, 1985, 99 Stat. 1704, 1711.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-205, § 205(e)(2), struck out "the Governor of the Farm Credit Administration, and may" after "may be issued" in first sentence.

Subsec. (f). Pub. L. 99-205, § 205(e)(3), substituted "Noncumulative dividends" for "Dividends shall not be payable on any stock held by the Governor of the Farm Credit Administration other than the tax imposed by section 2151(c) of this title but noncumulative dividends" in first sentence, and struck out ", when the Governor of the Farm Credit Administration holds no stock in the bank," before "in cash" in second sentence.

Pub. L. 99-205, § 604, added provision that Federal intermediate credit banks shall be subject to the general direction of the Farm Credit Administration with regard to the payment dividends.

Subsec. (g). Pub. L. 99-205, § 205(e)(4), substituted "The bank may retire stock" for "After all stock held by the Governor of the Farm Credit Administration has been retired, the bank may retire other stock" in fourth par.

Subsec. (h). Pub. L. 99-205, § 205(e)(5), substituted "Farm Credit Administration" for "Governor".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2074. Loans; discounts; participation; leasing

[*See main edition for text of* (a) *and* (b)]

(c) Limitation on aggregate liabilities

No paper shall be purchased from or discounted for, and no loans shall be made or other similar financial assistance extended by a Federal intermediate credit bank to any entity identified in subsection (a)(2) of this section if the amount of such paper added to the aggregate liabilities of such entity, whether direct or contingent (other than bona fide deposit liabilities), exceeds ten times the paid-in and unimpaired capital and surplus of such entity or the amount of such liabilities permitted under the laws of the jurisdiction creating such institution, whichever is the lesser. It shall be unlawful for any national bank which is indebted to any Federal intermediate credit bank, upon paper discounted or purchased under subsection (a) of this section, to incur any additional indebtedness, if by virtue of such additional indebtedness its aggregate liabilities direct or contingent, will exceed the limitation herein contained.

[*See main edition for text of* (d) *and* (e)]

(As amended Pub. L. 99-205, title II, § 205(e)(6), Dec. 23, 1985, 99 Stat. 1704.)

[1] So in original.

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AMENDMENTS

1985—Subsec. (c). Pub. L. 99-205 substituted "subsection (a)(2) of this section" for "subsection (a)(1) and (2) of this section" and struck out "(in the case of financing institutions under subsection (a)(2) of this section)" after "entity or" in first sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2077. Net earnings

(a), (b) Repealed. Pub. L. 99-205, title II, § 205(e)(7), Dec. 23, 1985, 99 Stat. 1704

(c) Patronage refunds

At the end of each fiscal year, the net earnings of each Federal intermediate credit bank shall, under regulations prescribed by the Farm Credit Administration, continue to be distributed on a cooperative basis with an obligation to distribute patronage dividends and with provision for sound, adequate capitalization to meet changing financing needs of production credit associations, other financial institutions eligible to discount paper with the bank, and other eligible borrowers, and prudent corporate fiscal management, to the end that the current year's patrons carry their fair share of the capitalization, ultimate expenses, and reserves. Such regulations may provide for the application of net earnings after payment of operating expenses to the restoration or maintenance of the allocated reserve account, additions to unallocated contingency reserve account of not to exceed such per centum of net earnings as may be approved by the Farm Credit Administration, and provide for allocations to portions not qualified under title 26, and the payment of patronage in stock, participation certificates, or in cash, as the board may determine. If during the fiscal year but not at the end thereof a bank shall have had outstanding capital stock held by the Governor of the Farm Credit Administration, provision will be made for the payment of the franchise tax required in section 2151 of this title.

[*See main edition for text of (d)*]

(As amended Pub. L. 99-205, title II, § 205(e)(7), (8), Dec. 23, 1985, 99 Stat. 1704.)

AMENDMENTS

1985—Subsecs. (a), (b). Pub. L. 99-205, § 205(e)(7), struck out subsec. (a) relating to determination of net earnings, annual applications, surplus accounts, and absorption of net losses, and subsec. (b) relating to patronage refunds when bank has outstanding capital stock held by the Governor.

Subsec. (c). Pub. L. 99-205, § 205(e)(8), substituted "At the end of each fiscal year, the net earnings of each Federal intermediate credit bank" for "If, at the end of a fiscal year a Federal intermediate credit bank shall have no outstanding capital stock held by the Governor of the Farm Credit Administration, the net earnings of such bank" in first sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2078, 2214 of this title.

§ 2078. Distribution of assets on liquidation

In the case of liquidation or dissolution of any Federal intermediate credit bank, after payment or retirement, as the case may be, first, of all liabilities; second, of all stock owned by production credit associations at par and all participation certificates at face amount; any remaining assets of the bank shall be distributed as provided in this subsection. Any of the surplus established pursuant to section 2077 of this title (excluding that transferred from the production credit corporation of the district) which the Farm Credit Administration determines was contributed by financing institutions other than the production credit associations discounting with or borrowing from the bank on January 1, 1957, shall be paid to such institutions, or their successors in interest as determined by Farm Credit Administration, and the remaining portion of such surplus (including that transferred from the production credit corporation of the district) shall be paid to the holders of voting and nonvoting stock pro rata. The contribution of each such financing institution under the preceding sentence shall be computed on the basis of a ratio of its patronage to the total patronage of the bank from the date of organization of the bank to January 1, 1957. The allocated reserve established pursuant to section 2077 of this title shall be paid to the production credit associations and other financing institutions to which such reserve is allocated on the books of the bank. Any assets of the bank then remaining shall be distributed to the production credit associations and the holders of participation certificates pro rata.

(As amended Pub. L. 99-205, title II, § 205(e)(9), Dec. 23, 1985, 99 Stat. 1704.)

AMENDMENTS

1985—Pub. L. 99-205 struck out ", of all the stock held by the Governor of the Farm Credit Administration at par; third" after "second" in first sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

PART B—PRODUCTION CREDIT ASSOCIATIONS

§ 2091. Organization and charters

Each production credit association chartered under section 20 of the Farm Credit Act of 1933, as amended, shall continue as a federally chartered instrumentality of the United States. Production credit associations may be organized by ten or more farmers or ranchers or producers or harvesters of aquatic products desiring to borrow money under the provisions of this subchapter. The proposed articles of association shall be forwarded to the Federal intermediate credit bank for the district accompanied by an agreement to subscribe on behalf of the association for stock in the bank in such amounts as may be required by the bank. The

articles shall specify in general terms the objects for which the association is formed, the powers to be exercised by it in carrying out the functions authorized by this part, and the territory is proposes to serve. The articles shall be signed by persons desiring to form such an association and shall be accompanied by a statement signed by each such person establishing eligibility to borrow from the association in which he will become a stockholder. A copy of the articles of association shall be forwarded to the Farm Credit Administration with the recommendations of the bank concerning the need for such an association in order to adequately serve the credit needs of eligible persons in the proposed territory and whether that territory includes any area, described in the charter of another production credit association. The Farm Credit Administration for good cause shown may deny the charter. Upon approval of the proposed articles by the Farm Credit Administration and the issuance of a charter, the association shall become as of such date a federally chartered body corporate and an instrumentality of the United States. The Farm Credit Administration shall have the power, under rules and regulations prescribed by Farm [1] Credit Administration or by prescribing in the terms of the charter or by approval of bylaws of the association, to provide for the organization of the association, the initial amount of stock of the association, the territory within which its operations may be carried on, and to direct at any time such changes in the charter as Farm [1] Credit Administration finds necessary for the accomplishment of the purposes of this chapter.

(As amended Pub. L. 99-205, title II, § 205(e)(10), Dec. 23, 1985, 99 Stat. 1704.)

AMENDMENTS

1985—Pub. L. 99-205 struck out "the Governor of" before "the Farm Credit Administration" in sixth sentence, substituted "Farm Credit Administration" for "Governor" in seventh and eighth sentences, and substituted "Farm Credit Administration" for "Governor", "him", and "he" in ninth sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2093. General corporate powers

Each production credit association shall be a body corporate and, subject to supervision by the Federal intermediate credit bank for the district and regulation by the Farm Credit Administration, shall have power to—

[See main edition for text of (1) to (18)]

(19) Perform any functions delegated to it by the bank.

[See main edition for text of (20)]

(As amended Pub. L. 99-205, title II, § 205(e)(11), Dec. 23, 1985, 99 Stat. 1704.)

[1] So in original. Probably should be preceded by "the".

AMENDMENTS

1985—Pub. L. 99-205 inserted "regulation by" before "the Farm Credit Administration" in provision preceding par. (1).

Par. (19). Pub. L. 99-205 struck out "or the Farm Credit Administration" after "by the bank".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2094. Stock and participation certificates

[See main edition for text of (a) and (b)]

(c) Nonvoting stock

Nonvoting stock may be issued to to [2] other investors.

(d) Preferred stock

Preferred stock, which shall be nonvoting, may be issued to other investors when authorized by a majority vote of the outstanding shares of voting stock, by a majority vote of the outstanding shares of the nonvoting stock, and by a majority vote of the outstanding shares of preferred stock. For the purpose of this subsection only, the holders of such stock shall be entitled to one vote, in person or by written proxy, for each share of stock held. The authorization to issue preferred stock shall state the privileges, restrictions, limitations, dividend rights (either cumulative or noncumulative) [3] redemption rights, preferences, and other qualifications affecting said stock, and the total amount of the authorized issue to which it belongs.

[See main edition for text of (e) to (i)]

(j) First liens

Except with regard to stock or participation certificates held by other Farm Credit System institutions, each production credit association shall have a first lien on stock and participation certificates it issues, allocated surplus, and on investments in equity reserve, for any indebtedness of the holder of such capital investments and, in the case of equity reserve, for charges for association losses in excess of reserves and surplus.

(k) Default

In any case where the debt of a borrower is in default, the association may retire all or part of the capital investments in the association held by such debtor at the book value thereof, not exceeding par or face amount, as the case may be, in total or partial liquidation of the debt, on written notice to the borrower and approval by the bank of such retirement.

(As amended Pub. L. 99-205, title II, § 205(e)(12)-(14), title III, § 304(b), Dec. 23, 1985, 99 Stat. 1705, 1708.)

[2] So in original.

[3] So in original. Probably should be followed with a comma.

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AMENDMENTS

1985—Subsec. (c). Pub. L. 99-205, § 205(e)(12), struck out "the Governor of the Farm Credit Administration and" after "issued to".

Subsec. (d). Pub. L. 99-205, § 205(e)(13), struck out "to the Governor and" after "may be issued" and ", except that all stock held by the Governor shall be excluded from voting hereunder" after "preferred stock" in first sentence.

Subsec. (j). Pub. L. 99-205, § 205(e)(14), struck out "the Governor or" after "held by".

Subsec. (k). Pub. L. 99-205, § 304(b), inserted ", on written notice to the borrower and approval by the bank of such retirement".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2095. Application of earnings; restoration of capital impairment; surplus account

(a) Each production credit association at the end of each fiscal year shall apply the amount of its earnings for such year in excess of its operating expenses (including provision for valuation reserves against loan assets in an amount equal to one-half of 1 percent of the loans outstanding at the end of the fiscal year to the extent that such earnings in such year in excess of other operating expenses permit, or in such greater amounts as are deemed necessary under generally accepted accounting principles, until such reserves equal or exceed 3½ percent of the loans outstanding at the end of the fiscal year, beyond which 3½ percent further additions to such reserves may be made, if deemed necessary under generally accepted accounting principles) first to the restoration of the impairment, if any, of capital; and second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Federal intermediate credit bank.

(b) When the bylaws of an association so provide and subject to the general directions of the Farm Credit Administration, available net earnings at the end of any fiscal year may be distributed on a patronage basis in stock, participation certificates, or in cash. In accordance with the foregoing, any part of the earnings of the fiscal year in excess of the operating expenses for such year held in the surplus account may be allocated to patrons on a patronage basis.

(As amended Pub. L. 99-205, title II, § 205(e)(15), title VI, § 605, Dec. 23, 1985, 99 Stat. 1705, 1711.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-205, § 605(1), in parenthetical text, substituted "percent" for "per centum" wherever appearing, inserted "such" before "earnings", inserted "or in such greater amounts as are deemed necessary under generally accepted accounting principles," before "until such reserves", and substituted "may be made, if deemed necessary under generally accepted accounting principles" for "are not required but may be made".

Subsec. (b). Pub. L. 99-205, §§ 205(e)(15), 605(2), in first sentence, struck out end text reading "except that when the Governor holds any stock in an association the cash distribution shall be such percentage of the patronage refund as shall be determined under regulations of the Farm Credit Administration" and substituted "so provide and subject to the general directions of the Farm Credit Administration" for "so provide,"; and, in second sentence, substituted "In accordance with the foregoing, any" for "Any".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2094 of this title.

§ 2096. Short and intermediate term loans; participation; other financial assistance; terms; conditions; interest; security

(a) Each production credit association, under standards prescribed by the board of directors of the Federal intermediate credit bank of the district, may make, guarantee, or participate with other lenders in short- and intermediate-term loans and other similar financial assistance to (1) bona fide farmers and ranchers and the producers or harvesters of aquatic products, for agricultural or aquatic purposes and other requirements of such borrowers, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products: *Provided*, That the borrower's operations shall supply at least 20 per centum, or such larger per centum that is required by the supervising bank under regulations of the Farm Credit Administration, of the total processing or marketing for which financing is extended, (2) rural residents for housing financing in rural areas, under regulations of Farm Credit Administration, and (3) persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs. Rural housing financed under this subchapter shall be for single-family, moderate-priced dwellings and their appurtenances not inconsistent with the general quality and standards of housing existing in, planned or recommended for the rural area where it is located. The aggregate of such housing loans in an association to persons other than farmers or ranchers shall not exceed 15 per centum of the outstanding loans at the end of its preceding fiscal year except upon prior approval by the Federal intermediate credit bank of the district. The aggregate of such housing loans in any farm credit district shall not exceed 15 per centum of the outstanding loans of all associations in the district at the end of the preceding fiscal year. For rural housing purposes under this section the term "rural areas" shall not be defined to include any city or village having a population in excess of 2,500 inhabitants. Each association may own and lease, or lease with option to purchase, to stockholders of the association equipment needed in the operations of the stockholder.

(b) Loans authorized in subsection (a) hereof shall bear such rate or rates of interest as are determined under standards prescribed by the board of the bank subject to the provisions of

section 2205 of this title, and shall be made upon such terms, conditions, and upon such security, if any, as shall be authorized in such regulations. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers, at the lowest reasonable cost on a sound business basis, taking into account the cost of money to the association, necessary reserves and expenses of the association, and services provided to borrowers and members. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan in accordance with the rate or rates currently being charged by the association. Such standards may require prior approval of the bank on certain classes of loans; and may authorize a continuing commitment to a borrower of a line of credit.

(As amended Pub. L. 99-205, title II, § 205(b), Dec. 23, 1985, 99 Stat. 1703.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-205, § 205(b)(1), substituted "standards" for "rules and regulations" and struck out "and approved by the Farm Credit Administration" after "of the district" in first sentence.

Subsec. (b). Pub. L. 99-205, § 205(b)(2), (3), substituted "standards" for "regulations" and "subject to the provisions of" for "with the approval of the Farm Credit Administration as provided in" in first sentence, and substituted "standards" for "regulations" and struck out "or of Farm Credit Administration" after "of the bank" in last sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2098. Taxation

Each production credit association and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such associations shall be exempt, both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority.

(As amended Pub. L. 99-205, title II, § 205(e)(16), Dec. 23, 1985, 99 Stat. 1705.)

AMENDMENTS

1985—Pub. L. 99-205 struck out last two sentences which related to exemption of production credit associations and their property, franchises, capital, reserves, surplus, other funds, and income from Federal and non-Federal taxation except for Federal income taxation of interest on obligations of such associations and for Federal and non-Federal taxation of real and tangible personal property of such associations to same extent as similar property is taxed and making such exemption provisions applicable only for any year or part thereof in which stock in such associations was held by the Governor of the Farm Credit Administration.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

SUBCHAPTER III—BANKS FOR COOPERATIVES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2156, 2181, 2216h of this title.

§ 2122. Corporate existence; general corporate powers

Each bank for cooperatives shall be a body corporate and, subject to regulation by the Farm Credit Administration, shall have power to—

[*See main edition for text of (1) to (12)*]

(13)(A) Buy and sell obligations of or insured by the United States or of any agency thereof, or securities backed by the full faith and credit of any such agency and make such other investments as may be authorized under regulations issued by the Farm Credit Administration.

[*See main edition for text of (B) and (C), (14) and (15)*]

(16) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the bank.

(17) As may be authorized by the board of directors and approved by the Farm Credit Administration, maintain credit balances and pay or receive fees or interest thereon, for the purpose of assisting in the transfer of funds to or from parties to transactions that may be financed under section 2128(b) of this title: *Provided, however,* That nothing herein shall authorize the banks for cooperatives to engage in the business of accepting domestic deposits.

(18) As may be authorized by its board of directors and approved by the Farm Credit Administration, agree with other Farm Credit System institutions to share loan or other losses, whether to protect against capital impairment or for any other purpose.

(As amended Pub. L. 99-205, title II, § 205(e)(1), Dec. 23, 1985, 99 Stat. 1705.)

AMENDMENTS

1985—Pub. L. 99-205 substituted "regulation" for "supervision" in provision preceding par. (1).

Par. (13)(A). Pub. L. 99-205 inserted "under regulations issued" after "authorized".

Pars. (16) to (19). Pub. L. 99-205 struck out par. (16) respecting power of bank for cooperatives to perform any function delegated to it by the Farm Credit Administration, and redesignated pars. (17) to (19) as (16) to (18), respectively.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2123. Board of directors

(a) In the case of a district bank for cooperatives, the board of directors shall be the farm credit district board and in the case of the Central Bank for Cooperatives shall be a separate board of not more than thirteen members, one from each farm credit district and one at large. One district director of the Central Bank Board

shall be elected by each district farm credit board and the member at large shall be appointed by the Farm Credit Administration.

[*See main edition for text of* (b)]

(As amended Pub. L. 99-205, title II, § 205(e)(2), Dec. 23, 1985, 99 Stat. 1705.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-205 substituted "Farm Credit Administration" for "Governor with the advice and consent of the Federal Farm Credit Board".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2124. Stock of banks for cooperatives

[*See main edition for text of* (a) *to* (c)]

(d) Entitlement to vote

Each holder of one or more shares of voting stock which is eligible to borrow from a bank for cooperatives shall be entitled only to one vote and only in the affairs of the bank in the district in which its principal office is located unless otherwise authorized under regulations issued by by [2] the Farm Credit Administration, except that if such holder has not been a borrower from the bank in which it holds such stock within a period of two years next preceding the date fixed by the Farm Credit Administration prior to the commencement of voting, it shall not be entitled to vote.

(e) Nonvoting investment stock

Nonvoting investment stock may be issued in such series and in such amounts as may be determined by the board and approved by the Farm Credit Administration and may be exchanged for voting stock or sold or transferred to any person subject to the approval of the issuing bank.

[*See main edition for text of* (f)]

(As amended Pub. L. 99-205, title II, § 205(e)(3), (4), Dec. 23, 1985, 99 Stat. 1705.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-205, § 205(e)(3), inserted "under regulations issued by" after "authorized".

Subsec. (e). Pub. L. 99-205, § 205(e)(4), struck out ", except for stock held by the Governor," before "may be exchanged".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2125. Dividends

Dividends may be payable only on nonvoting investment stock, other than stock held by the Farm Credit Administration, if declared by the board of directors of the bank, subject to the general direction of the Farm Credit Administration.

[2] So in original.

(As amended Pub. L. 99-205, title II, § 205(e)(5), title VI, § 606, Dec. 23, 1985, 99 Stat. 1705, 1711.)

AMENDMENTS

1985—Pub. L. 99-205 struck out "the Governor of" before "the Farm Credit Administration" and inserted ", subject to the general direction of the Farm Credit Administration".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2126. Retirement of stock

Nonvoting investment stock and participation certificates may be called for retirement at par. With the approval of the issuing bank, the holder may elect not to have the called stock or participation certificates retired in response to a call, reserving the right to have such stock or participation certificates included in the next call for retirement. Voting stock may also be retired at par, on call or on such revolving basis as the board may determine with approval of the Farm Credit Administration with due regard for its total capital needs: *Provided, however,* That all equities in the district banks issued or allocated with respect to 1971 and prior years shall be retired on a revolving basis according to the year of issue with the oldest outstanding equities being first retired. Equities issued for subsequent years shall not be called or retired until equities described in the preceding sentence of this proviso have been retired.

(As amended Pub. L. 99-205, title II, § 205(e)(6), Dec. 23, 1985, 99 Stat. 1705.)

AMENDMENTS

1985—Pub. L. 99-205 substituted "Nonvoting investment stock" for "Any nonvoting stock held by the Governor of the Farm Credit Administration shall be retired to the extent required by section 2151(b) of this title before any other outstanding voting or nonvoting stock or participation certificates shall be retired except as may be otherwise authorized by the Farm Credit Administration. When those requirements have been satisfied, nonvoting investment stock", and substituted "Voting" for "When the requirements of section 2151(b) of this title have been met, voting".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2129. Eligibility

(1) Any association of farmers, producers or harvesters of aquatic products, or any federation of such associations, which is operated on a cooperative basis, and has the powers for processing, preparing for market, handling, or marketing farm or aquatic products; or for purchasing, testing, grading, processing, distributing, or furnishing farm or aquatic supplies or furnishing farm or aquatic business services or services to eligible cooperatives and conforms to either of the two following requirements:

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(a) no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

(b) does not pay dividends on stock or membership capital in excess of such per centum per annum as may be approved under regulations of the Farm Credit Administration; and in any case

(c) does not deal in farm products or aquatic products, or products processed therefrom, farm or aquatic supplies, farm or aquatic business services, or services to eligible cooperatives with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members, excluding from the total of member and nonmember business transactions with the United States or any agency or instrumentality thereof or services or supplies furnished as a public utility; and

(d) A [1] percentage of the voting control of the association not less than 80 per centum (60 per centum (1) in the case of rural electric, telephone, public utility, and service cooperatives; (2) in the case of local farm supply cooperatives that have historically served needs of the community that would not adequately be served by other suppliers and have experienced a reduction in the percentage of farmer membership due to changed circumstances beyond their control such as, but not limited to, urbanization of the community; and (3) in the case of local farm supply cooperatives that provide or will provide needed services to a community and that are or will be in competition with a cooperative specified in paragraph (2)) or, with respect to any type of association or cooperative, such higher percentage as established by the district board, is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations as defined herein;

shall be eligible to borrow from a bank for cooperatives.

(2) Notwithstanding any other provision of this subchapter, cooperatives and other entities that have received a loan, loan commitment, or loan guarantee from the Rural Electrification Administration, or a loan or loan commitment from the Rural Telephone Bank, or that have been certified by the Administrator of the Rural Electrification Administration to be eligible for such a loan, loan commitment, or loan guarantee, and subsidiaries of such cooperatives or other entities, shall also be eligible to borrow from a bank for cooperatives.

(As amended Pub. L. 99-198, title XIII, § 1322, Dec. 23, 1985, 99 Stat. 1534.)

AMENDMENTS

1985—Pub. L. 99-198, § 1322(1), designated existing provisions as subsec. (1) and added subsec. (2).

§ 2130. Ownership of stock by borrowers

[*See main edition for text of* (a)]

(b) Notwithstanding the provisions of subsection (a) of this section, the purchase of stock need not be required with respect to that part of any loan made by a bank for cooperatives which it sells to or makes in participation with financial institutions other than any of the banks for cooperatives. In such cases the distribution of earnings of the bank for cooperatives shall be on the basis of the interest in the loan retained by such bank.

[*See main edition for credits*]

CODIFICATION

Subsec. (b) is set out in this supplement because it had been omitted inadvertently from the main edition.

§ 2132. Earnings and reserves; application of savings

(a) Repealed. Pub. L. 99-205, title II, § 205(e)(7), Dec. 23, 1985, 99 Stat. 1705

(b) Application of savings

At the end of each fiscal year, the net savings shall, under regulations prescribed by the Farm Credit Administration, continue to be applied on a cooperative basis with provision for sound, adequate capitalization to meet the changing financing needs of eligible cooperative borrowers and prudent corporate fiscal management, to the end that current year's patrons carry their fair share of the capitalization, ultimate expenses, and reserves related to the year's operations and the remaining net savings shall be distributed as patronage refunds as provided in subsections (c) and (d) of this section. Such regulations may provide for application of net savings to the restoration or maintenance of an allocated surplus account, reasonable additions to unallocated surplus, or to unallocated reserves after payment of operating expenses as may be approved by the Farm Credit Administration, and provide for allocations to patrons not qualified under title 26, or payment of such per centum of patronage refunds in cash, as the board may determine. If during the fiscal year but not at the end thereof a bank shall have had outstanding capital stock held by the United States, provision will be made for payment of franchise taxes required in section 2151 of this title.

(c) Patronage refunds

The net savings of each district bank for cooperatives, after the earnings for the fiscal year have been applied in accordance with subsection (b) of this section, whichever is applicable, shall be paid in stock, participation certificates, or cash, or in any of them, as determined by its board, as patronage refunds to borrowers to whom such refunds are payable who are borrowers of the fiscal year for which such patronage refunds are distributed. Except as provided in subsection (d) below, all patronage refunds shall be paid in proportion that the amount of interest and service fees on the loans to each borrower during the year bears to the interest and service fees on the loans of all borrowers during the year or on such other proportionate patronage basis as the Farm Credit Administration may approve.

[1] So in original. Probably should not be capitalized.

(d) Savings of Central Bank for Cooperatives

The net savings of the Central Bank for Cooperatives after the earnings for the fiscal year have been applied in accordance with subsection (b) of this section whichever is applicable,[4] shall be paid in stock or cash, or both, as determined by the board, as patronage refunds to the district banks on the basis of interests held by the Central Bank in loans made by the district banks and upon any direct loans made by the Central Bank to cooperative associations, or on such other proportionate patronage basis as the Farm Credit Administration may approve. In cases of direct loans, such refund shall be paid to the district bank or banks which issued their stock to the borrower incident to such loans, and the district bank or banks shall issue a like amount of patronage refunds to the borrower.

[*See main edition for text of* (e) *to* (g)]

(As amended Pub. L. 99-205, title II, § 205(e)(7), (8), Dec. 23, 1985, 99 Stat. 1705.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-205, § 205(e)(7), struck out subsec. (a) which provided for application of savings when bank for cooperatives has outstanding stock held by the Governor.

Subsec. (b). Pub. L. 99-205, § 205(e)(8)(A), substituted "At the end of each fiscal year, the net" for "Whenever at the end of any fiscal year a bank for cooperatives shall have no outstanding capital stock held by the Governor of the Farm Credit Administration, the net".

Subsecs. (c), (d). Pub. L. 99-205, § 205(e)(8)(B), substituted "subsection (b) of this section" for "subsection (a) or (b) of this section".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2133. Distribution of assets on liquidation or dissolution

In the case of liquidation or dissolution of any bank for cooperatives, after payment or retirement, first, of all liabilities; second, of all capital stock issued before January 1, 1956, at par, and all nonvoting stock at par; and third, all voting stock at par; any surplus and reserves existing on January 1, 1956, shall be paid to the holders of stock issued before that date, and voting stock pro rata; and any remaining allocated surplus and reserves shall be distributed to those entities to which they are allocated on the books of the bank, and any other remaining surplus shall be paid to the holders of outstanding voting stock. If it should become necessary to use any surplus or reserves to pay any liabilities or to retire any capital stock, unallocated reserves or surplus, allocated reserves and surplus shall be exhausted in accordance with rules prescribed by Farm Credit Administration.

(As amended Pub. L. 99-205, title II, § 205(e)(9), Dec. 23, 1985, 99 Stat. 1705.)

[4] So in original. Words "whichever is applicable," probably should not appear.

AMENDMENTS

1985—Pub. L. 99-205 struck out ", any stock held by the Governor of the Farm Credit Administration at par" before ", and all nonvoting stock at par", and struck out "stock held by the Governor of the Farm Credit Administration," before "and voting stock pro rata" in first sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2134. Taxation

Each bank for cooperatives and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such bank shall be exempt, both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority.

(As amended Pub. L. 99-205, title II, § 205(e)(10), Dec. 23, 1985, 99 Stat. 1705.)

AMENDMENTS

1985—Pub. L. 99-205 struck out last two sentences relating to exemption of banks for cooperatives and their property, franchises, capital, reserves, surplus, other funds, and income from Federal and non-Federal taxation except for Federal income taxation of interest on obligations of such banks and for Federal and non-Federal taxation of real and tangible personal property of such banks to same extent as similar property is taxed, and making such exemption provisions applicable only for any year or part thereof in which stock in such banks was held by the Governor of the Farm Credit Administration.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

SUBCHAPTER IV—PROVISIONS APPLICABLE TO TWO OR MORE CLASSES OF INSTITUTIONS OF THE SYSTEM

PART A—FUNDING

§ 2151. Revolving funds; investments

The revolving fund established by Public Law 87-343, 75 Stat. 758, as amended, and the revolving fund established by Public Law 87-494, 76 Stat. 109, as amended, and continued by Public Law 96-592, shall be merged and shall be available to the Farm Credit Administration for the purchase, on behalf of the United States, of capital stock of the Capital Corporation. The Farm Credit Administration may make such purchases of stock as the Farm Credit Administration determines, in its discretion, are necessary to achieve the purposes of this chapter.

(As amended Pub. L. 99-205, title I, § 101(1), Dec. 23, 1985, 99 Stat. 1678.)

REFERENCES IN TEXT

The revolving fund established by Public Law 87-343, 75 Stat. 758, as amended, referred to in text, refers to the fund covered by former section 1131i of this title. See Revolving Funds note below.

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The revolving fund established by Public Law 87-494, 76 Stat. 109, as amended, and continued by Public Law 96-592, referred to in text, refers to the revolving fund covered by section 1141d of this title. See Revolving Funds note below.

AMENDMENTS

1985—Pub. L. 99-205 substituted provisions relating to revolving funds and investments for provisions respecting stock purchased by the Governor for the Farm Credit Administration, retirement, and franchise tax.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

REVOLVING FUNDS

At the time of enactment of former section 2152 of this title (see Prior Provisions note under section 2152 of this title) by Pub. L. 92-181 funds for temporary investment by the Governor of the Farm Credit Administration in the farm credit system were available from two revolving funds.

The first fund, providing moneys for investment in production credit associations and intermediate credit banks, was covered by former section 1131i of this title. Such fund was itself the result of an earlier merger of two revolving funds, the first having been created by the Farm Credit Act of 1933 and the second having been created by the Federal Farm Mortgage Corporation Act of 1934. These two were combined into a single fund pursuant to Pub. L. 87-343, § 2(1), Oct. 3, 1961, 75 Stat. 758. Each of the statutory steps in the establishment of such fund was cast in the form of an amendment to the Farm Credit Act of 1933. Since such Farm Credit Act of 1933 has been repealed by section 5.26 of Pub. L. 92-181, section 1131i of this title is carried as repealed. Notwithstanding such apparent repeal, statements of Congressional intent indicate an intention to retain the fund using as its statutory base the law (Pub. L. 87-343) which had effected the consolidation in 1961.

The second fund, providing moneys for investment in banks for cooperatives, is covered by section 1141d of this title. Although the basic authority for such fund would be the Agricultural Marketing Act of 1929, a more updated authority for such fund is the Agricultural Marketing Act Amendment of 1962, Pub. L. 87-494, June 25, 1962, 76 Stat. 109, under which the fund was reduced to $150,000,000 and the amount in such fund in excess of such figure was returned to the Treasury as miscellaneous receipts.

Pub. L. 96-592, referred to in text as continuing the revolving fund established by Pub. L. 87-494 is the Farm Credit Act Amendment of 1980, Pub. L. 96-592, Dec. 24, 1980, 94 Stat. 3437. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 2001 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2077, 2132, 2252 of this title.

§ 2152. Requirements to purchase stock and pay assessments and contribute capital to Capital Corporation

The Federal land banks, the Federal intermediate credit banks, the banks for cooperatives, the Federal land bank associations, and the production credit associations shall purchase stock in, or obligations of, the Capital Corporation, pay assessments, make capital contributions, and take such other related actions as required by the Capital Corporation in the exercise of its powers under this chapter. Any payment for retirement of stock so purchased, or repayment of obligations so purchased, by the Capital Corporation shall be distributed among all holders of such stock or obligations on the basis of the book value of the stock or obligations held by each such holder at the time of the distribution.

(Pub. L. 92-181, title IV, § 4.1, as added Pub. L. 99-205, title I, § 104, Dec. 23, 1985, 99 Stat. 1687.)

PRIOR PROVISIONS

A prior section 2152, Pub. L. 92-181, title IV, § 4.1, Dec. 10, 1971, 85 Stat. 609, relating to revolving funds and government deposits, was repealed, effective thirty days after Dec. 23, 1985, by Pub. L. 99-205, title I, § 101(2), Dec. 23, 1985, 99 Stat. 1678. See section 2151 of this title.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2153. Power to borrow; issuance of notes, bonds, debentures, and other obligations

Each of the banks of the System, in order to obtain funds for its authorized purposes, shall have power, subject to regulation by the Farm Credit Administration, and subject to the limitations of paragraph (e) of this section, to—

[*See main edition for text of* (a)]

(b) Issue its own notes, bonds, debentures, or other similar obligations, fully collateralized as provided in section 2154(c) of this title by the notes, mortgages, and security instruments it holds in the performance of its functions under this chapter in such sums, maturities, rates of interest, and terms and conditions of each issue as it may determine with approval of the Farm Credit Administration.

(c) Join with any or all banks organized and operating under the same subchapter of this chapter in borrowing or in issuance of consolidated notes, bonds, debentures, or other obligations as may be agreed with approval of the Farm Credit Administration.

(d) Join with other banks of the System in issuance of System-wide notes, bonds, debentures, and other obligations in the manner, form, amounts, and on such terms and conditions as may be agreed upon with approval of the Farm Credit Administration. Such System-wide issue by the participating banks and such participations by each bank shall not exceed the limits to which each such bank is subject in the issuance of its individual or consolidated obligations and each such issue shall be subject to approval of the Farm Credit Administration: *Provided, however,* There shall be no issues of System-wide obligations without the concurrence of the boards of directors of each of the 12 districts and the Central Bank for Cooperatives and the approval of the Farm Credit Administration for such issues shall be conditioned on and be evidence of the compliance with this provision.

[*See main edition for text of* (e)]

(As amended Pub. L. 99-205, title II, § 205(f)(1), Dec. 23, 1985, 99 Stat. 1705.)

AMENDMENTS

1985—Pub. L. 99-205 substituted "regulation by" for "supervision of" in provision preceding subsec. (a).

Subsec. (b). Pub. L. 99-205 substituted references to section "2154(c)" for "2154(b)" and "Farm Credit Administration" for "Governor".

Subsecs. (c), (d). Pub. L. 99-205 substituted "Farm Credit Administration" for "Governor" wherever appearing.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2216f, 2244, 2252 of this title.

§ 2154. Capital adequacy of banks and institutions

(a) Minimum levels of capital

The Farm Credit Administration shall cause System institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such System institutions and by using such other methods as the Farm Credit Administration deems appropriate. The Farm Credit Administration may establish such minimum level of capital for a System institution as the Farm Credit Administration, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the System institution.

(b) Failure to maintain minimum levels; directives; plans for achieving minimum levels; proposals affecting compliance

(1) Failure of a System institution to maintain capital at or above its minimum level as established under subsection (a) of this section may be deemed by the Farm Credit Administration, in its discretion, to constitute an unsafe and unsound practice within the meaning of this chapter.

(2)(A) In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the Farm Credit Administration may issue a directive to a System institution that fails to maintain capital at or above its required level as established under subsection (a) of this section. Such directive may require the System institution to submit and adhere to a plan acceptable to the Farm Credit Administration describing the means and timing by which the System institution shall achieve its required capital level, but may not require merger or consolidation without a majority vote of the voting stockholders or the contributors to the guaranty fund of the institution.

(B) Any directive issued under this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of section 2267 of this title to the same extent as an effective and outstanding order issued under section 2261 of this title that has become final.

(3) The Farm Credit Administration may consider such System institution's progress in adhering to any plan required under paragraph (2) whenever such System institution, or an affiliate thereof, seeks the requisite approval of the Farm Credit Administration for any proposal that would divert earnings, diminish capital, or otherwise impede such System institution's progress in achieving its minimum capital level. The Farm Credit Administration may deny such approval where it determines that such proposal would adversely affect the ability of the System institution to comply with such plan.

(c) Collateral

Each bank shall have on hand at the time of issuance of any long-term notes, bonds, debentures, or other similar obligations and at all times thereafter maintain, free from any lien or other pledge, notes and other obligations representing loans made under the authority of this chapter, obligations of the United States or any agency thereof direct or fully guaranteed, other readily marketable securities approved by the Farm Credit Administration, or cash, in an aggregate value equal to the total amount of long-term notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.

(As amended Pub. L. 99-205, title I, § 101(3), Dec. 23, 1985, 99 Stat. 1678.)

AMENDMENTS

1985—Pub. L. 99-205 substituted "Capital adequacy of banks and associations" for "Aggregate of obligations; collateral" in section catchline.

Subsec. (a). Pub. L. 99-205 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "No issue of long-term notes, bonds, debentures, or other similar obligations by a bank or banks shall be approved in an amount which, together with the amount of other bonds, debentures, long-term notes, or other similar obligations issued and outstanding, exceeds twenty times the capital and surplus of all the banks which will be primarily liable on the proposed issue, or such lesser amount as the Farm Credit Administration shall establish by regulation."

Subsecs. (b), (c). Pub. L. 99-205 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2153, 2216f of this title.

§ 2155. Liability of banks; United States not liable

[*See main edition for text of* (a)]

(b) Resolutions as to liability; execution of obligations

Each bank participating in an issue shall by appropriate resolution undertake such responsibility as provided in subsection (a) of this section, and in the case of consolidated or System-wide obligations shall authorize the execution of such long-term notes, bonds, debentures, or other obligations on its behalf. When a consolidated or System-wide issue is approved, the notes, bonds, debentures, or other obligations

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shall be executed and the banks shall be liable thereon as provided herein.

(c) Definition

For purposes of this part, the term "bank" shall include the Capital Corporation.

(d) United States liability

The United States shall not be liable or assume any liability directly or indirectly thereon.

(As amended Pub. L. 99-205, title I, § 101(4), title II, § 205(f)(2), Dec. 23, 1985, 99 Stat. 1679, 1706.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-205, § 205(f)(2), substituted "execution of" for "Governor to execute" in first sentence and struck out "by the Governor" after "shall be executed" in second sentence.

Subsecs. (c), (d). Pub. L. 99-205, § 101(4), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2156. Finance committee

There shall be established a finance committee for the banks organized and operated under subchapters I, II, and III, respectively, of this chapter, composed of the president of each bank or the president's designee. Each such committee may have such officers and such subcommittees for such terms and such representation as may be agreed upon between the banks. When appropriate to the performance of their function, the subcommittees or representatives thereof, of the various banks shall constitute such subcommittees in connection with System-wide issues of obligations. The finance committees and subcommittees acting for the banks of the System shall, subject to approval of the Farm Credit Administration, determine the amount, maturities, rates of interest, and participation by the several banks in each issue of joint, consolidated, or System-wide obligations.

(As amended Pub. L. 99-205, title II, § 205(f)(3), Dec. 23, 1985, 99 Stat. 1706.)

AMENDMENTS

1985—Pub. L. 99-205 substituted "Farm Credit Administration" for "Governor" in fourth sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2161. Central reserve for Farm Credit System

(a) Establishment and maintenance

The Farm Credit Administration may, effective January 1, 1991, establish and maintain a central reserve for the Farm Credit System.

(b) Treasury securities and demand deposits

Such central reserve shall be held in the form of Treasury securities and demand deposits.

(c) Temporary deposits and investments

The Farm Credit Administration may use the reserve to make temporary deposits and temporary investments in financially troubled banks or associations of the Farm Credit System.

(d) Payment of proceeds of notes, bonds, debentures, or other obligations; amounts

(1) The Farm Credit Administration may order payments into such central reserve of one-tenth of 1 percent of the proceeds of each individual, consolidated, or System-wide note, bond, debenture, or other obligation issued by the Farm Credit System, or any part thereof, under this chapter.

(2) Such payments under paragraph (1) may be ordered during any period when such central reserve contains the unobligated sum the Farm Credit Administration deems inadequate to achieve the purposes of such central reserve, but not more than a sum equal to 3 percent of the total of loans outstanding on December 31 of the last preceding calendar year from institutions in the Farm Credit System to persons other than other such institutions.

(e) Repayment of temporary deposits or retirement of temporary investments

The Farm Credit Administration shall require a bank or association to repay in whole or in part a temporary deposit or retire in whole or in part a temporary investment, made in such bank or association under this section, at such time as in the opinion of the Farm Credit Administration such bank or association has resources available therefor and the need for such temporary deposit or temporary investment is reduced or no longer exists.

(f) Rules and regulations

The Farm Credit Administration shall issue rules and regulations implementing this section.

(Pub. L. 92-181, title IV, § 4.9A, as added Pub. L. 99-205, title I, § 105, Dec. 23, 1985, 99 Stat. 1687.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

PART B—DISSOLUTION AND MERGER

§ 2182. Board of directors for merged bank

In the event of merger of two or more banks to serve borrowers in more than one farm credit district, a separate board of directors shall be created for the resulting merged bank. The board thus created shall be composed of two directors elected by each of the district boards involved, at least one of which from each district shall have been elected by the eligible stockholders of or subscribers to the guaranty fund of the merging banks, and one director appointed by the Farm Credit Administration. Notwithstanding the foregoing, the bylaws of the merged bank may, with the approval of the Farm Credit Administration, provide for a different number of directors selected in a differ-

ent manner. The board so constituted shall have such separate and distinct powers, functions, and duties as are normally exercised by a district board related to the operations and policies of the banks which were merged.

(As amended Pub. L. 99-205, title II, § 205(f)(4), Dec. 23, 1985, 99 Stat. 1706.)

AMENDMENTS

1985—Pub. L. 99-205 substituted "Farm Credit Administration" for "Governor with the advice and consent of the Federal Farm Credit Board" in second sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2183. Dissolution; voluntary or involuntary liquidation; mergers; receiverships or conservators

(a) Voluntary liquidation; consent of Farm Credit Administration; rules and regulations; minimization of adverse effect; voluntary merger; mandatory merger on failure to comply or meet obligations

No institution of the System shall go into voluntary liquidation without the consent of the Farm Credit Administration and with such consent may liquidate only in accordance with regulations prescribed by the Farm Credit Administration. In the case of a voluntary liquidation of an association, such regulations, among other things, shall direct the supervising bank to institute such measures as it deems appropriate to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution. Associations may voluntarily merge with other like associations upon the vote of a majority of each of their stockholders present and voting or voting by written proxy at duly authorized meetings, and with the approval of the supervising bank and the Farm Credit Administration. The Farm Credit Administration may require such merger whenever it determines, with the concurrence of the district board, that an association has failed to meet its outstanding obligations or failed to conduct its operations in accordance with this chapter.

(b) Appointment of conservator or receiver; grounds; action for removal; stay of actions or proceedings

The Farm Credit Administration may appoint a conservator or receiver for any System institution on the determination by the Farm Credit Administration that one or more of the following exists, or is occurring, with respect to the institution: (1) insolvency, in that the assets of the institution are less than its obligations to its creditors and others, including its members; (2) substantial dissipation of assets or earnings due to any violation of law, rules, or regulations, or to any unsafe or unsound practice; (3) an unsafe or unsound condition to transact business; (4) willful violation of a cease and desist order that has become final; (5) concealment of books, papers, records, or assets of the institution or refusal to submit books, papers, records, or other material relating to the affairs of the institution for inspection to any examiner or to any lawful agent of the Farm Credit Administration. The Farm Credit Administration shall have exclusive power and jurisdiction to appoint a conservator or receiver. If the Farm Credit Administration determines that a ground for the appointment of a conservator or receiver as herein provided exists, the Farm Credit Administration may appoint ex parte and without notice a conservator or receiver for the institution. In the event of such appointment, the institution, within thirty days thereafter, may bring an action in the United States district court for the judicial district in which the home office of such institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration to remove such conservator or receiver, and the court, shall on the merits, dismiss such action or direct the Farm Credit Administration to remove such conservator or receiver. On the commencement of such an action, the court having jurisdiction of any other action or enforcement proceeding authorized under this chapter to which the institution is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

(c) Involuntary liquidation; rules and regulations; minimization of adverse effect

In the case of an involuntary liquidation of an association, regulations of the Farm Credit Administration, among other things, shall direct the supervising bank to institute such measures as it deems appropriate to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution.

(As amended Pub. L. 99-205, title I, § 102, title II, § 205(f)(5), title III, § 305, Dec. 23, 1985, 99 Stat. 1679, 1706, 1708.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-205, § 205(f)(5), substituted "Farm Credit Administration" for "Federal Farm Credit Board" in last sentence.

Pub. L. 99-205, § 305(a), inserted after first sentence a sentence requiring the regulations, in the case of a voluntary liquidation of an association, to direct the supervising bank to institute appropriate measures to minimize the adverse effect of the liquidation on borrowers whose loans are purchased by or otherwise transferred to another System institution.

Subsec. (b). Pub. L. 99-205, § 102, in revising subsec. (b), substituted expanded provisions respecting appointment of conservator or receiver for former provision, which read: "Upon default of any obligation by any institution of the System, such institution may be declared insolvent and placed in the hands of a conservator or a receiver appointed by the Governor and the proceedings thereon shall be in accordance with regulations of the Farm Credit Administration regarding such insolvencies."

Subsec. (c). Pub. L. 99-205, § 305(b), added subsec. (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

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PART C—RIGHTS OF APPLICANTS

§ 2199. Disclosure

(a) In accordance with regulations of the Farm Credit Administration, System institutions shall provide to their borrowers, for all loans that are not subject to the Truth in Lending Act (15 U.S.C. 1601 et seq.), meaningful and timely disclosure of the following:

(1) the current rate of interest on the loan;

(2) in the case of an adjustable or variable rate loan, the amount and frequency by which the interest rate can be increased during the term of the loan or, if there are no such limitations, a statement to that effect, and the factors (including, but not limited to, the cost of funds, operating expenses, and provision for loan losses) that will be taken into account by the lending institution in determining adjustments to the interest rate;

(3) the effect, as shown by a representative example or examples, of the required purchase of stock or participation certificates in the institution on the effective rate of interest; and

(4) any change in the interest rate applicable to the borrower's loan.

(b) In accordance with regulations of the Farm Credit Administration, System institutions shall develop a policy governing forbearance. Each System institution shall provide borrowers with a copy of the institution's policy regarding forbearance at such time or times as the Farm Credit Administration shall prescribe in such regulations.

(Pub. L. 92-181, title IV, § 4.13, as added Pub. L. 99-205, title III, § 301(b), Dec. 23, 1985, 99 Stat. 1707.)

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (a), is title I of Pub. L. 90-321, May 29, 1968, 82 Stat. 146, as amended, which is classified generally to subchapter I (§ 1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

PRIOR PROVISIONS

A prior section 4.13 of Pub. L. 92-181, title IV, Dec. 10, 1971, 85 Stat. 613, which was renumbered section 4.13B by Pub. L. 99-205, title III, § 301(a), Dec. 23, 1985, 99 Stat. 1707, is classified to section 2201 of this title.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2202 of this title.

§ 2200. Access to documents and information

In accordance with regulations of the Farm Credit Administration, System institutions shall provide their borrowers, at the time of execution of loans, copies of all documents signed by the borrower and at any time thereafter, on a borrower's request, copies of all documents signed or delivered by the borrower and at any time, on request, a copy of the institution's articles of incorporation or charter and bylaws.

(Pub. L. 92-181, title IV, § 4.13A, as added Pub. L. 99-205, title III, § 301(b), Dec. 23, 1985, 99 Stat. 1707.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2201. Notice of action on application

Every applicant for a loan from an institution of the System shall be entitled to prompt written notice of action on his application, and, if the loan applied for is reduced or denied, the reason for such action, and of the applicant's right to review under section 2202 of this title.

(Pub. L. 92-181, title IV, § 4.13B, formerly § 4.13, Dec. 10, 1971, 85 Stat. 613, renumbered § 4.13B and amended Pub. L. 99-205, title III, §§ 301(a), 302, Dec. 23, 1985, 99 Stat. 1707, 1708.)

AMENDMENTS

1985—Pub. L. 99-205, § 302, provided for a "written" notice and for the applicant's right to review under section 2202 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2202. Reconsideration of action on loan application

The board of directors of each Farm Credit System institution shall establish one or more credit review committee(s), which shall include farmer board respresentation. Any loan applicant who has received written notice, under section 2199 of this title, of a decision to deny or reduce the loan applied for, if the applicant so requests in writing within thirty days after receiving such notice, may obtain a review of such decision in person before the credit review committee. When a loan applicant requests review of an adverse credit decision, a majority of persons serving on such reviews [1] committee must be persons who were not involved in making the adverse decision. Promptly after any such review, the applicant shall be notified in writing of the credit review committee's decision and the reasons therefor.

(As amended Pub. L. 99-205, title III, § 303, Dec. 23, 1985, 99 Stat. 1708.)

AMENDMENTS

1985—Pub. L. 99-205, in amending section generally, substituted provisions respecting reconsideration of action on loan application for prior reconsideration provisions which read: "Any applicant who has reason to believe that the action on his application by an association failed to take into account facts pertinent to his application, or has misinterpreted or failed to

[1] So in original. Probably should be "review".

properly apply the applicable law or rules and regulations governing his application, may, if he so requests in writing within thirty days of the date of that notice, request an informal hearing on his application and the action of the association in reduction or denial thereof, or the reason for such action, in person before the loan committee or officer or employee thereof authorized to act on applications under section 2033(11) or 2093(18) of this title. Promptly after such a hearing, he shall be notified of the decision upon reconsideration and the reasons therefor."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2201 of this title.

§ 2205. Interest rates

Interest rates on loans from institutions of the Farm Credit System shall be determined with the approval of, as provided in section 2252(a)(5) of this title, the Farm Credit Administration as provided in this chapter, notwithstanding any interest rate limitation imposed by any State constitution or statute or other laws which are hereby preempted for purposes of this chapter. Interest rates on loans made by agricultural credit corporations organized in conjunction with cooperative associations for the purpose of financing the ordinary crop operations of the members of such associations or other producers and eligible to discount with the Federal intermediate credit banks pursuant to section 2074 of this title shall be exempt from any interest rate limitation imposed by any State constitution or statute or other laws which are hereby preempted for purposes of this chapter.

(As amended Pub. L. 99-205, title II, § 205(f)(6), Dec. 23, 1985, 99 Stat. 1706.)

AMENDMENTS

1985—Pub. L. 99-205 inserted ", as provided in section 2252(a)(5) of this title," after "with the approval of" in first sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2206. Participation loans

Notwithstanding any other provisions of this chapter, the terms of any loan participated in by two or more Farm Credit System institutions operating under different subchapters of this chapter, including provisions for capitalization of the portion of the loan participated in by each institution, shall be as may be agreed upon among such institutions and authorized under regulations issued by the Farm Credit Administration, except that for purposes of determining borrower eligibility, membership, term, amount, loan security, and purchase of stock or participation certificates by the borrower, the provisions of law applicable to the loan shall be the provisions in the subchapter under which the institution that originates the loan operates.

(As amended Pub. L. 99-205, title II, § 205(f)(7), Dec. 23, 1985, 99 Stat. 1706.)

AMENDMENTS

1985—Pub. L. 98-205 inserted "under regulations issued" after "authorized".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

PART D—SERVICE ORGANIZATIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 2216, 2216g, 2271 of this title.

§ 2211. Establishment

Any bank of the Farm Credit System, or two or more of such banks acting together, may organize a corporation or corporations for the purpose of performing functions and services for or on behalf of the organizing bank or banks that the bank or banks may perform pursuant to this chapter: *Provided*, That a corporation so organized shall have no authority either to extend credit or provide insurance services for borrowers from Farm Credit System institutions, nor shall it have any greater authority with respect to functions and services than the organizing bank or banks possess under this chapter. The organizing bank or banks shall apply for a Federal charter for the corporation by forwarding to the Farm Credit Administration a statement of the need for the corporation and proposed articles specifying in general terms the objectives for which the corporation is formed, the powers to be exercised by it in carrying out the functions and services, and the territory it is to serve. The Farm Credit Administration for good cause may deny the charter applied for. Upon the approval of articles by the Farm Credit Administration and the issuance of a charter, the corporation shall become as of such date a federally chartered body corporate and an instrumentality of the United States.

(As amended Pub. L. 99-205, title II, § 205(f)(8), Dec. 23, 1985, 99 Stat. 1706.)

AMENDMENTS

1985—Pub. L. 99-205 struck out "the Governor of" before "the Farm Credit Administration" in second sentence and substituted "Farm Credit Administration" for "Governor" in third and fourth sentences.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2212. Powers of Farm Credit Administration

The Farm Credit Administration shall have power, under rules and regulations prescribed by the Farm Credit Administration or by prescribing in the terms of the charter or by approval of the bylaws of the corporation, to provide for the organization of any corporation chartered under this part and the territory within which its operations may be carried on,

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and to direct at any time such changes in its charter as the Farm Credit Administration finds necessary for the accomplishment of the purposes of this chapter. The powers of the Farm Credit Administration to provide for the organization of any corporation chartered under this part include, but are not limited to approval of—

[*See main edition for text of (1) to (7)*]

(As amended Pub. L. 99-205, title II, § 205(f)(9), Dec. 23, 1985, 99 Stat. 1706.)

AMENDMENTS

1985—Pub. L. 99-205 substituted "Farm Credit Administration" for "Governor" in heading and wherever appearing in text, and substituted "the Federal Credit Administration" for "he" before "finds necessary" in first sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2213. Regulation and examination

The corporations organized under this part shall be institutions of the Farm Credit System and shall be subject to the same regulation and examination by the Farm Credit Administration as are the organizing bank or banks under this chapter.

(As amended Pub. L. 99-205, title II, § 205(f)(10), Dec. 23, 1985, 99 Stat. 1706.)

AMENDMENTS

1985—Pub. L. 99-205 substituted "regulation" for "supervision".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

PART D1—FARM CREDIT SYSTEM CAPITAL CORPORATION

§ 2216. Existence of corporation

The Farm Credit Administration, not later than 60 days after December 23, 1985, shall (1) charter the Farm Credit System Capital Corporation (referred to in this chapter as "the Capital Corporation"), which, subject to the provisions of this part and the regulations of the Farm Credit Administration, shall be a federally chartered instrumentality of the United States and an institution of the Farm Credit System, and (2) revoke the charter for the Farm Credit System Capital Corporation issued under part D of this subchapter. The charter issued to the Farm Credit System Capital Corporation pursuant to this paragraph shall be reviewed on December 31, 1987. The Farm Credit Administration Board shall submit to Congress by December 31, 1987, a report and analysis of the Capital Corporation together with any recommendations for legislation to extend the charter of the Farm Credit System Capital Corporation.

(Pub. L. 92-181, title IV, § 4.28A, as added Pub. L. 99-205, title I, § 103, Dec. 23, 1985, 99 Stat. 1680.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2216a. Purposes

For the sole purpose of carrying out a program of financial and technical assistance to institutions within the Farm Credit System (and their borrowers) which are experiencing financial difficulties, the Capital Corporation shall, in accordance with this part—

(1) carry out a program of financial assistance among institutions of the Farm Credit System;

(2) acquire from other Farm Credit System institutions and participate with such institutions in nonperforming assets of such institutions;

(3) hold, restructure, collect, and otherwise administer nonperforming assets acquired from or participated in with other Farm Credit System institutions, and guarantee performing and nonperforming assets held by other Farm Credit institutions;

(4) provide technical assistance and related services to other Farm Credit System institutions in connection with the administration of their loan portfolios;

(5) provide assistance and related services to Farm Credit System institutions to assist them in restructuring or refinancing loans of their member-borrowers; and

(6) receive and administer financial assistance for Farm Credit System institutions that originates outside of the Farm Credit System.

(Pub. L. 92-181, title IV, § 4.28B, as added Pub. L. 99-205, title I, § 103, Dec. 23, 1985, 99 Stat. 1680.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2216b. Board of Directors of Capital Corporation

(a) Membership; derivation; election or appointment; projections for election; regulations and bylaws; increase of membership

(1) The Board of Directors of the Capital Corporation shall consist of five members, of which—

(A)(i) three members shall be elected by the farm credit banks that own the voting stock in the Corporation, with—

(I) one such member being elected from an institution and a district that, at the time of such election, is or is projected to be a net contributor of capital to the Corporation;

(II) one such member being elected from an institution and a district that, at the time of such election, is or is projected to be a net recipient of capital (other than through the sale of loans or other assets at fair market value) from the Corporation; and

(III) one such member being elected without regard to the restrictions in clause [1] (i) and (ii).

(ii) Each such bank shall have the right to cast one vote to fill each such vacancy without regard to the number of voting shares owned by such bank.

(B) two members shall be appointed by the Chairman of the Farm Credit Administration Board.

(2) Members appointed by the Chairman under paragraph (1)(B) shall be selected from United States citizens—

(A) who are not borrowers from, shareholders in, or employees or agents of any institution of the Farm Credit System; and

(B) who are experienced in financial services and credit.

(3) The Farm Credit Administration Board shall, in its sole discretion and for purposes of the election of directors to the Capital Corporation only, project whether—

(A) institutions within a district are or will be a net contributor of capital to the Corporation, or

(B) the institutions within a district are or are expected to become net recipients of capital from the Corporation.

(4) The Farm Credit Administration Board shall issue regulations providing for fair and equitable representation of all public and private interests on the Board of Directors of the Capital Corporation. The bylaws of the Corporation shall prescribe the procedures, established pursuant to regulations issued by the Board, under which directors of the Corporation will be nominated and elected.

(5) Notwithstanding paragraph (1), in the event the Secretary of the Treasury purchases any obligation of the Farm Credit System Capital Corporation under section 2216i of this title, and for so long as such obligation remains outstanding, the Board of Directors of the Capital Corporation shall be expanded by two members, of which—

(A) one member shall be appointed by the Secretary of Agriculture; and

(B) one member shall be selected by the other members of the Board of the Capital Corporation, including the appointee of the Secretary of Agriculture, which member shall not be a—

(i) borrower from, shareholder in, or employee or agent of any institution of the Farm Credit System; or

(ii) a government employee.

(b) Term of office

Members of the Board of Directors shall serve two-year terms, except that, of the members first elected or appointed to the Board of Directors, one elected member and one appointed member shall serve initial terms of one year.

(c) Chairman

The Board of Directors shall elect, on an annual basis, a Chairman from among the members of the Board.

[1] So in original. Probably should be "clauses".

(d) Succession; vacancies

(1) Members of the Board may succeed themselves and may serve until their successors are duly seated.

(2) Vacancies on the Board shall be filled in the same manner as the vacant position was previously filled.

(Pub. L. 92-181, title IV, § 4.28C, as added Pub. L. 99-205, title I, § 103, Dec. 23, 1985, 99 Stat. 1680.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2216c. Compensation of Board members

Members of the board of directors of the Capital Corporation shall receive compensation, including reasonable allowances for necessary expenses, in attending meetings of the board. The compensation shall not be in excess of the level set by the Farm Credit Administration.

(Pub. L. 92-181, title IV, § 4.28D, as added Pub. L. 99-205, title I, § 103, Dec. 23, 1985, 99 Stat. 1682.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2216d. Board procedures

The board of directors of the Capital Corporation shall adopt such rules as it may deem appropriate for the transaction of its business and shall keep permanent and accurate records and minutes of its acts and proceedings.

(Pub. L. 92-181, title IV, § 4.28E, as added Pub. L. 99-205, title I, § 103, Dec. 23, 1985, 99 Stat. 1682.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2216e. Chief executive officer of Corporation

The chief executive officer of the Capital Corporation shall be selected by the board of directors of the Capital Corporation, subject to the approval of the Farm Credit Administration, and shall serve at the pleasure of the board.

(Pub. L. 92-181, title IV, § 4.28F, as added Pub. L. 99-205, title I, § 103, Dec. 23, 1985, 99 Stat. 1682.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

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§ 2216f. General corporate powers

(a) Power and authority of Corporation

The Capital Corporation shall be a body corporate and, subject to regulation by the Farm Credit Administration, shall have the power to—

(1) operate under the direction of its board of directors;

(2) adopt, alter, and use a corporate seal, which shall be judicially noted;

(3) provide for one or more vice presidents, a secretary, a treasurer, and such other officers, employees, and agents, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

(4) prescribe by its board of directors its bylaws, not inconsistent with law, which shall provide for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; the manner in which its officers, employees, and agents are selected; its property is acquired, held, and transferred; its loans, commitments, and other financial assistance are made; its general business is conducted; and the privileges granted by law are exercised and enjoyed;

(5) enter into contracts and make advance, progress, or other payments with respect to such contracts;

(6) contract with System institutions for local administration, servicing, and restructuring of loan and loan-related assets and management of acquired properties of the Corporation;

(7) sue and be sued in its corporate name and complain and defend, in any court of competent jurisdiction, State or Federal;

(8) acquire, hold, lease, mortgage, or dispose of, at public or private sale, real and personal property, and guarantee, sell, or exchange any securities or obligations, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to its business;

(9) authorize, through its board of directors, the issuance and sale of obligations, including notes, bonds, debentures, capital notes, and voting or nonvoting securities, to the Secretary of the Treasury or the Farm Credit Administration, under such terms and conditions as shall be determined;

(10) obtain insurance against loss;

(11) modify or consent to modification with respect to the rate of interest, time of payment of any installment of principal or interest, security, or any other term of any contract or agreement to which it is a party or in which it has an interest under this chapter;

(12) borrow from any commercial bank on its own individual responsibility on such terms and conditions as it may determine with the approval of the Farm Credit Administration;

(13) join with Farm Credit System banks in the issuance of System-wide notes, bonds, debentures, and other similar obligations under section 2153(d) of this title, or assume liability with respect to outstanding System-wide obligations. If it satisfies the requirements applicable to banks under section 2154(c) of this title, it shall be jointly and severally liable with the System banks for the payment of principal and interest on such obligations, and pay on such obligations any sums as may be called on by the Farm Credit Administration to make payments of principal or interest that any bank or banks primarily liable therefor are unable to make;

(14) require other institutions of the Farm Credit System, through purchase of stock in, or obligations of, the Capital Corporation, to make funds available to the Capital Corporation to enable it to make financial assistance available to institutions of the Farm Credit System as provided in paragraph (15). The Capital Corporation may also assess at such times and under such circumstances as it deems appropriate, System Institutions for the purpose of covering its operating expenses not to include interest costs. The guidelines to be used by the Capital Corporation in obtaining funds from other institutions of the Farm Credit System for the purpose of aggregating resources to assist System institutions, to the extent practicable, shall give priority to obtaining funds through the use of transactions that require the Capital Corporation, on reasonable terms, to repay the contributed funds from surpluses accumulated by the Capital Corporation, and otherwise shall be in conformity with regulations issued by the Farm Credit Administration;

(15) administer financial assistance under regulations of the Farm Credit Administration which shall—

(A) include standards to ensure that, consistent with sound business practices and subject to the criteria established under subparagraph (B) of this paragraph, the available capital and reserves of System institutions are committed to providing financial assistance to those institutions of the Farm Credit System eligible therefor. The term "available capital and reserves", as used in this subparagraph, shall not include capital stock, participation certificates and allocated equities held by borrowers that are not associations chartered under this chapter;

(B) establish criteria pursuant to which the Capital Corporation shall require other institutions of the Farm Credit System, through the purchase of stock in, or obligations of, the Capital Corporation to make funds available to the Capital Corporation under paragraph (14). Such criteria shall—

(i) provide for an equitable sharing of the burden of such assessments or purchases, taking into account (I) the relative financial strength and ability to pay of the contributing institutions; (II) the effect, including the effect on loan interest rates, on current borrowers and members of each System institution; and (III) the effect on lending rates of financial assistance already provided to other System institutions; and

(ii) be designed to ensure that (I) the capital strength, earning capacity, loanable funds and overall financial viability of each System institution providing funds to the Capital Corporation are maintained at such a level that credit shall continue to be available to eligible borrowers on reasonable and competitive terms, (II) each bank shall continue to have access to funds in the public financial markets, and (III) each bank is able to maintain adequate financial resources to satisfy its liability on its own obligations and on that portion of systemwide notes, bonds, debentures, or other obligations for which it is primarily liable; and

(C) establish criteria to be used in determining eligibility of System institutions for financial assistance from the Capital Corporation and the types and amounts of financial assistance that can be obtained from the Corporation. Such regulations shall provide that an institution shall be eligible to receive financial assistance when its financial condition has deteriorated to a point where its continued operation is jeopardized and the provision of such financial assistance is necessary to ensure that farm credit services will continue to be available to borrowers in the institution's territory;

(16) purchase at fair market value from any other System institution, on the request of such institution, loans (or interests in loans) that have been placed in nonaccrual status and assets (or interests in assets) in the account for acquired properties;

(17) require System institutions to sell to the Capital Corporation loans, assets, and interests described in paragraph (16) as a condition to receiving financial assistance from the Capital Corporation;

(18) exercise all the rights and privileges of any System institution with respect to any loan which it has acquired or in which it has participated, including the adjustment of interest rates, compromise of indebtedness, waiver of default, and other such rights and privileges;

(19) assume debt or other liabilities from System institutions in connection with the acquisition of loans or interests therein or other assets from such institutions;

(20) refinance, reamortize, guarantee, or compromise indebtedness, and otherwise provide debt adjustment assistance, with respect to any loan to a borrower of a System institution purchased under paragraph (16) or participated in by the Capital Corporation, and, after a determination by the Capital Corporation that the borrower could not reasonably be anticipated to meet loan servicing charges under a refinanced, reamortized, or otherwise restructured loan under reasonable terms and conditions acceptable to the Capital Corporation, liquidate any such loan;

(21) purchase from associations undergoing liquidation all assets which are performing loans not voluntarily purchased by other associations;

(22) adopt a salary scale for officers and employees of the Capital Corporation, in accordance with the directives of the board of directors; and

(23) deposit its securities and its current funds with any member of the Federal Reserve System or any insured State nonmember bank as defined in section 2 of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] and pay fees therefor and receive interest thereon as may be agreed.

The Capital Corporation shall have such other incidental powers as are necessary to carry out its powers, duties, and functions in accordance with this chapter.

(b) Termination of lending authority; other powers to remain in effect

The powers of the Capital Corporation set forth in subsection (a) of this section, to the extent they authorize the financial assistance of any type to borrowers and System institutions, shall be limited after December 31, 1990, as provided in this subsection. The powers of the Capital Corporation to directly or indirectly increase the level of such financial assistance to a borrower or institution or to provide directly or indirectly any such financial assistance to a borrower or institution not receiving such assistance on December 31, 1990, shall terminate on that date. All other powers, including those necessary for management and orderly liquidation of commitments made and obligations incurred in providing such assistance to borrowers and institutions on or before December 31, 1990, shall remain in effect thereafter.

(c) Officers, employees or funds of Corporation not considered officers, employees or funds of Federal Government

Officers or employees of the Capital Corporation, like other Farm Credit System employees, shall not be considered officers or employees of the Federal Government. Funds held by the Capital Corporation shall not be construed to be Government funds or appropriated moneys.

(Pub. L. 92-181, title IV, § 4.28G, as added Pub. L. 99-205, title I, § 103, Dec. 23, 1985, 99 Stat. 1682.)

REFERENCES IN TEXT

Section 2 of the Federal Deposit Insurance Act, referred to in subsec. (a)(23), is section 2 of act Sept. 21, 1950, ch. 967, 64 Stat. 873, as amended, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2216j, 2216k of this title.

§ 2216g. Succession of Corporation

On the issuance by the Farm Credit Administration of the new charter for the Capital Corporation under this part, the Capital Corpora-

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tion shall succeed to the assets of and be liable for and assume all debts, obligations, contracts, and other liabilities of the Farm Credit System Capital Corporation chartered under part D of this subchapter (referred to in this section as "the predecessor corporation"), matured or unmatured, accrued, absolute, contingent or otherwise, and whether or not reflected or reserved against on balance sheets, books of account, or records of the predecessor corporation. The stock of the predecessor corporation shall be converted into stock of the Capital Corporation. The existing contractual obligations, security instruments, and title instruments of the predecessor corporation shall, by operation of law and without any further action by the Farm Credit Administration, the predecessor corporation, or any court, become and be converted into obligations, entitlements, and instruments of the Capital Corporation chartered under this part. To the extent that, on the extinguishing of liabilities assumed by the Capital Corporation under this section, and full performance or other final disposition of contract obligations under contracts assumed by the Capital Corporation under this section, there remain surplus funds attributable to such obligations or contracts, the Capital Corporation shall distribute such surplus funds among the System institutions that contributed funds to the predecessor corporation on the basis of the relative amount of funds so contributed by each institution.

(Pub. L. 92-181, title IV, § 4.28H, as added Pub. L. 99-205, title I, § 103, Dec. 23, 1985, 99 Stat. 1685.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2216h. Limitation of powers

(a) The powers of the Capital Corporation under this part shall be exercised only for the purposes specified in this part and shall not be exercised in a manner that would result in the Capital Corporation supplanting the Farm Credit System institutions operating under subchapters I through III of this chapter as the primary providers of credit and other financial services to farmers, ranchers, and their cooperatives.

(b) Sales by the Capital Corporation of real property formerly securing a liquidated loan shall be conducted pursuant to guidelines adopted by the Capital Corporation that are compatible with the following criteria:

(1) Notice of pending sales shall be made public.

(2) Previous owners shall be advised of the pending sale and shall not be precluded from purchasing their former property.

(3) The sale of real property acquired by the Corporation in large tracts shall be discouraged.

(Pub. L. 92-181, title IV, § 4.28I, as added Pub. L. 99-205, title I, § 103, Dec. 23, 1985, 99 Stat. 1685.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2216i. Authority of Secretary of the Treasury

(a) On certification by the Farm Credit Administration that (1) the Farm Credit System is in need of financial assistance to address financial stress of System institutions, (2) the System has committed its available capital surplus and reserves to address such financial stress of System institutions, (3) the salaries and benefits of the senior executive officers of System institutions (except associations) will be frozen, such freeze to remain in effect until the earlier of five years after the freeze begins or such time as the Secretary no longer holds any obligations issued by the Capital Corporation, and (4) the System has used such capital surplus and reserves to the extent that further contributions from, or losses incurred by, System institutions likely will preclude such institutions from making credit available to eligible borrowers on reasonable terms, the Secretary of the Treasury, in the Secretary's discretion, may purchase any obligations issued by the Capital Corporation under this part, as heretofore, now, or hereafter in force; and for such purpose the Secretary of the Treasury may use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, as now or hereafter in force, and the purposes for which securities may be issued under chapter 31 of title 31, as now or hereafter in force, are extended to include such purchases. The authorities provided to the Secretary of the Treasury by the preceding sentence shall be effective for any fiscal year only to such extent or in such amounts as provided in advance in appropriation Acts. The Secretary of the Treasury, at any time, may sell, on such terms and conditions and at such price or prices as the Secretary shall determine, any of the obligations acquired by the Secretary under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this section shall be treated as public-debt transactions of the United States. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be on terms and conditions as shall be determined by the Secretary of the Treasury, taking into consideration the objectives that System institutions retain the ability to make credit available to eligible borrowers on reasonable terms and that banks of the System continue to have access to funds in the public financial markets.

(b) The Farm Credit Administration promptly shall submit a copy of any certification made under subsection (a) of this section to Congress, and the Secretary of the Treasury shall, not later than forty-five days after such certification is made, make known to the Congress and the Farm Credit Administration the Secretary's decision as to exercising the authority under subsection (a) of this section and the reasons and documentation therefor, if that decision is

not to purchase obligations of the Capital Corporation.

(Pub. L. 92-181, title IV, § 4.28J, as added Pub. L. 99-205, title I, § 103, Dec. 23, 1985, 99 Stat. 1686.)

CODIFICATION

In subsec. (a), "chapter 31 of title 31" was substituted for "the Second Liberty Bond Act" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2216b of this title.

§ 2216j. Initial capitalization

The Farm Credit Administration shall provide for the initial capitalization of the Capital Corporation by requiring, in accordance with section 2216f of this title, institutions of the System to contribute capital to the Capital Corporation in such amounts and under such terms and conditions as the Farm Credit Administration, in consultation with System institutions, may prescribe.

(Pub. L. 92-181, title IV, § 4.28K, as added Pub. L. 99-205, title I, § 103, Dec. 23, 1985, 99 Stat. 1687.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2216k. Tax status of consolidated obligations

Consolidated notes, bonds, debentures, or other obligations, the issuance of which is joined in by the Capital Corporation pursuant to paragraph (13) of section 2216f of this title, shall have the same tax status as provided by this chapter with respect to such obligations issued by the banks.

(Pub. L. 92-181, title IV, § 4.28L, as added Pub. L. 99-205, title I, § 103, Dec. 23, 1985, 99 Stat. 1687.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

PART F—MISCELLANEOUS

§ 2219. Limitation on separate sale

If real property is acquired by any institution of the Farm Credit System through foreclosure, no institution of the Farm Credit System shall sell the surface rights to that real property to any person unless the institution also sells all mineral rights to that real property to that person.

(Pub. L. 92-181, title IV, § 4.35, as added Pub. L. 99-205, title III, § 306, Dec. 23, 1985, 99 Stat. 1709.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2219a. Limitation on sale of tracts of real estate

No institution of the Farm Credit System shall sell any real property that previously served as security for a loan in a tract larger than a normal family size farm in the vicinity of the property for less than the amount it can receive from the Capital Corporation.

(Pub. L. 92-181, title IV, § 4.36, as added Pub. L. 99-205, title III, § 306, Dec. 23, 1985, 99 Stat. 1709.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

SUBCHAPTER V—DISTRICT AND FARM CREDIT ADMINISTRATION ORGANIZATION

PART A—DISTRICT ORGANIZATION

§ 2221. Creation of districts

There shall be not more than twelve farm credit districts in the United States, which may be designated by number, one of which districts shall include the Commonwealth of Puerto Rico and one of which districts may, if authorized by the Farm Credit Administration, include the Virgin Islands of the United States: *Provided,* That the extension of credit and other services authorized by this chapter in the Virgin Islands of the United States shall be undertaken only if determined to be feasible under regulations of the Farm Credit Administration. The boundaries of the twelve farm credit districts existing on December 10, 1971, may be readjusted from time to time by the Farm Credit Administration, with the concurrence of the district boards involved. Two or more districts may be merged as provided in section 2252(2) [1] of this title.

(As amended Pub. L. 99-205, title II, § 205(g)(1), Dec. 23, 1985, 99 Stat. 1706.)

REFERENCES IN TEXT

Section 2252(2) of this title, referred to in text, was redesignated as section 2252(a)(2) by Pub. L. 98-592 without corresponding amendment to this section.

AMENDMENTS

1985—Pub. L. 99-205 substituted "Farm Credit Administration" for "Federal Farm Credit Board" in first and second sentences, and made a technical amendment to reference to section 2252(2) of this title to reflect the renumbering of the corresponding section of the original act.

[1] See References in Text note below.

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EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2222. District boards of directors; membership; eligibility; terms

[*See main edition for text of* (a)]

(b) Eligibility of directors

[*See main edition for text of first par.*]

A person shall not be eligible who—

[*See main edition for text of* (1) *to* (3)]

No director of a district board shall be eligible to continue to serve in that capacity and his office shall become vacant if after his election or appointment as a member of a district board, he continues or becomes a salaried officer or employee of the Farm Credit Administration, of any institution of the System, or a member of the Farm Credit Administration Board, or if he becomes legally incompetent or is finally convicted of a felony or held liable in damages for fraud. In any event, no director shall, within one year after the date when he ceases to be a member of the board, be elected or designated to serve as a salaried employee of any bank or joint employee of the district for which he served as director.

[*See main edition for text of* (c)]

(As amended Pub. L. 99-205, title II, § 205(g)(2), Dec. 23, 1985, 99 Stat. 1707.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-205 substituted "Farm Credit Administration Board" for "Federal Farm Credit Board" in concluding provision.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2223. Nomination and election of district directors

(a) Electing and appointing bodies

(1) Two of the district directors shall be elected by the Federal land bank associations, two by the production credit associations, and two by the borrowers from or subscribers to the guaranty fund of the bank for cooperatives.

(2)(A) The seventh member shall be elected by the borrowers at large in a district.

(B) For purposes of this section, the term "borrowers at large in a district" means—

(i) a voting shareholder of a Federal land bank association and a direct borrower, and a borrower through an agency, from a Federal land bank;

(ii) a voting shareholder of a production credit association; and

(iii) a voting shareholder or subscriber to the guaranty fund of a bank for cooperatives.

(b) Nomination

At least two months before an election of an elected director the Farm Credit Administration shall cause notice in writing to be sent to those entitled to nominate candidates for such elected director. In the case of an election of a director by Federal land bank associations and borrowers through agencies, such notice shall be sent to all Federal land bank associations and borrowers through agencies in the district; in the case of an election by production credit associations, such notice shall be sent to all production credit associations in the district; in the case of an election by cooperatives which are voting stockholders or subscribers to the guaranty fund of the bank for cooperatives of the district, such notice shall be sent to all cooperatives which are eligible, voting stockholders or subscribers to the guaranty fund at the time of sending the notice; and in the case of an election by the borrowers at large, such notice shall be sent to all borrowers at large in the district. The notice in the case of associations shall state the number of votes the board of each association is entitled to cast for nomination and election based on the voting stockholders of the association as determined by the Farm Credit Administration as near as practicable to the date of the notice. After receipt of such notice those entitled to nominate a director shall forward nominations to the Farm Credit Administration. The Farm Credit Administration shall, from the nominations received within sixty days after it sends such notice, prepare a list of candidates for such elected director, consisting of the two nominees receiving the highest number of votes, except that for elections to fill vacancies the Farm Credit Administration may specify a shorter period than sixty days but not less than thirty days.

(c) Election

At least one month before the election of an elected director, the Farm Credit Administration shall mail to each person or organization entitled to elect the elected director a list of the two candidates receiving the highest number of votes from those nominated in accordance with subsection (b) of this section. In the case of an election of a director by the Federal land bank associations, the directors of each land bank association shall cast the vote of such association for one of the candidates on the list. Each association shall be entitled to cast the number of votes specified in the notice prior to the nomination poll as determined by the Farm Credit Administration to be the number of voting stockholders of each association, and each direct borrower and borrower through agent shall be entitled to cast one vote. Each production credit association shall be entitled to cast the number of votes specified in the notice of nomination poll as determined by the Farm Credit Administration to be equal to the number of voting stockholders of such association. Each cooperative which is the holder of voting stock in or a subscriber to the guaranty fund of the bank for cooperatives shall be entitled to cast one vote except as provided in section 2124(d) of this title. Each borrower at large shall be entitled to cast one vote. The votes shall be forwarded to the Farm Credit Administration and no vote shall be counted unless received by it within sixty days after the sending

of such list of candidates, except that for elections to fill vacancies the Farm Credit Administration may specify a shorter period than sixty days but not less than thirty days. In the case of a tie another runoff election between those tying shall be held.

(d) Vacancies

Any vacancies in the board of directors shall be filled for the unexpired term in the manner provided in section 2222 of this title and this section for the selection of such directors.

(As amended Pub. L. 99-205, title II, § 205(g)(3), (4), title VI, § 607, Dec. 23, 1985, 99 Stat. 1707, 1712.)

AMENDMENTS

1985—Pub. L. 99-205, § 607(1), deleted reference to appointment of district directors in section catchline.

Subsec. (a)(1). Pub. L. 99-205, § 607(2)(A), designated first sentence as par. (1).

Subsec. (a)(2). Pub. L. 99-205, §§ 205(g)(3), 607(2)(A), (B), substituted "Farm Credit Administration Board" for "Governor with the advice and consent of the Federal Farm Credit Board", designated second sentence as so amended as par. (2), redesignated as subpar. (A) of par. (2), provision previously designated par. (2), substituting therein "The seventh member shall be elected by the borrowers at large in a district" for "The seventh member shall be appointed by the Farm Credit Administration Board", and added subpar. (B).

Subsec. (b). Pub. L. 99-205, § 607(3), required, in second sentence, that notice be sent to all borrowers at large in the district, in the case of an election by the borrowers at large.

Subsec. (c). Pub. L. 99-205, § 607(4), inserted provision that each borrower at large shall be entitled to cast one vote.

Subsec. (d). Pub. L. 99-205, § 205(g)(4), substituted "section 2222 of this title and this section" for "sections 2222 and 2223 of this title".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2181 of this title.

§ 2227. Powers of the district farm credit board

(a) Each farm credit district board shall have power to—

[*See main edition for text of (1) to (4)*]

(5) Authorize agreements for the provision of joint services between institutions in the System and between districts for those banks' and associations' functions and for those services to borrowers which can most effectively be performed by the joint undertakings of the district or districts, all of such activities to be subject to the same regulation by the Farm Credit Administration as is applicable to such institutions under this chapter.

[*See main edition for text of (6); (b)*]

(As amended Pub. L. 99-205, title II, § 205(g)(5), Dec. 23, 1985, 99 Stat. 1707.)

AMENDMENTS

1985—Subsec. (a)(5). Pub. L. 99-205 substituted "regulation by" for "supervision of".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

PART B—FARM CREDIT ADMINISTRATION ORGANIZATION

§ 2241. Farm Credit Administration

The Farm Credit Administration shall be an independent agency in the executive branch of the Government. It shall be composed of the Farm Credit Administration Board and such other personnel as are employed in carrying out the functions, powers, and duties vested in the Farm Credit Administration by this chapter.

(As amended Pub. L. 99-205, title II, § 201(1), Dec. 23, 1985, 99 Stat. 1688.)

AMENDMENTS

1985—Pub. L. 99-205 amended section generally, substituting "Farm Credit Administration Board and such other personnel" for "Federal Farm Credit Board, the Governor of the Farm Credit Administration, and such other personnel".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

Section 402 of Pub. L. 99-205 provided that:

"(a) Until the Chairman of the Farm Credit Administration Board provided for under the amendment made by section 201(1) of this Act [see section 2242 of this title] is appointed by the President and confirmed by the Senate, the Governor of the Farm Credit Administration, under the Farm Credit Act of 1971 [this chapter] as in effect on the day before the date of enactment of this Act [Dec. 23, 1985], shall perform the functions of the Chairman prescribed for the Chairman by this Act [Pub. L. 99-205, see Short Title of 1985 Amendment note set out under section 2001 of this title].

"(b)(1) Except as provided in paragraph (2), until at least two members of the Farm Credit Administration Board provided under the amendment made by section 201(1) of this Act [see section 2242 of this title] are appointed by the President and confirmed by the Senate, the Governor of the Farm Credit Administration, under the Farm Credit Act of 1971 [this chapter] as in effect on the day before the date of enactment of this Act [Dec. 23, 1985], shall perform the functions of the Farm Credit Administration Board prescribed for such Board by this Act [Pub. L. 99-205, see Short Title of 1985 Amendment note set out under section 2001 of this title].

"(2) When the Chairman of such Board is so appointed and confirmed, the Chairman shall assume any responsibilities and powers of the Board being exercised by the Governor under this subsection.

"(c) In carrying out the duties and functions specified in subsections (a) and (b), the Governor of the Farm Credit Administration shall serve at the pleasure of the President.

"(d) All regulations of the Farm Credit Administration or the institutions of the System, and all charters, bylaws, resolutions, stock classifications, and policy directives issued or approved by the Farm Credit Administration, and all elections held and appointments made under the Farm Credit Act of 1971 [this chapter], before the date of enactment of this Act [Dec. 23, 1985], shall be continuing and remain valid until su-

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perseded, modified, or replaced under the authority of this Act [Pub. L. 99-205, see Short Title of 1985 Amendment note set out under section 2001 of this title]."

§ 2242. Farm Credit Administration Board

(a) Appointment

The management of the Farm Credit Administration shall be vested in a Farm Credit Administration Board (referred to in this part as "the Board"). The Board shall consist of three members, who shall be citizens of the United States and broadly representative of the public interest. Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate. Not more than two members of the Board shall be members of the same political party. Of the persons thus appointed, one shall be designated by the President to serve as Chairman of the Board for the duration of the member's term. The members of the Board shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any institution of the Farm Credit System.

(b) Terms of office

The term of office of each member of the Board shall be six years, except that the terms of the two members, other than the Chairman, first appointed under subsection (a) of this section shall expire, one on the expiration of two years after the date of appointment, and one on the expiration of four years after the date of appointment. Members of the Board shall not be appointed to succeed themselves, except that the members first appointed under subsection (a) of this section for a term of less than six years may be reappointed for a full six-year term and members appointed to fill unexpired terms of three years or less may be reappointed for a full six-year term. Any vacancy shall be filled for the unexpired term on like appointment. Any member of the Board shall continue to serve as such after the expiration of the member's term until a successor has been appointed and qualified.

(c) Organization

Each member of the Board, within fifteen days after notice of appointment, shall subscribe to the oath of office. The Board may transact business if a vacancy exists, provided a quorum is present. A quorum shall consist of two members of the Board. The Board shall hold at least one meeting each month and such additional meetings at such times and places as it may fix and determine. Such meetings shall be held on the call of the Chairman or any two Board members. The Board shall adopt such rules as it deems appropriate for the transaction of its business and shall keep permanent and accurate records and minutes of its acts and proceedings.

(d) Compensation

The members of the Board shall devote their full time and attention to the business of the Board. The Chairman of the Board shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5. Each of the other members of the Board shall receive compensation at the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5. Each member of the Board shall be reimbursed for necessary travel, subsistence, and other expenses in the discharge of the member's official duties without regard to other laws with respect to allowance for travel and subsistence of officers and employees of the United States. This subsection shall be subject to the provisions of section 2245 of this title.

(As amended Pub. L. 99-205, title II, § 201(1), Dec. 23, 1985, 99 Stat. 1688.)

Amendments

1985—Pub. L. 99-205 amended section generally, substituting provisions of subsecs. (a) to (d) relating to the Farm Credit Administration Board for provisions of former subsecs. (a) to (i) which related to the Federal Farm Credit Board.

Effective Date of 1985 Amendment

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

Interim Implementation of 1985 Amendment

For provisions authorizing interim implementation by the Governor of the Farm Credit Administration of amendments to this section by Pub. L. 99-205, see section 402 of Pub. L. 99-205, set out as a note under section 2241 of this title.

§ 2243. Powers of Board; civil proceedings

The Board shall manage and administer, and establish policies for, the Farm Credit Administration. It—

(1) shall approve the rules and regulations for the implementation of this chapter not inconsistent with its provisions;

(2) shall provide for the examination of the condition of, and general regulation of the performance of the powers, functions, and duties vested in, each institution of the Farm Credit System;

(3) shall provide for the performance of all the powers and duties vested in the Farm Credit Administration; and

(4) may require such reports as it deems necessary from the institutions of the Farm Credit System.

(As amended Pub. L. 99-205, title II, § 201(1), Dec. 23, 1985, 99 Stat. 1689.)

Amendments

1985—Pub. L. 99-205 substituted requirement that the Board manage and administer, and establish policies for, the Farm Credit Administration for former requirement that the Federal Farm Credit Board establish the general policy for the guidance of the Farm Credit Administration, including matters of broad and general supervisory, advisory, or policy nature; incorporated existing text in provisions designated cls. (1) to (4); substituted in cl. (2) "general regulation" for "general supervision"; and struck out last sentence which read: "The Board shall function as a unit without delegating any of its functions to individual members, but may appoint committees and subcommittees for studies and reports for consideration by the Board. It shall not operate in an administrative capacity."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

For provisions authorizing interim implementation by the Governor of the Farm Credit Administration of amendments to this section by Pub. L. 99-205, see section 402 of Pub. L. 99-205, set out as a note under section 2241 of this title.

§ 2244. Chairman; responsibilities; governing standards

(a) Chairman of Farm Credit Administration Board; power and authority

The Chairman of the Board shall be the executive officer of the Board and the chief executive officer of the Farm Credit Administration. The Chairman shall be responsible for directing the implementation of the policies and regulations adopted by the Board and the execution of all of the administrative functions and duties of the Farm Credit Administration. The Chairman shall be the spokesman for the Board and the Farm Credit Administration and shall represent the Board and the Farm Credit Administration in their official relations within the Government. Under policies adopted by the Board, the Chairman shall consult on a regular basis with the Secretary of the Treasury in connection with the exercise by the System of the powers conferred under section 2153 of this title, with the Board of Governors of the Federal Reserve System in connection with the effect of System lending activities on national monetary policy, and with the Secretary of Agriculture in connection with the effect of System policies on farmers and the agricultural economy.

(b) Governing standards

In carrying out responsibilities under this chapter, the Chairman of the Board shall be governed by general policies adopted by the Board and by such regulatory decisions, findings, and determinations as the Board may by law be authorized to make and, as to third persons, all acts of the Chairman of the Board shall be conclusively presumed to be in compliance with such general policies and regulatory decisions, findings, and determinations.

(c) Enforcement of rules, regulations, and orders of Board; civil proceedings; representation by attorneys

The Chairman of the Board shall enforce the rules, regulations, and orders of the Board. Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman shall represent the Farm Credit Administration in any civil proceeding or civil action brought in connection with the administration of conservatorships and receiverships. Attorneys designated by the Chairman may represent the Farm Credit Administration in any other civil proceedings or civil action when so authorized by the Attorney General under provisions of title 28.

(As amended Pub. L. 99-205, title II, § 201(1), Dec. 23, 1985, 99 Stat. 1689.)

AMENDMENTS

1985—Pub. L. 99-205 substituted provisions relating to the Chairman of the Board, his responsibilities, and governing standards for provisions relating to the Governor of the Farm Credit Administration.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

For provisions authorizing interim implementation by the Governor of the Farm Credit Administration of amendments to this section by Pub. L. 99-205, see section 402 of Pub. L. 99-205, set out as a note under section 2241 of this title.

§ 2245. Organization of Farm Credit Administration

The Chairman of the Board, in carrying out the powers and duties now or hereafter vested in the Chairman by this chapter and acts supplementary thereto, may establish and fix the powers and the duties of such divisions or other units as the Chairman may deem necessary to the efficient functioning of the Farm Credit Administration and the successful execution of the powers and duties vested in the Board and the Farm Credit Administration. The Chairman of the Board shall appoint such personnel as may be necessary to carry out the functions of the Farm Credit Administration. Officers and employees of the Farm Credit Administration shall be subject to the Ethics in Government Act of 1978 and shall be considered officers or employees of the United States for the purposes of sections 201 through 203, and sections 205 through 209, of title 18. Officers and employees of the Farm Credit Administration shall be subject to section 5373 of title 5. The powers of the Chairman as chief executive officer of the Farm Credit Administration may be exercised and performed by the Chairman through such other officers and employees of the Farm Credit Administration as the Chairman shall designate. The operations of the Farm Credit Administration, and the salaries of members of the Board and employees of the Administration, shall be funded and paid for from the fund created under section 2250 of this title.

(As amended Pub. L. 99-205, title II, § 201(1), Dec. 23, 1985, 99 Stat. 1690.)

REFERENCES IN TEXT

The Ethics in Government Act of 1978, referred to in text, is Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 2, The Congress and Tables.

AMENDMENTS

1985—Pub. L. 99-205 substituted provisions respecting organization of the Farm Credit Administration for provisions relating to compensation and expense allowance of the Governor of the Farm Credit Administration.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

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INTERIM IMPLEMENTATION OF 1985 AMENDMENT

For provisions authorizing interim implementation by the Governor of the Farm Credit Administration of amendments to this section by Pub. L. 99-205, see section 402 of Pub. L. 99-205, set out as a note under section 2241 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2242 of this title.

§ 2246. Advisory committees

The Chairman of the Board may establish one or more advisory committees in accordance with the Federal Advisory Committee Act and may appoint to such committee or committees individuals who are members of the Federal Farm Credit Board when such Board is terminated by the Farm Credit Amendments Act of 1985.

(As amended Pub. L. 99-205, title II, § 201(1), Dec. 23, 1985, 99 Stat. 1690.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in text, is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Farm Credit Amendments Act of 1985, referred to in text, is Pub. L. 99-205, Dec. 23, 1985, 99 Stat. 1678. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 2001 of this title and Tables.

AMENDMENTS

1985—Pub. L. 99-205 substituted provisions respecting advisory committees for provisions respecting compliance by the Governor with orders of the Federal Farm Credit Board.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

For provisions authorizing interim implementation by the Governor of the Farm Credit Administration of amendments to this section by Pub. L. 99-205, see section 402 of Pub. L. 99-205, set out as a note under section 2241 of this title.

§ 2247. Repealed. Pub. L. 99-205, title II, § 201(2), Dec. 23, 1985, 99 Stat. 1690

Section, Pub. L. 92-181, title V, § 5.13, Dec. 10, 1971, 85 Stat. 620, related to authority of Governor of the Farm Credit Administration to fix powers and duties of divisions and instrumentalities of the Administration.

EFFECTIVE DATE OF REPEAL

Repeal of section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2248. Seal of the Farm Credit Administration

The Farm Credit Administration shall have a seal, as adopted by the Board, which shall be judicially noted.

(Pub. L. 92-181, title V, § 5.13, formerly § 5.14, Dec. 10, 1971, 85 Stat. 620; renumbered § 5.13 and amended Pub. L. 99-205, title II, § 201(3), Dec. 23, 1985, 99 Stat. 1690.)

PRIOR PROVISIONS

A prior section 5.13 of Pub. L. 92-181 was classified to section 2247 of this title and was repealed by Pub. L. 99-205, title II, § 201(2), Dec. 23, 1985, 99 Stat. 1690.

AMENDMENTS

1985—Pub. L. 99-205 substituted "Board" for "Governor".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2249. Administrative expenses

[See main edition for text]

(Pub. L. 92-181, title V, § 5.14, formerly § 5.15, Dec. 10, 1971, 85 Stat. 620; Pub. L. 96-592, title V, § 505, Dec. 24, 1980, 94 Stat. 3449; renumbered § 5.14 and amended Pub. L. 99-205, title II, § 201(4), Dec. 23, 1985, 99 Stat. 1690.)

PRIOR PROVISIONS

A prior section 5.14 of Pub. L. 92-181 was renumbered section 5.13 and is classified to section 2248 of this title.

AMENDMENTS

1985—Pub. L. 99-205 made technical amendments to the references to sections 2250(b) and 2250(a) of this title appearing in second sentence to reflect the renumbering of the corresponding section of the original act.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2250. Allocation of expenses for administrative services; disposition of money

[See main edition for text of (a)]

(b) The amounts collected pursuant to subsection (a) of this section shall be covered into the Treasury, and credited to a special fund and, without regard to other law, shall be available to the Farm Credit Administration for expenditure during each fiscal year for salaries and expenses of the Farm Credit Administration. As soon as practicable after the end of each such fiscal year, the Farm Credit Administration shall determine, on a fair and reasonable basis, the cost of operation of the Farm Credit Administration and the part thereof which fairly and equitably should be allocated to each bank and association as its share of the cost during the fiscal year of the Farm Credit Administration. If the amount so allocated is greater than the amount collected from the bank or other institutions, the difference shall be collected from such bank or other institutions, and, if less, shall be refunded from the special fund to the bank or other institutions entitled thereto or credited in the special fund to such bank or other institutions for use for the same purposes in future fiscal years.

(Pub. L. 92-181, title V, § 5.15, formerly § 5.16, Dec. 10, 1971, 85 Stat. 620; renumbered § 5.15

and amended Pub. L. 99-205, title II, §§ 201(5), 205(g)(6), Dec. 23, 1985, 99 Stat. 1690, 1707.)

PRIOR PROVISIONS

A prior section 5.15 of Pub. L. 92-181 was renumbered section 5.14 and is classified to section 2249 of this title.

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-205, § 205(g)(6), substituted "the Farm Credit Administration" for "said Administration" twice in first sentence, and for "the Administration" and "such Administration" in second sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2245, 2249, 2251 of this title.

§ 2251. Quarters and facilities for the Farm Credit Administration

As an alternate to the rental of quarters under section 2249 of this title, and without regard to any other provision of law, the banks of the System, with the concurrence of two-thirds of the district boards, are hereby authorized—

[*See main edition for text of par. (1)*]

(2) To construct, develop, furnish, and equip such building thereon and such facilities appurtenant thereto as in their judgment may be appropriate to provide, to the extent the Board may deem advisable, suitable, and adequate quarters and facilities for the Farm Credit Administration.

[*See main edition for text of (3) to (5)*]

In actions undertaken by the banks pursuant to the foregoing provisions of this section, the Farm Credit Administration may act as agent for the banks. The Board may require of the respective banks of the System, and they shall make to the Farm Credit Administration, such advances of funds for the purposes set out in this section as in the sole judgment of the Board may from time to time be advisable for the purposes of this section. Such advances shall be in addition to and kept in a separate fund from the assessments authorized in section 2250 of this title and shall be apportioned by the Board among the banks in proportion to the total assets of the respective banks, and determined in such manner and at such times as the Board may prescribe. The powers of the banks of the System and purposes for which obligations may be issued by such banks are hereby enlarged to include the purpose of obtaining funds to permit the making of advances required by this section. The plans and decisions for such building and facilities and for the enlargement, remodeling, or reconstruction thereof shall be such as is approved in the sole discretion of the Board.

(Pub. L. 92-181, title V, § 5.16, formerly § 5.17, Dec. 10, 1971, 85 Stat. 621; Pub. L. 96-592, title V, § 506, Dec. 24, 1980, 94 Stat. 3449; renumbered § 5.16 and amended Pub. L. 99-205, title II, § 201(6), Dec. 23, 1985, 99 Stat. 1690.)

PRIOR PROVISIONS

A prior section 5.16 of Pub. L. 92-181 was renumbered section 5.15 and is classified to section 2250 of this title.

AMENDMENTS

1985—Pub. L. 99-205, § 201(6)(A)-(C), made technical amendments to the references to sections 2249 and 2250 of this title in first and fourth sentences to reflect the renumbering of the corresponding sections of the original act, and struck out "Federal Farm Credit" before "Board" in par. (2) of first sentence.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§ 2252. Powers and duties

(a) Enumerated powers

The Farm Credit Administration shall have the following powers, functions, and responsibilities in connection with the institutions of the Farm Credit System and the administration of this chapter:

(1) Modify the boundaries of farm credit districts, with due regard for the farm credit needs of the country, as approved by the Board, with the concurrence of the district boards involved.

(2) Where necessary or appropriate to carry out the policy and objectives of this chapter, issue and amend or modify Federal charters of institutions of the System; approve change in names of banks operating under this chapter; approve the merger of districts when agreed to by the boards of the districts involved and by a majority vote of the voting stockholders and contributors to the guaranty funds of each bank for each of such districts, voting in the same manner as is provided in section 2181 of this title; approve mergers of banks operating under the same subchapter of this chapter, merger of Federal land bank associations, merger of production credit associations, and the consolidation or division of the territories that they serve when agreed to by a majority vote of the voting stockholders or contributors to the guaranty fund of each of the institutions involved; and approve consolidations of boards of directors or management agreements when agreed to by a majority vote of the voting stockholders or contributors to the guaranty fund of each of the institutions involved. In issuing charters and certificates of territory for district-wide mergers of associations where stockholders of one or more associations did not approve the merger, the charter of the new or merged association shall not include the territory of the disagreeing association or associations; charters issued during calendar year 1985 for district-wide new or merged associations which included the territory of a disagreeing association shall be revoked and reissued to exclude such territory, unless subsequently agreed to by the board of

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directors of such association or associations; and the Farm Credit Administration shall ensure that the board of directors of district banks does not discriminate against the disapproving associations in exercising its supervisory authorities. Such associations shall not be (i) charged any assessment under this chapter at a rate higher than that charged other like associations in the district or (ii) discriminated against in the provision of any financial service and assistance (including, but not limited to, access to credit and rates of interest on loans and discounts) by a district Farm Credit bank to the association and its member-borrowers. The Chairman of the Farm Credit Administration Board, after consultation with the respective district board or boards and the board of directors of the Capital Corporation may require two or more banks of the Farm Credit System (other than Central Banks for Cooperatives) operating under the same subchapter to merge if the Chairman determines that one of such banks has failed to meet outstanding obligations of such bank.

(3) Make annual reports directly to Congress on the condition of the System and its institutions, based on the examinations carried out under section 2254 of this title, and on the manner and extent to which the purposes and objectives of this chapter are being carried out and, from time to time, recommend directly legislative changes. The annual reports shall include a summary and analysis of the reports submitted to the Farm Credit Administration by the Federal land banks and Federal intermediate credit banks under section 2207(b) of this title relating to programs for serving young, beginning, and small farmers and ranchers.

(4) Approve the issuance of obligations of the System under subsections (c) and (d) of section 2153 of this title for the purpose of funding the authorized operations of the institutions of the System, and prescribe collateral therefor.

(5) Grant approvals provided for under this chapter either on a case-by-case basis or through regulations that confer approval on actions of Farm Credit System institutions that meet standards and criteria established by the Farm Credit Administration, including standards and criteria with respect to (A) interest rates on obligations of Farm Credit System institutions and on loans made or discounted by such institutions, and (B) the payment of dividends or patronage refunds by Farm Credit System institutions.

(6) Establish standards for the System institutions with respect to loan security requirements and regulate the borrowing, repayment, and transfer of funds and equities between institutions of the System.

(7) Conduct loan and collateral security review.

(8) Make investments in stock of the Capital Corporation out of the revolving fund referred to in section 2151 of this title, and require the retirement of such stock.

(9) Regulate the preparation by System institutions and the dissemination to stockholders and investors of information on the financial condition and operations of such institutions.

(10) Prescribe rules and regulations necessary or appropriate for carrying out this chapter.

(11) Exercise the powers conferred on it under part C of this subchapter for the purpose of ensuring the safety and soundness of System institutions.

(12) Exercise such incidental powers as may be necessary or appropriate to fulfill its duties and carry out the purposes of this chapter.

(13) Sue and be sued, complain and defend in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the Farm Credit Administration shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount of the controversy; and the Farm Credit Administration may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect. Service of process on the Farm Credit Administration shall be in accordance with provisions of title 28 and rules adopted under title 28 for suits in which an agency of the United States is a party. The Farm Credit Administration shall designate an agent at its principal office to accept service of process.

(14) Require surety bonds or other provisions for protection of the assets of the institutions of the System against losses occasioned by employees.

(15) Except for associations, approve the salary scale for employees of the institutions of the System, and approve the compensation of the chief executive officer of such institutions: *Provided*, That no salary scale or rate of compensation shall be approved under this provision unless determined to be fair and reasonable.

[*See main edition for text of* (b) *and* (c)]

(Pub. L. 92-181, title V, § 5.17, formerly § 5.18, Dec. 10, 1971, 85 Stat. 621; Pub. L. 96-592, title V, §§ 507, 508, Dec. 24, 1980, 94 Stat. 3449; renumbered § 5.17 and amended Pub. L. 99-205, title II, § 201(7), Dec. 23, 1985, 99 Stat. 1691.)

PRIOR PROVISIONS

A prior section 5.17 of Pub. L. 92-181 was renumbered section 5.16 and is classified to section 2251 of this title.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-205 amended subsec. (a) generally, revising and reorganizing the enumerated powers of the Farm Credit Administration by substituting pars. (1) to (15) for former pars. (1) to (17).

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EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2205, 2221 of this title.

§ 2253. Prior delegations

Any delegations by the Farm Credit Administration and redelegations thereof made in accordance with section 5.19 of the Farm Credit Act of 1971 as in effect prior to the effective date of the Farm Credit Amendments Act of 1985 may continue in full force and effect, at the discretion of the Farm Credit Administration, for the period ending twelve months after December 23, 1985.

(Pub. L. 92-181, title V, § 5.18, as added Pub. L. 99-205, title II, § 202(b), Dec. 23, 1985, 99 Stat. 1693.)

REFERENCES IN TEXT

Section 5.19 of the Farm Credit Act of 1971 as in effect prior to the effective date of the Farm Credit Amendments Act of 1985, referred to in text, is section 5.19 of Pub. L. 92-181 which was classified to this section prior to its repeal by section 202(a) of Pub. L. 99-205, known as the Farm Credit Amendments Act of 1985. See Prior Provisions and Effective Date notes below.

PRIOR PROVISIONS

A prior section 2253, Pub. L. 92-181, title V, § 5.19, Dec. 10, 1971, 85 Stat. 622, which related to delegation of duties and powers to financial institutions, was repealed, effective thirty days after Dec. 23, 1985, by Pub. L. 99-205, title II, § 202(a), Dec. 23, 1985, 99 Stat. 1693.

A prior section 5.18 of Pub. L. 92-181 was renumbered section 5.17 and is classified to section 2252 of this title.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2254. Examinations

(a) Scope and frequency of examinations; power, authority, and liability of examiners

Each institution of the System shall be examined by Farm Credit Administration examiners at such times as the Chairman of the Board may determine, but in no event less than once each year. Such examinations shall include, but are not limited to, an analysis of credit and collateral quality and capitalization of the institution, and appraisals of the effectiveness of the institution's management and application of policies governing the carrying out of this chapter and regulations of the Farm Credit Administration and servicing all eligible borrowers. At the direction of the Chairman of the Board, Farm Credit Administration examiners also shall make examinations of the condition of any organization, other than federally regulated financial institutions, to, for, or with which any institution of the System contemplates making a loan or discounting paper. For the purposes of this chapter, examiners of the Farm Credit Administration shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act [12 U.S.C. 21 et seq.], the Federal Reserve Act [12 U.S.C. 221 et seq.], and Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law.

(b) Annual report of condition

Each institution of the System shall make and publish an annual report of condition as prescribed by the Farm Credit Administration. Each such report shall contain financial statements prepared in accordance with generally accepted accounting principles and contain such additional information as the Farm Credit Administration by regulation may require. Such financial statements of System institutions shall be audited by an independent public accountant.

(c) Report of examination of noncomplying institution; publication; notice of intention

The Farm Credit Administration may publish the report of examination of any System institution that does not, before the end of the 120th day after the date of notification of the recommendations and suggestions of the Farm Credit Administration, based on such examination, comply with such recommendations and suggestions to the satisfaction of the Farm Credit Administration. The Farm Credit Administration shall give notice of intention to publish in the event of such noncompliance at least 90 days before such publication. Such notice of intention may be given any time after such notification of recommendations and suggestions.

(Pub. L. 92-181, title V, § 5.19, formerly § 5.20, Dec. 10, 1971, 85 Stat. 623; renumbered § 5.19 and amended Pub. L. 99-205, title II, § 203(a), Dec. 23, 1985, 99 Stat. 1693.)

PRIOR PROVISIONS

A prior section 5.19 of Pub. L. 92-181 was classified to section 2253 of this title and was repealed by Pub. L. 99-205, title II, § 202(a), Dec. 23, 1985, 99 Stat. 1693.

AMENDMENTS

1985—Pub. L. 99-205 in amending section generally, revised and restated existing provisions in subsec. (a) and added subsecs. (b) and (c). Prior to amendment, section read as follows: "Except as provided herein, each institution of the System, and each of their agents, at such times as the Governor of the Farm Credit Administration may determine, shall be examined and audited by farm credit examiners under the direction of an independent chief Farm Credit Administration examiner, but each bank and each production credit association shall be examined and audited not less frequently than once each year. Such examinations shall include objective appraisals of the effectiveness of management and application of policies in carrying out the provisions of this chapter and in servicing all eligible borrowers. If the Governor determines it to be necessary or appropriate, the required examinations and audits may be made by independent certified public accountants, certified by a regulatory authority of a State, and in accordance with generally accepted auditing standards. Upon request of the Gov-

ernor or any bank of the System, farm credit examiners shall also make examinations and written reports of the condition of any organization, other than national banks, to which, or with which, any institution of the System contemplates making a loan or discounting paper of such organization. For the purposes of this chapter, examiners of the Farm Credit Administration shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act [12 U.S.C. 21 et seq.], the Federal Reserve Act [12 U.S.C. 221 et seq.], the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

RESTRAINT BY FEDERAL BANK REGULATORY AGENCIES IN OVERSEEING AGRICULTURAL BORROWERS

Pub. L. 99-198, title XIII, § 1326, Dec. 23, 1985, 99 Stat. 1540, provided that:

"(a) Congress finds and declares that—

"(1) high production costs and low commodity prices have combined to reduce farm income to the lowest levels since the depths of the Depression in the 1930's, to subject many agricultural producers, through no fault of their own, to severe economic hardship, and in many cases temporarily but seriously to impair producers' ability to meet loan repayment schedules in a timely fashion; and

"(2) a policy of adverse classification of agricultural loans by bank examiners under these circumstances will trigger a wave of foreclosures and similar actions on the part of banks, thereby depressing land values and prices for agricultural facilities and equipment and having a devastating effect on farmers and the banking industry, and upon rural areas of the United States in general.

"(b) It is therefore the sense of Congress that the Federal bank regulatory agencies should ensure, in their examination procedures, that examiners exercise caution and restraint and give due consideration not only to the current cash flow of agricultural borrowers under financial stress, but to factors such as their loan collateral and ultimate ability to repay as well, for so long as the adverse economic effects of the cost-price squeeze of recent years continue to impair the ability of these borrowers to meet scheduled repayments on their loans."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2252 of this title.

§ 2255. Conditions of other banks and lending institutions

[See main edition for text]

(Pub. L. 92-181, title V, § 5.20, formerly § 5.21, Dec. 10, 1971, 85 Stat. 623; renumbered § 5.20, Pub. L. 99-205, title II, § 203(b), Dec. 23, 1985, 99 Stat. 1694.)

PRIOR PROVISIONS

A prior section 5.20 of Pub. L. 92-181 was renumbered section 5.19 and is classified to section 2254 of this title.

§ 2256. Consent to the availability of reports and to examinations

[See main edition for text]

(Pub. L. 92-181, title V, § 5.21, formerly § 5.22, Dec. 10, 1971, 85 Stat. 623; renumbered § 5.21, Pub. L. 99-205, title II, § 203(b), Dec. 23, 1985, 99 Stat. 1694.)

PRIOR PROVISIONS

A prior section 5.21 of Pub. L. 92-181 was renumbered section 5.20 and is classified to section 2255 of this title.

§ 2257. Reports on conditions of institutions receiving loans or deposits

[See main edition for text]

(Pub. L. 92-181, title V, § 5.22, formerly § 5.23, Dec. 10, 1971, 85 Stat. 624; renumbered § 5.22, Pub. L. 99-205, title II, § 203(b), Dec. 23, 1985, 99 Stat. 1694.)

PRIOR PROVISIONS

A prior section 5.22 of Pub. L. 92-181 was renumbered section 5.21 and is classified to section 2256 of this title.

§ 2258. Jurisdiction

[See main edition for text]

(Pub. L. 92-181, title V, § 5.23, formerly § 5.24, Dec. 10, 1971, 85 Stat. 624; Pub. L. 94-184, § 1(b), Dec. 31, 1975, 89 Stat. 1060; renumbered § 5.23, Pub. L. 99-205, title II, § 203(b), Dec. 23, 1985, 99 Stat. 1694.)

PRIOR PROVISIONS

A prior section 5.23 of Pub. L. 92-181 was renumbered section 5.22 and is classified to section 2257 of this title.

§ 2259. State legislation

[See main edition for text]

(Pub. L. 92-181, title V, § 5.24, formerly § 5.25, Dec. 10, 1971, 85 Stat. 624; renumbered § 5.24, Pub. L. 99-205, title II, § 203(b), Dec. 23, 1985, 99 Stat. 1694.)

PRIOR PROVISIONS

A prior section 5.24 of Pub. L. 92-181 was renumbered section 5.23 and is classified to section 2258 of this title.

§ 2260. Transferred

CODIFICATION

Section, Pub. L. 92-181, title V, § 5.30, as added Pub. L. 96-592, title V, § 509, Dec. 24, 1980, 94 Stat. 3450, which related to audit and report to Congress by the Comptroller General, was renumbered section 5.44 of Pub. L. 92-181 by, Pub. L. 99-205, title II, § 205(a)(2), Dec. 23, 1985, 99 Stat. 1703, and was transferred to section 2275 of this title.

PART C—ENFORCEMENT POWERS OF FARM CREDIT ADMINISTRATION

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 2252 of this title.

§ 2261. Cease and desist proceedings

(a) If, in the opinion of the Farm Credit Administration, any institution in the Farm Credit System, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such an institution is en-

gaging or has engaged, or the Farm Credit Administration has reasonable cause to believe that the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is about to engage, in an unsafe or unsound practice in conducting the business of such institution, or is violating or has violated, or the Farm Credit Administration has reasonable cause to believe that the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Farm Credit Administration in connection with the granting of any application or other request by the institution or any written agreement entered into with the Farm Credit Administration, the Farm Credit Administration may issue and serve upon the institution or such director, officer, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Farm Credit Administration at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease and desist order. In the event of such consent, or if upon the record made at any such hearing, the Farm Credit Administration shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Farm Credit Administration may issue and serve upon the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution an order to cease and desist from any such violation or practice. Such order may, by provisions that may be mandatory or otherwise, require the institution or its directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such institution to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(b) A cease and desist order shall become effective at the expiration of thirty days after the service of such order upon the institution or other person concerned (except in the case of a cease and desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein except to such extent as it is stayed, modified, terminated, or set aside by action of the Farm Credit Administration or a reviewing court.

(Pub. L. 92-181, title V, § 5.25, as added Pub. L. 99-205, title II, § 204, Dec. 23, 1985, 99 Stat. 1694.)

PRIOR PROVISIONS

A prior section 5.25 of Pub. L. 92-181 was renumbered section 5.24 and is classified to section 2259 of this title.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2154, 2262, 2268 of this title.

§ 2262. Temporary cease and desist orders

(a) Whenever the Farm Credit Administration shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution under section 2261 of this title, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to seriously weaken the condition of the institution or otherwise seriously prejudice the interests of the investors in Farm Credit System obligations or shareholders in the institution prior to the completion of the proceedings conducted under section 2261 of this title, the Farm Credit Administration may issue a temporary order requiring the institution or such director, officer, employee, agent, or other person to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the institution or such director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution and, unless set aside, limited, or suspended by a court in proceedings authorized by subsection (b) of this section, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Farm Credit Administration shall dismiss the charges specified in such notice, or if a cease and desist order is issued against the institution or such director, officer, employee, agent, or other person, until effective date of such order.

(b) Within ten days after the institution concerned or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution has been served with a temporary cease and desist order, the institution or such director, officer, employee, agent, or other person may apply to the United States district court for the judicial district in which the home office of the institution is located, or the United States district court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforce-

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ment, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the institution or such director, officer, employee, agent, or other person under section 2261 of this title, and such court shall have jurisdiction to issue such injunction.

(Pub. L. 92-181, title V, § 5.26, as added Pub. L. 99-205, title II, § 204, Dec. 23, 1985, 99 Stat. 1695.)

PRIOR PROVISIONS

A prior section 5.26 of Pub. L. 92-181 was renumbered section 5.40 and is set out in part as notes under section 2001 of this title.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2263, 2268 of this title.

§ 2263. Enforcement of temporary cease and desist orders

In the case of violation or threatened violation of, or failure to obey, a temporary cease and desist order issued under section 2262 of this title, the Farm Credit Administration may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the institution is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(Pub. L. 92-181, title V, § 5.27, as added Pub. L. 99-205, title II, § 204, Dec. 23, 1985, 99 Stat. 1696.)

PRIOR PROVISIONS

A prior section 5.27 of Pub. L. 92-181, which amended section 393 of this title and sections 5314 and 5315 of Title 5, Government Organization and Employees, was renumbered section 5.41.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2264. Suspension or removal of director or officer

(a)[1] Written notice of intention to remove; violation of law, rule, regulation, or final cease and desist order; unsafe or unsound practice; breach of fiduciary duty

Whenever, in the opinion of the Farm Credit Administration, any director or officer of any institution in the Farm Credit System has committed any violation of law, rule, or regulation or of a cease and desist order that has become final, or has engaged or participated in any unsafe or unsound practice in connection with the institution, or has committed or engaged in any act, omission, or practice which constitutes a breach of a fiduciary duty as such director or officer, and the Farm Credit Administration determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interests of its shareholders or investors in Farm Credit System obligations could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or one that demonstrates a willful or continuing disregard for the safety or soundness of the System institution, the Farm Credit Administration may serve upon such director or officer a written notice of its intention to remove him from office.

(b) Written notice of intention to remove or suspend director, officer or other person; personal dishonesty; willful or continuing disregard; unfitness to continue in office or to participate in affairs of institution

Whenever, in the opinion of the Farm Credit Administration, any director or officer of an institution in the Farm Credit System, by conduct or practice with respect to another institution in the Farm Credit System or other business institution that resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness and, in addition, has evidenced his unfitness to continue as a director or officer, and whenever, in the opinion of the Farm Credit Administration, any other person participating in the conduct of the affairs of an institution in the Farm Credit System, by the conduct or practice with respect to such institution or other institution in the Farm Credit System or other business institution that resulted in substantial financial loss or other damage, has evidenced either personal dishonesty or a willful or continuing disregard for its safety and soundness and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such institution, the Farm Credit Administration may serve upon such director, officer, or other person a written notice of its intention to remove that director, officer, or other person from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

(c) Suspension from office; prohibition from further participation in conduct of affairs of institution; service of notice

In respect to any director or officer of an institution in the Farm Credit System or any other person referred to in subsection (a) or (b) of this section, the Farm Credit Administration

[1] Subsection "(a)" designation supplied editorially.

may, if it deems it necessary for the protection of the institution or the interests of its shareholders and the investors in the Farm Credit System obligations, by written notice to such effect served upon such director, officer, or other person, suspend such director, officer, or other person from office or prohibit such director, officer, or other person from further participation in any manner in the conduct of the affairs of the institution. Such suspension or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (e) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subsection (a) or (b) of this section and until such time as the Farm Credit Administration shall dismiss the charges specified in such notice, or, if an order of removal or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the institution of which the person is a director or officer or in the conduct of whose affairs the person has participated.

(d) Statement of grounds for removal or prohibition; notice and hearing; order of suspension, removal or prohibition; service of order

A notice of intention to remove a director, officer, or other person from office or to prohibit such director's, officer's, or other person's participation in the conduct of the affairs of an institution in the Farm Credit System, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Farm Credit Administration at the request of (1) such director or officer or other person, and for good cause shown, or (2) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, such director, officer, or other person shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Farm Credit Administration shall find that any of the grounds specified in such notice have been established, the Farm Credit Administration may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the institution, as it may deem appropriate. A copy of an order issued under this subsection shall be served upon the institution concerned. Any such order shall become effective at the expiration of thirty days after service upon such institution and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(e) Stay of suspension or prohibition

Within ten days after any director, officer, or other person has been suspended from office or prohibited from participation in the conduct of the affairs of a System institution under subsection (d)(3) of this section, such director, officer, or other person may apply to the United States district court for the judicial district in which the home office of the institution is located, or the United States district court for the District of Columbia, for a stay of either such suspension or prohibition, or both, pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, or other person under subsection (a) or (b) of this section, and such court shall have jurisdiction to stay either such suspension or prohibition, or both.

(Pub. L. 92-181, title V, § 5.28, as added Pub. L. 99-205, title II, § 204, Dec. 23, 1985, 99 Stat. 1696.)

PRIOR PROVISIONS

A prior section 5.28 of Pub. L. 92-181 was renumbered section 5.42 and is set out as a note under section 2001 of this title.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2265, 2269, 2270 of this title.

§ 2265. Suspension or removal of director or officer charged with felony

(a) Whenever any director or officer of an institution in the Farm Credit System, or other person participating in the conduct of the affairs of such institution, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under State or Federal law, the Farm Credit Administration may, if continued service or participation by the individual may pose a threat to the interest of the institution's shareholders or the investors in the Farm Credit System obligations or may threaten to impair public confidence in the institution or Farm Credit System, by written notice served upon such director, officer, or other person, suspend such director, officer, or other person from office or prohibit such director, officer, or other person from further participation in any manner in the conduct of the affairs of the institution. A copy of such notice shall also be served upon the institution. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Farm Credit Administration. In the event that a judgment of conviction with respect to such crime is entered against such director, officer, or other person, and at such time as such judgment is

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not subject to further appellate review, the Farm Credit Administration may, if continued service or participation by the individual may pose a threat to the interests of the institution's shareholders or the investors in Farm Credit System obligations or may threaten to impair public confidence in the institution or the Farm Credit System, issue and serve upon such director, officer, or other person an order removing such director, officer, or other person from office or prohibiting such director, officer, or other person from further participation in any manner in the conduct of the affairs of the institution except with the consent of the Farm Credit Administration. A copy of such order shall also be served upon such institution, whereupon such director or officer shall cease to be a director or officer of such institution. A finding of not guilty or other disposition of the charge shall not preclude the Farm Credit Administration from thereafter instituting proceedings to remove such director, officer, or other person from office or to prohibit further participation in Farm Credit System affairs under section 2264 of this title. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under subsection (b) of this section unless terminated by the Farm Credit Administration.

(b) Within thirty days from service of any notice of suspension or order of removal issued under subsection (a) of this section, the director, officer, or other person concerned may request in writing an opportunity to appear before the Farm Credit Administration to show that the continued service to or participation in the conduct of the affairs of the institution by such individual does not, or is not likely to, pose a threat to the interest in Farm Credit System obligations. Upon receipt of any such request, the Farm Credit Administration shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, officer, or other person) and place at which the director, officer, or other person may appear, personally or through counsel, before the Chairman of the Farm Credit Administration or designated employees of the Farm Credit Administration to submit written materials (or, at the discretion of the Farm Credit Administration, oral testimony) and oral argument. Within sixty days of such hearing, the Farm Credit Administration shall notify the director, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the institution will be continued, terminated, or otherwise modified, or whether the order removing such director, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the institution will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Farm Credit Administration's decision, if adverse to the director, officer, or other person. The Farm Credit Administration may prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(Pub. L. 92-181, title V, § 5.29, as added Pub. L. 99-205, title II, § 204, Dec. 23, 1985, 99 Stat. 1698.)

PRIOR PROVISIONS

A prior section 5.29 of Pub. L. 92-181 was renumbered section 5.43 and is set out as a note under section 2001 of this title.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2266, 2269, 2270, 2271 of this title.

§ 2266. Hearings and judicial review

(a) Venue; closed hearings; decisions and findings of fact; orders; modification or other action by Farm Credit Administration; judicial review

Any hearing provided for in this part (other than the hearing provided for in section 2265 of this title) shall be held in the Federal judicial district or in the territory in which the home office of the institution is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5. Such hearing shall be private, unless the Farm Credit Administration, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After such hearing, and within ninety days after the Farm Credit Administration has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this part. Judicial review of any such order shall be exclusively as provided in this subsection (g).[1] Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in subsection (b) of this section, and thereafter until the record in the proceeding has been filed as so provided, the Farm Credit Administration may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Farm Credit Administration may modify, terminate, or set aside any such order with permission of the court.

(b) Judicial review; commencement of proceedings; filing of petition and record; exclusive jurisdiction; finality of judgment and decree

Any party to the proceeding, or any person required by an order issued under this part to cease and desist from any of the violations or practices stated therein, may obtain a review of any order served under subsection (a) of this section (other than an order issued with the

[1] So in original. Probably should be "in this section".

consent of the System institution or the director or officer or other person concerned, or an order issued under section 2265 of this title) by the filing in the court of appeals of the United States for the circuit in which the home office of the institution is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Farm Credit Administration be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Farm Credit Administration, and thereupon the Farm Credit Administration shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of subsection (a) of this section be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Farm Credit Administration. Review of such proceedings shall be had as provided in chapter 7 of title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(c) Proceedings operating as stays of orders

The commencement of proceedings for judicial review under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Farm Credit Administration.

(Pub. L. 92-181, title V, § 5.30, as added Pub. L. 99-205, title II, § 204, Dec. 23, 1985, 99 Stat. 1699.)

PRIOR PROVISIONS

A prior section 5.30 of Pub. L. 92-181 was renumbered section 5.44 and transferred from section 2260 to section 2275 of this title.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2271 of this title.

§ 2267. Jurisdiction and enforcement

The Farm Credit Administration may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the institution is located, for the enforcement of any effective and outstanding notice or order issued under this part, and such courts shall have jurisdiction and power to order and require compliance herewith; but except as otherwise provided in this part no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this part, or to review, modify, suspend, terminate, or set aside any such notice or order.

(Pub. L. 92-181, title V, § 5.31, as added Pub. L. 99-205, title II, § 204, Dec. 23, 1985, 99 Stat. 1700.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2154, 2268 of this title.

§ 2268. Penalty

(a) Forfeiture and payment; compromise, modification, or remitting by Farm Credit Administration; assessment and collection by written notice

Any institution in the System that violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such an institution who violates the terms of any order that has become final and was issued under section 2261 or 2262 of this title, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues, but the Farm Credit Administration may, in its discretion, compromise, modify, or remit any civil money penalty that is subject to imposition or has been imposed under such authority. The penalty may be assessed and collected by the Farm Credit Administration by written notice.

(b) Factors determining amount

In determining the amount of the penalty, the Farm Credit Administration shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the System institution or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(c) Notice and hearing; final orders

The System institution or person assessed shall be afforded an opportunity for a hearing by the Farm Credit Administration, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The Farm Credit Administration determination shall be made by final order which may be reviewed only as provided in subsection (d) of this section. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(d) Judicial review

Any System institution or person against whom an order imposing a civil money penalty has been entered after a Farm Credit Administration hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the System institution is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within twenty days after the service of such order, and simultaneously sending a

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copy of such notice by registered or certified mail to the Farm Credit Administration. The Farm Credit Administration shall promptly certify and file in such Court the record upon which the penalty was imposed, as provided in section 2112 of title 28. The findings of the Farm Credit Administration shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

(e) Action by Attorney General to recover amount assessed

If any System institution or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Farm Credit Administration, the Farm Credit Administration shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(f) Rules and regulations

The Farm Credit Administration shall promulgate regulations establishing procedures necessary to implement sections 2267 and 2268 of this title.

(g) Payment into Treasury

All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(Pub. L. 92-181, title V, § 5.32, as added Pub. L. 99-205, title II, § 204, Dec. 23, 1985, 99 Stat. 1700.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2269. Further penalties

Any director or officer, or former director or officer of a System institution, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under section 2264 or 2265 of this title, and who (1) participates in any manner in the conduct of the affairs of the institution involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such institution, or (2) without the prior written approval of the Farm Credit Administration, votes for a director, serves or acts as a director, officer, or employee of any System institution, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.

(Pub. L. 92-181, title V, § 5.33, as added Pub. L. 99-205, title II, § 204, Dec. 23, 1985, 99 Stat. 1701.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2270. Replacement of suspended or removed directors

If at any time, because of the suspension or removal of one or more directors pursuant to section 2264 or 2265 of this title, there shall be on the board of directors of a System institution less than a quorum of directors not so suspended, the Chairman shall appoint persons to serve temporarily as directors in their place and stead so as to establish a quorum until such time as those who have been removed are reinstated or their respective successors are duly elected and take office.

(Pub. L. 92-181, title V, § 5.34, as added Pub. L. 99-205, title II, § 204, Dec. 23, 1985, 99 Stat. 1701.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2271. Definitions

As used in this part—

(1) the terms "cease and desist order that has become final" and "order which has become final" mean a cease and desist order, or an order, issued by the Farm Credit Administration with the consent of the System institution or the director or officer or other person concerned, or with respect to which no petition for review of the action of the Farm Credit Administration has been filed and perfected in a court of appeals as specified in section 2266(b) of this title, or with respect to which the action of the court in which such petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in section 2266(b) of this title, or an order issued under section 2265 of this title;

(2) the term "violation" includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation;

(3) the terms "institution in the System", "System institution", and "institution" mean all institutions enumerated in section 2002 of this title, any service organization chartered under part D of subchapter IV of this chaper, and the Capital Corporation; and

(4) the term "unsafe or unsound practice" shall have the meaning given to it by the Farm Credit Administration by regulations, rule, or order.

(Pub. L. 92-181, title V, § 5.35, as added Pub. L. 99-205, title II, § 204, Dec. 23, 1985, 99 Stat. 1701.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

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§ 2272. Notice of service

Any service required or authorized to be made by the Farm Credit Administration under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Farm Credit Administration may by regulation or otherwise provide. Any such service by mail is complete upon mailing. Copies of any notice or order served by the Farm Credit Administration on any association or any director or officer thereof or other person participating in the conduct of its affairs, under the provisions of this part, shall also be sent to the supervisory bank.

(Pub. L. 92-181, title V, § 5.36, as added Pub. L. 99-205, title II, § 204, Dec. 23, 1985, 99 Stat. 1702.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§ 2273. Ancillary provisions; subpena power; etc.

In the course of or in connection with any proceeding under this part or any examination or investigation under this chapter, the Farm Credit Administration or any designated representative thereof, including any person designated to conduct any hearing under this part, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and the Farm Credit Administration is empowered to make rules and regulations with respect to any such proceedings, claims, examinations, or investigations. The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. The Farm Credit Administration or any party to proceedings under this part may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this part, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this part by a System institution or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the System institution or from its assets. Any person who willfully shall fail or refuse to attend or testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpena of the Farm Credit Administration, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year or both.

(Pub. L. 92-181, title V, § 5.37, as added Pub. L. 99-205, title II, § 204, Dec. 23, 1985, 99 Stat. 1702.)

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

PART D—MISCELLANEOUS

§ 2275. General Accounting Office audit; report to Congress

(a) The Comptroller General shall conduct an evaluation of the programs and activities authorized under the 1980 amendments to this chapter, and shall make an interim report to the Congress no later than December 31, 1982, and a final report to the Congress no later than December 31, 1984. The Comptroller General shall include in such evaluation the effect that this chapter, as amended, will have on agricultural credit services provided by the Farm Credit System, Federal agencies, and other entities. The Comptroller General may make such interim reports to the Congress on the programs and activities under these amendments as the Comptroller General deems necessary or as requested by Members of Congress.

(b) For the purpose of conducting program evaluations required in subsection (a) of this section, the Comptroller General or his duly authorized representatives shall have access to and the right to examine all books, documents, papers, records, or other recorded information within the possession or control of the Federal land banks and Federal land bank associations, Federal intermediate credit banks and production credit associations and banks for cooperatives.

(Pub. L. 92-181, title V, § 5.44, formerly § 5.30, as added Pub. L. 96-592, title V, § 509, Dec. 24, 1980, 94 Stat. 3450, and renumbered § 544, Pub. L. 99-205, title II, § 205(a)(2), Dec. 23, 1985, 99 Stat. 1703.)

REFERENCES IN TEXT

The 1980 amendments to this chapter and these amendments, referred to in subsec. (a), are the amendments made to this chapter by the Farm Credit Act Amendment of 1980, Pub. L. 96-592, Dec. 24, 1980, 94 Stat. 3437. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 2001 of this title and Tables.

CODIFICATION

Section was formerly classified to section 2260 of this title.

Similar provisions relating to general powers of the Comptroller General with respect to access and examination of books, documents, etc., are set out in section 2276 of this title.

§ 2276. Access to and examination by Comptroller General of books, documents, etc., of farm credit system banks and institutions

On and after December 19, 1985, the Comptroller General or his duly authorized representatives shall have access to and the right to examine all books, documents, papers, records, or other recorded information within the possession or control of the Federal land banks and Federal land bank associations, Federal intermediate credit banks and production credit associations and banks for cooperatives.

(Pub. L. 99-190, § 107, Dec. 19, 1985, 99 Stat. 1316.)

CODIFICATION

Section was not enacted as part of the Farm Credit Act of 1971 which comprises this chapter.

Similar provisions relating to powers of the Comptroller General with respect to access and examination of books, documents, etc., for purposes of conducting program evaluations under section 2275(a) of this title, are set out in section 2275(b) of this title.

CHAPTER 24—FEDERAL FINANCING BANK

§ 2294. Payments on behalf of public bodies

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2294a of this title; title 42 section 1437q.

CHAPTER 27—REAL ESTATE SETTLEMENT PROCEDURES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 section 1638; title 42 sections 3541, 8232.

§ 2602. Definitions

For purposes of this chapter—

[*See main edition for text of (1) to (4)*]

(5) the term "person" includes individuals, corporations, associations, partnerships, and trusts;

(6) the term "Secretary" means the Secretary of Housing and Urban Development;

(7) the term "controlled business arrangement" means an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider; and

(8) the term "associate" means one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent, or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor, or franchisee of such person; or (D) anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business.

(As amended Pub. L. 98-181, title IV, § 461(a), Nov. 30, 1983, 97 Stat. 1230.)

AMENDMENTS

1983—Pars. (7), (8). Pub. L. 98-181 added pars. (7) and (8).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 461(f) of Pub. L. 98-181 provided that: "The amendments made by this section [amending sections 2602, 2607, 2614, and 2617 of this title] shall become effective on Janaury 1, 1984."

§ 2604. Special information booklets

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2607, 2613 of this title.

§ 2607. Prohibition against kickbacks and unearned fees

[*See main edition for text of (a) and (b)*]

(c) Fees, salaries, compensation, or other payments

Nothing in this section shall be construed as prohibiting (1) the payment of a fee (A) to attorneys at law for services actually rendered or (B) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or (C) by a lender to its duly appointed agent for services actually performed in the making of a loan, (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed, (3) payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers, (4) controlled business arrangements so long as (A) at or prior to the time of the referral a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with the referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred, except that where a lender makes the referral, this requirement may be satisfied as part of and at the time that the estimates of settlement charges required under section 2604(c) of this title are provided, (B) such person is not required to use any particular provider of settlement services, and (C) the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship, or (5) such other payments or classes of payments or other transfers as are specified in regulations prescribed by the Secretary, after consultation with the Attorney General, the Administrator of Veterans' Affairs, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Secretary of Agriculture. For

purposes of the preceding sentence, the following shall not be considered a violation of clause 4(B): [1] (i) any arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or (ii) any arrangement where an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(d) Penalties for violations; joint and several liability; treble damages; actions for injunction by Secretary and by State officials; costs and attorney fees; construction of State laws

[See main edition for text of (1)]

(2) Any person or persons who violate the prohibitions or limitations of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service.

(3) No person or persons shall be liable for a violation of the provisions of subsection (c)(4)(A) of this section if such person or persons proves by a preponderance of the evidence that such violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adapted to avoid such error.

(4) The Secretary, the Attorney General of any State, or the insurance commissioner of any State may bring an action to enjoin violations of this section.

(5) In any private action brought pursuant to this subsection, the court may award to the prevailing party the court costs of the action together with reasonable attorneys fees.

(6) No provision of State law or regulation that imposes more stringent limitations on controlled business arrangements shall be construed as being inconsistent with this section.

(As amended Pub. L. 98-181, title IV, § 461(b), (c), Nov. 30, 1983, 97 Stat. 1231.)

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-181, § 461(b), redesignated cl. (4) as (5), added cl. (4) and provisions following cl. (5), as so redesignated, relating to arrangements which shall not be considered a violation of cl. (4)(B).

Subsec. (d)(2). Pub. L. 98-181, § 461(c), substituted provisions setting forth the liability of persons violating the prohibitions or limitations of this section for provisions setting forth liability, in addition to penalties provided in par. (1), of persons violating subsecs. (a) and (b) of this section, plus costs and attorney's fees.

Subsec. (d)(3) to (6). Pub. L. 98-181, § 461(c), added pars. (3) to (6).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 effective Jan. 1, 1984, see section 461(f) of Pub. L. 98-181, set out as a note under section 2602 of this title.

[1] So in original. Probably should be "clause (4)(B):".

§ 2614. Jurisdiction of courts; limitations

Any action pursuant to the provisions of section 2607 or 2608 of this title may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within one year from the date of the occurrence of the violation, except that actions brought by the Secretary, the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation.

(As amended Pub. L. 98-181, title IV, § 461(d), Nov. 30, 1983, 97 Stat. 1232.)

AMENDMENTS

1983—Pub. L. 98-181 amended section generally, striking out a reference to section 2605 of this title, and adding provision allowing action in district where violation is alleged to have occurred, and provision relating to time limitations in actions brought by the Secretary, the Attorney General of any State, or the insurance commissioner of any State.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 effective Jan. 1, 1984, see section 461(f) of Pub. L. 98-181, set out as a note under section 2602 of this title.

§ 2617. Authority of Secretary

[See main edition for text of (a) and (b)]

(c)(1) The Secretary may investigate any facts, conditions, practices, or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of this chapter, in prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning real estate settlement practices. To aid in the investigations, the Secretary is authorized to hold such hearings, administer such oaths, and require by subpena the attendance and testimony of such witnesses and production of such documents as the Secretary deems advisable.

(2) Any district court of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena of the Secretary issued under this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(As amended Pub. L. 98-181, title IV, § 461(e), Nov. 30, 1983, 97 Stat. 1232.)

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-181 added subsec. (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-181 effective Jan. 1, 1984, see section 461(f) of Pub. L. 98-181, set out as a note under section 2602 of this title.

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CHAPTER 28—EMERGENCY MORTGAGE RELIEF

§ 2706. Emergency Homeowners' Relief Fund

(a) To carry out the purposes of this chapter, the Secretary is authorized to establish in the Treasury of the United States an Emergency Homeowners' Relief Fund (hereinafter in this chapter referred to as the "fund") which shall be available to the Secretary without fiscal year limitation—

(1) for making payments in connection with defaulted loans or advances of credit insured under section 2704 of this title;

(2) for making emergency mortgage relief payments under section 2705 of this title;

(3) to pay such administrative expenses (or portion of such expenses) of carrying out the provisions of this chapter as the Secretary may deem necessary.

(b) The fund shall be credited with—

(1) all amounts received by the Secretary as premium charges for insurance or as repayment for emergency mortgage relief payments under this chapter and all receipts, earnings, collections, or proceeds derived from any claim or other assets acquired by the Secretary under this Act; and

(2) such amounts as may be appropriated for the purposes of this chapter.

(As amended Pub. L. 98-479, title II, § 204(m)(1), Oct. 17, 1984, 98 Stat. 2234.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), is Pub. L. 94-50, July 2, 1975, 89 Stat. 249, as amended, known as the Emergency Housing Act of 1975, which in addition to enacting this chapter, amended sections 1723e, 1723e note and 1735b of this title, and sections 1452 and 4106 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-479, § 204(m)(1)(A), (B), redesignated subsec. (a)(1) as subsec. (a) and subpars. (A), (B), and (C) as pars. (1), (2), and (3), respectively. Subsec. (b). Pub. L. 98-479, § 204(m)(1)(C), (D), redesignated subsec. (a)(2) as subsec. (b) and subpars. (A) and (B) as pars. (1) and (2), respectively.

§ 2709. Waiver and relaxation by institutions and approved mortgagees of limitations with respect to mortgage delinquencies; notification to Federal supervisory agency prior to foreclosure proceedings

Each Federal supervisory agency with respect to financial institutions subject to its jurisdiction, and the Secretary, with respect to other approved mortgagees, shall (1) prior to October 1, 1977, take appropriate action, not inconsistent with laws relating to the safety or soundness of such institutions or mortgagee, as the case may be, to waive or relax limitations pertaining to the operations of such institutions or mortgagees with respect to mortgage delinquencies in order to cause or encourage forebearance in residential mortgage loan foreclosures, and (2) until one year from July 2, 1975, request each such institution or mortgagee to notify that Federal supervisory agency, the Secretary, and the mortgagor, at least thirty days prior to instituting foreclosure proceedings in connection with any mortgage loan. As used in this chapter the term "Federal supervisory agency" means the Board of Governors of the Federal Reserve System, the Board of Directors of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration.

(As amended Pub. L. 98-479, title II, § 204(m)(2), Oct. 17, 1984, 98 Stat. 2234.)

AMENDMENTS

1984—Pub. L. 98-479 struck out subsection "(a)" designation.

CHAPTER 29—HOME MORTGAGE DISCLOSURE

§ 2803. Maintenance of records and public disclosure

(a) Duty of depository institutions; nature and content of information

(1) Each depository institution which has a home office or branch office located within a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas, as defined by the Department of Commerce shall compile and make available, in accordance with regulations of the Board, to the public for inspection and copying at the home office, and at at [1] least one branch office within each primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas in which the depository institution has an office the number and total dollar amount of mortgage loans which were (A) originated, or (B) purchased by that institution during each fiscal year (beginning with the last full fiscal year of that institution which immediately preceded the effective date of this chapter).

(2) The information required to be maintained and made available under paragraph (1) shall also be itemized in order to clearly and conspicuously disclose the following:

(A) The number and dollar amount for each item referred to in paragraph (1), by census tracts for mortgage loans secured by property located within any county with a population of more than 30,000, within that primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas, otherwise, by county, for mortgage loans secured by property located within any other county within that primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas.

[1] So in original.

(B) The number and dollar amount for each item referred to in paragraph (1) for all such mortgage loans which are secured by property located outside that primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas.

For the purpose of this paragraph, a depository institution which maintains offices in more than one primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas shall be required to make the information required by this paragraph available at any such office only to the extent that such information relates to mortgage loans which were originated or purchased by an office of that depository institution located in the primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas in which the office making such information available is located.

[*See main edition for text of* (b) *to* (e)]

(f) Data disclosure system; operation, etc.

The Federal Financial Institutions Examination Council, in consultation with the Secretary, shall implement a system to facilitate access to data required to be disclosed under this section. Such system shall include arrangements for a central depository of data in each primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas. Disclosure statements shall be made available to the public for inspection and copying at such central depository of data for all depository institutions which are required to disclose information under this section (or which are exempted pursuant to section 2805(b) of this title) and which have a home office or branch office within such primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas.

(As amended Pub. L. 98-181, title VII, § 701(a), Nov. 30, 1983, 97 Stat. 1266.)

AMENDMENTS

1983—Subsecs. (a), (f). Pub. L. 98-181 substituted "primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas" for "standard metropolitan statistical area" wherever appearing.

§ 2807. Study of feasibility of disclosure by depository institutions outside metropolitan areas; report to Congress

(a) The Board, in consultation with the Secretary of Housing and Urban Development, is authorized and directed to carry out a study to determine the feasibility and usefulness of requiring depository institutions located outside primary metropolitan statistical areas, metropolitan statistical areas, or consolidated metropolitan statistical areas that are not comprised of designated primary metropolitan statistical areas, as defined by the Office of Management and Budget, to make disclosures comparable to those required by this chapter.

[*See main edition for text of* (b)]

(As amended Pub. L. 98-181, title VII, § 701(b), Nov. 30, 1983, 97 Stat. 1266.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-181 substituted "primary metropolitan statistical areas, metropolitan statistical areas, or consolidated metropolitan statistical areas that are not comprised of designated primary metropolitan statistical areas" for "standard metropolitan statistical areas".

§ 2809. Compilation of aggregate data

(a) Commencement; scope of data and tables

Beginning with data for calendar year 1980, the Federal Financial Institutions Examination Council shall compile each year, for each primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas, aggregate data by census tract for all depository institutions which are required to disclose data under section 2803 of this title or which are exempt pursuant to section 2805(b) of this title. The Council shall also produce tables indicating, for each primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas, aggregate lending patterns for various categories of census tracts grouped according to location, age of housing stock, income level, and racial characteristics.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 98-181, title VII, § 701(a), Nov. 30, 1983, 97 Stat. 1266.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-181 substituted "primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas" for "standard metropolitan statistical areas" in two places.

§ 2810. Disclosure by Secretary; commencement, scope, etc.

Beginning with data for calendar year 1980, the Secretary shall make publicly available data in the Secretary's possession for each mortgagee which is not otherwise subject to the requirements of this chapter and which is not exempt pursuant to section 2805(b) of this title, with respect to mortgage loans approved by the Secretary for insurance under title I or II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.]. Such data to be disclosed shall consist of data comparable to the data which would be disclosed if such mortgagee were subject to the requirements of section

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2803 of this title. Disclosure statements containing data for each such mortgagee for a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas shall, at a minimum, be publicly available at the central depository of data established pursuant to section 2803(f) of this title for such primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas. The Secretary shall also compile and make publicly available aggregate data for such mortgagees by census tract, and tables indicating aggregate lending patterns, in a manner comparable to the information required to be made publicly available in accordance with section 2809 of this title.

(As amended Pub. L. 98-181, title VII, § 701(a), Nov. 30, 1983, 97 Stat. 1266.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas" for "standard metropolitan statistical areas" in two places.

§ 2811. Termination of authority

The authority granted by this chapter shall expire on March 17, 1986.

(As amended Pub. L. 99-120, § 5(c), Oct. 8, 1985, 99 Stat. 504; Pub. L. 99-156, § 5(c), Nov. 15, 1985, 99 Stat. 817; Pub. L. 99-219, § 5(c), Dec. 26, 1985, 99 Stat. 1732.)

AMENDMENTS

1985—Pub. L. 99-219 substituted "March 17, 1986" for "December 16, 1985".

Pub. L. 99-156 substituted "December 16, 1985" for "November 15, 1985".

Pub. L. 99-120 substituted "November 15, 1985" for "October 1, 1985".

CHAPTER 32—FOREIGN BANK PARTICIPATION IN DOMESTIC MARKETS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 619, 1813, 3902 of this title.

CHAPTER 33—DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS

§ 3202. Dual service of management official as management official of unaffiliated institution or holding company in same area, town, or village prohibited

A management official of a depository institution or a depository holding company may not serve as a management official of any other depository institution or depository holding company not affiliated therewith if an office of one of the institutions or any depository institution that is an affiliate of such institutions is located within either—

(1) the same primary metropolitan statistical area, the same metropolitan statistical area, or the same consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas as defined by the Office of Management and Budget, except in the case of depository institutions with less than $20,000,000 in assets in which case the provision of paragraph (2) shall apply, as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or

[See main edition for text of (2)]

(As amended Pub. L. 98-181, title VII, § 701(c), Nov. 30, 1983, 97 Stat. 1267.)

AMENDMENTS

1983—Par. (1). Pub. L. 98-181 substituted "primary metropolitan statistical area, the same metropolitan statistical area, or the same consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas" for "standard metropolitan statistical area".

CHAPTER 35—RIGHT TO FINANCIAL PRIVACY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 section 78u; title 18 section 1030.

§ 3401. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3412 of this title; title 18 section 1030.

§ 3413. Exceptions

[See main edition for text of (a) and (b)]

(c) Disclosure pursuant to title 26

Nothing in this chapter prohibits the disclosure of financial records in accordance with procedures authorized by title 26.

[See main edition for text of (d) to (j)]

(k) Disclosure necessary for proper administration of programs of withholding taxes on nonresident aliens, Federal Old-Age, Survivors, and Disability Insurance Benefits, and Railroad Retirement Act Benefits

(1) Nothing in this chapter shall apply to the disclosure by the financial institution of the name and address of any customer to the Department of the Treasury, the Social Security Administration, or the Railroad Retirement Board, where the disclosure of such information is necessary to, and such information is used solely for the purpose of, the proper administration of section 1441 of title 26, title II of the Social Security Act [42 U.S.C. 401 et seq.], or the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.].

(2) Notwithstanding any other provision of law, any request authorized by paragraph (1) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing the customer's name and address to the Department of the Treasury, the Social Security Administration, or the Railroad Retirement Board and shall be

barred from redisclosure by the financial institution or its agents.

(As amended Pub. L. 98–21, title I, § 121(c)(3)(C), Apr. 20, 1983, 97 Stat. 83.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (k)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of such Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (k)(1), is title I of Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Such title I completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§ 215 et seq.) and subchapter III (§ 228a et seq.), respectively, of chapter 9 of Title 45.

AMENDMENTS

1983—Subsec. (k). Pub. L. 98–21 added subsec. (k).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of Title 26, Internal Revenue Code.

CHAPTER 37—SOLAR ENERGY AND ENERGY CONSERVATION BANK

§ 3602. Definitions

For purposes of this chapter—

[*See main edition for text of (1) to (5)*]

(6) the term "residential energy conserving improvements" means, with respect to a residential, or multifamily residential, building—

[*See main edition for text of (A) to (G)*]

(H) air-conditioning systems having better than average energy efficiency ratings;

(I) any residential energy audit;

(J) such other improvements (not including solar energy systems) as the Board by rule identifies for purposes of this chapter; and

(K) planning and technical services, and any conversion from master utility meters to individual utility meters, which are directly related to and undertaken with the installation of any of the items specified in subparagraphs (B) through (J);

(7) the term "commercial energy conserving improvements" means the installation or the modification of an installation which is designed primarily to reduce the consumption of petroleum, natural gas, or electrical power in a commercial or agricultural building, including—

[*See main edition for text of (A) to (I)*]

(J) air-conditioning systems having better than average energy efficiency ratings;

(K) any commercial energy audit;

(L) such other improvements (not including solar energy systems) as the Board identifies, by rule, for purposes of this chapter; and

(M) planning and technical services which are directly related to and undertaken with the installation, or the modification of an installation, which includes any of the items specified in subparagraphs (B) through (L).

[*See main edition for text of (8) to (11)*]

(As amended Pub. L. 98–181, title IV, § 463(a), Nov. 30, 1983, 97 Stat. 1233.)

AMENDMENTS

1983—Par. (6)(H), (I). Pub. L. 98–181, § 463(a)(1)(A), added subpars. (H) and (I). Former subpars. (H) and (I), redesignated (J) and (K), respectively.

Par. (6)(J). Pub. L. 98–181, § 463(a)(1)(B), redesignated former subpar. (H) as (J).

Par. (6)(K). Pub. L. 98–181, § 463(a)(1)(B), (C), redesignated former subpar. (I) as (K), and in subpar. (K), as so designated, struck out references to residential energy audit and substituted "through (J)" for "through (H)".

Par. (7)(J), (K). Pub. L. 98–181, § 463(a)(2)(A), added subpars. (J) and (K). Former subpars. (J) and (K) redesignated (L) and (M), respectively.

Par. (7)(L). Pub. L. 98–181, § 463(a)(2)(B), redesignated former subpar. (J) as (L).

Par. (7)(M). Pub. L. 98–181, § 463(a)(2)(B), (C), redesignated former subpar. (K) as (M) and in subpar. (M), as so designated, struck out reference to commercial energy audit and substituted "through (L)" for "through (J)".

§ 3604. Board of Directors of Bank

REFERENCES IN TEXT

Section 38 of title 26, referred to in subsec. (f)(1), which related to investment tax credit, was repealed and a new section 38 (relating to general business credit) was added by Pub. L. 98–369, div. A, title IV, §§ 473, 474(m)(1), July 18, 1984, 98 Stat. 827, 833.

Section 44C of title 26, referred to in subsec. (f)(1), was renumbered section 23 of title 26, by Pub. L. 98–369, div. A, title IV, § 471(c)(1), July 18, 1984, 98 Stat. 826.

§ 3606. Advisory committees of Bank

[*See main edition for text of (a) to (e)*]

(f) Quorum and hearing requirements

Three members of the Energy Conservation Advisory Committee shall constitute a quorum, and 3 members of the Solar Energy Advisory Committee shall constitute a quorum, but a lesser number of members of either advisory committee may hold hearings. Each such advisory committee shall meet at the call of its

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chairperson or a majority of its members, and shall meet not less than twice during each year.

[*See main edition for text of (g) and (h)*]

(As amended Pub. L. 98-181, title IV, § 463(b), Nov. 30, 1983, 97 Stat. 1233.)

AMENDMENTS

1983—Subsec. (f). Pub. L. 98-181 added "Each such advisory committee shall meet at the call of its chairperson or a majority of its members, and shall meet not less than twice during each year."

§ 3607. Provision of financial assistance

REFERENCES IN TEXT

Section 38 of title 26, referred to in subsec. (b)(2)(E), which related to investment tax credit, was repealed and a new section 38 (relating to general business credit) was added by Pub. L. 98-369, div. A, title IV, §§ 473, 474(m)(1), July 18, 1984, 98 Stat. 827, 833.

Section 44C of title 26, referred to in subsec. (b)(2)(E), was renumbered section 23 of title 26, by Pub. L. 98-369, div. A, title IV, § 471(c)(1), July 18, 1984, 98 Stat. 826.

§ 3609. Maximum amounts of financial assistance for residential and commercial energy conserving improvements

(a) Determination of maximum amount for residential building improvements

The maximum amount of financial assistance which may be provided to an owner or tenant under this chapter for the purchase and installation of residential energy conserving improvements in a residential building may not exceed—

[*See main edition for text of (1) and (2)*]

(3) in the case of an owner or tenant whose income exceeds an amount equal to 100 percent, but does not exceed an amount equal to 120 percent, of the median area income—

[*See main edition for text of (A) and (B)*]

whichever is less;

(4) in the case of an owner or tenant whose income exceeds an amount equal to 120 percent, but does not exceed an amount equal to 150 percent, of the median area income—

[*See main edition for text of (A) and (B)*]

whichever is less; and

(5) in the case of a residential building with 2 to 4 dwelling units and an owner or tenant whose income exceeds 150 percent of the median area income, or in the case of a residential building that is available for rent and is owned by a person whose income exceeds 150 percent of the median area income—

(A) an amount equal to 20 percent of the cost of the residential energy conservation improvements; or

(B) the sum of $400 times the number of dwelling units in such building in the case of an owner, or $400 in the case of a tenant,

whichever is less.

[*See main edition for text of (b) and (c)*]

(d) Limits on financial assistance

The Board may not limit the amount of financial assistance that may be provided under this chapter for the purchase or installation of residential or commercial energy conserving improvements on the basis of the projected amount of energy conserved as a result of such improvements.

(As amended Pub. L. 98-181, title IV, § 463(c), Nov. 30, 1983, 97 Stat. 1233.)

AMENDMENTS

1983—Subsec. (a)(5). Pub. L. 98-181, § 463(c)(1), added par. (5).

Subsec. (d). Pub. L. 98-181, § 463(c)(2), added subsec. (d).

§ 3612. Conditions on financial assistance for residential and commercial energy conserving improvements

(a) Loans

In addition to the conditions contained in section 3611 of this title, financial assistance may be provided under this chapter to an owner or tenant with respect to a loan made for the purchase and installation of residential or commercial energy conserving improvements in a building only if—

[*See main edition for text of (1)*]

(2)(A) the contractor who installs residential or commercial energy conserving improvements in a building shall, in connection with such improvements, warrant in writing that the owner or tenant receiving the proceeds of such loan shall (for those improvements found within 1 year of installation to be defective due to materials manufacture, design, or installation) at a minimum be entitled to obtain within a reasonable period of time and at no charge appropriate replacement parts, materials, or installation; and

(B) in the case of energy conserving improvements installed by an owner or tenant without the assistance of a contractor, such owner or tenant shall certify to the financial institution that he or she has obtained warranties as appropriate from the supplier for the energy conserving measures;

[*See main edition for text of (3) to (8)*]

(b) Grants

Financial assistance may be provided by a financial institution under this chapter in the form of a grant to an owner or tenant only if—

[*See main edition for text of (1) to (3)*]

(4) the supplier or contractor who sells or installs the residential energy conserving improvements purchased and installed with such grant is included on a list provided under section 8214(a) of title 42 unless such residential energy conserving improvements are installed in a building which is either located in an area which is not served by a public utility described in section 8212(a) of title 42 or which is located in an area served by such a public utility but in which no list

has been made public by the public utility under section 8216(a)(3) of title 42 or by the Secretary of Energy;

(5)(A) the contractor who installs residential or commercial energy conserving improvements in a building shall, in connection with such improvements, warrant in writing that the owner or tenant receiving the proceeds of such grant shall (for those improvements found within 1 year of installation to be defective due to materials manufacture, design, or installation) at a minimum be entitled to obtain within a reasonable period of time and at no charge appropriate replacement parts, materials, or installation; and

(B) in the case of energy conserving improvements installed by an owner or tenant without the assistance of a contractor, such owner or tenant shall certify to the financial institution that he or she has obtained warranties as appropriate from the supplier for the energy conserving measures;

[See main edition for text of (6) to (9)]

(As amended Pub. L. 98-181, title IV, § 463(d), formerly § 463(c), Nov. 30, 1983, 97 Stat. 1234; Pub. L. 98-479, title I, § 104(d)(1), (e)(1), Oct. 17, 1984, 98 Stat. 2226.)

AMENDMENTS

1984—Subsec. (b)(5)(A). Pub. L. 98-479, § 104(d)(1), substituted "grant" for "loan".

1983—Subsec. (a)(2). Pub. L. 98-181, § 463(d)(1), amended par. (2) generally, substituting a new par. (2) for one which read: "(2)(A) the manufacturer of such residential or commercial energy conserving improvements shall, in connection with such improvements, warrant in writing that the owner or tenant receiving the proceeds of such loan, the installation contractor who installs the improvements, and the supplier of the improvements shall (for those improvements found within one year from the date of installation to be defective due to materials, manufacture, or design), at a minimum, be entitled to obtain, within a reasonable period of time and at no charge, appropriate replacement parts or materials, (B) the supplier of such residential or commercial energy conserving improvements shall, in connection with such improvements, provide, at a minimum, to the owner or tenant receiving the proceeds of such loan a warranty equivalent to that required under clause (A), and (C) the contractor for the installation of such residential or commercial energy conserving improvements shall, in connection with such improvements, warrant in writing that, at a minimum, any defect in materials, manufacture, design, or installation found within one year from the date of installation shall be remedied without charge and within a reasonable period of time;".

Subsec. (b)(4). Pub. L. 98-181, § 463(d)(2), added provision relating to improvements in buildings not served by a utility described in section 8212(a) of title 42 or located in an area served by a utility but in which no list has been made public by the utility under section 8216(a)(3) of title 42 or by the Secretary of Energy.

Subsec. (b)(5). Pub. L. 98-181, § 463(d)(3), amended par. (5) generally, substituting a new par. (5) for one which read: "(5)(A) the manufacturer of the residential energy conserving improvements to be purchased and installed with such grant shall, in connection with such improvements, warrant in writing that the owner or tenant receiving such grant, the installation contractor who installs the improvements, and the supplier of the improvements shall (for those improvements found within one year from the date of installation to be defective due to materials, manufacturer, or design), at a minimum, be entitled to obtain, within a reasonable period of time and at no charge, appropriate replacement parts or materials, (B) the supplier of such residential energy conserving improvements shall, in connection with such improvements, provide, at a minimum, to the owner or tenant receiving such grant a warranty equivalent to that required under clause (A), and (C) the contractor for the installation of such residential energy conserving improvements shall, in connection with such improvements, warrant in writing that, at a minimum, any defect in materials, manufacture, design, or installation found within one year from the date of installation shall be remedied without charge and within a reasonable period of time;".

§ 3613. Conditions on financial assistance for solar energy systems

REFERENCES IN TEXT

Section 38 of title 26, referred to in subsec. (b), relating to investment tax credit, was repealed and a new section 38 (relating to general business credit) was added by Pub. L. 98-369, div. A, title IV, §§ 473, 474(m)(1), July 18, 1984, 98 Stat. 827, 833.

Section 44C of title 26, referred to in subsec. (b), was renumbered section 23 of title 26, by Pub. L. 98-369, div. A, title IV, § 471(c)(1), July 18, 1984, 98 Stat. 826.

§ 3615. Limitations on provision of financial assistance for solar energy systems

REFERENCES IN TEXT

Section 3620(b) of this title, referred to in subsecs. (a) to (c), which authorized appropriations for financial assistance under this chapter for the purchase and installation of solar energy systems for fiscal years 1981 to 1983 was struck out and subsec. (c) of section 3620 of this title was redesignated subsec. (b) by Pub. L. 98-181, title IV, § 463(f)(2), Nov. 30, 1983, 97 Stat. 1235. See section 3620(a) of this title for authorization of appropriations for fiscal year 1985 for the purchase and installation of solar energy systems.

§ 3618. Rules and regulations

(a) As soon as practicable, but not later than 180 days after June 30, 1980, the Board shall issue such final rules and regulations as the Board determines are necessary to carry out this chapter, including rules and regulations to assure that there will be no fraud in the provision of financial assistance through grants under this chapter, except that any final rules and regulations with respect to multifamily residential, commercial, or agricultural buildings may be issued later than 180 days after such date but not later than 270 days after such date.

(b) Not later than 90 days after November 30, 1983, the Board shall issue regulations that—

(1) permit the provision of financial assistance under this chapter for the purchase and installation of solar energy systems of the active type, and the purchase and installation of passive and active type solar space heating and water heating in new and existing residential buildings and multifamily residential buildings;

(2) do not prohibit the use of tax-exempt financing in connection with any purchase or installation of residential or commercial energy conserving improvements or solar energy systems assisted under this subtitle;

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(3) provide that a residential energy audit shall not be required as a condition of the receipt of financial assistance by an owner or tenant of a residential building under this chapter, except that such regulations may require such audit with respect to any such building located in an area in which an audit is available under the provisions of title II or VII of the National Energy Conservation Policy Act [42 U.S.C. 8211 et seq., 8281 et seq.];

(4)(A) establish a maximum limitation on the percentage or amount of any financial assistance provided under this chapter that may be used for administrative expenses, which limitation shall be 12 percent (or such higher percentage as the Secretary may determine to be appropriate), or $20,000, whichever amount is greater; and

(B) provide that not more than one-half of any such amount may be used by any State for its administrative expenses, except that if any State is the sole administrative entity in such State with respect to financial assistance under this chapter such State may use all of such amount for such expenses;

(5)(A) establish explicit criteria, and their relative weights, for the allocation of financial assistance under this chapter among eligible financial institutions; and

(B) provide that all amounts available for financial assistance under this chapter as a result of any one appropriations law, or otherwise available for such assistance, shall be allocated at the same time; and

(6) provide that any amount of unexpended financial assistance under this chapter that is recaptured by the Board shall be reallocated by the Board to eligible financial institutions under this chapter.

(As amended Pub. L. 98-181, title IV, § 463(e), Nov. 30, 1983, 97 Stat. 1234; Pub. L. 98-479, title I, § 104(d)(2)(A), Oct. 17, 1984, 98 Stat. 2226.)

REFERENCES IN TEXT

The National Energy Conservation Policy Act, referred to in subsec. (b)(3), is Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3206, as amended. Titles II and VII of the National Energy Conservation Policy Act are classified generally to subchapters II (§ 8211 et seq.) and IV (§ 8281 et seq.), respectively, of chapter 91 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of Title 42 and Tables.

AMENDMENTS

1984—Subsec. (b)(5). Pub. L. 98-479 designated existing provisions as subpar. (A) and in subpar. (A) as so designated substituted "explicit criteria, and their relative weights," for "criteria" and added subpar. (B).

1983—Pub. L. 98-181 designated existing provisions as subsec. (a), and aded subsec. (b).

REGULATIONS

Section 104(d)(2)(B) of Pub. L. 98-479 provided that: "The Secretary shall issue the regulations required as a result of the amendment made by this paragraph [amending this section] not later than 90 days after the date of the enactment of this Act [Oct. 17, 1984]."

§ 3620. Authorization of appropriations for residential and commercial energy conserving improvements and for solar energy systems

(a) There is authorized to be appropriated to provide financial assistance under this chapter for the purchase and installation of residential and commercial energy conserving improvements and of solar energy systems such sums as may be necessary for fiscal year 1985.

(b) Any funds appropriated under the authorizations contained in this section shall remain available until expended.

(c) Redesignated (b)

(As amended Pub. L. 98-181, title IV, § 463(f)(2), Nov. 30, 1983, 97 Stat. 1235.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a), see References in Text note set out under section 3601 of this title.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-181, § 463(f)(2)(A), substituted "and of solar energy systems such sums as may be necessary for fiscal year 1985" for provisions formerly designated as pars. (1) to (4) authorizing appropriations of $200,000,000 for fiscal 1981, $625,000,000 for fiscal 1982, $800,000,000 for fiscal 1983 and $875,000,000 for fiscal 1984, with spending limitations of $10,000,000, $7,500,000, $7,500,000, and $7,500,000 to carry out section 3616 of this title for each of those fiscal years, respectively.

Subsec. (b). Pub. L. 98-181, § 463(f)(2)(B), redesignated subsec. (c) as (b). Former subsec. (b), authorizing appropriations of $100,000,000 for fiscal 1982, $200,000,000 for fiscal 1982, and $225,000,000 for fiscal 1983, for purchase and installation of solar energy systems, with spending limitations of $10,000,000, $7,500,000 and $7,500,000 to carry out section 3616 of this title for each of those fiscal years, respectively, was struck out.

Subsec. (c). Pub. L. 98-181, § 463(f)(2)(B), redesignated former subsec. (c) as (b).

LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1982, 1983, AND 1984

Pub. L. 97-35, title X, § 1071, Aug. 13, 1981, 95 Stat. 622, as amended by Pub. L. 98-181, title IV, § 463(f)(1), Nov. 30, 1983, 97 Stat. 1235, provided that: "In lieu of the amounts authorized by subsections (a) and (b) of section 522 of the Solar Energy and Energy Conservation Act of 1980 (12 U.S.C. 3620) to be appropriated for fiscal years 1982, 1983, and 1984, there is authorized to be appropriated for each of fiscal years 1982 and 1983 not to exceed $50,000,000, and for fiscal year 1984 not to exceed $35,000,000, to provide financial assistance under subtitle A of such Act [this chapter] for the purchase and installation of residential and commercial energy conserving improvements and of solar energy systems. Any funds appropriated pursuant to the preceding authorization may remain available without fiscal year limitation."

CHAPTER 38—MULTIFAMILY MORTGAGE FORECLOSURE

§ 3703. Applicability

Multifamily mortgages held by the Secretary encumbering real estate located in any State may be foreclosed by the Secretary in accordance with this chapter, or pursuant to other foreclosure procedures available, at the option of the Secretary. If the Secretary forecloses on any such mortgage pursuant to such other fore-

closure procedures available, the provisions of section 3706(b) of this title may be applied at the discretion of the Secretary.

(As amended Pub. L. 98-181, title IV, § 471, Nov. 30, 1983, 97 Stat. 1237.)

AMENDMENTS

1983—Pub. L. 98-181 added provision relating to the application of section 3706(b) of this title in the event of foreclosure under other foreclosure procedures.

§ 3706. Notice of default and foreclosure sale; condition and term of sale

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3703, 3708 of this title.

CHAPTER 39—ALTERNATIVE MORTGAGE TRANSACTIONS

§ 3804. Applicability of preemption provisions

(a) The provisions of section 3803 of this title shall not apply to any alternative mortgage transaction in any State made on or after the effective date (if such effective date occurs on or after October 15, 1982, and prior to a date three years after October 15, 1982) of a State law or a certification that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the preemption provided in section 3803 of this title to apply with respect to alternative mortgage transactions (or to any class or type of alternative mortgage transaction) subject to the laws of such State, except that section 3803 of this title shall continue to apply to—

[*See main edition for text of (1) and (2); (b)*]

(As amended Pub. L. 98-181, title IV, § 472, Nov. 30, 1983, 97 Stat. 1237.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-181 added "(or to any class or type of alternative mortgage transaction)".

CHAPTER 40—INTERNATIONAL LENDING SUPERVISION

Sec.
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3902. Definitions.
3903. Strengthened supervision of international lending.
3904. Reserves.
(a) Establishment and maintenance of special reserves.
(b) Accommodation of potential losses on foreign loans by United States banks.
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3908. Foreign loan evaluations.
(a) Projects requiring an economic feasibility evaluation; content of evaluation.
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(d) Civil penalties; assessment and collection.
3910. Audit authority of General Accounting Office.
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(b) Limits on disclosure.
(c) Records, property, workpapers, correspondence, and documents; accessability.
3911. Equal representation for Federal Deposit Insurance Corporation.
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§ 3901. Congressional declaration of policy

(a)(1) It is the policy of the Congress to assure that the economic health and stability of the United States and the other nations of the world shall not be adversely affected or threatened in the future by imprudent lending practices or inadequate supervision.

(2) This shall be achieved by strengthening the bank regulatory framework to encourage prudent private decisionmaking and by enhancing international coordination among bank regulatory authorities.

(b) The Federal banking agencies shall consult with the banking supervisory authorities of other countries to reach understandings aimed at achieving the adoption of effective and consistent supervisory policies and practices with respect to international lending.

(Pub. L. 98-181, title IX, § 902, Nov. 30, 1983, 97 Stat. 1278.)

SHORT TITLE

Section 901 of title IX of Pub. L. 98-181 provided that: "This title [enacting this chapter] may be cited as the 'International Lending Supervision Act of 1983'."

§ 3902. Definitions

For purposes of this chapter—

(1) the term "appropriate Federal banking agency" has the same meaning given such term in section 1813(q) of this title, except that for purposes of this chapter such term means the Board of Governors of the Federal Reserve System for—

(A) bank holding companies and any nonbank subsidiary thereof;

(B) Edge Act corporations organized under section 25(a) of the Federal Reserve Act [12 U.S.C. 611 et seq.]; and

(C) Agreement Corporations operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.]; and

(2) the term "banking institution" means—

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(A)(i) an insured bank as defined in section 1813(h) of this title or any subsidiary of an insured bank;

(ii) an Edge Act corporation organized under section 25(a) of the Federal Reserve Act [12 U.S.C. 611 et seq.]; and

(iii) an Agreement Corporation operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.]; and

(B) to the extent determined by the appropriate Federal banking agency, any agency or branch of a foreign bank, and any commercial lending company owned or controlled by one or more foreign banks or companies that control a foreign bank as those terms are defined in the International Banking Act of 1978 [12 U.S.C. 3101 et eq.]. The term "banking institution" shall not include a foreign bank.

(Pub. L. 98-181, title IX, § 903, Nov. 30, 1983, 97 Stat. 1278.)

REFERENCES IN TEXT

Section 25(a) of the Federal Reserve Act, referred to in pars. (1) and (2)(A), is classified to subchapter II (§ 611 et seq.) of chapter 6 of this title. Section 25 of the Federal Reserve Act is classified to subchapter I (§ 601 et seq.) of chapter 6 of this title.

The International Banking Act of 1978, referred to in par. (2)(B), is Pub. L. 95-369, Sept. 17, 1978, 92 Stat. 607, which enacted sections 347d, 611a, and 3101 to 3108 of this title, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under sections 36, 247, 601, 611a, and 3101 of this title. For definitions, see section 3101 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3910 of this title.

§ 3903. Strengthened supervision of international lending

(a) Each appropriate Federal banking agency shall evaluate banking institution foreign country exposure and transfer risk for use in banking institution examination and supervision.

(b) Each such agency shall establish examination and supervisory procedures to assure that factors such as foreign country exposure and transfer risk are taken into account in evaluating the adequacy of the capital of banking institutions.

(Pub. L. 98-181, title IX, § 904, Nov. 30, 1983, 97 Stat. 1279.)

§ 3904. Reserves

(a) Establishment and maintenance of special reserves

(1) Each appropriate Federal banking agency shall require a banking institution to establish and maintain a special reserve whenever, in the judgment of such appropriate Federal banking agency—

(A) the quality of such banking institution's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as—

(i) a failure by such public or private borrowers to make full interest payments on external indebtedness;

(ii) a failure to comply with the terms of any restructured indebtedness; or

(iii) a failure by the foreign country to comply with any International Monetary Fund or other suitable adjustment program; or

(B) no definite prospects exist for the orderly restoration of debt service.

(2) Such reserves shall be charged against current income and shall not be considered as part of capital and surplus or allowances for possible loan losses for regulatory, supervisory, or disclosure purposes.

(b) Accommodation of potential losses on foreign loans by United States banks

The appropriate Federal banking agencies shall analyze the results of foreign loan rescheduling negotiations, assess the loan loss risk reflected in rescheduling agreements, and, using the powers set forth in section 3907 of this title (regarding capital adequacy), ensure that the capital and reserve positions of United States banks are adequate to accommodate potential losses on their foreign loans.

(c) Regulations and orders of Federal banking agencies

The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this section within one hundred and twenty days after November 30, 1983.

(Pub. L. 98-181, title IX, § 905, Nov. 30, 1983, 97 Stat. 1279.)

§ 3905. Accounting for fees on international loans

(a)(1) In order to avoid excessive debt service burdens on debtor countries, no banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative cost of the restructuring unless it amortizes such fee over the effective life of each such loan.

(2)(A) Each appropriate Federal banking agency shall promulgate such regulations as are necessary to further carry out the provisions of this subsection.

(B) The requirement of paragraph (1) shall take effect on November 30, 1983.

(b)(1) Subject to subsection (a) of this section, the appropriate Federal banking agencies shall promulgate regulations for accounting for agency, commitment, management and other fees charged by a banking institution in connection with an international loan.

(2) Such regulations shall establish the accounting treatment of such fees for regulatory, supervisory, and disclosure purposes to assure that the appropriate portion of such fees is accrued in income over the effective life of each such loan.

(3) The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this subsection within one

hundred and twenty days after November 30, 1983.

(Pub. L. 98-181, title IX, § 906, Nov. 30, 1983, 97 Stat. 1279.)

§ 3906. Collection and disclosure of international lending data

(a) Submission of information to Federal banking agencies

Each appropriate Federal banking agency shall require, by regulation, each banking institution with foreign country exposure to submit, no fewer than four times each calendar year, information regarding such exposure in a format prescribed by such regulations.

(b) Disclosure of information to the public

Each appropriate Federal banking agency shall require, by regulation, banking institutions to disclose to the public information regarding material foreign country exposure in relation to assets and to capital.

(c) Regulations and orders of Federal banking agencies

The appropriate Federal banking agencies shall promulgate regulations or orders necessary to implement this section within one hundred and twenty days after November 30, 1983.

(Pub. L. 98-181, title IX, § 907, Nov. 30, 1983, 97 Stat. 1280.)

§ 3907. Capital adequacy

(a)(1) Each appropriate Federal banking agency shall cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate Federal banking agency deems appropriate.

(2) Each appropriate Federal banking agency shall have the authority to establish such minimum level of capital for a banking institution as the appropriate Federal banking agency, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the banking institution.

(b)(1) Failure of a banking institution to maintain capital at or above its minimum level as established pursuant to subsection (a) of this section may be deemed by the appropriate Federal banking agency, in its discretion, to constitute an unsafe and unsound practice within the meaning of section 1818 of this title.

(2)(A) In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the appropriate Federal banking agency may issue a directive to a banking institution that fails to maintain captial at or above its required level as established pursuant to subsection (a) of this section.

(B)(i) Such directive may require the banking institution to submit and adhere to a plan acceptable to the appropriate Federal banking agency describing the means and timing by which the banking institution shall achieve its required capital level.

(ii) Any such directive issued pursuant to this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of section 1818(i) of this title to the same extent as an effective and outstanding order issued pursuant to section 1818(b) of this title which has become final.

(3)(A) Each appropriate Federal banking agency may consider such banking institution's progress in adhering to any plan required under this subsection whenever such banking institution, or an affiliate thereof, or the holding company which controls such banking institution, seeks the requisite approval of such appropriate Federal banking agency for any proposal which would divert earnings, diminish capital, or otherwise impede such banking institution's progress in achieving its minimum capital level.

(B) Such appropriate Federal banking agency may deny such approval where it determines that such proposal would adversely affect the ability of the banking institution to comply with such plan.

(C) The Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury shall encourage governments, central banks, and regulatory authorities of other major banking countries to work toward maintaining and, where appropriate, strengthening the capital bases of banking institutions involved in international lending.

(Pub. L. 98-181, title IX, § 908, Nov. 30, 1983, 97 Stat. 1280.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3904, 3912 of this title.

§ 3908. Foreign loan evaluations

(a) Projects requiring an economic feasibility evaluation; content of evaluation

(1) In any case in which one or more banking institutions extend credit, whether by loan, lease, guarantee, or otherwise, which individually or in the aggregate exceeds $20,000,000, to finance any project which has as a major objective the construction or operation of any mining operation, any metal or mineral primary processing operation, any fabricating facility or operation, or any metal-making operations (semi and finished) located outside the United States or its territories and possessions, a written economic feasibility evaluation of such foreign project shall be prepared and approved in writing by a senior official of the banking institution, or, if more than one banking institution is involved, the lead banking institution, prior to the extension of such credit.

(2) Such evaluation shall—

(A) take into account the profit potential of the project, the impact of the project on world markets, the inherent competitive advantages and disadvantages of the project over the entire life of the project, and the likely effect of the project upon the overall long-term economic development of the country in which the project is located; and

(B) consider whether the extension of credit can reasonably be expected to be repaid from revenues generated by such foreign project without regard to any subsidy, as defined in international agreements, provided

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by the government involved or any instrumentality of any country.

(b) Review of evaluation by Federal banking agencies

Such economic feasibility evaluations shall be reviewed by representatives of the appropriate Federal banking agencies whenever an examination by such appropriate Federal banking agency is conducted.

(c) Other statutory authorities applicable

(1) The authorities of the Federal banking agencies contained in section 1818 of this title and in section 3909 of this title, except those contained in section 3909(d) of this title, shall be applicable to this section.

(2) No private right of action or claim for relief may be predicated upon this section.

(Pub. L. 98-181, title IX, § 909, Nov. 30, 1983, 97 Stat. 1281.)

§ 3909. General authorities

(a) Rules and regulations

(1) The appropriate Federal banking agencies are authorized to interpret and define the terms used in this chapter, and each appropriate Federal banking agency shall prescribe rules or regulations or issue orders as necessary to effectuate the purposes of this chapter and to prevent evasions thereof.

(2) The appropriate Federal banking agency is authorized to apply the provisions of this chapter to any affiliate of an insured bank, but only to affiliates for which it is the appropriate Federal banking agency, in order to promote uniform application of this chapter or to prevent evasions thereof.

(3) For purposes of this section, the term "affiliate" shall have the same meaning as in section 371c of this title, except that the term "member bank" in such section shall be deemed to refer to an "insured bank", as such term is used in section 1813(h) of this title.

(b) Systems uniformity

The appropriate Federal banking agencies shall establish uniform systems to implement the authorities provided under this chapter.

(c) Existing authorities

(1) The powers and authorities granted in this chapter shall be supplemental to and shall not be deemed in any manner to derogate from or restrict the authority of each appropriate Federal banking agency under section 1818 of this title or any other law including the authority to require additional capital or reserves.

(2) Any such authority may be used by any appropriate Federal banking agency to ensure compliance by a banking institution with the provisions of this chapter and all rules, regulations, or orders issued pursuant thereto.

(d) Civil penalties; assessment and collection

(1) Any banking institution which violates, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such banking institution, who violates any provision of this chapter, or any rule, regulation, or order, issued under this chapter, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues.

(2) Such violations shall be deemed to be a violation of a final order under section 1818(i)(2) of this title and the penalty shall be assessed and collected by the appropriate Federal banking agency under the procedures established by, and subject to the rights afforded to parties in, such section.

(Pub. L. 98-181, title IX, § 910, Nov. 30, 1983, 97 Stat. 1282.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3908 of this title.

§ 3910. Audit authority of General Accounting Office

(a) Scope of audit

(1) Under regulations of the Comptroller General, the Comptroller General shall audit the appropriate Federal banking agencies (as defined in section 3902 of this title), but may carry out an onsite examination of an open insured bank or bank holding company only if the appropriate Federal banking agency has consented in writing.

(2) An audit under this subsection may include a review or evaluation of the international regulation, supervision, and examination activities of the appropriate Federal banking agency, including the coordination of such activities with similar activities of regulatory authorities of a foreign government or international organization.

(3) Audits of the Federal Reserve Board and Federal Reserve banks may not include—

(A) transactions for, or with, a foreign central bank, government of a foreign country, or nonprivate international financing organization;

(B) deliberations, decisions, or actions on monetary policy matters, including discount window operations, reserves of member banks, securities credit, interest on deposits, or open market operations;

(C) transactions made under the direction of the Federal Open Market Committee; or

(D) a part of a discussion or communication among or between members of the Board of Governors of the Federal Reserve System and officers and employees of the Federal Reserve System related to subparagraphs (A) through (C) of this paragraph.

(b) Limits on disclosure

(1)(A) Except as provided in this subsection, an officer or employee of the General Accounting Office may not disclose information identifying an open bank, an open bank holding company, or a customer of an open or closed bank or bank holding company.

(B) The Comptroller General may disclose information related to the affairs of a closed bank or closed bank holding company identifying a customer of the closed bank or closed bank holding company only if the Comptroller General believes the customer had a controlling influence in the management of the closed bank or closed bank holding company or was related to or affiliated with a person or group having a controlling influence.

(2) An officer or employee of the General Accounting Office may discuss a customer, bank, or bank holding company with an official of an appropriate Federal banking agency and may report an apparent criminal violation to an appropriate law enforcement authority of the United States Government or a State.

(3) This subsection does not authorize an officer or employee of an appropriate Federal banking agency to withhold information from a committee of the Congress authorized to have the information.

(c) Records, property, workpapers, correspondence, and documents; accessability

(1)(A) To carry out this section, all records and property of or used by an appropriate Federal banking agency, including samples of reports of examinations of a bank or bank holding company the Comptroller General considers statistically meaningful and workpapers and correspondence related to the reports shall be made available to the Comptroller General, including such records and property pertaining to the coordination of international regulation, supervisor and examination activities of an appropriate Federal banking agency.

(B) The Comptroller General shall give each appropriate Federal banking agency a current list of officers and employees to whom, with proper identification, records and property may be made available, and who may make notes or copies necessary to carry out an audit.

(C) Each appropriate Federal banking agency shall give the Comptroller General suitable and lockable offices and furniture, telephones, and access to copying facilities.

(2) Except for the temporary removal of workpapers of the Comptroller General that do not identify a customer of an open or closed bank or bank holding company, an open bank, or an open bank holding company, all workpapers of the Comptroller General and records and property of or used by an appropriate Federal banking agency that the Comptroller General possesses during an audit, shall remain in such agency. The Comptroller General shall prevent unauthorized access to records or property.

(Pub. L. 98–181, title IX, § 911, Nov. 30, 1983, 97 Stat. 1282.)

§ 3911. Equal representation for Federal Deposit Insurance Corporation

As one of the three Federal bank regulatory and supervisory agencies, and as the insurer of the United States banks involved in international lending, the Federal Deposit Insurance Corporation shall be given equal representation with the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency on the Committee on Banking Regulations and Supervisory Practices of the Group of Ten Countries and Switzerland.

(Pub. L. 98–181, title IX, § 912, Nov. 30, 1983, 97 Stat. 1284.)

§ 3912. Reports

Not later than six months after November 30, 1983, the Secretary of the Treasury or the appropriate Federal banking agencies as specified below, shall transmit a report to the Congress regarding changes to improve the international lending operations of banking institutions. Such report shall—

(1) review the laws, regulations, and examination and supervisory procedures and practices, governing international banking in each of the Group of Ten Nations and Switzerland with particular attention to such matters bearing on capital requirements, lending limits, reserves, disclosure, examiner access, and lender of last resort resources, such report to be prepared by the Chairman of the Board of Governors of the Federal Reserve System;

(2) outline progress made in reaching the goal specified in section 3907(c) of this title, such report to be prepared by the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System; and

(3) indicate actions taken to implement this chapter by the appropriate Federal banking agencies, including a description of the actions taken in carrying out the objectives of the chapter and any actions taken by any appropriate Federal banking agency that are inconsistent with the uniform implementation by the appropriate Federal banking agencies of their respective authorities under this chapter, and any recommendations for amendments to this or other legislation, such report to be prepared by the appropriate Federal banking agencies.

(Pub. L. 98–181, title IX, § 913, Nov. 30, 1983, 97 Stat. 1284.)

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TITLE 13—CENSUS

This title was enacted by act Aug. 31, 1954, ch. 1158, 68 Stat. 1012

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 5 sections 552a, 7201; title 42 section 3013.

CHAPTER 3—COLLECTION AND PUBLICATION OF STATISTICS

SUBCHAPTER I—COTTON

§ 42. Contents of reports; number of bales of linter; distribution; publication by Department of Agriculture

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2276.

CHAPTER 5—CENSUSES

SUBCHAPTER II—POPULATION, HOUSING, AGRICULTURE, IRRIGATION, DRAINAGE, AND UNEMPLOYMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 221, 222, 223, 225 of this title.

SUBCHAPTER IV—INTERIM CURRENT DATA

§ 181. Population

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 10403.

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TITLE 14—COAST GUARD

This title was enacted by act Aug. 4, 1949, ch. 393, § 1, 63 Stat. 495

PART I—REGULAR COAST GUARD

CHAPTER 1—ESTABLISHMENT AND DUTIES

§ 1. Establishment of Coast Guard

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 46 section 2101.

§ 2. Primary duties

CROSS REFERENCES

Ice and derelict patrol, see section 738a of Title 46, Appendix, Shipping.

CHAPTER 3—COMPOSITION AND ORGANIZATION

§ 41. Grades and ratings

In the Coast Guard there shall be an admiral, vice admirals; rear admirals; rear admirals (lower half); captains; commanders; lieutenant commanders; lieutenants; lieutenants (junior grade); ensigns; chief warrant officers, W-4; chief warrant officers, W-3; chief warrant officers, W-2; cadets; warrant officers, W-1; and enlisted members. Enlisted members shall be distributed in ratings established by the Secretary.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(B), (C), 98 Stat. 2865; November 8, 1985, Pub. L. 99-145, title V, § 514(a)(2), 99 Stat. 628.)

AMENDMENTS

1985—Pub. L. 99-145 substituted "rear admirals (lower half)" for "commodores".

1984—Pub. L. 98-557 substituted "members" for "men" in two places.

§ 42. Number and distribution of commissioned officers

[*See main edition for text of (a)*]

(b) The commissioned officers on the active duty promotion list shall be distributed in grade in the following percentages, respectively: rear admiral 0.375; rear admiral (lower half) 0.375; captain 6.0; commander 12.0; lieutenant commander 18.0. The Secretary shall prescribe the percentages applicable to the grades of lieutenant, lieutenant (junior grade), and ensign. The Secretary may, as the needs of the Coast Guard require, reduce the percentage applicable to any grade above lieutenant commander, and in order to compensate for such reduction increase correspondingly the percentage applicable to any lower grade.

[*See main edition for text of (c) to (e)*]

(As amended Oct. 30, 1984, Pub. L. 98-557, § 25(a)(1), 98 Stat. 2872; Nov. 8, 1985, Pub. L. 99-145, title V, § 514(c)(1), 99 Stat. 629.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

1984—Subsec. (b). Pub. L. 98-557 substituted "0.375" for ".375" in two places.

CHAPTER 5—FUNCTIONS AND POWERS

§ 81. Aids to navigation authorized

CROSS REFERENCES

Ice and derelict patrol, see section 738a of Title 46, Appendix, Shipping.

§ 88. Saving life and property

HELICOPTER RESCUE SWIMMING PROGRAM

Pub. L. 98-557, § 9, Oct. 30, 1984, 98 Stat. 2862, provided that: "The Secretary of the department in which the Coast Guard is operating shall use such sums as are necessary, from amounts appropriated for the operation and maintenance of the Coast Guard, to establish a helicopter rescue swimming program for the purpose of training selected Coast Guard personnel in rescue swimming skills."

§ 89. Law enforcement

ENHANCED DRUG-INTERDICTION ASSISTANCE

Pub. L. 99-145, title XIV, § 1421, Nov. 8, 1985, 99 Stat. 750, provided that:

"(a) MANDATORY ASSIGNMENT OF COAST GUARD PERSONNEL ON NAVAL VESSELS.—The Secretary of Defense and the Secretary of Transportation shall provide that there be assigned on board each surface naval vessel at sea in a drug-interdiction area at least one member of the Coast Guard who is trained in law enforcement and has power to arrest, search, and seize property and persons suspected of violations of law.

"(b) LAW ENFORCEMENT FUNCTIONS.—Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)—

"(1) as may be agreed upon by the Secretary of Defense and the Secretary of Transportation; and

"(2) as are otherwise within the jurisdiction of the Coast Guard.

"(c) AUTHORIZATION OF NECESSARY COAST GUARD PERSONNEL; FUNDING.—(1) The active-duty military strength level for the Coast Guard for fiscal year 1986 is increased by 500. Additional members of the Coast Guard who are on active duty by reason of this subsection shall be assigned to duty as provided in subsection (a).

"(2) Of the funds appropriated for operation and maintenance for the Navy for fiscal year 1986, the sum of $15,000,000 shall be transferred to the Secre-

tary of Transportation and shall be available only for the additional personnel authorized by paragraph (1).

"(d) DEFINITIONS.—For the purposes of this section:

"(1) The term 'drug-interdiction area' means an area outside the land area of the United States in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing.

"(2) The term 'active-duty military strength level for the Coast Guard for fiscal year 1986' means the full-time equivalent strength level for active-duty military personnel of the Coast Guard for fiscal year 1986 required to be maintained by section 3 of the Coast Guard Authorization Act of 1984 (Public Law 98-557; 98 Stat. 2860)."

§ 92. Secretary; general powers

For the purpose of executing the duties and functions of the Coast Guard the Secretary may within the limits of appropriations made therefor:

(a) establish, change the limits of, consolidate, discontinue, and re-establish Coast Guard districts;

(b) arrange with the Secretaries of the Army, Navy and Air Force to assign members of the Coast Guard to any school maintained by the Army, Navy, and Air Force, for instruction and training, including aviation schools;

[*See main edition for text of* (c) *to* (i)]

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(D), 98 Stat. 2865.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-557 substituted reference to members for reference to officers and enlisted men.

LIFESAVING EQUIPMENT ON PASSENGER FERRIES

Section 10 of Pub. L. 98-557 provided that: "The Secretary of the department in which the Coast Guard is operating shall proceed vigorously with efforts to develop improved lifesaving equipment for use on passenger ferries."

AIRCRAFT

Provisions specifying the maximum number of aircraft on hand at any one time, exclusive of planes and parts stored to meet future attrition, were contained in the following appropriation acts:

Dec. 19, 1985, Pub. L. 99-190, § 101(e) [title I, § 101], 99 Stat. 1267, 1269.

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(i) [title I, § 101], 98 Stat. 1944, 1945.

Aug. 15, 1983, Pub. L. 98-78, title I, § 101, 97 Stat. 454.

§ 93. Commandant; general powers

CROSS REFERENCES

Advancements and allotments to seamen, enforcement of law, see sections 10314, 10315, 10505, 10506 of Title 46, Shipping.

Appeal from certificate of complement of officers and crew, see section 8101 of Title 46.

Inspection laws, see section 3301 et seq. of Title 46.

Suspension or revocation of license, certificate of registry, or merchant mariners' document, see section 7702 of Title 46.

CHAPTER 7—COOPERATION WITH OTHER AGENCIES

Sec.
149. Detail of members to assist foreign governments.

AMENDMENTS

1984—Pub. L. 98-557, § 15(a)(4)(A)(ii), Oct. 30, 1984, 98 Stat. 2865, substituted "members" for "officers and men" in item 149.

§ 141. General

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 46 section 13109.

§ 144. Department of the Army and Department of the Air Force

(a) The Secretary of the Army or the Secretary of the Air Force at the request of the Secretary may, with or without reimbursement for the cost thereof, as agreed, receive members of the Coast Guard for instruction in any school, including any aviation school, maintained by the Army or the Air Force, and such members shall be subject to the regulations governing such schools.

[*See main edition for text of* (b) *and* (c)]

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(D), 98 Stat. 2865.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-557 substituted reference to members for reference to officers and enlisted men in two places.

§ 145. Navy Department

(a) The Secretary of the Navy, at the request of the Secretary may, with or without reimbursement for the cost thereof, as agreed:

(1) build any vessel for the Coast Guard at such Navy yards as the Secretary of the Navy may designate;

(2) receive members of the Coast Guard for instruction in any school, including any aviation school maintained by the Navy, and such members shall be subject to the regulations governing such schools; and

[*See main edition for text of* (3); (b) *and* (c)]

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(D), 98 Stat. 2865.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-557 substituted reference to members for reference to officers and enlisted men in two places.

§ 148. Maritime instruction

The Coast Guard may, when so requested by proper authority, detail members for duty in connection with maritime instruction and training by the several States, Territories, the District of Columbia, and Puerto Rico, and when requested by the Maritime Administrator, detail persons in the Coast Guard for duty in connection with maritime instruction and training by the United States. The service rendered

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by any person so detailed shall be considered Coast Guard duty.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(D), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to members for reference to officers and enlisted men.

§ 149. Detail of members to assist foreign governments

The President may upon application from the foreign governments concerned, and whenever in his discretion the public interests render such a course advisable, detail members of the Coast Guard to assist foreign governments in matters concerning which the Coast Guard may be of assistance. Members so detailed may accept, from the government to which detailed, offices and such compensation and emoluments thereunder appertaining as may be first approved by the Secretary. While so detailed such members shall receive, in addition to the compensation and emoluments allowed them by such governments, the pay and allowances to which they are entitled in the Coast Guard and shall be allowed the same credit for longevity, retirement, and for all other purposes that they would receive if they were serving with the Coast Guard.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(D), (E), (4)(A)(i), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to members for reference to officers and enlisted men in three places in text, and in catchline substituted "members" for "officers and men".

CHAPTER 9—COAST GUARD ACADEMY

Sec.
181a. Cadet applicants; preappointment travel to Academy.

AMENDMENTS

1984—Pub. L. 98-557, § 24(b), Oct. 30, 1984, 98 Stat. 2872, added item 181a.

§ 181a. Cadet applicants; preappointment travel to Academy

The Secretary is authorized to expend appropriated funds for selective preappointment travel to the Academy for orientation visits of cadet applicants.

(Added Pub. L. 98-557, § 24(a), Oct. 30, 1984, 98 Stat. 2872.)

§ 192. Assignment of personnel as instructors

The Commandant may assign any member to appropriate instruction duty at the Academy.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(H), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to member for reference to commissioned officer, warrant officer, and enlisted man.

CHAPTER 11—PERSONNEL

OFFICERS

D. DISCHARGES; RETIREMENTS; REVOCATION OF COMMISSIONS

Sec.
290. Rear admirals and rear admirals (lower half); continuation on active duty; involuntary retirement.
295. Deferment of retirement or separation for medical reasons.

ENLISTED MEMBERS

360. Recall to active duty with consent of member.
361. Relief of retired enlisted member promoted while on active duty.

AMENDMENTS

1985—Pub. L. 99-145, title V, § 514(c)(2)(B), Nov. 8, 1985, 99 Stat. 629, substituted "rear admirals (lower half)" for "commodores" in item 290.

1984—Pub. L. 98-557, §§ 15(a)(4)(B)(ii), (C)(ii), (E)(ii), 17(b)(2)(B), Oct. 30, 1984, 98 Stat. 2865, 2866, 2867, added item 295, in heading preceding item 350 substituted "MEMBERS" for "MEN", in item 360 substituted "member" for "man", and in item 361 substituted "enlisted member" for "man".

OFFICERS

A. APPOINTMENTS

§ 211. Original appointment of permanent commissioned officers

(a) The President may appoint, by and with the advice and consent of the Senate, permanent commissioned officers in the Regular Coast Guard in grades of ensign or above appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may require, from among the following categories:

(1) graduates of the Coast Guard Academy;

(2) commissioned warrant officers, warrant officers, and enlisted members of the Regular Coast Guard;

[*See main edition for text of (3) and (4); (b) and (c)*]

(As amended Pub. L. 98-557, § 15(a)(3)(B), Oct. 30, 1984, 98 Stat. 2865.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-557 substituted reference to enlisted members for reference to enlisted men.

§ 212. Original appointment of permanent commissioned warrant officers

(a) The President may appoint, by and with the advice and consent of the Senate, permanent commissioned warrant officers in the Regular Coast Guard, as the needs of the Coast Guard may require, from among the following categories:

(1) warrant officers (W-1) of the Regular Coast Guard;

(2) enlisted members of the Regular Coast Guard;

[*See main edition for text of (3) and (4); (b) and (c)*]

(As amended Pub. L. 98-557, § 15(a)(3)(B), Oct. 30, 1984, 98 Stat. 2865.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-557 substituted reference to enlisted members for reference to enlisted men.

§ 213. Original appointment of permanent warrant officers (W-1)

(a) The Secretary may appoint permanent warrant officers (W-1), in the Regular Coast Guard, as the needs of the Coast Guard may require, from among the following categories:

(1) enlisted members of the Regular Coast Guard;

[*See main edition for text of (2) and (3); (b) and (c)*]

(As amended Pub. L. 98-557, § 15(a)(3)(B), Oct. 30, 1984, 98 Stat. 2865.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-557 substituted reference to enlisted members for reference to enlisted men.

§ 214. Original appointment of temporary officers

(a) The President may appoint temporary commissioned officers in the Regular Coast Guard in a grade, not above lieutenant, appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may require, from among the commissioned warrant officers, warrant officers, and enlisted members of the Coast Guard, and from licensed officers of the United States merchant marine.

(b) The President may appoint temporary commissioned warrant officers in the Regular Coast Guard, as the needs of the Coast Guard may require, from among the warrant officers and enlisted members of the Coast Guard, and from licensed officers of the United States merchant marine.

(c) The Secretary may appoint temporary warrant officers (W-1) in the Regular Coast Guard, as the needs of the Coast Guard require, from among the enlisted members of the Coast Guard, and from licensed officers of the United States merchant marine.

[*See main edition for text of (d) to (f)*]

(As amended Pub. L. 98-557, § 15(a)(3)(B), Oct. 30, 1984, 98 Stat. 2865.)

AMENDMENTS

1984—Subsecs. (a) to (c). Pub. L. 98-557 substituted reference to enlisted members for reference to enlisted men wherever appearing.

B. SELECTION FOR PROMOTION

§ 256. Promotion zones

(a) Before convening a selection board to recommend officers for promotion to any grade above lieutenant (junior grade) and below rear admiral (lower half), the Secretary shall establish a promotion zone for the grade to be considered. The promotion zone for each grade shall consist of the most senior officers of that grade on the active duty promotion list who are eligible for consideration for promotion to the next higher grade and who have not previously been placed in a promotion zone for selection for promotion to the next higher grade. The number of officers in each zone shall be determined after considering—

[*See main edition for text of (1) to (3)*]

However, such number of officers shall not exceed the number to be selected for promotion divided by six-tenths.

(b) Promotion zones from which officers will be selected for promotion to the grade of commodore [1] shall be established by the Secretary as the needs of the service require.

(As amended Pub. L. 99-145, title V, § 514(c)(1), Nov. 8, 1985, 99 Stat. 629.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

§ 257. Eligibility of officers for consideration for promotion

[*See main edition for text of (a) to (d)*]

(e) An officer whose involuntary retirement or separation is deferred under section 295 of this title is not eligible for consideration for promotion to the next higher grade during the period of that deferment.

(As amended Pub. L. 98-557, § 17(b)(1), Oct. 30, 1984, 98 Stat. 2867.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-557 added subsec. (e).

§ 259. Officers to be recommended for promotion

[*See main edition for text of (a)*]

(b) The number of officers that a board convened under section 251 of this title may recommend for promotion to a grade below rear admiral (lower half) from among eligible officers junior in rank to the junior officer in the appropriate promotion zone may not exceed—

[*See main edition for text of (1) to (3)*]

unless such percentage is a number less than one, in which case the board may recommend one such officer for promotion.

(As amended Pub. L. 99-145, title V, § 514(c)(1), Nov. 8, 1985, 99 Stat. 629.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

[1] So in original. Probably should be "rear admiral (lower half)".

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C. Promotions

§ 271. Promotions; appointments

[*See main edition for text of* (a) *to* (c)]

(d) When a vacancy in the grade of rear admiral occurs, the senior rear admiral (lower half) serving on the active duty promotion list shall be appointed by the President, by and with the advice and consent of the Senate, to fill the vacancy. The appointment shall be effective on the date the vacancy occurred.

[*See main edition for text of* (e) *and* (f)]

(As amended Pub. L. 99-145, title V, § 514(c)(1), Nov. 8, 1985, 99 Stat. 629.)

Amendments

1985—Subsec. (d). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

D. Discharges; Retirements; Revocation of Commissions

§ 289. Captains; continuation on active duty; involuntary retirement

(a) The Secretary may, whenever the needs of the service require, but not more often than annually, convene a board consisting of not less than six officers of the grade of rear admiral (lower half) or rear admiral to recommend for continuation on active duty officers on the active duty promotion list serving in the grade of captain, who during the promotion year in which the board meets will complete at least three years' service in that grade and who have not been selected for promotion to the grade of rear admiral (lower half). Officers who are subject to retirement under section 288 of this title during the promotion year in which the board meets shall not be considered by this board.

[*See main edition for text of* (b) *to* (g)]

(As amended Pub. L. 99-145, title V, § 514(c)(1), Nov. 8, 1985, 99 Stat. 629.)

Amendments

1985—Subsec. (a). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore" in two places.

§ 290. Rear admirals and rear admirals (lower half); continuation on active duty; involuntary retirement

(a) The Secretary shall from time to time convene boards to recommend for continuation on active duty the most senior officers on the active duty promotion list serving in the grade of rear admiral (lower half) or rear admiral who have not previously been considered for continuation in that grade. Officers serving for the time being or who have served in the grade of vice admiral or in the position of Chief of Staff are not subject to consideration for continuation under this subsection, and as to all other provisions of this section shall be considered as having been continued in the grade of rear admiral. A board shall consist of at least five officers serving in the grade of vice admiral or as rear admirals previously continued. Boards shall be convened frequently enough to assure that each officer serving in the grade of rear admiral (lower half) or rear admiral is subject to consideration for continuation during a promotion year in which he completes not less than four or more than five years combined service in the grades of rear admiral (lower half) and rear admiral.

[*See main edition for text of* (b) *to* (g)]

(As amended Pub. L. 98-557, § 25(a)(2), Oct. 30, 1984, 98 Stat. 2872; Pub. L. 99-145, title V, § 514(c)(1), (2)(A), Nov. 8, 1985, 99 Stat. 629.)

Amendments

1985—Pub. L. 99-145, § 514(c)(2)(A), substituted "rear admirals (lower half)" for "commodores" in section catchline.

Subsec. (a). Pub. L. 99-145, § 514(c)(1), substituted "rear admiral (lower half)" for "commodore" in three places.

1984—Subsec. (a). Pub. L. 98-557 substituted "Boards" for "Board".

§ 295. Deferment of retirement or separation for medical reasons

(a) Subject to subsection (b), the Secretary may defer the retirement or separation of a commissioned officer, other than a commissioned warrant officer, if the evaluation of the physical condition of the officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization, medical observation, or other physical disability processing that cannot be completed before the date on which the officer would otherwise be retired or separated.

(b) A deferment under subsection (a)—

(1) may only be made with the consent of the officer involved; and

(2) if the Secretary receives written notice from the officer withdrawing that consent, shall end not later than the end of the sixty-day period beginning on the date the Secretary receives that notice.

(Added Pub. L. 98-557, § 17(b)(2)(A), Oct. 30, 1984, 98 Stat. 2867.)

Section Referred to in Other Sections

This section is referred to in section 257 of this title.

ENLISTED MEMBERS

Amendments

1984—Pub. L. 98-557, § 15(a)(4)(E)(i), Oct. 30, 1984, 98 Stat. 2866, substituted "MEMBERS" for "MEN" in heading.

§ 351. Enlistments; term, grade

(a) Under regulations prescribed by the Secretary, the Commandant may enlist persons for minority or terms of full years not exceeding six years.

(b) The Secretary shall prescribe the grades or ratings for persons enlisting in the Regular Coast Guard.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(F), 98 Stat. 2865.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-557 substituted reference to persons for reference to men.

§ 352. Promotion

Enlisted members shall be advanced in rating by the Commandant under regulations prescribed by the Secretary.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(C), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted "Enlisted members" for "Enlisted men".

§ 353. Compulsory retirement at age of sixty-two

Any enlisted member who has reached the age of sixty-two shall be retired from active service, with retired pay of the grade or rating with which retired.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(A), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to enlisted member for reference to enlisted man.

§ 354. Voluntary retirement after thirty years' service

Any enlisted member who has completed thirty years' service may, upon his own application, in the discretion of the Commandant, be retired from active service, with retired pay of the grade or rating with which retired.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(A), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to enlisted member for reference to enlisted man.

§ 355. Voluntary retirement after twenty years' service

Any enlisted member who has completed twenty years' service may, upon his own application, in the discretion of the Commandant, be retired from active service, with retired pay of the grade or rating with which retired.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(A), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to enlisted member for reference to enlisted man.

§ 357. Enlisted Personnel Board

(a) The Commandant shall assemble annually a Coast Guard Enlisted Personnel Board, of not less than three commissioned officers on the active list, who shall recommend for retirement such enlisted members who have twenty years of service, as the Board determines, in its discretion, should be retired from active service. The recommendations of the Board shall be transmitted to the Commandant for final action. If the Commandant approves the recommendations of the Board, the enlisted members concerned shall be notified thereof in writing, and any enlisted member who, within thirty days after receipt of such notification, files with the Commandant a written protest of the action taken by the Board in his case, shall not be retired involuntarily under this section unless a subsequent annual Board again determines, in its discretion, and recommends that such enlisted member should be retired, in which case such enlisted member may, upon approval by the Commandant, be retired from active service. At the expiration of thirty days after receipt by an enlisted member of notice as aforesaid, in the event that no such protest is filed by him within the period prescribed, such enlisted member may, upon approval by the Commandant, be retired from active service. If the Commandant disapproves any recommendation of the Board the enlisted member concerned shall retain his status to the same extent as if his case had not been considered.

(b) Any enlisted member who has completed twenty years' service and who has been retired from active duty by the Commandant pursuant to the action of an Enlisted Personnel Board shall receive the retired pay of the grade or rating with which retired.

(c) Any enlisted member retired by reason of twenty years' service, whether voluntarily or involuntarily, who has been cited for extraordinary heroism in line of duty, as determined by the Secretary, whose determination shall be final and conclusive, shall be entitled to have his retired pay increased by an amount equal to 10 per cent of the active-duty pay and permanent additions thereto of the grade or rating with which retired.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(A), (B), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557, § 15(a)(3)(A), substituted reference to enlisted member for reference to enlisted man wherever appearing in subsecs. (a) to (c).

Subsec. (a). Pub. L. 98-557, § 15(a)(3)(B), substituted reference to enlisted members for reference to enlisted men in two places.

§ 359. Recall to active duty during war or national emergency

In times of war or national emergency, the Commandant may order any enlisted member on the retired list to active duty.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(A), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to enlisted member for reference to enlisted man.

§ 360. Recall to active duty with consent of member

Any enlisted member on the retired list may, with his consent, be assigned to such duties as he may be able to perform, except that no enlisted member on the retired list who has reached the age of sixty-two years shall be recalled in time of peace.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(A), (4)(B)(i), 98 Stat. 2865.)

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AMENDMENTS

1984—Pub. L. 98-557 substituted "member" for "man" in section catchline, and in text substituted reference to enlisted member for reference to enlisted man in two places.

§ 361. Relief of retired enlisted member promoted while on active duty

Any enlisted member on the retired list recalled to active duty who during such active duty is advanced to a higher grade or rating under a permanent or temporary appointment or promotion shall, upon relief from active duty be advanced on the retired list to the highest grade or rating held while on active duty. In case the appointment or promotion was temporary the advancement on the retired list shall be made only to such grade or rating in which the member served satisfactorily on active duty.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(A), (G), (4)(C)(i), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 in section catchline substituted "enlisted member" for "man", and in two places in text substituted "member" for "man".

§ 362. Retirement in cases where higher grade or rating has been held

Any enlisted member who is retired under any provision of section 353, 354, 355, or 357 of this title shall be retired from active service with highest grade or rating held by him while on active duty in which, as determined by the Secretary, his performance of duty was satisfactory, but not lower than his permanent grade or rating, with retired pay of the grade or rating with which retired.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(A), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to enlisted member for reference to enlisted man.

§ 365. Extension of enlistments

Under regulations prescribed by the Secretary, the term of enlistment of any enlisted member may, by voluntary written agreement, be extended and re-extended for a period not exceeding six full years from the date of expiration of the then-existing term of enlistment, and subsequent to such date an enlisted member who so extends his term of enlistment shall receive the same pay and allowances in all respects as though regularly discharged and reenlisted immediately upon expiration of his term of enlistment. However, the total of all such extensions of an enlistment may not exceed six years. No such extension shall operate to deprive the enlisted member concerned, upon discharge at the termination thereof, of any right, privilege, or benefit to which he would have been entitled if his term of enlistment had not been so extended.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(A), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to enlisted member for reference to enlisted man in three places.

§ 366. Retention beyond term of enlistment in case of disability

Any enlisted member of the Coast Guard in the active service whose term of enlistment expires while he is suffering disease or injury incident to service and not due to misconduct, and who is in need of medical care or hospitalization, may, with his consent, be retained in such service beyond the expiration of his term of enlistment. Any such enlisted member shall be entitled to receive at Government expense medical care or hospitalization and his pay and allowances, including credit for longevity, until he shall have recovered to such extent as would enable him to meet the physical requirements for reenlistment, or until it shall have been ascertained by competent authority of the Coast Guard that the disease or injury is of a character that recovery to such an extent would be impossible. Any enlisted member whose enlistment is so extended shall be subject to forfeitures in the same manner and to the same extent as if his term of enlistment had not expired. Nothing contained in this section shall prevent any enlisted member from being held in the service without his consent under section 367 of this title.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(A), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to enlisted member for reference to enlisted man in four places.

§ 367. Detention beyond term of enlistment

Under regulations prescribed by the Secretary, an enlisted member may be detained in the Coast Guard beyond the term of his enlistment:

(1) until the first arrival of the vessel on which he is serving at its permanent station, or at a port in a State of the United States or in the District of Columbia; or

(2) if attached to a shore station beyond the continental limits of the United States or in Alaska, until his first arrival at a port in any State of the United States or in the District of Columbia where his reenlistment or discharge may be effected, or until he can be discharged or reenlisted at his station beyond the continental limits of the United States or in Alaska, whichever is earlier, but in no event to exceed three months; or

(3) during a period of war or national emergency as proclaimed by the President, and, in the interest of national defense, for a period not to exceed six months after the end of the war or the termination of the emergency; or

(4) for a period of not exceeding thirty days in other cases whether or not specifically covered by this section, when essential to the public interests, and the determination that such detention is essential to the public inter-

ests, made in accordance with regulations prescribed by the Secretary, shall be final and conclusive.

Any member detained in the Coast Guard as provided in this section shall be entitled to receive pay and allowances and benefits under the same conditions as though his enlistment period had not expired, and shall be subject in all respects to the laws and regulations for the government of the Coast Guard until his discharge therefrom. Enlisted members detained under the provisions of clause (1) shall be entitled to the pay and allowances provided for enlisted personnel of the Navy detained under similar circumstances.

(As amended Oct. 30, 1984, Pub. L. 98-557, §§ 15(a)(3)(A), (C), 17(b)(4), 98 Stat. 2865, 2868.)

AMENDMENTS

1984—Pub. L. 98-557 struck out subsec. "(a)" designation; in provisions preceding cl. (1) substituted "enlisted member" for "enlisted man"; and in provisions following cl. (4) substituted "member detained" for "person detained", "Enlisted members" for "Enlisted men", and "clause (1)" for "(1) of this subsection".

§ 370. Discharge within three months before expiration of enlistment

Under regulations prescribed by the Secretary, any enlisted member may be discharged at any time within three months before the expiration of his term of enlistment or extended enlistment without prejudice to any right, privilege, or benefit that he would have received, except pay and allowances for the unexpired period not served, or to which he would thereafter become entitled, had he served his full term of enlistment or extended enlistment.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(A), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to enlisted member for reference to enlisted man.

§ 371. Aviation cadets; procurement; transfer

(a) The grade of aviation cadet is established as a special enlisted grade in the Coast Guard. Under such regulations as the Secretary prescribes, citizens in civil life may be enlisted as, and enlisted members of the Coast Guard with their consent may be designated as, aviation cadets.

[*See main edition for text of* (b)]

(c) No persons may be enlisted or designated as an aviation cadet unless—

(1) the person agrees in writing that, upon successful completion of the course of training as an aviation cadet, the person will accept a commission as an ensign in the Coast Guard Reserve and will serve on active duty as such for at least three years, unless sooner released; and

(2) if under twenty-one years of age, the person has the consent of the person's parent or guardian to the agreement.

[*See main edition for text of* (d)]

(As amended Pub. L. 98-557, § 15(a)(1), Oct. 30, 1984, 98 Stat. 2864.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-557, § 15(a)(1)(A), struck out "male" before "citizens" and "enlisted members".

Subsec. (c)(1). Pub. L. 98-557, § 15(a)(1)(B), substituted "the person" for "he" in two places and struck out "his" after "upon".

Subsec. (c)(2). Pub. L. 98-557, § 15(a)(1)(C), substituted "the person" for "he", "the person's" for "his", and "the agreement" for "his agreement".

GENERAL PROVISIONS

§ 421. Retirement

(a) Every commissioned officer, warrant officer, or enlisted member who is retired under any provisions of this title shall be retired with the permanent grade or rating held at the time of retirement, unless entitled to retire with a higher grade or rating under any provision of this title or any other law.

(b) Where an officer is entitled, under any provision of law, to retire with one grade higher than the grade in which serving at the time of retirement, the next higher grade in the case of captain shall be rear admiral (lower half), and the next higher grade in the case of commissioned warrant officer shall be lieutenant (junior grade).

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(A), 98 Stat. 2865; Nov. 8, 1985, Pub. L. 99-145, title V, § 514(c)(1), 99 Stat. 629.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

1984—Subsec. (a). Pub. L. 98-557 substituted reference to enlisted member for reference to enlisted man.

§ 423. Computation of retired pay

(a) Except as provided in subsection (b), the retired pay of a grade or rating shall be computed at the rate of 2½ percent of the sum of the basic pay of that grade or rating, and all permanent additions thereto including longevity credit to which the officer or enlisted member concerned was entitled at the time of retirement, multiplied by the number of years of service that may be credited to him under section 1405 of title 10. In the case of an enlisted member who served as the master chief petty officer of the Coast Guard, his retired pay shall be computed at the highest basic pay applicable to him while he so served, if that basic pay is greater than the basic pay of the grade or rating to which he was otherwise entitled at the time of retirement. In the case of an officer whose retired pay is computed on the pay of a grade for which basic pay is not based upon years of service the retired pay shall be 2½ percent of his basic pay in the grade in which serving at the time of retirement multiplied by the number of years of service for which he would be entitled to credit in the computation of pay on the active list had he been serving in the grade of captain at the time of his retirement. In computing the number of years of service by which the rate of 2½ percent

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is multiplied, each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded. Retired pay, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

[*See main edition for text of (b)*]

(As amended Sept. 24, 1983, Pub. L. 98-94, title IX, §§ 922(b), 923(d), 97 Stat. 642, 643; Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(A), 98 Stat. 2865.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-557 substituted reference to enlisted member concerned for reference to enlisted man concerned.

1983—Subsec. (a). Pub. L. 98-94, § 923(d), substituted "In computing the number of years of service by which the rate of 2½ percent is multiplied, each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded" for "A fractional year of six months or more shall be considered a full year in computing the number of years of service by which the rate of 2½ percent is multiplied".

Pub. L. 98-94, § 922(b), added "Retired pay, if not a multiple of $1, shall be rounded to the next lower multiple of $1."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of Title 10, Armed Forces.

Amendment by section 923 of Pub. L. 98-94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of Title 10.

§ 424. Limitations on retirement and retired pay

The provisions of any section of this title shall not be construed so as to prevent any officer or enlisted member from being placed on the retired list with the highest grade or rating and the highest retired pay to which such officer or enlisted member may be entitled under the provisions of any other section of this title or under the provisions of any other law. In no case shall the retired pay of an officer or enlisted member exceed 75 percent of the sum of the active-duty pay and all permanent additions thereto, including longevity credit to which the officer or enlisted member concerned is entitled, of the grade or rating on which his pay is computed.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(A), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to enlisted member for reference to enlisted man in four places.

SPECIAL PROVISIONS

§ 432. Personnel of former Lighthouse Service

[*See main edition for text of (a) and (b)*]

(c) All persons of the former Lighthouse Service commissioned, appointed, or enlisted in the Coast Guard shall be subject to all laws and regulations for the government of the Coast Guard, and nothing contained in this title shall be construed to prevent the application to any of such persons of laws and regulations concerning the military discipline of commissioned and warrant officers and enlisted members of the Coast Guard.

[*See main edition for text of (d) to (g) and last par.*]

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(B), 98 Stat. 2865.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-557 substituted reference to enlisted members for reference to enlisted men.

CHAPTER 13—PAY, ALLOWANCES, AWARDS, AND OTHER RIGHTS AND BENEFITS

Sec.
[462 to 466. Repealed.]
487. Procurement and sale of stores to members and civilian employees.

AMENDMENTS

1984—Pub. L. 98-557, §§ 15(a)(4)(D)(ii), 25(a)(3), Oct. 30, 1984, 98 Stat. 2866, 2872, struck out item 462a and substituted "members" for "officers, enlisted men," in item 487.

§ 478. Rations or commutation therefor in money

(a) Enlisted members of the Coast Guard, civilian officers and civilian crews of vessels, and working parties in the field shall be allowed a ration or commutation thereof in money, in such amount and under limitations and regulations prescribed by the Secretary.

[*See main edition for text of (b) and (c)*]

(d) Nothing contained in this section shall be construed as modifying or changing in any manner the provisions of law pertaining to subsistence allowances for enlisted members, but no ration or commutation thereof shall be allowed a person receiving a subsistence allowance.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(B), (C), 98 Stat. 2865.)

AMENDMENTS

1984—Subsecs. (a), (d). Pub. L. 98-557 substituted reference to enlisted members for reference to enlisted men.

§ 480. Flight rations

There may be furnished to officers, enlisted members, and civilian employees, while actually engaged in flight operations, an aircraft flight ration in kind, chargeable to the proper Coast Guard appropriation, which flight ration shall be supplementary to any ration or subsistence allowance now granted to such personnel. No part of an aircraft flight ration shall be furnished without cost to any person in a travel status or to any person to whom a per diem allowance is granted in lieu of actual subsistence.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(B), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to enlisted members for reference to enlisted men.

§ 481. Payments at time of discharge for good of service

Enlisted members discharged by dishonorable discharge, bad-conduct discharge, or any other discharge for the good of the service, may, upon discharge, be paid a sum not to exceed $25. The sum paid shall be fixed by and in the discretion of the Commandant, and shall be paid only in cases where the person so discharged would otherwise be without funds to meet his immediate needs.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(C), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted "Enlisted members" for "Enlisted men".

§ 482. Clothing at time of discharge for good of service

Enlisted members discharged for bad conduct, undesirability, unsuitability, or inaptitude may be furnished civilian clothing, including an overcoat when necessary, the cost of such furnished clothing not to exceed $30, per person.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(C), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted "Enlisted members" for "Enlisted men".

§ 483. Right to wear uniform

When authorized by and in accordance with applicable regulations:

(a) any member who has served honorably in the Coast Guard during war shall when not in active service, whether or not on the retired list, be entitled to bear the official title and upon occasions of ceremony to wear the uniform of the highest rank or rating held by him during his war service, and

(b) any member on the retired list shall be entitled to wear the uniform of his rank or rating.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(H), 98 Stat. 2865.)

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98-557 substituted reference to member for reference to commissioned officer, warrant officer, and enlisted man.

§ 487. Procurement and sale of stores to members and civilian employees

Such stores as the Secretary may designate may be procured and sold to members of the Coast Guard, and to the surviving spouses of such members. Such designated stores may also be procured and sold to civilian officers and employees of the United States, and to such other persons as may be specifically authorized by the Secretary, at Coast Guard stations and other units beyond the continental limits of the United States or in Alaska.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(2), (3)(D), (4)(D)(i), 98 Stat. 2865, 2866.)

AMENDMENTS

1984—Pub. L. 98-557 in section catchline substituted "members" for "officers, enlisted men," and in text substituted "surviving spouses" for "widows" and "members" for "officers and enlisted men" in two places.

§ 488. Advancement of public funds to personnel

The Commandant, under regulations prescribed by the Secretary, may advance public funds to personnel when required to meet expenses of members detailed on emergency shore duty. Funds so advanced shall not exceed a reasonable estimate of the actual expenditures to be made and for which reimbursement is authorized by law.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(I), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to members for reference to officers and men.

CHAPTER 17—ADMINISTRATION

§ 647. Claims for damage to property of the United States

The Secretary may consider, ascertain, adjust, determine, compromise, or settle claims for damage cognizable in admiralty in a district court of the United States and all claims for damage caused by a vessel or floating object, to property of the United States under the jurisdiction of the Coast Guard or property for which the Coast Guard may have assumed, by contract or otherwise, any obligation to respond for damage thereto. The Secretary is further authorized to receive in payment of any such claim the amount due the United States pursuant to determination, compromise, or settlement as herein authorized and, upon acceptance of such payment but not until then, such determination, settlement, or compromise of such claim shall be final and conclusive for all purposes, any law to the contrary notwithstanding. All such payments shall be deposited in the Treasury of the United States as miscellaneous receipts. The Secretary is further authorized to execute on behalf of the United States and to deliver in exchange for such payment a full release of such claim. This section, as respects the determination, compromise, settlement, and payment of claims, shall be supplementary to, and not in lieu of, all other provisions of law authorizing the determination, compromise, or settlement of claims for damage to property hereinabove described. No settlement or compromise where there is involved a payment in the net amount of over $100,000 is authorized by this section.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 17(b)(3)(A), 98 Stat. 2868.)

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AMENDMENTS

1984—Pub. L. 98-557 substituted "$100,000" for "$25,000".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 17(b)(3)(B) of Pub. L. 98-557 provided that: "The amendment made by subparagraph (A) of this paragraph [amending this section] shall apply to all claims considered, ascertained, adjusted, determined, compromised or settled on or after the date of enactment of this Act [Oct. 30, 1984]."

§ 660. Transportation to and from certain places of employment

[*See main edition for text of (a) to (d)*]

(e) Passenger motor vehicles of the United States may be used to provide transportation between the residence and place of work of the Commandant.

(As amended Pub. L. 99-145, title XVI, § 1623, Nov. 8, 1985, 99 Stat. 778.)

AMENDMENTS

1985—Subsec. (e). Pub. L. 99-145 added subsec. (e).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1623 of Pub. L. 99-145 provided in part that enactment of subsec. (e) of this section by Pub. L. 99-145 is effective Oct. 1, 1985.

PART II—COAST GUARD RESERVE AND AUXILIARY

CHAPTER 21—COAST GUARD RESERVE

SUBCHAPTER B

COMMISSIONED OFFICERS

Sec.
743. Rear admiral and rear admiral (lower half); maximum service in grade.

AMENDMENTS

1985—Pub. L. 99-145, title V, § 514(c)(3)(B), Nov. 8, 1985, 99 Stat. 629, substituted "rear admiral (lower half)" for "commodore" in item 743.

SUBCHAPTER B

COMMISSIONED OFFICERS

§ 724. Authorized number of officers

[*See main edition for text of (a)*]

(b)(1) The authorized number of Reserve officers in an active status below the grade of rear admiral (lower half) shall be distributed in grade in the following percentages, respectively: captain, 1.5; commander, 7.0; lieutenant commander, 22.0; lieutenant, 37.0; and the combined grades of lieutenant (junior grade) and ensign, 32.5. When the actual number of Reserve officers in an active status in a grade is less than the number authorized, the difference may be applied to increase the authorized number in a lower grade. A Reserve officer may not be reduced in rank or grade solely because of a reduction in an authorized number as provided for in this subsection, or because an excess results directly from the operation of law.

(2) The authorized number of Reserve Officers in an active status not on active duty in the grades of rear admiral (lower half) and rear admiral is a total of two. However, the Secretary of the department in which the Coast Guard is operating may authorize an additional number of Reserve officers not on active duty in the grades of rear admiral (lower half) and rear admiral as necessary in order to meet planned mobilization requirements.

(As amended Pub. L. 98-557, § 25(a)(4), Oct. 30, 1984, 98 Stat. 2872; Pub. L. 99-145, title V, § 514(c)(1), Nov. 8, 1985, 99 Stat. 629.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore" wherever appearing.

1984—Subsec. (b). Pub. L. 98-557 designated existing provisions as par. (1) and in par. (1), as so designated, struck out provisions authorizing number of Reserve officers in an active status not on active duty in the combined grades of commodore and rear admiral as two, and added par. (2).

§ 729. Promotion; recommendations of selection boards

[*See main edition for text of (a) to (d)*]

(e) The law and regulations relating to the selection for promotion of a commissioned officer of the Regular Coast Guard to the grades of rear admiral (lower half) and rear admiral apply to a Reserve officer, except that to be eligible for consideration for promotion to the grade of rear admiral (lower half) an officer shall have completed at least ten years commissioned service, of which the last five years shall have been served in the Coast Guard Reserve.

[*See main edition for text of (f) to (i)*]

(As amended Pub. L. 99-145, title V, § 514(c)(1), Nov. 8, 1985, 99 Stat. 629.)

AMENDMENTS

1985—Subsec. (e). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore" wherever appearing.

§ 736. Date of rank upon promotion; entitlement to pay

[*See main edition for text of (a)*]

(b) Notwithstanding any other law, when the running mate of a reserve officer serving in the grade of rear admiral (lower half) is promoted to the grade of rear admiral, the reserve officer shall also be promoted to that grade.

[*See main edition for text of (c)*]

(As amended Pub. L. 99-145, title V, § 514(c)(1), Nov. 8, 1985, 99 Stat. 629.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

§ 740. Failure of selection and removal from an active status

(a) The Secretary—

(1) may remove from an active status a Reserve officer who has twice failed of selection to the next higher grade; and

(2) shall remove from an active status a Reserve officer serving in the grade of captain who has completed thirty years of total commissioned service and whose name is not carried on an approved list of selectees for promotion to the grade of rear admiral (lower half).

[*See main edition for text of* (b) *to* (d)]

(As amended Pub. L. 99-145, title V, § 514(c)(1), Nov. 8, 1985, 99 Stat. 629.)

AMENDMENTS

1985—Subsec. (a)(2). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

§ 742. Maximum ages for retention in an active status

[*See main edition for text of* (a)]

(b) Notwithstanding subsection (a) of this section, the Secretary may authorize the retention of a Reserve rear admiral or rear admiral (lower half) in an active status not longer than the day on which the officer concerned becomes sixty-four years of age.

[*See main edition for text of* (c)]

(As amended Pub. L. 99-145, title V, § 514(c)(1), Nov. 8, 1985, 99 Stat. 629.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

§ 743. Rear admiral and rear admiral (lower half); maximum service in grade

Unless retained in or removed from an active status under any other law, a Reserve rear admiral or rear admiral (lower half) shall be removed from an active status on the day that officer completes four years combined service in the grades of rear admiral and rear admiral (lower half).

(As amended Pub. L. 99-145, title V, § 514(c)(1), (3)(A), Nov. 8, 1985, 99 Stat. 629.)

AMENDMENTS

1985—Pub. L. 99-145 substituted references to "rear admiral (lower half)" for "commodore" in section catchline and two places in text.

CHAPTER 23—COAST GUARD AUXILIARY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 46 section 13109.

§ 832. Injury or death in line of duty

When any member of the Auxiliary is physically injured or dies as a result of physical injury incurred while performing any specific duty to which he has been assigned by competent Coast Guard authority, such member or his beneficiary shall be entitled to the same benefits provided for temporary members of the Reserve who suffer physical injury or death resulting from physical injury incurred incident to service. Members of the Auxiliary who incur physical injury or contract sickness or disease while performing any specific duty to which they have been assigned by competent Coast Guard authority shall be entitled to the same hospital treatment afforded members of the Coast Guard. The performance of a specific duty as the term is used in this section includes time engaged in traveling back and forth between the place of assigned duty and the permanent residence of a member of the Auxiliary.

(As amended Oct. 30, 1984, Pub. L. 98-557, § 15(a)(3)(D), 98 Stat. 2865.)

AMENDMENTS

1984—Pub. L. 98-557 substituted reference to members for reference to officers and enlisted men after "treatment afforded".

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TITLE 15—COMMERCE AND TRADE

Chap.		Sec.
67.	Arctic Research and Policy	4101
68.	Land Remote-Sensing Commercialization	4201
69.	Cooperative Research	4301

CHAPTER 1—MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

Sec.

28. Repealed.

34. Definitions applicable to sections 34 to 36.

35. Recovery of damages, etc., for antitrust violations from any local government, or official or employee thereof acting in an official capacity.
    (a) Prohibition in general.
    (b) Preconditions for attachment of prohibition; prima facie evidence for nonapplication of prohibition.

36. Recovery of damages, etc., for antitrust violations on claim against person based on official action directed by local government, or official or employee thereof acting in an official capacity.
    (a) Prohibition in general.
    (b) Nonapplication of prohibition for cases commenced before effective date of provisions.

ANTITRUST ACTS AND LAWS DEFINED IN OTHER SECTIONS

Antitrust acts and laws are defined in sections 12, 44, 1311, 1802, 3301, 3503, 4002, 4021, 4301 of this title; title 10 section 7430; title 12 sections 1828, 1849; title 16 section 2602; title 17 section 109; title 28 section 1407; title 30 sections 184, 1413; title 33 section 1502; title 40 section 488; title 42 sections 5417, 5909, 6202, 8235f, 9102; title 43 sections 1331, 1770; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 49 App. section 1384; title 50 App. sections 1941a, 2158.

§ 1. Trusts, etc., in restraint of trade illegal; penalty

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-544, § 1, Oct. 24, 1984, 98 Stat. 2750, provided: "That this Act [enacting sections 34 to 36 of this title and provisions set out as a note under section 34 of this title] may be cited as the 'Local Government Antitrust Act of 1984'."

SHERMAN ACT REFERRED TO IN OTHER SECTIONS

The Sherman Act [15 U.S.C. 1 to 7] is referred to in sections 12, 15c, 15d, 29, 30, 31, 44, 62, 1012, 1013, 3301, 3503 of this title; title 7 section 225; title 8 section 1251; title 10 section 7430; title 12 sections 1828, 1849; title 16 section 2602; title 30 sections 184, 1413; title 33 section 1502; title 40 section 488; title 42 sections 2135, 5417, 5909, 6202, 8235f, 9102; title 43 sections 970, 1331, 1770; title 45 section 791; title 46 App. sections 814, 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.

§ 8. Trusts in restraint of import trade illegal; penalty

WILSON TARIFF ACT REFERRED TO IN OTHER SECTIONS

The Wilson Tariff Act [15 U.S.C. 8 to 11] is referred to in sections 12, 31, 44 of this title; title 7 section 225; title 16 section 2602, title 30 section 1413; title 42 section 2135; title 43 section 1331; title 46 App. section 814; title 49 section 10706.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9, 11, 3301 of this title; title 10 section 7430; title 16 section 2602; title 30 section 184; title 33 section 1502; title 40 section 488; title 42 sections 5417, 5909, 6202, 8235f, 9102; title 43 section 1770; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.

§ 9. Jurisdiction of courts; duty of United States attorneys; procedure

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10, 3301 of this title; title 10 section 7430; title 16 section 2602; title 30 section 184; title 33 sections 1331, 1502; title 40 section 488; title 42 sections 5417, 5909, 6202, 8235f, 9102; title 43 section 1770; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.

§ 12. Definitions; short title

CLAYTON ACT REFERRED TO IN OTHER SECTIONS

The Clayton Act [see References in Text note above] is referred to in sections 35, 44, 1012, 1013, 3301, 3503 of this title; title 7 section 225; title 10 section 7430; title 12 sections 1828, 1849, 3208; title 16 section 2602; title 30 sections 184, 1413; title 33 sections 1331, 1502; title 40 section 488; title 42 sections 2135, 5417, 5909, 6202, 8235f, 9102; title 43 section 1770; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 34, 1291, 1311, 4002, 4021, 4301 of this title; title 17 section 109; title 19 sections 2033, 2561; title 28 section 1407; title 42 section 8775; title 46 App. section 885; title 49 sections 10706, 10708, 10934, 11110; title 49 App. sections 1301, 1384.

§ 13. Discrimination in price, services, or facilities

ROBINSON-PATMAN ANTI-DISCRIMINATION ACT REFERRED TO IN OTHER SECTIONS

The Robinson-Patman Anti-Discrimination Act [15 U.S.C. 13 to 13b, 21a] is referred to in sections 13b, 13c, 21a, 1013, 3301 of this title; title 10 section 7430; title 16 section 2602; title 30 sections 184, 1413; title 42 sections 5909, 6202; title 43 section 1331; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. section 2158.

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§ 13a. Discrimination in rebates, discounts, or advertising service charges; underselling in particular localities; penalties

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 7430; title 28 section 1407; title 30 section 184; title 42 sections 6202, 8235f; title 49 section 10706.

§ 13b. Cooperative association; return of net earnings or surplus

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 7430; title 28 section 1407; title 42 sections 6202, 8235f; title 49 section 10706.

§ 15. Suits by persons injured

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15b, 15c, 16, 35, 36, 4016, 4303, 4304 of this title; title 26 sections 162, 186; title 46 App. section 1706.

§ 15a. Suits by United States; amount of recovery; prejudgment interest

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15b, 16, 35, 36 of this title; title 28 section 1407.

§ 15c. Actions by State attorneys general

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15b, 15d, 15e, 15g, 15h, 16, 35, 36, 4303 of this title; title 28 section 1407.

§ 15g. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15h, 34, 4301 of this title.

§ 18. Acquisition by one corporation of stock of another

[See main edition for text of first to fifth pars.]

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Communications Commission, Federal Power Commission, Interstate Commerce Commission, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79j of this title, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission or Secretary.

(As amended Oct. 4, 1984, Pub. L. 98-443, § 9(*l*), 98 Stat. 1708.)

AMENDMENTS

1984—Pub. L. 98-443 substituted "Secretary of Transportation" for "Civil Aeronautics Board" and "Commission or Secretary" for "Commission, Secretary, or Board" in sixth par.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

§ 18a. Premerger notification and waiting period

[See main edition for text of (a) to (e)]

(f) Preliminary injunctions; hearings

If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates section 18 of this title, or section 45 of this title, or an action is filed by the United States, alleging that a proposed acquisition violates such section 18 of this title, or section 1 or 2 of this title, and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and (2) certifies the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection, then upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes.

[See main edition for text of (g) to (j)]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(10)(A), 98 Stat. 3358.)

AMENDMENTS

1984—Subsec. (f)(2). Pub. L. 98-620 struck out designation "(A)" before "upon the filing", and struck out subpar. (B) which had provided that if the Federal Trade Commission or the Assistant Attorney General certified that he or it believed that the public interest required relief pendente lite pursuant to this subsection, the motion for a preliminary injunction had to be set down for hearing by the district judge so designated at the earliest practicable time, would take precedence over all matters except older matters of the same character and trials pursuant to section 3161 of title 18, and had to be in every way expedited.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 11 section 363.

§ 21. Enforcement provisions

(a) Commission, Board, or Secretary authorized to enforce compliance

Authority to enforce compliance with sections 13, 14, 18, and 19 of this title by the persons respectively subject thereto is vested in the Interstate Commerce Commission where applicable to common carriers subject to subtitle IV of title 49; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject to

the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]; in the Board of Governors of the Federal Reserve System where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce to be exercised as follows:

(b) Issuance of complaints for violations; hearing; intervention; filing of testimony; report; cease and desist orders; reopening and alteration of reports or orders

Whenever the Commission, Board, or Secretary vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections 13, 14, 18, and 19 of this title, it shall issue and serve upon such person and the Attorney General a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission, Board, or Secretary requiring such person to cease and desist from the violation of the law so charged in said complaint. The Attorney General shall have the right to intervene and appear in said proceeding and any person may make application, and upon good cause shown may be allowed by the Commission, Board, or Secretary, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission, Board, or Secretary. If upon such hearing the Commission, Board, or Secretary, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock, or other share capital, or assets, held or rid itself of the directors chosen contrary to the provisions of sections 18 and 19 of this title, if any there be, in the manner and within the time fixed by said order. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission, Board, or Secretary may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission, Board, or Secretary may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission, Board, or Secretary conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

(c) Review of orders; jurisdiction; filing of petition and record of proceeding; conclusiveness of findings; additional evidence; modification of findings; finality of judgment and decree

Any person required by such order of the commission, board, or Secretary to cease and desist from any such violation may obtain a review of such order in the court of appeals of the United States for any circuit within which such violation occurred or within which such person resides or carries on business, by filing in the court, within sixty days after the date of the service of such order, a written petition praying that the order of the commission, board, or Secretary be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the commission, board, or Secretary, and thereupon the commission, board, or Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the commission, board, or Secretary until the filing of the record, and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the commission, board, or Secretary, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the commission, board, or Secretary as to the facts, if supported by substantial evidence, shall be conclusive. To the extent that the order of the commission, board, or Secretary is affirmed, the court shall issue its own order commanding obedience to the terms of such order of the commission, board, or Secretary. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, board, or Secretary, the court may order such additional evidence to be taken before the commission, board, or Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission, board, or Secretary may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and shall file such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and

decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(d) Exclusive jurisdiction of Court of Appeals

Upon the filing of the record with its jurisdiction of the court of appeals to affirm, enforce, modify, or set aside orders of the commission, board, or Secretary shall be exclusive.

(e) Liability under antitrust laws

No order of the commission, board, or Secretary or judgment of the court to enforce the same shall in anywise relieve or absolve any person from any liability under the antitrust laws.

(f) Service of complaints, orders and other processes

Complaints, orders, and other processes of the commission, board, or Secretary under this section may be serviced by anyone duly authorized by the commission, board, or Secretary, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (2) by leaving a copy thereof at the residence or the principal office or place of business of such person; or (3) by mailing by registered or certified mail a copy thereof addressed to such person at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered or certified mail as aforesaid shall be proof of the service of the same.

(g) Finality of orders generally

Any order issued under subsection (b) of this section shall become final—

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the commission, board, or Secretary may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b) of this section; or

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed, or the petition for review has been dismissed by the court of appeals, and no petition for certiorari has been duly filed; or

(3) upon the denial of a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed or the petition for review has been dismissed by the court of appeals; or

(4) upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the commission, board, or Secretary be affirmed or the petition for review be dismissed.

(h) Finality of orders modified by Supreme Court

If the Supreme Court directs that the order of the commission, board, or Secretary be modified or set aside, the order of the commission, board, or Secretary rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

(i) Finality of orders modified by Court of Appeals

If the order of the commission, board, or Secretary is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court then the order of the commission, board, or Secretary rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the commission, board, or Secretary was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

(j) Finality of orders issued on rehearing ordered by Court of Appeals or Supreme Court

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the commission, board, or Secretary for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the commission, board, or Secretary rendered upon such rehearing shall become final in the same manner as though no prior order of the commission, board, or Secretary had been rendered.

[*See main edition for text of* (*k*)]

(*l*) Penalties

Any person who violates any order issued by the commission, board, or Secretary under subsection (b) of this section after such order has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States. Each separate violation of any such order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the commission, board, or Secretary each day of continuance of such failure or neglect shall be deemed a separate offense.

(Oct. 15, 1914, ch. 323, § 11, 38 Stat. 734; June 19, 1934, ch. 652, title VII, § 702(d), formerly title VI, § 602(d), 48 Stat. 1102, renumbered Oct. 30, 1984, Pub. L. 98-549, § 6(a), 98 Stat. 2804; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; June 23, 1938, ch. 601, § 1107(g), 52 Stat.

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1028; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Dec. 29, 1950, ch. 1184, 64 Stat. 1125; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1401(b), 72 Stat. 806; Aug. 28, 1958, Pub. L. 85-791, § 4, 72 Stat. 943; July 23, 1959, Pub. L. 86-107, § 1, 73 Stat. 243; Oct. 4, 1984, Pub. L. 98-443, § 9(m), 98 Stat. 1708; Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(10)(B), 98 Stat. 3358.)

REFERENCES IN TEXT

The Federal Aviation Act of 1958, referred to in subsec. (a), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, as amended, which is classified principally to chapter 20 (§ 1301 et seq.) of Title 49, Appendix, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 49, Appendix, and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-443, § 9(m)(1), substituted "Secretary of Transportation where applicable to air carriers and foreign air carriers subject to the Federal Aviation Act of 1958" for "Civil Aeronautics Board where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938".

Subsec. (b). Pub. L. 98-443, § 9(m)(2), substituted "Commission, Board, or Secretary" for "Commission or Board" wherever appearing.

Subsecs. (c), (d). Pub. L. 98-443, § 9(m)(3), substituted "commission, board, or Secretary" for "commission or board" wherever appearing.

Subsec. (e). Pub. L. 98-620 struck out provision that such proceedings in the court of appeals had to be given precedence over other cases pending therein, and had to be in every way expedited.

Pub. L. 98-443, § 9(m)(3), substituted "commission, board, or Secretary" for "commission or board".

Subsecs. (f) to (j), (l). Pub. L. 98-443, § 9(m)(3), substituted "commission, board, or Secretary" for "commission or board" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board under this section were transferred to the Secretary of Transportation by section 1553(a)(4) of Title 49, Appendix, Transportation, effective Jan. 1, 1985.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21a of this title; title 49 App. section 1553.

§ 21a. Actions and proceedings pending prior to June 19, 1936; additional and continuing violations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 7430; title 42 sections 6202, 8235f; title 49 section 10706.

§ 26. Injunctive relief for private parties; exception; costs

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4016, 4304 of this title; title 46 App. section 1706.

§ 28. Repealed. Pub. L. 98-620, title IV, § 402(11), Nov. 8, 1984, 98 Stat. 3358

Section, acts Feb. 11, 1903, ch. 544, § 1, 32 Stat. 823; June 25, 1910, ch. 428, 36 Stat. 854; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Apr. 6, 1942, ch. 210, § 1, 56 Stat. 198; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Dec. 21, 1974, Pub. L. 93-528, § 4, 88 Stat. 1708, related to the expedition of actions by the United States involving general public importance.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 34. Definitions applicable to sections 34 to 36

For purposes of sections 34 to 36 of this title—

(1) the term "local government" means—

(A) a city, county, parish, town, township, village, or any other general function governmental unit established by State law, or

(B) a school district, sanitary district, or any other special function governmental unit established by State law in one or more States,

(2) the term "person" has the meaning given it in subsection (a) of the first section of the Clayton Act [15 U.S.C. 12(a)], but does not include any local government as defined in paragraph (1) of this section, and

(3) the term "State" has the meaning given it in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

(Pub. L. 98-544, § 2, Oct. 24, 1984, 98 Stat. 2750.)

EFFECTIVE DATE

Section 6 of Pub. L. 98-544 provided that: "This Act [enacting sections 34 to 36 of this title, and provisions set out as a note under section 1 of this title] shall take effect thirty days before the date of the enactment of this Act [Oct. 24, 1984]."

§ 35. Recovery of damages, etc., for antitrust violations from any local government, or official or employee thereof acting in an official capacity

(a) Prohibition in general

No damages, interest on damages, costs, or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from any local government, or official or employee thereof acting in an official capacity.

(b) Preconditions for attachment of prohibition; prima facie evidence for nonapplication of prohibition

Subsection (a) of this section shall not apply to cases commenced before the effective date of this Act unless the defendant establishes and the court determines, in light of all the circumstances, including the stage of litigation and the availability of alternative relief under the Clayton Act, that it would be inequitable not to apply this subsection to a pending case. In consideration of this section, existence of a jury verdict, district court judgment, or any stage of litigation subsequent thereto, shall be deemed

to be prima facie evidence that subsection (a) of this section shall not apply.

(Pub. L. 98-544, § 3, Oct. 24, 1984, 98 Stat. 2750.)

REFERENCES IN TEXT

For the effective date of this Act, referred to in subsec. (b), see Effective Date note below.

The Clayton Act, referred to in subsecs. (a) and (b), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title and to sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

EFFECTIVE DATE

Section effective thirty days before Oct. 24, 1984, see section 6 of Pub. L. 98-544, set out as a note under section 34 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 34 of this title.

§ 36. Recovery of damages, etc., for antitrust violations on claim against person based on official action directed by local government, or official or employee thereof acting in an official capacity

(a) Prohibition in general

No damages, interest on damages, costs or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) in any claim against a person based on any official action directed by a local government, or official or employee thereof acting in an official capacity.

(b) Nonapplication of prohibition for cases commenced before effective date of provisions

Subsection (a) of this section shall not apply with respect to cases commenced before the effective date of this Act.

(Pub. L. 98-544, § 4, Oct. 24, 1984, 98 Stat. 2750.)

REFERENCES IN TEXT

For effective date of this Act, referred to in subsec. (b), see Effective Date note below.

EFFECTIVE DATE

Section effective thirty days before Oct. 24, 1984, see section 6 of Pub. L. 98-544, set out as a note under section 34 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 34 of this title.

CHAPTER 2—FEDERAL TRADE COMMISSION; PROMOTION OF EXPORT TRADE AND PREVENTION OF UNFAIR METHODS OF COMPETITION

SUBCHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 18a, 64, 65, 68, 68a, 68c, 68d, 68e, 68f, 68g, 69, 69a, 69d, 69f, 69g, 69h, 70a, 70c, 70d, 70e, 70f, 70g, 70h, 638, 640, 1012, 1013, 1172, 1191, 1192, 1194, 1195, 1197, 1291, 1460, 1607, 1681s, 1691c, 1692*l*, 1693*o*, 1802, 2006, 2079, 2101, 2103, 2106, 2311, 2821, 2823, 3301, 3503 of this title; title 10 section 7430; title 16 section 2602; title 19 section 2485; title 21 section 378; title 30 sections 184, 1413; title 33 section 1502; title 40 section 488; title 42 sections 2135, 5417, 5909, 6202, 6294, 6315, 6325, 8235f; title 43 sections 1331, 1770; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.

§ 45. Unfair methods of competition unlawful; prevention by Commission

[*See main edition for text of* (a) *to* (d)]

(e) Exemption from liability

No order of the Commission or judgement of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

[*See main edition for text of* (f) *to* (m)]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(12), 98 Stat. 3358.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-620 struck out provision that such proceedings in the court of appeals had to be given precedence over other cases pending therein, and had to be in every way expedited.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 16a, 18a, 52, 53, 56, 57a, 57b, 57b-1, 1456, 1681s, 2006, 2310, 2823, 4002, 4021, 4301 of this title; title 7 section 193; title 17 section 109; title 21 sections 347b, 378; title 39 section 3009; title 42 section 6303.

§ 49. Documentary evidence; depositions; witnesses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57b-1, 756 of this title; title 7 sections 222, 610, 2146, 3807; title 21 sections 467d, 677, 1051; title 26 section 5274; title 27 section 202; title 29 sections 177, 209, 521, 1134, 1573, 1862; title 33 sections 907, 944; title 42 section 7255; title 50 App. section 1983.

§ 50. Offenses and penalties

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 756 of this title; title 7 sections 222, 610, 2146, 3807; title 21 sections 467d, 677, 1051; title 26 section 5274; title 27 section 202; title 29 sections 177, 209, 521, 1134, 1862; title 33 sections 907, 944; title 50 App. 1983.

§ 57a. Unfair or deceptive acts or practices rulemaking proceedings

[*See main edition for text of* (a) *to* (g)]

(h) Compensation for attorney fees, expert witness fees, etc., incurred by persons in rulemaking proceedings; limitation on amount; establishment of small business outreach program

[*See main edition for text of* (1) *and* (2)]

(3) The aggegate amount of compensation paid to all persons in any fiscal year under this subsection may not exceed $1,000,000.

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(4) The Commission, in connection with the administration of this subsection pursuant to rules prescribed by the Commission under paragraph (1), shall establish a small business outreach program. Such program shall—

(A) solicit public comment from small businesses whose views otherwise would not be adequately represented, in order to ensure a fair determination in rulemaking proceedings under this section; and

(B) encourage the participation of small businesses in the compensation program administered by the Commission under this subsection by disseminating to small businesses information which explains the procedures and requirements applicable to the receipt of compensation under such program.

(5) Redesignated (4)

[See main edition for text of (i) to (k)]

(Sept. 26, 1914, ch. 311, § 18, as added Jan. 4, 1975, Pub. L. 93-637, title II, § 202(a), 88 Stat. 2193, and amended July 23, 1979, Pub. L. 96-37, § 1(c), 93 Stat. 95; Mar. 25, 1980, H. Res. 549; Mar. 31, 1980, Pub. L. 96-221, title VI, § 610(b), 94 Stat. 174; May 28, 1980, Pub. L. 96-252, §§ 7-11(a), 12, 94 Stat. 376-379.)

AMENDMENTS

1983—Subsec. (h)(3). Pub. L. 96-252, § 10(a), (e), temporarily added par. (3) and redesignated former par. (3) as (4). See Effective and Termination Dates of 1980 Amendments note below.

Subsec. (h)(4). Pub. L. 96-252, § 10(a), (c), (e), temporarily redesignated former par. (3) as (4) and, in par. (4) as so redesignated, substituted "$750,000" for "$1,000,000". See Effective and Termination Dates of 1980 Amendments note below.

Subsec. (h)(5). Pub. L. 96-252, § 10(d), (e), added par. (5) to be redesignated (4) effective Sept. 30, 1983. See Effective and Termination Dates of 1980 Amendments note below.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENTS

Section 10(e) of Pub. L. 96-252 provided that: "The amendments made in subsection (a) [redesignating subsec. (h)(3) as (h)(4) and adding subsec. (h)(3)] and subsection (c) [substituting in subsec. (h)(4) "$750,000" for "$1,000,000"] are repealed, effective at the end of fiscal year 1982. Effective upon such repeal, paragraph (5) of section 18(h) of the Federal Trade Commission Act, as added by subsection (d) [subsec. (h)(5) of this section], is redesignated as paragraph (4) of section 18(h) of such Act."

Pub. L. 97-377, title I, § 101(d), Dec. 21, 1982, 96 Stat. 1866, 1870, provided in part that: "Notwithstanding any other provision of law, the provisions of sections 10 [amending this section and enacting provision set out as first paragraph of this note], 11(b) [set out as a note below], 18 [set out as a note under section 57c of this title], 20 [set out as a note under section 57c of this title] and 21 [enacting section 57a-1 of this title and enacting a provision set out as a note under section 57a-1 of this title], of the Federal Trade Commission Improvements Act of 1980 (Public Law 96-252; 94 Stat. 374) are hereby extended until the termination date set forth in section 102(c) of H.J. Res. 631 [Sept. 30, 1983] as enacted into law [Pub. L. 97-377], notwithstanding subsections 10(e) [see paragraph above] and 21(i) [set out as a note under section 57a-1 of this title] of the Federal Trade Commission Improvements Act of 1980 (Public Law 96-252; 94 Stat. 374)."

§ 57a-1. Omitted

CODIFICATION

Section, Pub. L. 96-252, § 21(a)-(h), May 28, 1980, 94 Stat. 393; H. Res. 549, Mar. 25, 1980; Pub. L. 98-620, title IV, § 402(13), Nov. 8, 1984, 98 Stat. 3358, provided procedures for review by Congress of final rules promulgated by the Federal Trade Commission.

SUBCHAPTER III—LABELING OF WOOL PRODUCTS

§ 68b. Misbranded wool products

(a) False identification; affixation of label, etc., contents

A wool product shall be misbranded—

(1) If it is falsely or deceptively stamped, tagged, labeled, or otherwise identified.

(2) If a stamp, tag, label, or other means of identification, or substitute therefor under section 68c of this title, is not on or affixed to the wool product and does not show—

[See main edition for text of (A) to (C)]

(D) the name of the country where processed or manufactured.

[See main edition for text of (3) and (4); (b) to (d)]

(e) False or deceptive advertising in mail order promotions

For the purposes of this subchapter, a wool product shall be considered to be falsely or deceptively advertised in any mail order promotional material which is used in the direct sale or direct offering for sale of such wool product, unless such wool product description states in a clear and conspicuous manner that such wool product is processed or manufactured in the United States of America, or imported, or both.

(f) Location of label, etc.

For purposes of this subchapter, any wool product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the inside center of the neck midway between the shoulder seams or, if such product does not contain a neck, in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product or in the case of hosiery items, on the outer side of such product or package.

(As amended Sept. 24, 1984, Pub. L. 98-417, title III, §§ 304, 305, 98 Stat. 1604.)

AMENDMENTS

1984—Subsec. (a)(2)(D). Pub. L. 98-417, § 304, added subpar. (D).

Subsecs. (e), (f). Pub. L. 98-417, § 305, added subsecs. (e) and (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 307 of title III of Pub. L. 98-417 provided that: "The amendments made by this title [amending sections 68b, 68c, and 70b of this title] shall be effective ninety days after the date of enactment of this Act [Sept. 24, 1984]."

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§ 68c. Stamp, tag, label, or other identification

(a) Affixing; retention until sale

Any person manufacturing for introduction, or first introducing into commerce a wool product shall affix thereto the stamp, tag, label, or other means of identification required by this subchapter, and the same, or substitutes therefor containing identical information with respect to content of the wool product or any other products contained therein in an amount of 5 per centum or more by weight and other information required under section 68b of this title, shall be and remain affixed to such wool product, whether it remains in its original state or is contained in garments or other articles made in whole or in part therefrom, until sold to the consumer: *Provided*, That the name of the manufacturer of the wool product need not appear on the substitute stamp, tag, or label if the name of the person who affixes the substitute appears thereon.

(b) Removal or mutilation

Any person who shall cause or participate in the removal or mutilation of any stamp, tag, label, or other means of identification affixed to a wood [1] product with intent to violate the provisions of this subchapter, is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(c) Packages of wool products

For the purposes of subsections (a) and (b) of this section, any package of wool products intended for sale to the ultimate consumer shall also be considered a wool product and shall have affixed to it a stamp, tag, label, or other means of identification bearing the information required by section 68b of this title, with respect to the wool products contained therein, unless such package of wool products is transparent to the extent that it allows for the clear reading of the stamp, tag, label, or other means of identification affixed to the wool product, or in the case of hosiery items this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by section 68b of this title,[2] and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each hosiery product contained therein.

(As amended Sept. 24, 1984, Pub. L. 98-417, title III, § 306, 98 Stat. 1605.)

CODIFICATION

Section 68b of this title, the second time it appears in subsec. (c), was in the original "subsection (4)" and was translated as reading "section 4" as the probable intent of Congress.

AMENDMENTS

1984—Pub. L. 98-417 designated existing first and second pars. as subsecs. (a) and (b), respectively, and added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-417 effective 90 days after Sept. 24, 1984, see section 307 of Pub. L. 98-417, set out as a note under section 68b of this title.

SUBCHAPTER V—TEXTILE FIBER PRODUCTS IDENTIFICATION

§ 70b. Misbranded and falsely advertised textile fiber products

[*See main edition for text of* (a)]

(b) Stamp, tag, label or other means of identification; contents

Except as otherwise provided in this subchapter, a textile fiber product shall be misbranded if a stamp, tag, label, or other means of identification, or substitute therefor authorized by section 70c of this title, is not on or affixed to the product showing in words and figures plainly legible, the following:

[*See main edition for text of* (1) *to* (4)]

(5) If it is a textile fiber product processed or manufactured in the United States, it be so identified.

[*See main edition for text of* (c) *and* (d)]

(e) Labelling of packages

For purposes of this subchapter, in addition to the textile fiber products contained therein, a package of textile fiber products intended for sale to the ultimate consumer shall be misbranded unless such package has affixed to it a stamp, tag, label, or other means of identification bearing the information required by subsection (b) of this section, with respect to such contained textile fiber products, or is transparent to the extent it allows for the clear reading of the stamp, tag, label, or other means of identification on the textile fiber product, or in the case of hosiery items, this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by subsection (b) of this section, and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each textile fiber product contained therein.

[*See main edition for text of* (f) *to* (h)]

(i) Mail order catalog or promotional material

For the purposes of this subchapter, a textile fiber product shall be considered to be falsely

[1] So in original. Probably should be "wool".

[2] See Codification note.

or deceptively advertised in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, unless such textile fiber product description states in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States of America, or imported, or both.

(j) Location of stamp, tag, label, or other identification

For purposes of this subchapter, any textile fiber product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the inside center of the neck midway between the shoulder seams or, if such product does not contain a neck, in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product, or in the case of hosiery items on the outer side of such product or package.

(As amended Pub. L. 98-417, title III, §§ 301-303, Sept. 24, 1984, 98 Stat. 1603, 1604.)

AMENDMENTS

1984—Subsec. (b)(5). Pub. L. 98-417, § 301, added par. (5).

Subsec. (e). Pub. L. 98-417, § 302, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "This section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each textile fiber product contained in a package if (1) such textile fiber products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the textile fiber products contained therein, the information required by subsection (b) of this section, and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each textile fiber product contained therein."

Subsecs. (i), (j). Pub. L. 98-417, § 303, added subsecs. (i) and (j).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-417 effective 90 days after Sept. 24, 1984, see section 307 of Pub. L. 98-417, set out as a note under section 68b of this title.

CHAPTER 2A—SECURITIES AND TRUST INDENTURES

SUBCHAPTER I—DOMESTIC SECURITIES

Sec.

77r-1. Preemption of State law.
(a) Authority to purchase, hold, and invest in securities; securities considered as obligations of United States.
(b) Exception; validity of contracts under prior law.
(c) Registration and qualification requirements; exemption; subsequent enactment by State.

SUBCHAPTER I—DOMESTIC SECURITIES

§ 77c. Classes of securities under this subchapter

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77b, 77d, 77l, 77q, 77ddd, 80a-3, 80a-24 of this title; title 11 section 101; title 12 sections 1425b, 2290; title 22 sections 283h, 283ll, 285h, 286k-1, 290l-9; title 25 section 646; title 49 section 11367.

§ 77d. Exempted transactions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77r-1, 80a-24 of this title; title 12 sections 24, 1464, 1757.

§ 77f. Registration of securities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77b, 78m, 78n, 80a-24 of this title.

§ 77r-1. Preemption of State law

(a) Authority to purchase, hold, and invest in securities; securities considered as obligations of United States

(1) Any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State shall be authorized to purchase, hold, and invest in securities that are—

(A) offered and sold pursuant to section 77d(5) of this title,

(B) mortgage related securities (as that term is defined in section 78c(a)(41) of this title), or

(C) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

to the same extent that such person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(2) Where State law limits the purchase, holding, or investment in obligations issued by the United States by such a person, trust, corporation, partnership, association, business trust, or business entity, such securities that are—

(A) offered and sold pursuant to section 77d(5) of this title,

(B) mortgage related securities (as that term is defined in section 78c(a)(41) of this title), or

(C) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

shall be considered to be obligations issued by the United States for purposes of the limitation.

(b) Exception; validity of contracts under prior law

The provisions of subsection (a) of this section shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of seven years after October 3, 1984, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corpora-

tion, partnership, association, business trust, or business entity or class thereof than is provided in subsection (a) of this section. The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior thereto and shall not require the sale or other disposition of any securities acquired prior thereto.

(c) Registration and qualification requirements; exemption; subsequent enactment by State

Any securities that are offered and sold pursuant to section 77(d)(5) of this title or that are mortgage related securities (as that term is defined in section 78c(a)(41) of this title) shall be exempt from any law of any State with respect to or requiring registration or qualification of securities or real estate to the same extent as any obligation issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. Any State may, prior to the expiration of seven years after October 3, 1984, enact a statute that specifically refers to this section and requires registration or qualification of any such security on terms that differ from those applicable to any obligation issued by the United States.

(Pub. L. 98-440, title I, § 106, Oct. 3, 1984, 98 Stat. 1691.)

CODIFICATION

Section was enacted as part of the Secondary Mortgage Market Enhancement Act of 1984, and not as part of the Securities Act of 1933, which comprises this subchapter.

CHAPTER 2B—SECURITIES EXCHANGES

§ 78a. Short title

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99-222, § 1, Dec. 28, 1985, 99 Stat. 1737, provided that: "This Act [amending section 78n of this title and enacting a provision set out as a note under section 78n of this title] may be cited as the 'Shareholder Communications Act of 1985'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-376, § 1, Aug. 10, 1984, 98 Stat. 1264, provided that: "This Act [amending sections 78c, 78o, 78t, 78u, and 78ff of this title and enacting provisions set out as a note under section 78c of this title] may be cited as the 'Insider Trading Sanctions Act of 1984'."

§ 78c. Definitions and application

(a) Definitions

When used in this chapter, unless the context otherwise requires—

[*See main edition for text of (1) to (38)*]

(39) A person is subject to a "statutory disqualification" with respect to membership or participation in, or association with a member of, a self-regulatory organization, if such person—

(A) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7), or futures association registered under section 17 of such Act (7 U.S.C. 21), or has been and is denied trading privileges on any such contract market;

(B) is subject to an order of the Commission denying, suspending for a period not exceeding twelve months, revoking his registration as a broker, dealer, or municipal securities dealer, or barring his being associated with a broker, dealer, or municipal securities dealer, or is subject to an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(C) by his conduct while associated with a broker, dealer, or municipal securities dealer, or while associated with an entity or person required to be registered under the Commodity Exchange Act, has been found to be a cause of any effective suspension, expulsion, or order of the character described in subparagraph (A) or (B) of this paragraph, and in entering such a suspension, expulsion, or order, the Commission or any such self-regulatory organization shall have jurisdiction to find whether or not any person was a cause thereof;

[*See main edition for text of (D) and (E), (40)*]

(41) The term "mortgage related security" means a security that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization, and either:

(A) represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

(i) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in section 5402(6) of title 42, whether such manufactured home is considered real or personal property under the laws of the State in which it is to be located; and

(ii) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to sections 1709 and 1715b of title 12, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the Secretary of Housing and Urban Develop-

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ment pursuant to section 1703 of title 12; or

(B) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of subparagraphs (A)(i) and (ii) or certificates of interest or participations in promissory notes meeting such requirements.

For the purpose of this paragraph, the term "promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidence [3] by a retail installment sales contract or other instrument.

[See main edition for text of (b) to (d)]

(As amended Aug. 10, 1984, Pub. L. 98-376, § 6(a), 98 Stat. 1265; Oct. 3, 1984, Pub. L. 98-440, title I, § 101, 98 Stat. 1689.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (a)(39)(B), (C), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

AMENDMENTS

1984—Subsec. (a)(39)(A). Pub. L. 98-376, § 6(a)(1), added ", contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7), or futures association registered under section 17 of such Act (7 U.S.C. 21), or has been and is denied trading privileges on any such contract market".

Subsec. (a)(39)(B). Pub. L. 98-376, § 6(a)(2), added ", or is subject to an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.)".

Subsec. (a)(39)(C). Pub. L. 98-376, § 6(a)(3), added "or while associated with an entity or person required to be registered under the Commodity Exchange Act,".

Subsec. (a)(41). Pub. L. 98-440 added par. (41).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 7 of Pub. L. 98-376 provided that: "The amendments made by this Act [amending sections 78c, 78o, 78t, 78u, and 78ff of this title] shall become effective immediately upon enactment of this Act [Aug. 10, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77r-1, 78m, 78o-4, 78q, 78w, 78y, 78ccc, 78fff-2, 80b-2, 80b-4 of this title; title 2 section 702; title 7 section 2a, 6c, 12a; title 11 section 101; title 12 sections 24, 1464, 1757, 2290; title 22 sections 283h, 283i, 285h, 286k-1, 290i-9; title 25 section 646; title 26 section 7609; title 28 App. section 302.

§ 78d. Securities and Exchange Commission

[See main edition for text of (a) and (b)]

(c) Acceptance of travel support for Commission activities from non-Federal sources; regulations

Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission. Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission. The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

(d) Acceptance of relocation expenses from former employers by professional fellows program participants

Notwithstanding any other provision of law, former employers of participants in the Commission's professional fellows programs may pay such participants their actual expenses for relocation to Washington, District of Columbia, to facilitate their participation in such programs, and program participants may accept such payments.

(As amended June 6, 1983, Pub. L. 98-38, § 1, 97 Stat. 205.)

AMENDMENTS

1983—Subsecs. (c), (d). Pub. L. 98-38 added subsecs. (c) and (d).

§ 78g. Margin requirements

[See main edition for text of (a) to (f)]

(g) Effect of bona fide agreement for delayed delivery of mortgage related security

Subject to such rules and regulations as the Board of Governors of the Federal Reserve System may adopt in the public interest and for the protection of investors, no member of a national securities exchange or broker or dealer shall be deemed to have extended or maintained credit or arranged for the extension or maintenance of credit for the purpose of purchasing a security, within the meaning of this section, by reason of a bona fide agreement for delayed delivery of a mortgage related security against full payment of the purchase price thereof upon such delivery within one hundred and eighty days after the purchase, or within such shorter period as the Board of Governors of the Federal Reserve System may prescribe by rule or regulation.

(As amended Oct. 3, 1984, Pub. L. 98-440, title I, § 102, 98 Stat. 1690.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98-440 added subsec. (g).

[3] So in original. Probably should be "evidenced".

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§ 78h. Restrictions on borrowing and lending by members, brokers, and dealers

It shall be unlawful for any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange, directly or indirectly—

(a) To borrow in the ordinary course of business as a broker or dealer on any security (other than an exempted security) registered on a national securities exchange except (1) from or through a member bank of the Federal Reserve System, (2) from any nonmember bank which shall have filed with the Board of Governors of the Federal Reserve System an agreement, which is still in force and which is in the form prescribed by the Board, undertaking to comply with all provisions of this chapter, the Federal Reserve Act as amended, [12 U.S.C. 221 et seq.], and the Banking Act of 1933, which are applicable to member banks and which relate to the use of credit to finance transactions in securities, and with such rules and regulations as may be prescribed pursuant to such provisions of law or for the purpose of preventing evasions thereof, or (3) in accordance with such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe to permit loans between such members and/or brokers and/or dealers, or to permit loans to meet emergency needs. Any such agreement filed with the Board of Governors of the Federal Reserve System shall be subject to termination at any time by order of the Board, after appropriate notice and opportunity for hearing, because of any failure by such bank to comply with the provisions thereof or with such provisions of law or rules or regulations; and, for any willful violation of such agreement, such bank shall be subject to the penalties provided for violations of rules and regulations prescribed under this chapter. The provisions of sections 78u and 78y of this title shall apply in the case of any such proceeding or order of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply in the case of proceedings and orders of the Commission. Subject to such rules and regulations as the Board of Governors of the Federal Reserve System may adopt in the public interest and for the protection of investors, no person shall be deemed to have borrowed within the ordinary course of business, within the meaning of this subsection, by reason of a bona fide agreement for delayed delivery of a mortgage related security against full payment of the purchase price thereof upon such delivery within one hundred and eighty days after the purchase, or within such shorter period as the Board of Governors of the Federal Reserve System may prescribe by rule or regulation.

[*See main edition for text of* (b) *and* (c)]

(As amended Oct. 3, 1984, Pub. L. 98-440, title I, § 103, 98 Stat. 1690.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-440 added provision that no person shall be deemed to have borrowed within the oridinary course of business, within the meaning of this subsection, by reason of a bona fide agreement for delayed delivery of a mortgage related security under certain conditions.

§ 78k. Trading by members of exchanges, brokers, and dealers

[*See main edition for text of* (a) *to* (c)]

(d) Prohibition on extension of credit by broker-dealer

It shall be unlawful for a member of a national securities exchange who is both a dealer and a broker, or for any person who both as a broker and a dealer transacts a business in securities through the medium of a member or otherwise, to effect through the use of any facility of a national securities exchange or of the mails or of any means or instrumentality of interstate commerce, or otherwise in the case of a member, (1) any transaction in connection with which, directly or indirectly, he extends or maintains or arranges for the extension or maintenance of credit to or for a customer on any security (other than an exempted security) which was a part of a new issue in the distribution of which he participated as a member of a selling syndicate or group within thirty days prior to such transaction: *Provided*, That credit shall not be deemed extended by reason of a bona fide delayed delivery of (i) any such security against full payment of the entire purchase price thereof upon such delivery within thirty-five days after such purchase or (ii) any mortgage related security against full payment of the entire purchase price thereof upon such delivery within one hundred and eighty days after such purchase, or within such shorter period as the Commission may prescribe by rule or regulation, or (2) any transaction with respect to any security (other than an exempted security) unless, if the transaction is with a customer, he discloses to such customer in writing at or before the completion of the transaction whether he is acting as a dealer for his own account, as a broker for such customer, or as a broker for some other person.

(As amended Oct. 3, 1984, Pub. L. 98-440, title I, § 104, 98 Stat. 1690.)

AMENDMENTS

1984—Subsec. (d)(1). Pub. L. 98-440 designated existing provisions of par. (1) as cl. (i) and added cl. (ii).

§ 78k-1. National market system for securities; securities information processors

[*See main edition for text of* (a) *and* (b)]

(c) Rules and regulations covering use of mails or other means or instrumentalities of interstate commerce; reports of purchase or sale of qualified securities; limiting registered securities transactions to national securities exchanges

[*See main edition for text of* (1) *to* (3)]

(4) The Commission is directed to review any and all rules of national securities exchanges which limit or condition the ability of members to effect transactions in securities otherwise

than on such exchanges. On or before the ninetieth day following June 4, 1975, the Commission shall (i) report to the Congress the results of its review, including the effects on competition of such rules, and (ii) commence a proceeding in accordance with the provisions of section 78s(c) of this title to amend any such rule imposing a burden on competition which does not appear to the Commission to be necessary or appropriate in furtherance of the purposes of this chapter. The Commission shall conclude any such proceeding within ninety days of the date of publication of notice of its commencement.

[*See main edition for text of (5); (d) and (e)*]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(14), 98 Stat. 3358.)

AMENDMENTS

1984—Subsec. (c)(4). Pub. L. 98-620 struck out designation "(A)" after "(4)", and struck out former subpar. (B), which had provided that review pursuant to section 78y(b) of this title of any rule promulgated by the Commission in accordance with any proceeding commenced pursuant to this paragraph would, except as to causes the court considers of greater importance, take precedence on the docket over all other causes and had to be assigned for consideration at the earliest practicable date and expedited in every way.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 78*l*. Registration requirements for securities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78d-1, 78k-1, 78*l*-1, 78m, 78n, 78o, 78p, 78q-1, 78dd-1, 78hh, 78hh-1, 80a-53, 3904 of this title; title 12 sections 1464, 3305; title 16 section 824c; title 26 section 409.

§ 78m. Periodical and other reports

[*See main edition for text of (a) to (d)*]

(e) Purchase of securities by issuer

[*See main edition for text of (1) and (2)*]

(3) At the time of filing such statement as the Commission may require by rule pursuant to paragraph (1) of this subsection, the person making the filing shall pay to the Commission a fee of ⅟₅₀ of 1 per centum of the value of securities proposed to be purchased. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to any securities issued in connection with the proposed transaction under section 6(b) of the Securities Act of 1933 [15 U.S.C. 77f(b)], or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this paragraph.

[*See main edition for text of (f) to (h)*]

(As amended June 6, 1983, Pub. L. 98-38, § 2(a), 97 Stat. 205.)

AMENDMENTS

1983—Subsec. (e)(3). Pub. L. 98-38 added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77nnn, 78*l*, 78n, 78o, 78w, 78hh, 80a-8, 80a-29, 80a-54, 80a-63, 773 of this title; title 7 section 12a; title 11 section 1145; title 16 section 824c; title 22 section 2197; title 26 sections 162, 952, 964.

§ 78n. Proxies

[*See main edition for text of (a)*]

(b) Giving or refraining from giving proxy in respect of any security carried for account of customer

(1) It shall be unlawful for any member of a national securities exchange, or any broker or dealer registered under this chapter, or any bank, association, or other entity that exercises fiduciary powers, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to give, or to refrain from giving a proxy, consent, or authorization in respect of any security registered pursuant to section 78*l* of this title and carried for the account of a customer.

(2) With respect to banks, the rules and regulations prescribed by the Commission under paragraph (1) shall not require the disclosure of the names of beneficial owners of securities in an account held by the bank on December 28, 1985, unless the beneficial owner consents to the disclosure. The provisions of this paragraph shall not apply in the case of a bank which the Commission finds has not made a good faith effort to obtain such consent from such beneficial owners.

[*See main edition for text of (c) to (f)*]

(g) Filing fees

(1)(A) At the time of filing such preliminary proxy solicitation material as the Commission may require by rule pursuant to subsection (a) of this section that concerns an acquisition, merger, consolidation, or proposed sale or other disposition of substantially all the assets of a company, the person making such filing, other than a company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], shall pay to the Commission the following fees:

(i) for preliminary proxy solicitation material involving an acquisition, merger, or consolidation, if there is a proposed payment of cash or transfer of securities or property to shareholders, a fee of ⅟₅₀ of 1 per centum of such proposed payment, or of the value of such securities or other property proposed to be transferred; and

(ii) for preliminary proxy solicitation material involving a proposed sale or other disposition of substantially all of the assets of a company, a fee of ⅟₅₀ of 1 per centum of the cash or of the value of any securities or other property proposed to be received upon such sale or disposition.

(B) The fee imposed under subparagraph (A) shall be reduced with respect to securities in an amount equal to any fee paid to the Commission with respect to such securities in connection with the proposed transaction under sec-

tion 77f(b) of this title, or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this subsection. Where two or more companies involved in an acquisition, merger, consolidation, sale, or other disposition of substantially all the assets of a company must file such proxy material with the Commission, each shall pay a proportionate share of such fee.

(2) At the time of filing such preliminary information statement as the Commission may require by rule pursuant to subsection (c) of this section, the issuer shall pay to the Commission the same fee as required for preliminary proxy solicitation material under paragraph (1) of this subsection.

(3) At the time of filing such statement as the Commission may require by rule pursuant to subsection (d)(1) of this section, the person making the filing shall pay to the Commission a fee of 1/50 of 1 per centum of the aggregate amount of cash or of the value of securities or other property proposed to be offered. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to such securities in connection with the proposed transaction under section 77f(b) of this title, or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this subsection.

(4) Notwithstanding any other provision of law, the Commission may impose fees, charges, or prices for matters not involving any acquisition, merger, consolidation sale, or other disposition of assets described in this subsection, as authorized by section 9701 of title 31, or otherwise.

(As amended June 6, 1983, Pub. L. 98-38, § 2(b), 97 Stat. 205; Dec. 28, 1985, Pub. L. 99-222, § 2, 99 Stat. 1737.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsecs. (d)(1), (g)(1)(A), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-222 designated existing provision as par. (1), and in par. (1) as so designated, inserted "or any bank, association, or other entity that exercises fiduciary powers," after "under this chapter," and added par. (2).

1983—Subsec. (g). Pub. L. 98-38 added subsec. (g).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 3 of Pub. L. 99-222 provided that: "The amendments made by this Act [amending subsec. (b) of this section] shall become effective one year after the date of enactment of this Act [Dec. 28, 1985]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78*l*, 78*o*, 78hh of this title; title 49 section 11367.

§ 78o. Registration and regulation of brokers and dealers

[*See main edition for text of* (*a*)]

(b) Manner of registration of brokers and dealers

[*See main edition for text of* (*1*) *to* (*3*)]

(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

[*See main edition for text of* (*A*)]

(B) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor which the Commission finds—

[*See main edition for text of* (*i*)]

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, fiduciary, or any entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

[*See main edition for text of* (*iii*) *and* (*iv*)]

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, entity or person required to be registered under the Commodity Exchange Act, or municipal securities dealer, or as an affiliated person or employee of any investment company, bank, entity or person required to be registered under such Act, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(D) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the Commodity Exchange Act, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such

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other person is subject to his supervision. For the purposes of this subparagraph (E) no person shall be deemed to have failed reasonably to supervise any other person, if—

[*See main edition for text of* (i) *and* (ii), (*F*), (5) *to* (7)]

(8) It shall be unlawful for any broker or dealer required to register pursuant to this chapter to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to section 78o–3 of this title or effects transactions in securities solely on a national securities exchange of which it is a member.

(9) The Commission by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (8) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

[*See main edition for text of* (*10*)]

(c) Use of manipulative or deceptive devices; contravention of rules and regulations

[*See main edition for text of* (*1*) *to* (*3*)]

(4) If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of section 78*l*, 78m, 78n of this title or subsection (d) of this section or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

[*See main edition for text of* (*5*) *and* (*6*); (*d*) *and* (*e*)]

(As amended June 6, 1983, Pub. L. 98–38, § 3(a), 97 Stat. 206; Aug. 10, 1984, Pub. L. 98–376, §§ 4, 6(b), 98 Stat. 1265.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(2)(B), (C), (3), (4)(A), (D), (E), (8), and (e), was in the original "this title". See References in Text note set out under section 78a of this title.

The Commodity Exchange Act, referred to in subsec. (b)(4)(B)(ii), (C) to (E), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

AMENDMENTS

1984—Subsec. (b)(4)(B)(ii). Pub. L. 98–376, § 6(b)(1), substituted "fiduciary, or any entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.)" for "or fiduciary".

Subsec. (b)(4)(C). Pub. L. 98–376, § 6(b)(2), inserted "entity or person required to be registered under the Commodity Exchange Act," and "entity or person required to be registered under such Act".

Subsec. (b)(4)(D), (E). Pub. L. 98–376, § 6(b)(3), inserted "the Commodity Exchange Act,".

Subsec. (c)(4). Pub. L. 98–376, § 4, inserted reference to section 78n of this title and "and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply,".

1983—Subsec. (b)(8). Pub. L. 98–38, § 3(a)(1), added par. (8) and struck out former par. (8), which had directed that, in addition to the fees and charges authorized by par. (7) of this subsection, each registered broker or dealer not a member of a registered securities association pay to the Commission such reasonable fees and charges as necessary to defray the costs of the additional regulatory duties required to be performed by the Commission because such broker or dealer effected transactions in securities otherwise than on a national securities exchange of which it was a member and was not a member of a registered securities association, and that the Commission, by rule, establish such fees and charges.

Subsec. (b)(9). Pub. L. 98–38, § 3(a)(2), added par. (9) and struck out former par. (9), which had provided that no broker or dealer subject to par. (8) of this subsection could effect any transaction in, or induce the purchase or sale of, any security (otherwise than on a national securities exchange of which it was a member) in contravention of such rules and regulations as the Commission might prescribe designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment Pub. L. 98–376 effective Aug. 10, 1984, see section 7 of Pub. L. 98–376, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 3(b) of Pub. L. 98–38 provided that: "The amendments made by subsection (a) [amending this section] shall become effective six months after the date of enactment of this Act [June 6, 1983]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77nnn, 78c, 78*l*, 78m, 78o–1, 78o–2, 78o–4, 78r, 78s, 78u, 78y, 78cc, 78dd–1, 78ff, 78hh, 78hh–1, 78ccc, 78ddd, 78fff–4, 78*lll*, 80a–8, 80a–22, 80a–29, 80a–35, 773 of this title; title 11 section 1145.

§ 78o–4. Municipal securities

[*See main edition for text of* (*a*)]

(b) Municipal Securities Rulemaking Board; rules and regulations

(1) Not later than one hundred twenty days after June 4, 1975, the Commission shall establish a Municipal Securities Rulemaking Board (hereinafter in this section referred to as the "Board"), to be composed initially of fifteen members appointed by the Commission, which shall perform the duties set forth in this section. The initial members of the Board shall serve as members for a term of two years, and shall consist of (A) five individuals who are not associated with any broker, dealer, or municipal

securities dealer (other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer), at least one of whom shall be representative of investors in municipal securities, and at least one of whom shall be representative of issuers of municipal securities (which members are hereinafter referred to as "public representatives"); (B) five individuals who are associated with and representative of municipal securities brokers and municipal securities dealers which are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as "broker-dealer representatives"); and (C) five individuals who are associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as "bank representatives"). Prior to the expiration of the terms of office of the initial members of the Board, an election shall be held under rules adopted by the Board (pursuant to subsection (b)(2)(B) of this section) of the members to succeed such initial members.

(2) The Board shall propose and adopt rules to effect the purposes of this chapter with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers. (Such rules are hereinafter collectively referred to in this chapter as "rules of the Board".) The rules of the Board, as a minimum, shall:

[*See main edition for text of (A)*]

(B) establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of municipal securities brokers and municipal securities dealers. Such rules shall provide that the membership of the Board shall at all times be equally divided among public representatives, broker-dealer representatives, and bank representatives, and that the public representatives shall be subject to approval by the Commission to assure that no one of them is associated with any broker, dealer, or municipal securities dealer (other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer) and that at least one is representative of investors in municipal securities and at least one is representative of issuers of municipal securities. Such rules shall also specify the term members shall serve and may increase the number of members which shall constitute the whole Board provided that such number is an odd number.

[*See main edition for text of (C) to (K), (3); (c) and (d)*]

(As amended June 6, 1983, Pub. L. 98-38, § 4, 97 Stat. 207.)

AMENDMENTS

1983—Subsec. (b)(1)(A). Pub. L. 98-38, § 4(a), added "(other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer)" after "securities dealer".

Subsec. (b)(2)(B). Pub. L. 98-38, § 4(b), added "(other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer)" after "broker, dealer, or municipal securities dealer".

§ 78t. Liabilities of controlling persons

[*See main edition for text of (a) to (c)*]

(d) Liability for trading in securities while in possession of material nonpublic information

Wherever communicating, or purchasing or selling a security while in possession of, material nonpublic information would violate, or result in liability to any purchaser or seller of the security under any provision of this chapter, or any rule or regulation thereunder, such conduct in connection with a purchase or sale of a put, call, straddle, option, or privilege with respect to such security or with respect to a group or index of securities including such security, shall also violate and result in comparable liability to any purchaser or seller of that security under such provision, rule, or regulation.

(As amended Aug. 10, 1984, Pub. L. 98-376, § 5, 98 Stat. 1265.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-376 added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-376 effective Aug. 10, 1984, see section 7 of Pub. L. 98-376, set out as a note under section 78c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78u, 78kkk of this title.

§ 78u. Investigations and actions

[*See main edition for text of (a) to (c)*]

(d) Injunction proceedings; criminal proceedings; civil penalty actions relating to transactions when in possession of material nonpublic information: persons liable, exemptions, amount of penalty, payment into Treasury, and period of limitations

(1) Wherever [1] it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation of any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, or the rules of the Municipal Securities Rulemaking Board,

[1] So in original. Probably should be "Whenever".

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it may in its discretion bring an action in the proper district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices as may constitute a violation of any provision of this chapter or the rules or regulations thereunder to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this chapter.

(2)(A) Whenever it shall appear to the Commission that any person has violated any provision of this chapter or the rules or regulations thereunder by purchasing or selling a security while in possession of material nonpublic information in a transaction (i) on or through the facilities of a national securities exchange or from or through a broker or dealer, and (ii) which is not part of a public offering by an issuer of securities other than standardized options, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, a civil penalty to be paid by such person, or any person aiding and abetting the violation of such person. The amount of such penalty shall be determined by the court in light of the facts and circumstances, but shall not exceed three times the profit gained or loss avoided as a result of such unlawful purchase or sale, and shall be payable into the Treasury of the United States. If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court. The actions authorized by this paragraph may be brought in addition to any other actions that the Commission or the Attorney General are entitled to bring. For purposes of section 78aa of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this chapter. The Commission, by rule or regulation, may exempt from the provisions of this paragraph any class of persons or transactions.

(B) No person shall be subject to a sanction under subparagraph (A) of this paragraph solely because that person aided and abetted a transaction covered by such subparagraph in a manner other than by communicating material nonpublic information. Section 78t(a) of this title shall not apply to an action brought under this paragraph. No person shall be liable under this paragraph solely by reason of employing another person who is liable under this paragraph.

(C) For purposes of this paragraph "profit gained" or "loss avoided" is the difference between the purchase or sale price of the security and the value of that security as measured by the trading price of the security a reasonable period after public disseminaton of the nonpublic information.

(D) No action may be brought under this paragraph more than five years after the date of the purchase or sale. This paragraph shall not be construed to bar or limit in any manner any action by the Commission or the Attorney General under any other provision of this chapter, nor shall it bar or limit in any manner any action to recover penalties, or to seek any other order regarding penalties, imposed in an action commenced within five years of such transaction.

[*See main edition for text of* (e) *to* (h)]

(As amended Aug. 10, 1984, Pub. L. 98-376, § 2, 98 Stat. 1264.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-376 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-376 effective Aug. 10, 1984, see section 7 of Pub. L. 98-376, set out as a note under section 78c of this title.

§ 78y. Court review of orders and rules

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78f, 78h, 78s, 78ccc of this title.

§ 78aa. Jurisdiction of offenses and suits

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78s, 78u, 78eee of this title.

§ 78dd-1. Foreign corrupt practices by issuers

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78dd-2, 78ff of this title; title 7 section 12a; title 22 section 2197; title 26 sections 162, 952, 964.

§ 78dd-2. Foreign corrupt practices by domestic concerns

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 12a; title 22 section 2197; title 26 sections 162, 952, 964.

§ 78ff. Penalties

(a) Willful violations; false and misleading statements

Any person who willfully violates any provision of this chapter (other than section 78dd-1 of this title), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than $100,000, or impris-

oned not more than five years, or both, except that when such person is an exchange, a fine not exceeding $500,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

[*See main edition for text of* (b) *and* (c)]

(As amended Aug. 10, 1984, Pub. L. 98-376, § 3, 98 Stat. 1265.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-376 substituted "$100,000" for "$10,000".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-376 effective Aug. 10, 1984, see section 7 of Pub. L. 98-376, set out as a note under section 78c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 12a; title 22 section 2197; title 26 sections 162, 952, 964.

CHAPTER 2B-1—SECURITIES INVESTOR PROTECTION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 78u of this title; title 7 section 12a; title 11 sections 555, 559, 742.

CHAPTER 2C—PUBLIC UTILITY HOLDING COMPANIES

§ 79k. Simplification of holding company systems

COGENERATION ACTIVITIES BY GAS UTILITY HOLDING COMPANY SYSTEMS

Pub. L. 99-186, Dec. 18, 1985, 99 Stat. 1180, provided: "That, notwithstanding section 11(b)(1) of the Public Utility Holding Company Act of 1935 [15 U.S.C. 79k(b)(1)], a company registered under said Act [15 U.S.C. 79 et seq.] solely by reason of direct or indirect ownership of voting securities of one or more gas utility companies, or any subsidiary company of such registered company, may acquire or retain, in any geographic area, any interest in any qualifying cogeneration facilities as defined pursuant to the Public Utility Regulatory Policies Act of 1978 [see Short Title note set out under 16 U.S.C. 2601], and shall qualify for any exemption relating to the Public Utility Holding Company Act prescribed pursuant to section 210(e) of the Public Utility Regulatory Policies Act [16 U.S.C. 824a-3(e)]. Nothing herein shall be construed to affect the applicability of provisions of the Public Utility Holding Company Act, other than section 11(b)(1), to the acquisition or retention of any such interest by any such company."

CHAPTER 2D—INVESTMENT COMPANIES AND ADVISERS

SUBCHAPTER I—INVESTMENT COMPANIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 77b, 78c, 78m, 78n, 78o, 78s, 78u, 80b-2, 80b-3, 80b-5, 687, 687b, 3904 of this title; title 7 section 12a; title 12 sections 1425a, 1464, 1843, 3503; title 26 sections 265, 368, 851, 852, 856, 1246, 4975, 6049; title 29 sections 432, 1001, 1002, 1101; title 43 section 1625; title 49 section 11301.

§ 80a-2. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77b, 80a-6, 80a-13, 80a-15, 80a-31, 80a-53, 80a-54, 80a-56, 80a-58, 80b-2 of this title; title 12 section 371c; title 26 sections 72, 265, 368, 401, 1246; title 42 section 8731.

§ 80a-3. Definition of investment company

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a-2, 80a-6, 80a-58, 80a-62, 80a-64, 80b-5 of this title; title 26 sections 851, 6049.

CHAPTER 4—CHINA TRADE

§ 144. China trade corporations

[*See main edition for text of* (a), (b)]

(c) Prohibited transactions

A China Trade Act corporation shall not engage in the business of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt, for circulation as money; nor engage in any other form of banking business; nor engage in any form of insurance business; nor engage in, nor be formed to engage in, the business of owning or operating any vessel, unless the controlling interest in such corporation is owned by citizens of the United States, within the meaning of section 802 of title 46, Appendix.

[*See main edition for text of* (d); *credits*]

CODIFICATION

Subsec. (c) is set out in this supplement to reflect the transfer of section 802 of title 46, referred to in text, to title 46, Appendix, Shipping.

CHAPTER 6—WEIGHTS AND MEASURES AND STANDARD TIME

SUBCHAPTER I—WEIGHTS, MEASURES, AND STANDARDS GENERALLY

§ 205. Authorized tables

U.S. CUSTOMARY SYSTEM OF WEIGHTS AND MEASURES—COMMERCIAL WEIGHTS AND MEASURES UNITS

A notice by the Director of the National Bureau of Standards dated July 15, 1968, and published in the FEDERAL REGISTER (33 F.R. 10755, July 27, 1968), provided that:

By virtue of the authority vested in the Secretary of Commerce by 15 U.S.C. 272 and delegated to the National Bureau of Standards by Department Order 90-A, the Bureau is charged with the responsibility for "The custody, maintenance, and development of the national standards of measurement, * * *." The method employed for disseminating information on weights and measures units has been through official National Bureau of Standards publications. However, all such units have never been listed together in any Federal legislation or in the FEDERAL REGISTER. On February 27, 1968, in the House Committee on Science and Astronautics Report No. 1107, accompanying H.R. 13058, legislation to repeal the Standard Container Act of August 31, 1916 (39 Stat. 673; 15 U.S.C. 251-256), and the Standard Container Act of May 21, 1928 (45 U.S.C. 685; 15 U.S.C. 257-257i), and amend the Fair Packaging and Labeling Act of November 3,

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1966 (80 Stat. 1296; 15 U.S.C. 1451), the following Committee view was expressed:

Testimony revealed that although, standard weights and measures are defined in publications by the Bureau of Standards, these definitions are not defined by law nor have they been published in the FEDERAL REGISTER. Consequently, the Committee recommends that the Secretary of Commerce cause to be published in the FEDERAL REGISTER a listing of the common weights and measures used in normal commerce throughout the United States and relate them to the standards developed in accordance with existing law, 15 U.S.C. 272.

Commercial units of weight and measure in common use are based on the yard and the avoirdupois pound. The yard and avoirdupois pound were last defined in the FEDERAL REGISTER of July 1, 1959, in terms of the national standards of length and mass: The meter and the National Prototype Kilogram. From the two units, the yard and the pound, are derived all other U.S. Customary multiple and submultiple units that will be found in ordinary commerce. They are defined as:

1 yard=0.914 4 meter [1]
1 pound (avoirdupois)=0.453 592 37 kilogram [1]

LINEAR MEASURE

U.S. CUSTOMARY

12 inches=1 foot=0.304 8 meter [1]
3 feet=1 yard=1.914 4 meter [1]
5,280 feet=1 statute mile=1,609 kilometers
6,076.115 feet=1 International Nautical Mile=1.852 kilometers [1]

METRIC

10 milimeters=1 centimeter
10 centimeters=1 decimeter
10 decimeters=1 meter
10 meters=1 dekameter
10 dekameters=1 hectometer
10 hectometers=1 kilometer

AREA MEASURE

U.S. CUSTOMARY

144 square inches=1 square foot=.0.092 9 square meter
9 square feet=1 square yard=0.886 1 square meter
43,560 square feet=1 acre=0.404 7 hectare
640 acres=1 square mile=259 hectares
1 square mile=1 section=259 hectares
36 sections=1 township=932 4 hectares

METRIC

100 square milimeters=1 square centimeter
10,000 square centimeters=1 square meter
100 square meters=1 are
100 ares=1 hectare
100 hectares=1 square kilometer

WEIGHT

U.S. CUSTOMARY (AVOIRDUPOIS)

437.5 grains=1 ounce=28.349 5 grams
7,000 grains=1 pound=0.453 592 37 kilogram
16 ounces=1 pound=0.453 592 37 kilogram
2,000 pounds=1 short ton=0.907 2 metric ton
2,240 pounds=1 long ton=1.016 metric tons

METRIC

10 milligrams=1 centigram
10 centigrams=1 decigram
10 decigrams=1 gram
10 grams=1 dekagram
10 dekagrams=1 hectogram
10 hectograms=1 kilogram
1,000 kilograms=1 metric ton

[1] Denotes exact figures.

CAPACITY, OR VOLUME, LIQUID MEASURE

U.S. CUSTOMARY

1 gallon=231 cubic inches=3.785 4 liters
4 fluid ounces=1 gill=0.118 3 liter
4 gills=1 pint=0.473 2 liter
2 pints=1 quart=0.946 4 liter
4 quarts=1 gallon=3.785 4 liters

METRIC

10 milliliters=1 centiliter
10 centiliters=1 deciliter
10 deciliters=1 liter
10 liters=1 dekaliter
10 dekaliters=1 hectoliter
10 hectoliters=1 kiloliter

CAPACITY, OR VOLUME, DRY MEASURE

U.S. CUSTOMARY

1 bushel=2,150.42 cubic inches=35.239 1 liters
2 dry pints=1 dry quart=1.101 2 liters
8 dry quarts=1 peck=8.809 8 liters
4 pecks=1 bushel=35.239 1 liters

The accepted volume of a barrel in the United States varies significantly depending both on the commodity for which it is used and on how it is defined in State law (varying from State-to-State).

METRIC

The volumetric units are the same for both liquid and dry measure in the Metric System.

CUBIC MEASURE

U.S. CUSTOMARY

1,728 cubic inches=1 cubic foot=0.028 316 8 cubic meter
27 cubic feet=1 cubic yard=0.764 554 9 cubic meter

METRIC

1,000 cubic millimeters=1 cubic centimeter
1,000 cubic centimeters=1 cubic decimeter
1,000 cubic decimeters=1 cubic meter

SPECIAL UNITS

The unit used for the sale of firewood is the cord of 128 cubic feet.

The unit used for the sale of precious stones is the Metric Carat of 200 milligrams.

The units used for over-the-counter sales of precious metals in the United States are troy units.

TROY WEIGHT

24 grains=1 pennyweight=1.555 17 grams
20 pennyweights=1 ounce troy=31.103 47 grams
12 ounces troy=1 pound troy=0.373 242 kilogram

The apothecaries system of units, once widely used in the United States for pharmaceutical purposes, is now used only very little. Usage of the Metric System has replaced the apothecaries system at the manufacturing level, and at most of the retail level.

ELECTRICITY AND NATURAL GAS

When a consumer is billed for having used electricity, what has been sold is electrical energy, and that energy is expressed in terms of kilowatt-hours. One kilowatt-hour equals 3,600,000 joules (the joule is the unit of energy in the International System of Units).

Consumption of natural gas normally is expressed in terms of therms. One therm equals 105,480,400 joules.

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SUBCHAPTER IX—STANDARD TIME

§ 261. Zones for standard time; interstate or foreign commerce

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 260, 260a, 262, 266, 267 of this title.

§ 262. Duty to observe standard time of zones

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 260, 260a, 261, 266, 267 of this title.

§ 263. Designation of zone standard times

The standard time of the first zone shall be known and designated as Atlantic standard time; that of the second zone shall be known and designated as eastern standard time; that of the third zone shall be known and designated as central standard time; that of the fourth zone shall be known and designated as mountain standard time; that of the fifth zone shall be known and designated as Pacific standard time; that of the sixth zone shall be known and designated as Alaska standard time; that of the seventh zone shall be known and designated as Hawaii-Aleutian standard time; and that of the eighth zone shall be known and designated as Samoa standard time.

(As amended Nov. 30, 1983, Pub. L. 98-181, title II, § 2003(a), 97 Stat. 1297.)

AMENDMENTS

1983—Pub. L. 98-181 substituted "Alaska" for "Yukon", "Hawaii-Aleutian" for "Alaska-Hawaii", and "Samoa" for "Bering".

CONFORMING CHANGES IN TIME ZONE DESIGNATIONS

Section 2003(b) of Pub. L. 98-181 provided that:

"(1) Any reference to Yukon standard time in any law, regulation, map, document, record, or other paper of the United States shall be held and considered to be a reference to Alaska standard time.

"(2) Any reference to Alaska-Hawaii standard time in any law, regulation, map, document, record, or other paper of the United States shall be held and considered to be a reference to Hawaii-Aleutian standard time.

"(3) Any reference to Bering standard time in any law, regulation, map, document, record, or other paper of the United States shall be held and considered to be a reference to Samoa standard time."

CHAPTER 7—THE BUREAU OF STANDARDS

Sec.
275c. Cost recovery authority.
281a. Structural failures.

§ 274. Director; powers and duties; report; compensation

The director shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall have the general supervision of the bureau, its equipment, and the exercise of its functions. The Director shall make an annual report to the Secretary of Commerce, including an abstract of the work done during the year and a financial statement. The Director may issue, when necessary, bulletins for public distribution, containing such information as may be of value to the public or facilitate the bureau in the exercise of its functions. The Director shall be compensated at the rate now or hereafter in effect for Level IV of the Executive Schedule under section 5315 of title 5.

(As amended July 29, 1985, Pub. L. 99-73, § 6(a), 99 Stat. 172.)

AMENDMENTS

1985—Pub. L. 99-73 substituted "The Director" for "He" at the beginning of the second, third, and fourth sentences, and added provisions relating to compensation for the Director.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-73 effective Oct. 1, 1985, see section 6(c) of Pub. L. 99-73, set out as a note under section 5315 of Title 5, Government Organization and Employees.

§ 275c. Cost recovery authority

Fees for calibration services, standard reference materials, and other comparable services provided by the National Bureau of Standards shall be at least sufficient to meet the requirements set forth in the amendments made by subsection (a),[1] and any funds recovered in excess of such requirements shall be returned to the Treasury of the United States.

(Pub. L. 99-73, § 5(b), July 29, 1985, 99 Stat. 172.)

REFERENCES IN TEXT

The amendments made by subsection (a), referred to in text, mean the amendments made by subsec. (a) of section 5 of Pub. L. 99-73, which amended section 278b(f) of this title.

CODIFICATION

Section was not enacted as part of act Mar. 3, 1901, ch. 872, which comprises this chapter.

EFFECTIVE DATE

Section 5(c) of Pub. L. 99-73 provided that: "The amendments made by subsection (a) [amending section 278b of this title] (and the provisions of subsection (b) [enacting this section]) shall be effective October 1, 1984."

§ 278b. Working Capital Fund

[See main edition for text of (a) to (e)]

(f) Distribution of earnings; restoration of prior impairment

The amount of any earned net income resulting from the operation of the fund at the close of each fiscal year shall be paid into the general fund of the Treasury: *Provided*, That such earned net income may be applied to restore any prior impairment of the fund, and to ensure the availability of working capital necessary to replace equipment and inventories.

(As amended July 29, 1985, Pub. L. 99-73, § 5(a), 99 Stat. 172.)

AMENDMENTS

1985—Subsec. (f). Pub. L. 99-73 struck out "first" after "may be applied", and added provisions relating

[1] See References in Text note below.

to working capital for replacement of equipment and inventories.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-73 effective Oct. 1, 1984, see section 5(c) of Pub. L. 99-73, set out as an Effective Date note under section 275c of this title.

§ 281a. Structural failures

The National Bureau of Standards, on its own initiative but only after consultation with local authorities, may initiate and conduct investigations to determine the causes of structural failures in structures which are used or occupied by the general public. No part of any report resulting from such investigation shall be admitted as evidence or used in any suit or action for damages arising out of any matter mentioned in such report.

(Pub. L. 99-73, § 7, July 29, 1985, 99 Stat. 173.)

CODIFICATION

Section was not enacted as part of act Mar. 3, 1901, ch. 872, which comprises this chapter.

CHAPTER 9—NATIONAL WEATHER SERVICE

§ 313. Duties of Secretary of Commerce

WEATHER AND CLIMATE INFORMATION IN AGRICULTURE

Pub. L. 99-198, title XVII, § 1762, Dec. 23, 1985, 99 Stat. 1651, provided that:

"(a) Congress finds that—

"(1) agricultural and silvicultural operations are vulnerable to damage from atmospheric conditions that accurate and timely reporting of weather information can help prevent;

"(2) the maintenance of current weather and climate analysis and information dissemination systems, and Federal, State, and private efforts to improve these systems, is essential if agriculture and silviculture are to mitigate damage from atmospheric conditions;

"(3) agricultural and silvicultural weather services at the Federal level should be maintained with joint planning between the National Oceanic and Atmospheric Administration and the Department of Agriculture; and

"(4) efforts should be made, involving user groups, weather and climate information providers, and Federal and State governments, to expand the use of weather and climate information in agriculture and silviculture.

"(b) It, therefore, is declared to be the policy of Congress that it is in the public interest to maintain an active Federal involvement in providing agricultural and silvicultural weather and climate information and that efforts should be made, among users of this information and among private providers of this information, to improve use of this information."

NATIONAL WEATHER SERVICE; CONGRESSIONAL APPROVAL REQUISITE TO SALE, LEASE, TRANSFER, OR DISMANTLING OF AGENCY

Pub. L. 98-8, title I, § 104, Mar. 24, 1983, 97 Stat. 34, provided that:

"Since the Administration has proposed to sell the weather (METSAT) and land (LANDSAT) satellite systems;

"Since there are concerns about possible commercialization of the National Weather Service;

"Since our country should provide weather service information for the protection of life and property;

"Since our Nation's economy—its agriculture, aviation, ocean shipping and construction—is heavily affected by weather and our ability to forecast and disseminate vital information about its behavior: Now, therefore,

"It is the sense of the Congress that a reliable and comprehensive national weather information system responsive to the needs of national security; agriculture, transportation and other affected sectors; and individual citizens must be maintained through a strong central National Weather Service that can work closely with the private sector, other Federal and State government agencies, and the weather services of other nations.

"Further, the Nation's civil operational remote sensing satellites (METSAT and LANDSAT) shall remain under the National Oceanic and Atmospheric Administration. No effort shall be made to dismantle, transfer, lease or sell any portion of these systems without prior congressional approval."

CHAPTER 14A—AID TO SMALL BUSINESS

Sec.
650. El Nino-related ocean conditions; disaster loan assistance to small business concerns in fishing industry.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 662, 687 of this title; title 7 section 2000; title 10 section 2855; title 16 section 472a; title 19 sections 2345, 2346; title 38 section 1842; title 50 App. section 2017*l*.

§ 631. Declaration of policy

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98-395, § 1, Aug. 21, 1984, 98 Stat. 1366, provided that: "This Act [amending sections 636 and 648 of this title and provisions set out as notes under sections 631 and 648 of this title] may be cited as the 'Small Business Development Center Improvement Act of 1984'."

Pub. L. 98-362, § 1, July 16, 1984, 98 Stat. 431, provided that: "This Act [amending sections 632, 633, and 637 of this title and enacting provisions set out as notes under sections 633 and 637 of this title] may be cited as the 'Small Business Computer Security and Education Act of 1984'."

Pub. L. 98-352, § 1, July 10, 1984, 98 Stat. 329, provided that: "This Act [amending sections 633, 634, and 639 of this title and enacting provisions set out as notes under section 634 of this title] may be cited as the 'Small Business Secondary Market Improvements Act of 1984'."

AUTHORIZATION OF APPROPRIATIONS

Section 2[20] of Pub. L. 85-536, as amended by Pub. L. 87-341, § 11(h)(2), Oct. 3, 1961, 75 Stat. 757; Pub. L. 95-89, title I, § 102, Aug. 4, 1977, 91 Stat. 553; Pub. L. 95-315, §§ 5, 7, July 4, 1978, 92 Stat. 379; Pub. L. 96-302, title I, §§ 101, 110, July 2, 1980, 94 Stat. 833, 837; Pub. L. 97-35, title XIX, §§ 1905, 1906, Aug. 13, 1981, 95 Stat. 772, 777; Pub. L. 98-270, title III, §§ 302, 305, Apr. 18, 1984, 98 Stat. 160, 161; Pub. L. 98-395, § 3, Aug. 21, 1984, 98 Stat. 1367, provided that:

"(a) For fiscal years 1981, 1982, 1983 and 1984 there are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act [this chapter] other than those for which appropriations are specifically authorized. For fiscal year 1985 and every year thereafter, there are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act other than those for which appropriations are specifically authorized. For fiscal year 1986 and every year thereafter, there are hereby authorized to be appropriated such sums as may be necessary and appropriate to be available solely (1) to carry out the provisions and purposes of the Small Business Development

Center Program in section 21 [section 648 of this title], but not to exceed the level as specified in subsection (a) of such section, (2) to pay the expenses of the National Small Business Development Center Advisory Board as provided in section 21(h) [section 648(h) of this title], and (3) to reimburse centers for participation in evaluations as provided in section 21(j) [section 648(j) of this title]. All appropriations whether specifically or generally authorized shall remain available until expended.

[*See main edition for text of (b) to (p)*]

"(q) The following program levels are authorized for fiscal year 1984:

[*See main edition for text of (1) to (4)*]

"(5) For the program authorized by sections 7(b)(3) and 7(b)(4) of this Act [section 636(b)(3), (4) of this title], the Administration is authorized to make $100,000,000 in direct loans and for the programs authorized by sections 7(b)(1) and 7(b)(2) of this Act [section 636(b)(1), (2) of this title], the Administration is authorized to make $500,000,000 in direct loans.

[*See main edition for text of (6) and (7); (r) and (s)*]

"(t) For each of fiscal years 1985 and 1986, for the programs authorized by sections 7(b)(1) and 7(b)(2) [section 636(b)(1), (2) of this title] the Administration is authorized to make $500,000,000 in direct loans and for each of such years for the programs authorized by sections 7(b)(3) and 7(b)(4) [section 636(b)(3), (4) of this title] the Administration also is authorized to make $100,000,000 in direct loans.

"(t) There are hereby authorized to be appropriated for fiscal year 1985, $30,000,000 to be available solely (1) to carry out the provisions and purposes of the Small Business Development Center Program in section 21 [section 648 of this title], (2) to pay the expenses of the National Small Business Development Center Advisory Board as provided in subsection 21(h) [section 648(h) of this title], and (3) to reimburse centers for participation in evaluations as provided in subsection 21(j) [section 648(j) of this title]".

White House Conference on Small Business

Pub. L. 98-276, May 8, 1984, 98 Stat. 169, provided: "That this Act may be cited as the 'White House Conference on Small Business Authorization Act'.

"AUTHORIZATION OF CONFERENCE

"Sec. 2. (a) The President shall call and conduct a National White House Conference on Small Business (hereinafter referred to as the 'Conference') not earlier than January 1, 1985, and not later than September 1, 1986, to carry out the purposes described in section 3 of this Act. The Conference shall be preceded by State and regional conferences with at least one such conference being held in each State.

"(b) Participants in the Conference and other interested individuals and organizations, are authorized to conduct conferences and other activities at the State and regional levels prior to the date of the Conference, subject to the approval of the Administrator of the Small Business Administration, and shall direct such conferences and activities toward the consideration of the purposes of the Conference described in section 3 of this Act in order to prepare for the National Conference.

"PURPOSE OF CONFERENCE

"Sec. 3. The purpose of the Conference shall be to increase public awareness of the essential contribution of small business; to identify the problems of small business; to examine the status of minorities and women as small business owners; to assist small business in carrying out its role as the Nation's job creator; to assemble small businesses to develop such specific and comprehensive recommendations for executive and legislative action as may be appropriate for maintaining and encouraging the economic viability of small business and, thereby, the Nation; and to review the status of recommendations adopted at the 1980 White House Conference on Small Business.

"CONFERENCE PARTICIPANTS

"Sec. 4. (a) In order to carry out the purposes specified in section 3 of this Act, the Conference shall bring together individuals concerned with issues relating to small business: *Provided*, That no small business concern representative may be denied admission to any State or regional conference, nor may any fee or charge be imposed on any small business concern representative except an amount to cover the cost of any meal provided to such representative plus a registration fee of not to exceed $10.

"(b) Delegates, including alternates, to the National Conference shall be elected by participants at the State and regional conferences: *Provided*, That each Governor and each chief executive official of the political subdivisions enumerated in section 4(a) of the Small Business Act [15 U.S.C. 633(a)] may appoint one delegate and one alternate: *Provided further*, That each Member of the United States House of Representatives, including each Delegate, and each Member of the United States Senate may appoint one delegate and one alternate: *And provided further*, That the President may appoint one hundred delegates and alternates. Only individuals from small businesses shall be eligible for appointment pursuant to this subsection.

"PLANNING AND ADMINISTRATION OF CONFERENCE

"Sec. 5. (a) All Federal departments, agencies, and instrumentalities are authorized and directed to provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

"(b) In carrying out the provisions of this Act, the Administrator of the Small Business Administration—

"(1) shall provide such assistance as may be necessary for the organization and conduct of conferences at the State and regional levels as authorized under section 2(b) of this Act; and

"(2) is authorized to enter into contracts with public agencies, private organizations, and academic institutions to carry out the provisions of this Act.

"(c) The Chief Counsel for Advocacy shall assist in carrying out the provisions of this Act by preparing and providing background materials for use by participants in the Conference, as well as by participants in State and regional conferences.

"(d) Each participant in the Conference shall be responsible for his or her expenses related to attending the Conference and shall not be reimbursed either from funds appropriated pursuant to this Act or the Small Business Act [this chapter].

"(e)(1) The President is authorized to appoint and compensate an executive director and such other directors and personnel for the Conference as he may deem advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(2) Upon request by the executive director, the heads of the executive and military departments are authorized to detail employees to work with the executive director in planning and administering the Conference without regard to the provisions of section 3341 of title 5, United States Code.

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"REPORTS REQUIRED

"SEC. 6. Not more than six months from the date on which the National Conference is convened, a final report of the Conference shall be submitted to the President and the Congress. The report shall include the findings and recommendations of the Conference as well as proposals for any legislative action necessary to implement the recommendations of the Conference. The final report of the Conference shall be available to the public.

"FOLLOWUP ACTIONS

"SEC. 7. The Small Business Administration shall report to the Congress annually during the three-year period following the submission of the final report of the Conference on the status and implementation of the findings and recommendations of the Conference.

"AVAILABILITY OF FUNDS

"SEC. 8. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, and they shall remain available until expended. New spending authority or authority to enter contracts as provided in this Act shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.

"(b) No funds appropriated to the Small Business Administration shall be made available to carry out the provisions of this Act other than funds appropriated specifically for the purpose of conducting the Conference. Any funds remaining unexpended at the termination of the Conference, including submission of the report pursuant to section 6, shall be returned to the Treasury of the United States and credited as miscellaneous receipts.

"SEC. 9. This Act shall become effective October 1, 1984."

EX. ORD. NO. 12432. MINORITY BUSINESS ENTERPRISE DEVELOPMENT

Ex. Ord. No. 12432, July 14, 1983, 48 F.R. 32551, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Section 205(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(a)), in order to provide guidance and oversight for programs for the development of minority business enterprise pursuant to my statement of December 17, 1982 concerning Minority Business Development; and to implement the commitment of the Federal government to the goal of encouraging greater economic opportunity for minority entrepreneurs, it is hereby ordered as follows:

SECTION 1. *Minority Business Development Plans.* (a) Minority business enterprise development plans shall be developed by each Federal agency having substantial procurement or grantmaking authority. Such agencies shall submit these plans to the Cabinet Council on Commerce and Trade on an annual basis.

(b) These annual plans shall establish minority enterprise development objectives for the participating agencies and methods for encouraging both prime contractors and grantees to utilize minority business enterprises. The plans shall, to the extent possible, build upon the programs administered by the Minority Business Development Agency and the Small Business Administration, including the goals established pursuant to Public Law 95-507 [see Tables for classification].

(c) The Secretary of Commerce and the Administrator of the Small Business Administration, in consultation with the Cabinet Council on Commerce and Trade, shall establish uniform guidelines for all Federal agencies to be utilized in establishing the minority business programs set forth in Section 2 of this Order.

(d) The participating agencies shall furnish an annual report regarding the implementation of their programs in such form as the Cabinet Council on Commerce and Trade may request, and at such time as the Secretary of Commerce shall designate.

(e) The Secretary of Commerce shall provide an annual report to the President, through the Cabinet Council on Commerce and Trade, on activities under this Order and agency implementation of minority business development programs.

SEC. 2. *Minority Business Development Responsibilities of Federal Agencies.* (a) To the extent permitted by law and consistent with its primary mission, each Federal agency which is required to develop a minority business development plan under Section 1 of this Order shall, to accomplish the objectives set forth in its plan, establish programs concerning provision of direct assistance, procurement assistance, and management and technical assistance to minority business enterprises.

(b) Each Federal agency shall, to the extent permitted by law and consistent with its primary mission, establish minority business development programs, consistent with Section 211 of Public Law 95-507 [amending 15 U.S.C. 637(d)] to develop and implement incentive techniques to encourage greater minority business subcontracting by Federal prime contractors.

(c) Each Federal agency shall encourage recipients of Federal grants and cooperative agreements to achieve a reasonable minority business participation in contracts let as a result of its grants and agreements. In cases where State and local governments are the recipients, such encouragement shall be consistent with principles of federalism.

(d) Each Federal agency shall provide the Cabinet Council on Commerce and Trade such information as it shall request from time to time concerning the agency's progress in implementing these programs.

RONALD REAGAN.

EX. ORD. NO. 12523. NATIONAL WHITE HOUSE CONFERENCE ON SMALL BUSINESS

Ex. Ord. No. 12523, June 27, 1985, 50 F.R. 26963, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to implement the White House Conference on Small Business Authorization Act (Public Law 98-276) [set out as a note above] it is hereby ordered as follows:

Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act [5 U.S.C. App.] applicable to the White House Conference on Small Business Authorization Act, except that of reporting annually to the Congress, shall be performed by the Administrator of the Small Business Administration in accordance with the guidelines and procedures established by the Administrator of General Services.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 636 of this title; title 10 section 2320; title 12 section 635; title 41 section 418a.

§ 632. Small-business concern

[See main edition for text of (a) to (i)]

(j) [1] "Small agricultural cooperative" defined

For the purposes of section 636(b)(2) of this title, the term "small agricultural cooperative"

[1] So in original. Two subsecs. (j) have been enacted.

means an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141j), whose size does not exceed the size standard established by the Administration for other similar agricultural small business concerns. In determining such size, the Administration shall regard the association as a business concern and shall not include the income or employees of any member shareholder of such cooperative.

(j) [4] "Computer crime" defined

For purposes of this chapter—

(1) [5] the term "computer crime" means—

(A) any crime committed against a small business concern by means of the use of a computer; and

(B) any crime involving the illegal use of, or tampering with, a computer owned or utilized by a small business concern.

(As amended Pub. L. 98-270, title III, § 310, Apr. 18, 1984, 98 Stat. 161; Pub. L. 98-362, § 6, July 16, 1984, 98 Stat. 434; Pub. L. 98-473, title I, § 111A(b), Oct. 12, 1984, 98 Stat. 1966.)

REFERENCES IN TEXT

The Agricultural Marketing Act (12 U.S.C. 1141j), referred to in subsec. (j), set out first, is act June 15, 1929, ch. 24, 46 Stat. 11, as amended, which is classified generally to chapter 7A (§ 1141 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1141j(f) of Title 12 and Tables.

AMENDMENTS

1984—Subsec. (j). Pub. L. 98-473 in the subsec. (j) added by Pub. L. 98-270 substituted "as a business concern and shall not include the income or employees of any member shareholder of such cooperative" for "as an entity and shall not include the income or employees of any member shareholder of such cooperative: *Provided*, That such an association shall not be deemed to be a small agricultural cooperative unless each member of the board of directors of the association, or each member of the governing body of the association if it is not incorporated, also individually qualifies as a small business concern".

Pub. L. 98-362 added subsec. (j) defining "computer crime".

Pub. L. 98-270 added subsec. (j) defining "small agricultural cooperative".

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 312 of title III of Pub. L. 98-270 provided that: "The amendments made by sections 310 and 311 of this title [amending sections 632 and 636 of this title] shall apply to loans granted on the basis of any disaster with respect to which a declaration has been issued after September 1, 1982, under section 7(b)(2)(A), (B), or (C) of the Small Business Act [15 U.S.C. 636(b)(2)(A), (B), (C)] or with respect to which a certification has been made after such date under section 7(b)(2)(D) of such Act."

Section 313 of title III of Pub. L. 98-270 provided that: "This title [amending sections 632, 633, 636, and 647 of this title, enacting provisions set out as notes under sections 632 and 636 of this title, and amending provisions set out as a note under section 631 of this title] shall take effect October 1, 1983."

Amendment by Pub. L. 98-362 effective Oct. 1, 1984, see section 7(a) of Pub. L. 98-362, set out as an Effective and Termination Dates of 1984 Amendments note under section 633 of this title.

[4] So in original. Two subsecs. (j) have been enacted.

[5] So in original. Subsection enacted without a par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 637 of this title; title 5 section 601; title 10 section 2319; title 12 sections 635, 3013; title 35 section 201; title 41 section 253c.

§ 633. Small Business Administration

[*See main edition for text of* (a)]

(b) Appointment of Administrator, Deputy Administrator, and Associate Administrators; duties of Administrator: preparation of data base and publication of economic indices and annual report; Small Business Computer Security and Education Advisory Council; establishment, functions, etc.; computer security and education program

[*See main edition for text of* (1) *and* (2)]

(3)(A) The Administrator shall, not later than ninety days after October 1, 1984, establish an advisory council to be known as the Small Business Computer Security and Education Advisory Council (hereinafter referred to as the "advisory council").

(B) The advisory council shall consist of the following members:

(i) an official of the Small Business Administration, appointed by the Administrator;

(ii) an official of the Institute for Computer Sciences and Technology of the Department of Commerce, appointed by the Secretary of Commerce;

(iii) an official of the Department of Justice, appointed by the Attorney General, who is knowledgeable about issues of computer security and its protection;

(iv) an official of the Department of Defense, appointed by the Secretary of Defense, who is knowledgeable about issues of computer security;

(v) one individual, appointed by the Administrator, who is representative of the interests of the manufacturers of computer hardware to small business concerns;

(vi) one individual, appointed by the Administrator, who is representative of the interests of the manufacturers of computer software to small business concerns;

(vii) one individual, appointed by the Administrator, who is representative of the interests of the providers of computer liability insurance to small business concerns;

(viii) one individual, appointed by the Administrator, who is representative of the interests of the providers of computer security equipment and services to small business concerns;

(ix) one individual, appointed by the Administrator, who is representative of the interests of associations of small business concerns, other than small business concerns engaging in any of the activities described in clauses (v) through (viii); and

(x) such additional qualified individuals from the private sector, appointed by the Administrator, as the Administrator determines to be appropriate.

(C) It shall be the function of the advisory council to advise the Administration on—

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(i) the nature and scope of computer crimes committed against small business concerns;

(ii) the effectiveness of Federal and State law in deterring computer-related criminal activity or prosecuting computer-related crimes;

(iii) the effectiveness of computer technology and management techniques available to small business for increasing their computer security;

(iv) the development of information and guidelines to be made available to the Administrator to assist small business concerns in evaluating the security of computer systems; and

(v) such other appropriate functions of the small business computer security and education program.

(D) The Administrator shall designate one of the non-Federal members of the advisory council as its chairperson. The advisory council shall meet at least annually and at such other times as requested by the Administrator. A majority of the members of the advisory council shall constitute a quorum. Vacancies on the council shall be filled in the same manner as the original appointment.

(E) Each member of the advisory council shall serve without additional pay, allowances, or benefits by reason of such service. Each non-Federal member shall be reimbursed for actual expenses, including travel expenses, as authorized by section 5703 of title 5.

(F) Upon request of the chairperson of the advisory council, the Administrator may request directly from any Federal agency information necessary to enable the advisory council to carry out its functions under the Small Business Computer Security and Education Act of 1984. Upon the request of the Administrator, the head of such agency shall furnish to the Administrator such information, subject to the requirements of section 552 of title 5.

(4)(A) The Administrator shall establish a small business computer security and education program to—

(i) provide small business concerns information regarding—

(I) utilization and management of computer technology;

(II) computer crimes committed against small business concerns; and

(III) security for computers owned or utilized by small business concerns;

(ii) provide for periodic forums for small business concerns to improve their knowledge of the matters described in clause (i); and

(iii) provide training opportunities to educate small business users on computer security techniques.

(B) The Administrator, after consultation with the Director of the Institute of Computer Sciences and Technology within the Department of Commerce, shall develop information and materials to carry out the activities described in subparagraph (A) of this paragraph.

(c) Revolving funds; disaster loan fund; business loan and investment fund; payments into funds; appropriations; reports to Congress; business-type budgets; borrowing authority: terms and conditions of notes, interest rate, public debt transactions; payments into miscellaneous receipts; authorization of appropriations for losses and interest subsidies

(1) There are established in the Treasury the following revolving funds: (A) a disaster loan fund which shall be available for financing functions performed under sections 634(e), 636(b)(1), 636(b)(2), 636(b)(3), 636(b)(4), and 636(c)(2) of this title; and (B) a business loan and investment fund which shall be available for financing functions performed under sections 634(g), 636(a) and 637(a) of this title, and titles III and V of the Small Business Investment Act of 1958 [15 U.S.C. 681 et seq., 695 et seq.].

(2) All repayments of loans and debentures, payments of interest and other receipts arising out of transactions heretofore or hereafter entered into by the Administration (A) pursuant to sections 634(e), 636(b)(1), 636(b)(2), 636(b)(3), 636(b)(4), 636(b)(5), 636(b)(6), 636(b)(7), 636(b)(8), 636(c)(2), and 636(g) of this title, shall be paid into a disaster loan fund; and (B) pursuant to sections 634(g), 636(a), 636(e), 636(h), 636(i), 36(*l*) and 637(a) of this title, and titles III and √ of the Small Business Investment Act of 1958 [15 U.S.C. 681 et seq., 695 et seq.], shall be paid into the business loan and investment fund.

[*See main edition for text of (3) to (5); (d)*]

(As amended Pub. L. 98-270, title III, § 306, Apr. 18, 1984, 98 Stat. 161; Pub. L. 98-352, § 5, July 10, 1984, 98 Stat. 331; Pub. L. 98-362, §§ 3, 4, July 16, 1984, 98 Stat. 431, 433.)

REFERENCES IN TEXT

The Small Business Computer Security and Education Act of 1984, referred to in subsec. (b)(3)(F), is Pub. L. 98-362, July 16, 1984, 98 Stat. 431, which amended sections 632, 633, and 637 of this title and enacted provisions set out as notes under sections 631, 633, and 637 of this title. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 631 of this title and Tables.

AMENDMENTS

1984—Subsec. (b)(3), (4). Pub. L. 98-362 added pars. (3) and (4).

Subsec. (c)(1)(A). Pub. L. 98-270 added reference to section 636(b)(4).

Subsec. (c)(1)(B), (2)(B). Pub. L. 98-352 added reference to section 634(g).

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Section 7 of Pub. L. 98-362 provided that:

"(a) This Act [amending sections 632, 633, and 637 of this title and enacting provisions set out as notes under sections 631, 633, and 637 of this title] shall take effect on October 1, 1984.

"(b) The amendments made to section 4(b)(3) of the Small Business Act [15 U.S.C. 633(b)(3)] by section 3 of this Act and the amendments made to section 8(b)(1)(A) of the Small Business Act [15 U.S.C. 637(b)(1)(A)] by section 5(a)(2) of this Act are re-

pealed on October 1, 1988. Nothing in this section shall preclude the Administrator from continuing such committee under the authority of section 8(b)(3) of the Small Business Act and the Federal Advisory Committee Act [5 U.S.C. App.]."

Amendment by Pub. L. 98-270 effective Oct. 1, 1983, see section 313 of Pub. L. 98-270, set out as an Effective Date of 1984 Amendments note under section 632 of this title.

FINDING AND PURPOSE OF 1984 AMENDMENT

Section 2 of Pub. L. 98-362 provided that:

"(a) The Congress hereby finds that—

"(1) there is increased dependency on, and proliferation of, information technology (including computers, data networks, and other communication devices) in the small business community;

"(2) such technology has permitted an increase in criminal activity against small business;

"(3) small businesses in particular frequently lack the education and awareness of computer security techniques and technologies which would enable them to protect their computer systems from unauthorized access and the manipulation or destruction of their computer hardware, software, and stored data;

"(4) profitmaking organizations have substantial expertise in computer technology, communications, and management assistance that is not otherwise available; and

"(5) the use of this expertise in the Small Business Administration's training delivery system would improve substantially the quantity and quality of the agency's management assistance programs.

"(b) The purposes of this Act [amending sections 632, 633, and 637 of this title and enacting provisions set out as notes under sections 631, 633, and 637 of this title] are—

"(1) to improve the management by small businesses of their information technology,

"(2) to educate and encourage small businesses to protect such technology from intentional or unintentional manipulation or destruction; and

"(3) to permit cooperation with profitmaking organizations in providing management assistance to small business."

TRANSFER OF FUNCTIONS

All the functions, powers, and duties of the Office of Audits and Investigations in the Small Business Administration were transferred to the Office of Inspector General in the Small Business Administration, as established by Pub. L. 95-452, § 2, Oct. 12, 1978, 92 Stat. 1101, set out in the Appendix to Title 5, Government Organization and Employees. See section 9(a)(1)(M) of Pub. L. 95-452 set out in the Appendix to Title 5.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 634. General powers

[See main edition for text of (a) to (e)]

(f) Sale of guaranteed portion of loans by lender or subsequent holder; limitations; secondary market

(1) The guaranteed portion of any loan made pursuant to this chapter may be sold by the lender, and by any subsequent holder, consistent with regulations on such sales as the Administration shall establish, subject to the following limitations:

(A) prior to the Administration's approval of the sale, or upon any subsequent resale, of any loan guaranteed by the Administration, if the lender certifies that such loan has been properly closed and that the lender has substantially complied with the provisions of the guarantee agreement and the regulations of the Administration, the Administration shall review and approve only materials not previously approved;

(B) all fees due the Administration on a guaranteed loan shall have been paid in full prior to any sale; and

(C) each loan shall have been fully disbursed to the borrower prior to any sale.

(2) After a loan is sold in the secondary market, the lender shall remain obligated under its guarantee agreement with the Administration, and shall continue to service the loan in a manner consistent with the terms and conditions of such agreement.

(3) The Administration shall develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations, and for assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations.

(4) Nothing in this subsection or subsection (g) of this section shall be interpreted to impede or extinguish the right of the borrower or the successor in interest to such borrower to prepay (in whole or in part) any loan made pursuant to section 636(a) of this title, the guaranteed portion of which may be included in such trust or pool, or to impede or extinguish the rights of any party pursuant to subsection (e) of this section or section 636(a)(6) or 636(a)(8) of this title.

(g) Trust certificates; guarantee of timely payments of principal and interest; full faith and credit of United States; collection of fees; subrogation

(1) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this chapter, except those under section 636(a)(13) of this title: *Provided,* That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of the entire guaranteed portion of such loans.

(2) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this subsection. Such guarantee shall be limited to the extent of principal and interest on the guaranteed portions of loans which compose the trust or pool. In the event that a loan in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal

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and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid loan represents in the trust or pool. Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

(3) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this subsection.

(4) The Administration shall not collect any fee for any guarantee under this subsection: *Provided,* That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2) of this section.

(5)(A) In the event the Administration pays a claim under a guarantee issued under this subsection, it shall be subrogated fully to the rights satisfied by such payment.

(B) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the portions of loans constituting the trust or pool against which the trust certificates are issued.

(h) Central registration of loans and trust certificates; contracts with agent; disclosures by sellers of guaranteed portions of loans; regulation of brokers and dealers

Upon the adoption of final rules and regulations, the Administration shall—

(1) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section. Such central registration shall include, with respect to each sale, an identification of each lender who has sold the loan; the interest rate paid by the borrower to the lender; the lender's servicing fee; whether the loan is for a fixed rate or variable rate; an identification of each purchaser of the loan or trust certificate; the price paid by the purchaser for the loan or trust certificate; the interest rate paid on the loan or trust certificate; the fees of an agent for carrying out the functions described in paragraph (2) below; and such other information as the Administration deems appropriate;

(2) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate pooling. Such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interest of the Government;

(3) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this chapter and to the purchaser of a trust certificate issued pursuant to subsection (g) of this section, information on the terms, conditions, and yield of such instrument. As used in this paragraph, if the instrument being sold is a loan, the term "seller" does not include (A) an entity which made the loan or (B) any individual or entity which sells three or fewer guaranteed loans per year; and

(4) have the authority to regulate brokers and dealers in guaranteed loans and trust certificates sold pursuant to subsections (f) and (g) of this section.

(As amended Pub. L. 98-352, § 2, July 10, 1984, 98 Stat. 329.)

AMENDMENTS

1984—Subsecs. (f) to (h). Pub. L. 98-352 added subsecs. (f) to (h).

PROMULGATION OF RULES AND REGULATIONS

Section 3 of Pub. L. 98-352 provided that:

"(a) Within ninety days after the date of enactment of this Act [July 10, 1984], the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 5(h)(1) of the Small Business Act [15 U.S.C. 634(h)(1)], and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 5(h)(2) of such Act.

"(b) Within nine months after the date of enactment of this Act [July 10, 1984], the Small Business Administration shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement this Act [amending sections 633, 634, and 639 of this title and enacting provisions set out as notes under sections 631 and 634 of this title] other than as provided for in subsection (a).

"(c) The Small Business Administration shall not implement any of the provisions under section 5(g) of the Small Business Act, as amended [15 U.S.C. 634(g)], until final rules and regulations become effective."

APPROPRIATIONS NOT AUTHORIZED

Section 6 of Pub. L. 98-352 provided that: "This Act [amending sections 633, 634, and 639 of this title and enacting provisions set out as notes under sections 631 and 634 of this title] does not authorize the appropriation of any funds."

§ 636. Additional powers

(a) Loans to small-business concerns; allowable purposes; qualified business; restrictions and limitations

The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes, for purposes of this chapter. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

[*See main edition for text of (1) to (5)*]

(6) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however,* That—

[*See main edition for text of (A) and (B)*]

(C) Repealed. Pub. L. 97-35, title XIX, § 1910, Aug. 13, 1981, 95 Stat. 778.

On that portion of the loan used to refinance existing indebtedness held by a bank or other lending institution, the Administration shall limit the amount of deferred participation to 80 per centum of the amount of the loan at the time of disbursement: *Provided further,* That any authority conferred by this subparagraph on the Administration shall be exercised solely by the Administration and shall not be delegated to other than Administration personnel.

[*See main edition for text of (7)*]

(8) Repealed. Pub. L. 97-35, title XIX, § 1910, Aug. 13, 1981, 95 Stat. 778.

[*See main edition for text of (9) to (15)*]

(b) Disaster loans; refinancing of liens; loans necessitated by Federal action or law; term; suspension of principal and interest payments; rate of interest

The Administration also is empowered to the extent and in such amounts as provided in advance in appropriation Acts—

[*See main edition for text of (1)*]

(2) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determined to be necessary or appropriate to any small business concern or small agricultural cooperative located in an area affected by a disaster, if the Administration determines that the concern or the cooperative has suffered a substantial economic injury as a result of such disaster and if such disaster constitutes—

[*See main edition for text of (A) to (C)*]

(D) if no disaster declaration has been issued pursuant to subparagraph (A), (B), or (C), the Governor of a State in which a disaster has occurred may certify to the Small Business Administration that small business concerns or small agricultural cooperatives (1) have suffered economic injury as a result of such disaster, and (2) are in need of financial assistance which is not available on reasonable terms in the disaster stricken area. Upon receipt of such certification, the Administration may then make such loans as would have been available under this paragraph if a disaster declaration had been issued.

Provided, That no loan or guarantee shall be extended pursuant to this paragraph (2) unless the Administration finds that the applicant is not able to obtain credit elsewhere;

(3) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting continuation of, additions to, alterations in, or reestablishment in the same or a new location of its plant, facilities, or methods of operation made necessary by direct action of the Federal Government or as a consequence of Federal Government action or to meet requirements or restrictions imposed on such concern under any Federal law heretofore or hereafter enacted or any State law enacted in conformity therewith, or any regulation or order of a duly authorized Federal, State, regional, or local agency issued in conformity with such Federal law, if the Administration determines that such concern is likely to suffer substantial economic injury or be unable to market a product without assistance under this paragraph: *Provided,* That the maximum loan made to any small business concern under this paragraph shall not exceed $500,000 and the amount thereof shall be based solely on a determination made on each application: *Provided further,* That no loan or guarantee shall be extended unless the Administration finds that the applicant is unable to obtain credit elsewhere. For the purposes of this paragraph, the impact of the 1983 Payment-in-Kind Land Diversion program, or any successor Payment-in-Kind program with a similar impact on the small business community, shall be deemed to be a consequence of Federal Government action; and

(4) To [1] make such disaster loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary to assist, or refinance all or part of the existing indebtedness (specifically including any direct loans under subsection (a) of this section which were made to small businesses affected by currency fluctuations and exchange freezes), of any small business concern located in an area of economic dislocation that is the result of the drastic fluctuation in the value of the currency of a country contiguous to the United States and adjustments in the regulation of its monetary system if such concern is unable to obtain credit elsewhere. The Governor of a State may certify to the Administration (A) that small business concerns within the State have suffered substantial economic injury as a result of such economic dislocation, and (B) that such concerns are in need of financial assistance which is not available on reasonable terms. Such economic dislocations must be of such magnitude that without the benefit of disaster loans provided hereunder a significant number of otherwise financially sound small businesses in the impacted regions or business sectors would either become insolvent or be unable to return quickly to their former level of operation. No disaster loan

[1] So in original. Probably should be "to".

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made hereunder shall exceed $100,000, nor shall the proceeds thereof be used to reduce the exposure of any other lender. The Administration may permit deferral of payment of principal and interest for one year on loans made hereunder.

[*See main edition for text of three concluding pars.*]

(c) Extension or renewal of loans; purchase of participations; assumption of obligations; disaster loans; interest rates; loan amounts

[*See main edition for text of (1) to (4)*]

(5) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b)(1) and (b)(2) of this section on account of a disaster commencing on or after October 1, 1982, shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 4 per centum per annum;

(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 8 per centum per annum;

(C) in the case of a business concern unable to obtain credit elsewhere, not to exceed 4 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the lowest of (i) the rate prevailing in the private market for similar loans, (ii) the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under subsection (a) of this section, or (iii) 8 per centum per annum. Loans under this subparagraph shall be limited to a maximum term of three years.

(6) Notwithstanding the provisions of any other law, such loans, subject to the reductions required by subparagraphs (A) and (B) of subsection (b)(1) of this section, shall be in amounts equal to 100 per centum of loss. The interest rates for loans made under subsection (b)(1) and (2) of this section, as determined pursuant to paragraph (5), shall be the rate of interest which is in effect on the date of the disaster commenced: *Provided,* That no loan under subsection (b)(1) and (2) of this section shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under subsection (b) of this section would exceed $500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation: *Provided further,* That the Administration, subject to the reductions required by subparagraphs (A) and (B) of subsection (b)(1) of this section, shall not reduce the amount of eligibility for any homeowner on account of loss of real estate to less than $100,000 for each disaster nor for any homeowner or lessee on account of loss of personal property to less than $20,000 for each disaster, such sums being in addition to any eligible refinancing. Employees of concerns sharing a common business premises shall be aggregated in determining "major source of employment" status for nonprofit applicants owning such premises.

With respect to any loan which is outstanding on April 18, 1984, and which was made on account of a disaster commencing on or after October 1, 1982, the Administrator shall make such change in the interest rate on the balance of such loan as is required herein effective as of April 18, 1984.

(d) Funds for small business development centers under section 648 of this title; seminars

(1) The Administration shall not fund any Small Business Development Center or any variation thereof, except as authorized in section 648 of this title.

[*See main edition for text of (2); (e) to (l)*]

(Pub. L. 85-536, § 2[7], July 18, 1958, 72 Stat. 387; Pub. L. 85-699, title VI, § 602(c), Aug. 21, 1958, 72 Stat. 698; Pub. L. 86-367, § 2, Sept. 22, 1959, 73 Stat. 647; Pub. L. 87-70, title III, § 305[a], June 30, 1961, 75 Stat. 167; Pub. L. 87-305, § 9, Sept. 26, 1961, 75 Stat. 668; Pub. L. 88-264, § 1, Feb. 5, 1964, 78 Stat. 7; Pub. L. 88-560, title III, § 319, Sept. 2, 1964, 78 Stat. 794; Pub. L. 89-59, § 1(a), (b), June 30, 1965, 79 Stat. 206; Pub. L. 89-409, § 3(a), May 2, 1966, 80 Stat. 133; Pub. L. 89-769, § 7(b), Nov. 6, 1966, 80 Stat. 1319; Pub. L. 90-104, title I, §§ 103, 104, Oct. 11, 1967, 81 Stat. 268; Pub. L. 90-448, title XI, § 1106(a), Aug. 1, 1968, 82 Stat. 567; Pub. L. 90-495, § 31, Aug. 23, 1968, 82 Stat. 835; Pub. L. 91-173, title V, § 504(a), (b), Dec. 30, 1969, 83 Stat. 802; Pub. L. 91-596, § 28(a), (b), Dec. 29, 1970, 84 Stat. 1618; Pub. L. 91-597, § 25(a), (b), Dec. 29, 1970, 84 Stat. 1633, 1634; Pub. L. 92-385, §§ 1(a), 2(a), Aug. 16, 1972, 86 Stat. 554, 555; Pub. L. 92-500, § 8(a), Oct. 18, 1972, 86 Stat. 898; Pub. L. 92-595, § 3(b), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 93-237, §§ 2(a), (b), 3(a), 5, 6, Jan. 2, 1974, 87 Stat. 1023, 1024; Pub. L. 93-386, §§ 2(a)(4), 3(2), 8, 9, 12, Aug. 23, 1974, 88 Stat. 742, 746, 748, 749; Pub. L. 94-305, title I,

§§ 108(b), 109, 111, 112(c), (d), 114, June 4, 1976, 90 Stat. 666, 667; Pub. L. 95-89, title I, § 101(d), (e), title III, §§ 301, 302, title IV, §§ 402-405, Aug. 4, 1977, 91 Stat. 553, 558-560; Pub. L. 95-315, §§ 2, 3, July 4, 1978, 92 Stat. 377, 378; Pub. L. 95-507, title II, §§ 204, 205, 231, Oct. 24, 1978, 92 Stat. 1764, 1766, 1772; Pub. L. 95-510, § 104, Oct. 24, 1978, 92 Stat. 1782; Pub. L. 96-38, title I, § 101(b), July 25, 1979, 93 Stat. 118; Pub. L. 96-302, title I, §§ 119(a), (b), 122-124, title II, § 203, title V, § 505, July 2, 1980, 94 Stat. 840, 841, 843, 848, 852; Pub. L. 96-481; title I, §§ 104, 106(a), 107, 112, Oct. 21, 1980, 94 Stat. 2322, 2323; Pub. L. 97-35, title XIX, §§ 1902, 1910-1912, 1913(a), (c), 1914, Aug. 13, 1981, 95 Stat. 767, 778-780; (As amended Pub. L. 98-270, title III, §§ 301, 304, 308, 309, 311, Apr. 18, 1984, 98 Stat. 159-161; Pub. L. 98-395, § 5, Aug. 21, 1984, 98 Stat. 1368.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-270, § 311(1), (3), substituted in provisions preceding subpar. (A) "small business concern or small agricultural cooperative" for "small business concern" and "the concern or the cooperative" for "the concern".

Subsec. (b)(2)(D). Pub. L. 98-270, § 311(2), substituted "small business concerns or small agricultural cooperatives" for "small business concerns".

Subsec. (b)(3). Pub. L. 98-270, § 308, inserted "continuation of," after "in effecting" and added provision directing that, for purposes of this paragraph, the impact of the 1983 Payment-in-Kind Land Diversion program, or any successor Payment-in-Kind program with a similar impact on the small business community, be deemed to be a consequence of Federal Government action.

Subsec. (b)(4). Pub. L. 98-270, § 304(2), added par. (4).

Subsec. (c). Pub. L. 98-270, § 301, added undesignated par. following par. (6).

Subsec. (c)(5). Pub. L. 98-270, § 301, added par. (5).

Subsec. (c)(6). Pub. L. 98-270, § 301, added par. (6).

Pub. L. 98-270, § 309, added provision directing that employees of concerns sharing common business premises be aggregated in determining "major source of employment" status for nonprofit applicants owning such premises.

Subsec. (d)(1). Pub. L. 98-395 substituted provisions stating that the Administration shall not fund any Small Business Development Center except as authorized for former provisions which prohibited such funding only after October 1, 1980.

1981—Subsec. (a)(6)(C). Pub. L. 97-35, § 1910, repealed subpar. (C) which read: "the Administration shall not decline to participate in a loan on a deferred basis under this subsection solely because such loan will be used to refinance all or any part of the existing indebtedness of a small business concern, unless the Administration determines that—

"(i) the holder of such existing indebtedness is in a position likely to sustain a loss if such refinancing is not provided, and

"(ii) if the Administration provides such refinancing through an agreement to participate on a deferred basis, it will be in a position likely to sustain part or all of any loss which would have otherwise been sustained by the holder of the original indebtedness: *Provided further,* That the Administration may decline to approve such refinancing if it determines that the loan will not benefit the small business concern."

Subsec. (a)(8). Pub. L. 97-35, § 1910, repealed par. (8) which read: "(8)(A) Any loan made under the authority of this subsection by the Administration in cooperation with a bank or other lending institution through an agreement to participate on a deferred basis, may, upon the concurrence of the Administration, borrower and such bank or institution, have the term of such loan extended or such loan refinanced with an extension of its term: *Provided,* That the aggregate term of such extended or refinanced loan does not exceed the term permitted pursuant to paragraph (5): *And provided further,* That such extended loans, or refinancings shall be repaid in equal installments of principal and interest.

"(B) An additional service fee not exceeding 1 per centum of the outstanding amount of the principal may be paid by the borrower to the lender in consideration for such lender extending the term or refinancing of such borrower's indebtedness if such extension or refinancing results in the term of such indebtedness exceeding ten years.

"(C) The authority provided in this paragraph shall not be construed to otherwise limit the authority of the Administration to set terms and conditions of the loan."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 307 of Pub. L. 98-270 provided that: "The amendments made by sections 304 and 305 of this title [enacting subsec. (b)(4) of this section and amending provisions set out as a note under section 631 of this title] shall apply to economic dislocations certified by any State Governor to the Small Business Administration after the date of enactment of this Act [Apr. 18, 1984] providing such dislocation commenced since January 1, 1982."

Amendment of subsec. (b)(2) of this section by section 311 of Pub. L. 98-270 applicable to loans granted on the basis of any disaster with respect to which a declaration has been issued after Sept. 1, 1982, under subsec. (b)(2)(A), (B), or (C) of this section or with respect to which a certification has been made after such date under subsec. (b)(2)(D) of this section, see section 312 of Pub. L. 98-270, set out as a note under section 632 of this title.

Amendment by Pub. L. 98-270 effective Oct. 1, 1983, see section 313 of Pub. L. 98-270, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1910 of Pub. L. 97-35 provided in part that subsec. (a)(6)(C) and (8) of this section is repealed effective Oct. 1, 1985.

DETERMINATION OF NATURAL DISASTER BY SECRETARY OF AGRICULTURE TO BE DEEMED DISASTER DECLARATION BY ADMINISTRATOR OF SMALL BUSINESS ADMINISTRATION; DISASTERS COMMENCING BETWEEN JANUARY 1, 1983, AND SEPTEMBER 30, 1983

Pub. L. 98-166, title I, § 101, Nov. 28, 1983, 97 Stat. 1079, provided in part that: "beginning with disasters commencing between January 1, 1983, through September 30, 1983, determination of a natural disaster by the Secretary of Agriculture pursuant to 7 U.S.C. 1961 shall be deemed a disaster declaration by the Administrator of the Small Business Administration for purposes of determining eligibility for assistance under section 7(b)(1) of the Small Business Act [subsec. (b)(1) of this section] for agricultural enterprises as defined in section 18(b) of the Small Business Act [15 U.S.C. 647(b)]: *Provided,* That nothing in this paragraph is to preclude the applicability of section 18(a) of the Small Business Act [15 U.S.C. 647(a)] with regard to the duplication of benefits for disasters commencing between January 1, 1983, through September 30, 1983."

EXTENSION OF TERM OF ADVISORY COMMITTEE ON SMALL AND MINORITY BUSINESS OWNERSHIP

Term of the Advisory Committee on Small and Minority Business Ownership extended until Sept. 30, 1985, see Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of

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the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the Advisory Committee on Small and Minority Business Ownership extended until Sept. 30, 1987, see Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 632, 633, 634, 637, 639, 644, 647, 650 of this title; title 19 section 2344; title 33 section 701n; title 38 section 1652; title 42 section 3142-1.

§ 637. Additional powers

(a) Procurement contracts; subcontracts to disadvantaged small business concerns; performance bonds; contract negotiations; definitions; eligibility; determinations; publication; recruitment; construction subcontracts; annual estimates

(1) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

[*See main edition for text of* (*A*)]

(B) to enter into contracts with such agency (other than the Department of Defense, or any component thereof) as shall be designated by the President, to furnish articles, equipment, supplies, services, or materials, or to perform construction work for such agency. In any case in which the Administration certifies to any officer of such agency having procurement powers that the Administration is competent and responsible to perform any specific procurement contract to be let by any such officer, such officer shall let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. If the Administration and such procurement officer fail to agree on such terms and conditions, either the Administration or such officer shall promptly notify, in writing, the head of such agency. The head of such agency shall have five days (exclusive of Saturdays, Sundays, and legal holidays) to establish the terms and conditions upon which such procurement contract may be let to the Administration, and shall communicate in writing to the Administration the terms and conditions so established. Within five days (exclusive of Saturdays, Sundays, and legal holidays) after the receipt of such written communication, the Administration shall decide whether to perform such procurement contract or withdraw its prior certification that the Administration is competent and responsible to perform such contract; and

[*See main edition for text of* (*C*)]

No contract may be entered into under subparagraph (B) prior to October 1, 1983 nor after September 30, 1985.

(2) Notwithstanding subsections (a) and (c) of section 270a of title 40, no small business concern shall be required to provide any amount of any bond as a condition of receiving any subcontract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: *Provided,* That the Administrator shall exercise the authority granted by the paragraph only if—

[*See main edition for text of* (*A*) *to* (*D*)]

The authority to waive bonds provided in this paragraph (2) may not be exercised prior to October 1, 1983 nor after September 30, 1985.

[*See main edition for text of* (*3*) *to* (*12*)]

(b) Procurement and property disposal powers; determination of small-business concerns

It shall also be the duty of the Administration and it is empowered, whenever it determines such action is necessary—

(1)(A) to provide technical and managerial aids to small-business concerns, by advising and counseling on matters in connection with Government procurement and property disposal and on policies, principles, and practices of good management, including but not limited to cost accounting, methods of financing, business insurance, accident control, wage incentives, computer security, and methods engineering, by cooperating and advising with voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions and with other Federal and State agencies, by maintaining a clearinghouse for information concerning the managing, financing, and operation of small-business enterprises, by disseminating such information, and by such other activities as are deemed appropriate by the Administration. Such assistance also may be provided to small business concerns by the Administration through cooperation with a profit-making concern (hereafter in this paragraph referred to as a "cosponsor") to provide training: *Provided,* That the Administration shall take such actions as it deems appropriate to ensure that the cooperation does not constitute or imply an endorsement by the Administration of the products or services of the cosponsor, to avoid unnecessary promotion of the products or services of the cosponsor, and to minimize utilization of any one cosponsor in a marketing area. Such actions shall include, but not be limited to: (i) developing an agreement which specifies the standard terms and conditions of the cooperation, the use of which shall be mandatory; (ii) prohibiting any fee or charge from being imposed upon any small business concern for receiving assistance in excess of a minimal amount to cover the direct costs of providing such assistance; (iii) prohibiting the release to the cosponsor of any of the Administration's lists of names and addresses of small business concerns; and (iv) requiring that all printed materials which contain the names of both the Administration and the cosponsor include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administration of the products or services of the cosponsor.

[*See main edition for text of (B) to (F), (2) to (6)*]

(7) [*See main edition for text of (A) and (B)*]

(C) In any case in which a small business concern or group of such concerns has been certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it to meet any other requirement of responsibility or eligibility. Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed.

[*See main edition for text of (8) to (15); (c)*]

(d) Performance of contracts by small business concerns; inclusion of required contract clause; subcontracting plans; contract eligibility; incentives; breach of contract; review; report to Congress

(1) It is the policy of the United States that small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

[*See main edition for text of (2)*]

(3) The clause required by paragraph (2) shall be as follows:

"(A) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

[*See main edition for text of (B) to (D), (4) to (11)*]

(e) Covered executive agency activities; procurement notice; publication; time limitations

(1) Except as provided in subsection (g) of this section—

(A) an executive agency intending to—

(i) solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000; or

(ii) place an order, expected to exceed $10,000, under a basic agreement, basic ordering agreement, or similar arrangement,

shall furnish for publication by the Secretary of Commerce a notice described in subsection (b) of this section; and

(B) an executive agency awarding a contract for property or services for a price exceeding $25,000, or placing an order referred to in clause (A)(ii) exceeding $25,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.

(2) The Secretary of Commerce shall publish promptly in the Commerce Business Daily each notice required by paragraph (1).

(3) Whenever an executive agency is required by paragraph (1)(A) to furnish a notice to the Secretary of Commerce, such executive agency may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published by the Secretary of Commerce; or

(B) establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

(i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;

(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

(f) Contents of notice

Each notice of solicitation required by subsection (e)(1)(A) of this section shall include—

(1) an accurate description of the property or services to be contracted for, which description (A) shall not be unnecessarily restrictive of competition, and (B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

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(A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and

(B) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and, if so, identify the office from which a qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency; and

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source.

(g) Exempted, etc., activities of executive agency

(1) A notice is not required under subsection (a)(1) of this section if—

(A) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(B) the proposed procurement would result from acceptance of—

(i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 638 of this title;

(C) the procurement is made against an order placed under a requirements contract;

(D) the procurement is made for perishable subsistence supplies; or

(E) the procurement is for utility services, other than telecommunication services, and only one source is available.

(2) The requirements of subsection (a)(1)(A) of this section do not apply to any procurement under conditions described in paragraph (2), (3), (4), (5), or (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)) or paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10.

(3) The requirements of subsection (a)(1)(A) of this section shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(h) Award of contracts; procedures other than competitive ones; exceptions

(1) An executive agency may not award a contract using procedures other than competitive procedures unless—

(A) except as provided in paragraph (2), a written justification for the use of such procedures has been approved—

(i) in the case of a contract for an amount exceeding $100,000 (but equal to or less than $1,000,000), by the advocate for competition for the procuring activity (without further delegation);

(ii) in the case of a contract for an amount exceeding $1,000,000 (but equal to or less than $10,000,000), by the head of the procuring activity or a delegate who, if a member of the Armed Forces, is a general or flag officer, or, if a civilian, is serving in a position in grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) in the case of a contract for an amount exceeding $10,000,000, by the senior procurement executive of the agency designated pursuant to section 414(3) of title 41 (without further delegation); and

(B) all other requirements applicable to the use of such procedures under title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or chapter 137 of title 10, as appropriate, have been satisfied.

(2) The same exceptions as are provided in section 303(f)(2) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)(2)) or section 2304(f)(2) of title 10 shall apply with respect to the requirements of paragraph (1)(A) of this subsection in the same manner as such exceptions apply to the requirements of section 303(f)(1) of such Act or section 2304(f)(1) of such title, as appropriate.

(i) Availability; complete solicitation package; fees

An executive agency shall make available to any business concern, or the authorized representative of such concern, the complete solicitation package for any on-going procurement announced pursuant to a notice under subsection (e) of this section. An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such package.

(j) "Executive agency" defined

For purposes of this section, the term "executive agency" has the meaning provided such term in section 403(1) of title 41.

(As amended Pub. L. 98-47, §§ 1(a), 2, 3, July 13, 1983, 97 Stat. 243; Pub. L. 98-72, § 1(a), Aug. 11, 1983, 97 Stat. 403; Pub. L. 98-362, § 5(a), July 16, 1984, 98 Stat. 433; Pub. L. 98-577, title IV, §§ 401, 402, 404(a), Oct. 30, 1984, 98 Stat. 3079, 3082.)

REFERENCES IN TEXT

The effective date of this paragraph, referred to in subsec. (a)(9), probably means the effective date of Pub. L. 95-507, which was approved Oct. 24, 1978.

Section 110 of the Housing Act of 1949 [42 U.S.C. 1460], referred to in subsec. (d)(14), was omitted from the Code pursuant to section 5316 of Title 42, The Public Health and Welfare, which terminated authority to make grants or loans under title I of that Act [42 U.S.C. 1450 et seq.] after Jan. 1, 1975.

The General Schedule, referred to in subsec. (h)(1)(A)(ii), is set out under section 5332 of Title 5, Government Organization and Employees.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (h)(1)(B), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of that act is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables.

AMENDMENTS

1984—Subsec. (b)(1)(A). Pub. L. 98-362, § 5(a)(2), added provisions at end of subpar. (A) relating to providing of assistance through cooperation of cosponsors, and provisions respecting activities of the Administration related to furnishing of assistance by cosponsors.

Pub. L. 98-362, § 5(a)(1), added "computer security," after "wage incentives,".

Subsec. (b)(7)(C). Pub. L. 98-577, § 401, added "Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed."

Subsec. (d)(1). Pub. L. 98-577, § 402(a), added ", including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsec. (d)(3)(A). Pub. L. 98-577, § 402(b), added ", including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals".

Subsec. (e). Pub. L. 98-577, § 404(a), added subsec. (e). Former subsec. (e) which related to notice and publication of procurement actions, exceptions, departmental procedures, contents of notice, sole source contracts and unsolicited proposals was struck out.

Subsecs. (f) to (j). Pub. L. 98-577 added subsecs. (f) to (j).

1983—Subsec. (a)(1). Pub. L. 98-47, § 2, substituted provision that no contract may be entered into under subpar. (B) prior to Oct. 1, 1983, nor after Sept. 30, 1985, for provision that such contracts may not be entered into after Sept. 30, 1981.

Subsec. (a)(1)(B). Pub. L. 98-47, § 1(a), substituted "(other than the Department of Defense or any component thereof) as shall be designated by the President" for ", as shall be designated by the President within 60 days after the effective date of this paragraph".

Subsec. (a)(2). Pub. L. 98-47, § 3, substituted provision that the authority to waive bonds as provided in par. (2) may not be exercised prior to Oct. 1, 1983, nor after Sept. 30, 1985, for provision that par. (2) shall not apply after Sept. 30, 1981.

Subsec. (e). Pub. L. 98-72 amended subsec. (e) generally, designating existing provisions as par. (1) and in par. (1) as so designated substituting: "It shall be the duty of the Secretary of Commerce, and the Secretary is hereby empowered, to obtain notice of all proposed competitive and noncompetitive civilian and defense procurement actions of $10,000 and above from any Federal department, establishment or agency (hereinafter in this subsection referred to as 'department') engaged in procurement of property, supplies, and services in the United States; and to publicize such notices in the daily publication Commerce Business Daily, immediately after the necessity for the procurement is established: *Provided*, That nothing in this paragraph shall require publication of such notices with respect to those procurements in which it is determined on a case-by-case basis that (A) the procurement for security reasons is of a classified nature; (B) the Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the time periods provided for in paragraph (2) were complied with; (C) a foreign government reimburses the Federal department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty; (D) the procurement is made from another Government department or agency, or a mandatory source of supply; (E) the procurement is for utility services and only one source is available; (F) the procurement is made against an order placed under a requirement or similar contract, including orders for perishable subsistence supplies; (G) the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research; or (H) it is determined in writing by the head of the Federal department, with the concurrence of the Administrator, that advance notice is not appropriate or reasonable" for "It shall be the duty of the Secretary of Commerce, and he is empowered, to obtain notice of all proposed defense procurement actions of $10,000 and above, and all civilian procurement actions of $5,000 and above, from any Federal department, establishment, or agency engaged in procurement of supplies and services in the United States; and to publicize such notices in the daily publication 'United States Department of Commerce Synopsis of the United States Government Proposed Procurements, Sales, and Contract Awards', immediately after the necessity for the procurement is established; except that nothing herein shall require publication of such notices with respect to those procurements (1) which for security reasons are of a classified nature, or (2) which involve perishable subsistence supplies, or (3) which are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made, or (4) which are of such unusual and compelling emergency that the Government would be seriously injured if bids or offers were permitted to be made more than 15 days after the issuance of the invitation for bids or solicitation for proposals, or (5) which are made by an order placed under an existing contract, or (6) which are made from another Government department or agency, or a mandatory source of supply, or (7) which are for personal or professional services, or (8) which are for services from educational institutions, or (9) in which only foreign sources are to be solicited, or (10) for which it is determined in writing by the procuring agency, with the concurrence of the Administrator, that advance publicity is not appropriate or reasonable", and adding pars. (2) to (6).

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Amendment by section 5(a)(1), (2) of Pub. L. 98-362 effective Oct. 1, 1984, and amendment by section

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5(a)(2) of Pub. L. 98-362 repealed Oct. 1, 1988, see section 7 of Pub. L. 98-362, set out as a note under section 633 of this title.

Section 404(b) of Pub. L. 98-577 provided that: "The amendment made by subsection (a) [enacting subsecs. (e) to (j) of this section and striking out former subsec. (e) of this section] shall take effect with respect to any solicitation for bids or proposals issued after March 31, 1985."

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 1(b)(1), (2) of Pub. L. 98-72 provided that:

"(1) Except as to the amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act [subsec. (e)(4) of this section], the amendments made by this Act [amending subsec. (e) of this section] shall apply to procurement actions initiated ninety days after the date of enactment of this Act [Aug. 11, 1983].

"(2) The amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act shall apply to procurement actions initiated on or after October 1, 1983."

Section 1(b) of Pub. L. 98-47 provided that: "The designation of an agency pursuant to the amendment made by subsection (a) [amending subsec. (a)(1)(B) of this section] shall be made not later than sixty days after the date of enactment of this Act [July 13, 1983]."

REPORT TO CONGRESS RESPECTING ASSISTANCE FURNISHED BY PROFITMAKING CONCERNS TO SMALL BUSINESS CONCERNS; CONTENTS

Section 5(b) of Pub. L. 98-362 provided that: "Not later than December 1, 1987 the Small Business Administration shall report to the Committees on Small Business of the Senate and the United States House of Representatives on the impact of the assistance provided in cooperation with profitmaking concerns pursuant to the amendment made by section 5(a)(2) of the Small Business Computer Security and Education Act of 1984 [amending subsec. (b)(1)(A) of this section]. The report shall include information on benefits provided to small business concerns assisted by the Administration's cooperation with profitmaking concerns and any negative impact upon small businesses resulting from such cooperation with profitmaking concerns."

TENNESSEE VALLEY AUTHORITY; PROCUREMENT PROCEDURES UNDER 1983 AND 1984 AMENDMENTS APPLICABLE ONLY TO PROCUREMENTS PAID FROM APPROPRIATED FUNDS

Section 404(c) of Pub. L. 98-577 provided that: "The provisions of the amendment made by subsection (a) of this section [enacting subsecs. (e) to (j) of this section and striking out former subsec. (e) of this section] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds."

Section 1(b)(3) of Pub. L. 98-72 provided that: "The provisions of this Act [amending subsec. (c) of this section] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 633, 634d, 636, 644 of this title; title 10 sections 2304, 2319, 2655; title 41 sections 253, 253c; title 42 section 9815.

§ 638. Research and development

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 637 of this title; title 10 sections 2302, 2304; title 41 sections 253, 259, 416.

§ 639. Reporting requirements and agency cooperation

[See main edition for text of (a) to (g)]

(h) Report to Congress on secondary market operations

The Administration shall transmit, not later than March 31 of each year, to the Committees on Small Business of the Senate and House of Representatives a report on the secondary market operations during the preceding calendar year. This report shall include, but not be limited to, (1) the number and the total dollar amount of loans sold into the secondary market and the distribution of such loans by size of loan, size of lender, geographic location of lender, interest rate, maturity, lender servicing fees, whether the rate is fixed or variable, and premium paid; (2) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premiums; (3) the number and total dollar amount of pools formed; (4) the number and total dollar amount of loans in each pool; (5) the dollar amount, interest rate, and terms on each loan in each pool and whether the rate is fixed or variable; (6) the number, face value, interest rate, and terms of the trust certificates issued for each pool; (7) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to small business concerns; and (8) an analysis of the information reported in (1) through (7) to assess small businesses' access to capital at reasonable rates and terms as a result of secondary market operations.

(As amended Pub. L. 98-352, § 4, July 10, 1984, 98 Stat. 331.)

AMENDMENTS

1984—Subsec. (h). Pub. L. 98-352 added subsec. (h).

§ 644. Awards or contracts

[See main edition for text of (a) to (k)]

(l) Breakout procurement center representatives

(1) The Administration shall assign to each major procurement center a breakout procurement center representative with such assistance as may be appropriate. The breakout procurement center representative shall carry out the activities described in paragraph (2), and shall be an advocate for the breakout of items for procurement through full and open competition, whenever appropriate, while maintaining the integrity of the system in which such items are used, and an advocate for the use of full and open competition, whenever appropriate, for the procurement of supplies and services by such center. Any breakout procurement center representative assigned under this subsection shall be in addition to the representative referred to in subsection (k)(6) of this section.

(2) In addition to carrying out the responsibilities assigned by the Administration, a breakout procurement center representative is authorized to—

(A) attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be procured through other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

(B) review, at any time, restrictions on competition previously imposed on items through acquisition method coding or similar procedures, and recommend to personnel of the appropriate activity the prompt reevaluation of such limitations;

(C) review restrictions on competition arising out of restrictions on the rights of the United States in technical data, and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(D) obtain from any governmental source, and make available to personnel of the appropriate activity, unrestricted technical data necessary for the preparation of a competitive solicitation package for any item of supply or service previously procured noncompetitively due to the unavailability of such unrestricted technical data;

(E) have access to the unclassified procurement records and other data of the procurement center;

(F) receive unsolicited engineering proposals and, when appropriate (i) conduct a value analysis of such proposal to determine whether such proposal, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate activity recommendations with respect to such proposal, or (ii) forward such proposals without analysis to personnel of the activity responsible for reviewing such proposals and who shall furnish the breakout procurement center representative with information regarding the disposition of any such proposal; and

(G) review the systems that account for the acquisition and management of technical data within the procurement center to assure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive.

(3) A breakout procurement center representative is authorized to appeal a failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be in writing, specifically reciting both the circumstances of the appeal and the basis of the recommendation. The appeal shall be decided by a person within the employ of the appropriate activity who is at least one supervisory level above the person who initially failed to act favorably on the recommendation. Such appeal shall be decided within 30 calendar days of its receipt.

(4) The Administration shall assign and colocate at least two small business technical advisers to each major procurement center in addition to such other advisers as may be authorized from time to time. The sole duties of such advisers shall be to assist the breakout procurement center representative for the center to which such advisers are assigned in carrying out the functions described in paragraph (2) and the representatives referred to in subsection (k)(6) of this section.

(5)(A) The breakout procurement center representatives and technical advisers assigned pursuant to this subsection shall be—

(i) full-time employees of the Administration; and

(ii) fully qualified, technically trained, and familiar with the supplies and services procured by the major procurement center to which they are assigned.

(B) In addition to the requirements of subparagraph (A), each breakout procurement center representative, and at least one technical adviser assigned to such representative, shall be an accredited engineer.

(C) The Administration shall establish personnel positions for breakout procurement representatives and advisers assigned pursuant to this subsection, which are classified at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

(6) For purposes of this subsection, the term "major procurement center" means a procurement center of the Department of Defense that awarded contracts for items other than commercial items totaling at least $150,000,000 in the preceding fiscal year, and such other procurement centers as designated by the Administrator.

(m) Labor surplus area procurement and manpower programs; report to Congress

(1) [12] The President shall, not later than October 1, 1979, transmit to the Select Committee on Small Business and Committee on Armed Services of the Senate and to the Committee on Small Business and the Committee on Armed Services of the House of Representatives a report on the labor surplus area procurement program under this section and the manpower policy described in subparagraph (D). Such report, together with recommendations, shall include, but not be limited to—

(A) an analysis of the effectiveness of such labor surplus area procurement program, including its effectiveness in creating jobs in the areas of high unemployment and the method by which labor markets are classified and designated as labor surplus areas;

(B) its potential benefits to Federal, State and local governments, including tax benefits, reductions in Federal payments to labor surplus areas, and reductions in State unemployment costs where such information is available;

(C) its potential costs, including its impact on the efficient utilization of Federal resources, its effect on the local economy of non-labor surplus areas, its impact on small business concerns not in labor surplus areas to the extent such information is available,

[12] So in original. No par. (2) has been enacted.

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and its impact on contract costs to the Federal Government; and

(D) with respect to the implementation by the Department of Defense of Defense Manpower Policy Number 4A (32A CFR Chapter 1) or any successor policy, in addition to the matters required by subparagraphs (A), (B), and (C), information concerning the impact on such matters of the expenditure of any funds which were available for procurement and which were not obligated for expenditure on September 30, 1977.

(As amended Pub. L. 98-577, title IV, § 403(a), Oct. 30, 1984, 98 Stat. 3080.)

AMENDMENTS

1984—Subsecs. (*l*), (m). Pub. L. 98-577 added subsec. (*l*) and redesignated former subsec. (*l*) as (m).

STANDARDS FOR MEASURING COST SAVINGS FROM BREAKOUT PROCUREMENT CENTER REPRESENTATIVES

Section 403(b) of Pub. L. 98-577 provided that:

"(1) The Administrator of the Small Business Administration and the Comptroller General of the United States shall jointly establish standards for measuring cost savings achieved through the efforts of breakout procurement center representatives and for measuring the extent to which competition has been increased as a result of such efforts. Thereafter, the Administrator shall annually prepare and submit to the Congress a report setting forth—

"(A) the cost savings achieved during the year covered by such report through the efforts of breakout procurement center representatives;

"(B) an evaluation of the extent to which competition has been increased as a result of such efforts; and

"(C) such other information as the Administrator may deem appropriate.

"(2) Within 180 days following the submission of the second annual report to Congress by the Administrator, the Comptroller General shall report to the Congress an evaluation of the Administration's adherence to the standards jointly established and the accuracy of the information the Administration has submitted to the Congress."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 sections 2302, 2304; title 41 sections 253, 259.

§ 647. Duplication of activities of other Federal departments or agencies

(a) General prohibition; agricultural enterprises exception; prohibition of duplication

The Administration shall not duplicate the work or activity of any other department or agency of the Federal Government, except to those enterprises engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries: *Provided*, That prior to October 1, 1987, an agricultural enterprise shall not be eligible for loan asistance under paragraph (1) of section 636(b) of this title to repair or replace property other than residences and/or personal property unless it is declined for, or would be declined for, emergency loan assistance at substantially similar interest rates from the Farmers Home Administration under subchapter III of the Consolidated Farm and Rural Development Act [7 U.S.C. 1961 et seq.], and nothing contained in this chapter shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this chapter. If loan applications are being refused or loans denied by such other department or agency responsible for such work or activity due to administrative withholding from obligation or withholding from apportionment, or due to administratively declared moratorium, then, for purposes of this section, no duplication shall be deemed to have occurred.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-270, title III, § 303, Apr. 18, 1984, 98 Stat. 160; Pub. L. 98-369, div. B, title IV, § 2401, July 18, 1984, 98 Stat. 1116.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 substituted "October 1, 1987" for "October 1, 1986".

Pub. L. 98-270 substituted "October 1, 1986" for "October 1, 1983".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-270 effective Oct. 1, 1983, see section 313 of Pub. L. 98-270, set out as a note under section 632 of this title.

§ 648. Small business development center program authorization

(a) Grants, contracts and cooperative agreements for establishment of small business development centers and for small business activities and purposes; role of Administration; non-Federal additional amount; amount of grant

(1) The Administration is authorized to make grants (including contracts and cooperative agreements) to any State government or any agency thereof, any regional entity, any State-chartered development, credit or finance corporation, any public or private institution of higher education, including but not limited to any land-grant college or university, any college or school of business, engineering, commerce, or agriculture, community college or junior college, or to any entity formed by two or more of the above entities (herein referred to as "applicants") to assist in establishing small business development centers and to any such body for: small business oriented employment or natural resources development programs; studies, research, and counseling concerning the managing, financing, and operation of small business enterprises; delivery or distribution of such services and information; and providing access to business analysts who can refer small business concerns to available experts. The term of such grants shall be made on a calendar year basis or to coincide with the Federal fiscal year.

(2) The Small Business Development Center Program shall be under the general management and oversight of the Administration, but with recognition that a partnership exists under this section between the Administration and the applicant for the delivery of assistance to the small business community. Services shall be provided pursuant to a negotiated cooperative agreement with full participation of both parties.

(3) Except as provided in paragraph (4), the Administration shall require, as a condition to any grant (or amendment or modification thereof) made to an applicant under this section that an additional amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government: *Provided,* That the additional amount shall not include any amount of indirect costs or in-kind contributions paid for under any Federal program, nor shall such indirect costs or in-kind contributions exceed 50 per centum of the non-Federal additional amount: *Provided further,* That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a $65,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population in the United States, or $200,000, whichever is greater.

(4) In lieu of the matching funds required in paragraph (3), the Administration shall require as a condition of any grant (or amendment or modification thereof) made to an applicant under this section, that a matching amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government, to be comprised of not less than 50 per centum cash and not more than 50 per centum of indirect costs and in-kind contributions as follows:

(A) for grants for performance commencing on or after October 1, 1987 if the applicant is located in a State which received its grant for performance under this section on or before August 1, 1984;

(B) for grants for performance commencing on or after October 1, 1988 if the applicant is located in a State which receives its initial grant for performance under this section commencing after August 1, 1984 and prior to October 1, 1986; and

(C) for grants for performance commencing on or after October 1, 1986 if the applicant is located in a State which receives its initial grant for performance under this section commencing after October 1, 1986:

Provided, That this matching amount shall not include any indirect costs or in-kind contributions derived from any Federal program: *Provided further,* That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a $65,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population in the United States, or $200,000 whichever is greater.

(b) Area plan inconsistent with applicant's plan: assistance unavailable 1981 through 1983; plan of applicant: submittal to Administration, action on plan, review by Administration, assistance to out-of-State businesses

(1) Financial assistance shall not be made available to any applicant if approving such assistance would be inconsistent with a plan for the area involved which has been adopted by an agency recognized by the State government as authorized to do so and approved by the Administration in accordance with the standards and requirements established pursuant to this section.

[*See main edition for text of (2) and (3)*]

(c) Problem-solving assistance; development center extension services; staff and access requirements; assistance services; changing services for evolving needs; qualified small business vendors

[*See main edition for text of (1)*]

(2) A small business development center shall provide services as close as possible to small businesses by providing extension services and utilizing satellite locations when necessary. The facilities and staff of each Small Business Development Center shall be located in such places as to provide maximum accessibility and benefits to the small businesses which the center is intended to serve. To the extent possible, it also shall make full use of other Federal and State government programs that are concerned with aiding small business. A small business development center shall have—

(A) a full-time staff, including a full-time director who shall have the authority to make expenditures under the center's budget and who shall manage the program activities;

[*See main edition for text of (B) to (F), (3) and (4); (d)*]

(e) National Science Foundation; cooperation with Administration and Small Business Development Centers; center support

The National Science Foundation is authorized and directed to cooperate with the Administration and with the Small Business Development Centers in developing and establishing programs to support the centers.

[*See main edition for text of (f) and (g)*]

(h) National Small Business Development Center Advisory Board; establishment; membership; term; Chairman; advisory and counseling functions; meetings; compensation

[*See main edition for text of (1)*]

(2) The Board shall elect a Chairman and advise, counsel, and confer with the Deputy Associate Administrator for Management Assistance in carrying out the duties described in this section. The Board shall meet at least semiannually and at the call of the Chairman of the Board. Each member of the Board shall be entitled to be compensated at the rate not in excess of the per diem, equivalent of the highest rate of pay for individuals occupying the position under GS-18 of the General Schedule for each day engaged in activities of the Board and shall be entitled to be reimbursed for expenses as a member of the Board.

(i) Small business development center advisory board; establishment; chairman; conferences with director on policy

(1) Each small business development center shall establish an advisory board.

[*See main edition for text of (2)*]

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(j) Program proposals for onsite evaluation; Small Business Development Centers; conducting of evaluation; providing for participation of other centers

Within six months of August 21, 1984, the Administration shall develop and implement a program proposal for onsite evaluation of each Small Business Development Center. Such evaluation shall be conducted at least once every two years and shall provide for the participation of a representative of at least one other Small Business Development Center on a cost-reimbursement basis.

[See main edition for text of (k)]

(As amended Pub. L. 98-395, § 2, Aug. 21, 1984, 98 Stat. 1366.)

REPEAL OF SECTION

Pub. L. 96-302, title II, § 204, July 2, 1980, 94 Stat. 848, as amended by Pub. L. 98-177, Nov. 29, 1983, 97 Stat. 1125; Pub. L. 98-395, § 4, Aug. 21, 1984, 98 Stat. 1368, provided that: "Sections 201 [set out as a Short Title of 1980 Amendment note under section 631 of this title] and 202 [enacting section 648 of this title and redesignating section 2[21] as 2[30] of Pub. L. 85-536, set out as a note under section 631 of this title] of this title are repealed effective October 1, 1990."

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-395, § 2(1), added "The term of such grants shall be made on a calendar year basis or to coincide with the Federal fiscal year."

Subsec. (a)(2) to (4). Pub. L. 98-395, § 2(2), added pars. (2) to (4). Former par. (2) which contained provisions similar to par. (3) was struck out.

Subsec. (b)(1). Pub. L. 98-395, § 2(3), substituted "Financial" for "During fiscal years 1981, 1982, and 1983, financial".

Subsec. (c)(2). Pub. L. 98-395, § 2(4), added in provisions preceding subpar. (A) "The facilities and staff of each Small Business Development Center shall be located in such places as to provide maximum accessibility and benefits to the small businesses which the center is intended to serve."

Subsec. (c)(2)(A). Pub. L. 98-395, § 2(5), substituted "including a full-time director who shall have the authority to make expenditures under the center's budget and who shall manage the program activities;" for "including a staff director to manage the program activities."

Subsec. (e). Pub. L. 98-395, § 2(6), substituted provisions authorizing the National Science Foundation to cooperate with the Administration and with Small Business Development Centers in developing and establishing programs to support the centers, for former provisions which related to the National Science Foundation and innovation centers, and reports to be made to the Administration and Congress.

Subsec. (h)(2). Pub. L. 98-395, § 2(7), substituted "at least semiannually" for "at least quarterly".

Subsec. (i)(1). Pub. L. 98-395, § 2(8), substituted "shall" for "may".

Subsec. (j). Pub. L. 98-395, § 2(9), substituted provisions mandating that the Administration develop and implement program proposals for onsite evaluation of each Small Business Development Center for provisions which related to the establishment of program evaluation plans and their submission to Congressional committees.

§ 649a. Omitted

CODIFICATION

Section, Pub. L. 98-481, title III, § 301(a)-(d), Oct. 21, 1980, 94 Stat. 2330, which related to establishment, staffing, functions, evaluation, and reporting requirements of export promotion centers, terminated Oct. 1, 1983.

§ 650. El Nino-related ocean conditions; disaster loan assistance to small business concerns in fishing industry

Notwithstanding any other provision of law, rule, or regulations, for purposes of section 636(b) of this title, the Administrator shall, with respect to small business concerns involved in the fishing industry, treat the recent El Nino-related ocean conditions as a disaster under such subsection:

(1) disaster loan assistance shall be provided to the fishing industry pursuant to paragraph (2) of such section—

(A) the term "recent El Nino-related ocean conditions" means the ocean conditions (including high water temperatures, scarcity of prey, and absence of normal upwellings) which occurred in the eastern Pacific Ocean off the west coast of the North American Continent during the period beginning with June 1982 and ending at the close of December 1983, and which resulted from the climatic conditions occurring in the Equatorial Pacific during 1982 and 1983;

(B) the term "fishing industry" means any trade or business involved in (i) the catching, taking, or harvesting of fish (whether or not sold on a commercial basis), (ii) any operation at sea or on land, in preparation for, or substantially dependent upon, the catching, taking, or harvesting of fish, and (iii) the processing or canning of fish (including storage, refrigeration and transportation of fish before processing or canning); and

(C) the term "fish" means finfish, molusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds; and

(2) for purposes of paragraphs (2) through (4) of section 636(b) of this title, eligibility of individual applicants shall not in any way be dependent upon the number of disaster victims in any county or other political subdivision.

(Pub. L. 85-536, § 2[23], as added Pub. L. 98-473, title I, § 111A(a), Oct. 12, 1984, 98 Stat. 1965.)

PRIOR PROVISIONS

A prior section 650, acts July 30, 1953, ch. 282, title II, § 221, 67 Stat. 240; June 30, 1955, ch. 251, § 4, 69 Stat. 225; Aug. 9, 1955, ch. 628, § 13, 69 Stat. 551; Pub. L. 85-120, § 2, Aug. 3, 1957, 71 Stat. 341, provided for a termination date of the Small Business Act of 1953, and was omitted from the general revision by Pub. L. 85-536. See Codification note set out under section 631 of this title.

CHAPTER 14B—SMALL BUSINESS INVESTMENT PROGRAM

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 77c, 77ddd, 80a–2, 80a–18, 80a–60, 637, 1691c of this title; title 26 sections 243, 246A, 542, 586, 1242, 1243.

SUBCHAPTER I—GENERAL PROVISIONS

§ 662. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 635; title 18 section 215.

SUBCHAPTER III—SMALL BUSINESS INVESTMENT COMPANIES

§ 687. Operation and regulation of companies

[*See main edition for text of* (*a*) *to* (*h*)]

(i) Interest rates

[*See main edition for text of* (*1*)]

(2) In the case of a business loan, the small business investment company making such loan may charge interest on such loan at a rate which does not exceed the maximum rate prescribed by regulation by the Administration for loans made by any licensee (determined without regard to any State rate incorporated by such regulation).

(3) A State law or constitutional provision shall be preempted for purposes of paragraph (2) with respect to any loan if such loan is made before the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of this subsection to apply with respect to loans made in such State, except that such State law or constitutional or other provision shall be preempted in the case of a loan made, on or after the date on which such law is adopted or such certification is made, pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made.

[*See main edition for text of* (*4*)]

(As amended Pub. L. 99–226, § 1, Dec. 28, 1985, 99 Stat. 1744.)

AMENDMENTS

1985—Subsec. (i)(2). Pub. L. 99–226, § 1(a), substituted "the maximum rate prescribed by regulation by the Administration for loans made by any licensee (determined without regard to any State rate incorporated by such regulation)." for "the lowest of the rates described in subparagraphs (A), (B), and (C)" and struck out subpars. (A), (B), and (C) which described the rates.

Subsec. (i)(3). Pub. L. 99–226, § 1(b), substituted "paragraph (2)" for "paragraph (2)(B)".

EFFECTIVE DATE OF 1985 AMENDMENT

Section 2 of Pub. L. 99–226 provided that: "This Act [amending this section] shall apply to maximum interest rates prescribed by the Administration on or after April 1, 1980."

§ 687a. Revocation and suspension of licenses; cease and desist orders

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Petition to modify or set aside order; filing, time and place, Administration to submit record; action of court; review

An order issued by the Administration under this section shall be final and conclusive unless within thirty days after the service thereof the licensee, or other person against whom an order is issued, appeals to the United States court of appeals for the circuit in which such licensee has its principal place of business by filing with the clerk of such court a petition praying that the Administration's order be set aside or modified in the manner stated in the petition. After the expiration of such thirty days, a petition may be filed only by leave of court on a showing of reasonable grounds for failure to file the petition theretofore. The clerk of the court shall immediately cause a copy of the petition to be delivered to the Administration, and the Administration shall thereupon certify and file in the court a transcript of the record upon which the order complained of was entered. If before such record is filed the Administration amends or sets aside its order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Administration. The filing of a petition for review shall not of itself stay or suspend the operation of the order of the Administration, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. The court may affirm, modify, or set aside the order of the Administration. If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the Administration to reopen the hearing for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Administration may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file its modified or new findings and the amendments, if any, of its order, with the record of such additional evidence. No objection to an order of the Administration shall be considered by the court unless such objection was urged before the Administration or, if it was not so urged, unless there were reasonable grounds for failure to do so. The judgment and decree of the court affirming, modifying, or setting aside any such order of the Administration shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in section 1254 of title 28.

(f) Enforcement of order

If any licensee or other person against which or against whom an order is issued under this section fails to obey the order, the Administration may apply to the United States court of appeals, within the circuit where the licensee has its principal place of business, for the enforcement of the order, and shall file a tran-

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script of the record upon which the order complained of was entered. Upon the filing of the application the court shall cause notice thereof to be served on the licensee or other person. The evidence to be considered, the procedure to be followed, and the jurisdiction of the court shall be the same as is provided in subsection (e) of this section for applications to set aside or modify orders.

(As amended Pub. L. 98-620, title IV, § 402(15)(A), (B), Nov. 8, 1984, 98 Stat. 3358.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-620, § 402(15)(A), struck out provision that the proceedings in such cases in the court of appeals had to be made a preferred cause and had to be expedited in every way.

Subsec. (f). Pub. L. 98-620, § 402(15)(B), struck out provision that the proceedings in such cases had to be made a preferred cause and expedited in every way.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 687c. Injunctions and other orders

(a) Grounds; jurisdiction of court

Whenever, in the judgment of the Administration, a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter, the Administration may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administration that such licensee or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 98-620, title IV, § 402(15)(C), Nov. 8, 1984, 98 Stat. 3358.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-620 struck out provision that the proceedings in such a case had to be made a preferred cause and had to be expedited in every way.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER IV-A—GUARANTEES

PART A—COMMERCIAL OR INDUSTRIAL LEASE AND QUALIFIED CONTRACT GUARANTEES

§ 694-1. Planning design or installation of pollution control facilities

[*See main edition for text of* (a)]

(b) Financing disadvantage; guarantee of payment by Administration; restrictions and limitations

The Administration may, whenever it determines that small business concerns are or are likely to be at an operational or financing disadvantage with other business concerns with respect to the planning, design, or installation of pollution control facilities, or the obtaining of financing therefor (including financing by means of revenue bonds issued by States, political subdivisions thereof, or other public bodies), guarantee the payment of rentals or other amounts due under qualified contracts. Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) Notwithstanding any other law, rule, or regulation or fiscal policy to the contrary, the guarantee authorized in the case of pollution control facilities or property shall be issued when such property is acquired by the use of proceeds from industrial revenue bonds which provide the holders interest which is exempt from Federal income tax, and the Administration is expressly prohibited from denying such guarantee due to the property being so acquired.

[*See main edition for text of* (2) *and* (3)]

(c) Uniform annual fees; processing fees; time and condition for payment; periodic review

The Administration shall fix a uniform annual fee for any guarantee issued under this section which shall be payable at such time and under such conditions as may be prescribed by the Administrator. The fee shall be set at an amount which the Administration deems reasonable and necessary and shall be subject to periodic review in order that the lowest fee that experience under the program shows to be justified will be placed into effect. In no case shall such amount be less than 1 per centum or more than 3½ per centum per annum of the minimum annual guaranteed rental payable under any qualified contract guaranteed under this section. The Administration may also fix such uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

[*See main edition for text of* (d) *to* (f)]

(As amended Pub. L. 98-473, title I, § 115, Oct. 12, 1984, 98 Stat. 1967.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-473, § 115(1), (2), substituted "shall be issued" for "may be issued" and inserted ", and the Administration is expressly prohibited from denying such guarantee due to the property being so acquired".

Subsec. (c). Pub. L. 98-473, § 115(3), substituted "be less than 1 per centum or more than 3½ per centum" for "exceed 3½ per centum".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 694-2 of this title; title 26 section 103.

CHAPTER 15—ECONOMIC RECOVERY

SUBCHAPTER I—GENERALLY

Sec.

713a-14. Dairy export incentive program.
(a) Establishment and operation.
(b) Payments to entity that sells for export United States dairy products; bid basis; criteria for acceptance or rejection of bids.
(c) Rules and regulations.
(d) Payments under program to be made in cash or commodities.
(e) Payment rates; publication in Federal Register or other public announcement.

SUBCHAPTER I—GENERALLY

§ 713a-14. Dairy export incentive program

(a) Establishment and operation

During the period beginning 60 days after December 23, 1985, and ending on September 30, 1989, the Commodity Credit Corporation shall establish and operate an export incentive program as described in this section for dairy products under section 714c of this title.

(b) Payments to entity that sells for export United States dairy products; bid basis; criteria for acceptance or rejection of bids

The program established under subsection (a) of this section shall provide for the Corporation to make payments, on a bid basis, to an entity that sells for export United States dairy products. The Secretary shall have discretion to accept or reject bids under such criteria as the Secretary deems appropriate.

(c) Rules and regulations

The program shall be operated under such rules and regulations issued by the Secretary as the Secretary deems necessary to ensure, among other things, that—

(1) payments may be made under the program only on the quantity of dairy products sold by an entity for export in any year that is in addition to, and not in place of, any export sales of dairy products that the entity would otherwise make in the absence of the program; and

(2) to the extent practicable, dairy products sold for export under the program will not displace commercial export sales of United States dairy products by other exporters.

(d) Payments under program to be made in cash or commodities

(1) The regulations issued by the Secretary may provide for payments under the program to be made in cash or in commodities of equal value that are available in Commodity Credit Corporation stock.

(2) If payments in commodities are authorized, such payments may be made through the issuance of certificates redeemable in commodities.

(3) If payments are authorized to be made in dairy products, the regulations issued by the Secretary shall ensure that such dairy products, or an equal amount of other dairy products, will be sold for export by the entity and that any such export sales by the entity will be in addition to, and not in place of, export sales of dairy products that the entity would otherwise make under program or in the absence of the program, and, to the extent practicable, will not displace commercial export sales of United States dairy products by other exporters.

(e) Payment rates; publication in Federal Register or other public announcement

(1) The payments made under the program shall be made at a rate or rates established or approved by the Secretary, taking into consideration, among other things the type of product to be exported, the domestic price of dairy products, and world price of the dairy products.

(2) Any such rate established or approved by the Secretary shall be published in the Federal Register or publicly announced through other appropriate means, and shall be at a level or levels as will encourage the exportation of United States dairy products by entities.

(Pub. L. 99-198, title I, § 153, Dec. 23, 1985, 99 Stat. 1377.)

§ 713c-3. Promotion of the free flow of domestically produced fishery products

(a) Definitions

As used in this section—

(1) The term "person" means—

[*See main edition for text of (A) and (B)*]

(C) any corporation, partnership, association, or other entity (including, but not limited to, any fishery development foundation or other private nonprofit corporation not located in Alaska), nonprofit or otherwise, if such entity is a citizen of the United States within the meaning of section 802 of title 46, Appendix, and for purposes of applying such section 802 with respect to this section—

[*See main edition for text of (i) to (iii), (2) to (4)*]

(5) The term "citizen of the Northern Mariana Islands" means—

[*See main edition for text of (A)*]

(B) a corporation, partnership, association, or other entity organized or existing under the laws of the Northern Mariana Islands, not less than 75 percent of the interest in which is owned by individuals referred to in subparagraph (A) or citizens or

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nationals of the United States, in cases in which "owned" is used in the same sense as in section 802 of title 46, Appendix.

[*See main edition for text of (b) to (d)*]

(e) Allocation of fund moneys

(1) Notwithstanding any other provision of law, all moneys in the fund shall be used exclusively for the purpose of promoting United States fisheries in accordance with the provisions of this section, and no such moneys shall be transferred from the fund for any other purpose. With respect to any fiscal year, all moneys in the fund, including the sum of all unexpended moneys carried over into that fiscal year and all moneys transferred to the fund under subsection (b) of this section or any other provision of law with respect to that fiscal year, shall be allocated as follows:

(A) the Secretary shall use no less than 60 per centum of such moneys to make direct industry assistance grants to develop the United States fisheries and to expand domestic and foreign markets for United States fishery products pursuant to subsection (c) of this section; and

(B) the Secretary shall use the balance of the moneys in the fund to finance those activities of the National Marine Fisheries Service which are directly related to development of the United States fisheries pursuant to subsection (d) of this section.

(2) The Secretary shall, consistent with the number of meritorious applications received with respect to any fiscal year, obligate or expend all of the moneys in the fund described in paragraph (1). Any such moneys which are not expended in a given fiscal year shall remain available for expenditure in accordance with this section without fiscal year limitation, except that the Secretary shall not obligate such moneys at a rate less than that necessary to prevent the balance of moneys in the fund from exceeding $3,000,000 at the end of any fiscal year.

(As amended Jan. 6, 1983, Pub. L. 97-424, title IV, § 423(a), 96 Stat. 2164.)

CODIFICATION

Subsec. (a)(1)(C), (5)(B), is set out in this supplement to reflect the transfer of section 802 of title 46, referred to in text, to title 46, Appendix, Shipping.

AMENDMENTS

1983—Subsec. (e). Pub. L. 97-424 amended subsec. (e) generally which formerly had provided:

"(1) With respect to any fiscal year, not less than 50 percent of—

"(A) the moneys transferred to the fund under subsection (b) of this section or any other provision of law with respect to that fiscal year; and

"(B) such existing fund moneys carried over into that fiscal year;

shall be used by the Secretary during that fiscal year to provide financial assistance for projects under subsection (c) of this section; and the remainder of such moneys in the fund shall be used to implement the national fisheries research and development program established under subsection (d) of this section during that fiscal year.

"(2) Moneys accruing to the fund established under subsection (b) of this section for any fiscal year and not expended with respect to that year shall remain available for expenditure under this section without fiscal year limitation."

EFFECTIVE DATE OF 1983 AMENDMENT

Section 423(b) of Pub. L. 97-424 provided that: "The amendment made by subsection (a) of this section [amending subsec. (e) of this section] shall take effect on October 1, 1983."

SHORT TITLE

Section 2 of act Aug. 11, 1939 [enacting this section], is popularly known as the "Saltonstall-Kennedy Act".

SUBCHAPTER II—COMMODITY CREDIT CORPORATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 7 sections 1429, 1431, 1444, 1445-1, 1446c-1, 2250a; title 16 sections 3811, 3821; title 21 section 881a.

§ 714b. General powers of Corporation

The Corporation—

[*See main edition for text of (a) to (g)*]

(h) May contract for the use, in accordance with the usual customs of trade and commerce, of plants and facilities for the physical handling, storage, processing, servicing, and transportation of the agricultural commodities subject to its control. The Corporation shall have power to acquire personal property necessary to the conduct of its business but shall not have power to acquire real property or any interest therein except that it may (a) rent or lease office space necessary for the conduct of its business and (b) acquire real property or any interest therein for the purpose of providing storage adequate to carry out effectively and efficiently any of the Corporation's programs, or of securing or discharging obligations owing to the Corporation, or of otherwise protecting the financial interests of the Corporation: *Provided*, That the authority contained in this subsection shall not be utilized by the Corporation for the purpose of acquiring real property, or any interest therein, in order to provide storage facilities for any commodity unless the Corporation determines that existing privately owned storage facilities for such commodity in the area concerned are not adequate: *Provided further*, That no refrigerated cold storage facilities shall be constructed or purchased except with funds specifically provided by Congress for that purpose: *And provided further*, That any contract entered into by the Corporation for the use of a storage facility shall provide at least that (1) the rental rate charged for an extended term in excess of one year shall be at an annual rate less than that which is charged for a one-year contract, (2) any obligation of the Corporation to pay for the use of any space in a facility shall be relieved to the extent that the Corporation does not use the space and payment is made by another person for the use of such space, and (3) if the Corporation determines that it no longer needs the space reserved in the facility, the Corporation may be relieved, for the remaining term of the contract, of its obligations to an extent and in a manner that

will provide significant savings to the Corporation while permitting the owner of the facility reasonable time to lease such space to another person: *And provided further,* That nothing contained in this subsection shall limit the duty of the Corporation, to the maximum extent practicable consistent with the fulfillment of the Corporation's purposes and the effective and efficient conduct of its business, to utilize the usual and customary channels, facilities, and arrangements of trade and commerce in the warehousing of commodities: *And provided further,* That to encourage the storage of grain on farms, where it can be stored at the lowest cost, the Corporation may make loans to grain growers needing storage facilities when such growers shall apply to the Corporation for financing the construction or purchase of suitable storage, and these loans shall be deducted from the proceeds of price support loans or purchase agreements made between the Corporation and the growers, except that the Secretary shall make such loans in areas in which the Secretary determines that there is a deficiency of such storage. To encourage the alleviation of natural resource conservation problems that reduce the productive capacity of the Nation's land and water resources or that cause degradation of environmental quality, the Corporation may, beginning December 22, 1981, make loans to any agricultural producer for those natural resource conservation and environmental enhancement measures that are recommended by the applicable county and State committees established under section 590h(b) of title 16 and are included in the producer's conservation plan approved by the local soil and water conservation district; such loans shall be for a period not to exceed ten years at a rate of interest based upon the rate of interest charged the Corporation by the United States Treasury; the Corporation may make loans to any one producer in any fiscal year in an amount not to exceed $25,000; loans up to $10,000 in amount may be unsecured and loans in excess of $10,000 shall be secured; and the total of such unsecured and secured loans made in each fiscal year shall not exceed $200,000,000: *Provided,* That the authority provided by this sentence to make loans shall be effective only to the extent and in such amounts as may be provided for in prior appropriation Acts. Notwithstanding any other provision of law, the Commodity Credit Corporation shall, to the maximum extent practicable, in consultation with the Secretary of State, and upon terms and conditions prescribed or approved by the Secretary of Agriculture, accept strategic and critical materials produced abroad in exchange for agricultural commodities acquired by the Corporation. Insofar as practicable, in effecting such exchange of goods, the Secretary shall: (1) use normal commercial trade channels; (2) take action to avoid displacing usual marketings of United States agricultural commodities and the products thereof; (3) take reasonable precautions to prevent the resale or transshipment to other countries, or use for other than domestic use in the importing country, of agricultural commodities used for such exchange; and (4) give priority to commodities easily storable and those which serve as prime incentive goods to stimulate production of critical and strategic materials. The Corporation may solicit bids from, and utilize, private trading firms to effect such exchange of goods. The determination of the quantities and qualities of such materials which are desirable for stock piling and the determination of which materials are strategic and critical shall be made in the manner prescribed by section 3 of the Strategic and Critical Materials Stock Piling Act [50 U.S.C. 98b]. Strategic and critical materials acquired by Commodity Credit Corporation in exchange for agricultural commodities shall, to the extent approved by the President, be transferred to the stock pile provided for by the Strategic and Critical Materials Stock Piling Act [50 U.S.C. 98 et seq.]; and in the same fiscal year such materials are transferred to the stock pile the Commodity Credit Corporation shall be reimbursed for the strategic and critical materials so transferred to the stock pile from the funds made available for the purpose of the Strategic and Critical Materials Stock Piling Act, in an amount equal to the fair market value, as determined by the Secretary of the Treasury, of the material transferred to the stock pile. If the volume of petroleum products (including crude oil) stored in the Strategic Petroleum Reserve is less than the level prescribed under section 6234 of title 42, the Corporation shall, to the maximum extent practicable and with the approval of the Secretary of Agriculture, make available annually to the Secretary of Energy, upon the request of the Secretary of Energy, a quantity of agricultural products owned by the Corporation with a market value at the time of such request of at least $300,000,000 for use by the Secretary of Energy in acquiring petroleum products (including crude oil) produced abroad for placement in the Strategic Petroleum Reserve through an exchange of such agricultural products. The terms and conditions of each such exchange, including provisions for full reimbursement to the Commodity Credit Corporation, shall be determined by the Secretary of Energy and the Secretary of Agriculture. Nothing contained herein shall limit the authority of the Commodity Credit Corporation to acquire, hold, or dispose of such quantity of strategic and critical materials as it deems advisable in carrying out its functions and protecting its assets: *Provided,* That, notwithstanding any other provision of law, where a grain storage facility owned by the Corporation is not needed by the Corporation and, upon being offered for sale no person offers to pay the minimum price set by the Corporation for such facility for use in connection with storage or handling of agricultural commodities, then the Corporation may, without declaring such facility to be excess property, sell it by bids at not less than such minimum price to any public or private nonprofit agency or organization for use for the purposes of such agency or organization. This provision shall apply also to facilities which on the effective date of this Act have been declared excess to the needs of the Commodity Credit Corporation but have not been claimed by any other Government agency, or surplus to

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the needs of the Government but not disposed of pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended [40 U.S.C. 471 et seq.].

[*See main edition for text of* (i) *to* (m)]

(As amended Dec. 23, 1985, Pub. L. 99-198, title XI, § 1167(b), title XVII, § 1761, 99 Stat. 1503, 1651.)

AMENDMENTS

1985—Subsec. (h). Pub. L. 99-198, § 1761, added an additional proviso reading as follows: "That any contract entered into by the Corporation for the use of a storage facility shall provide at least that (1) the rental rate charged for an extended term in excess of one year shall be at an annual rate less than that which is charged for a one-year contract, (2) any obligation of the Corporation to pay for the use of any space in a facility shall be relieved to the extent that the Corporation does not use the space and payment is made by another person for the use of such space, and (3) if the Corporation determines that it no longer needs the space reserved in the facility, the Corporation may be relieved, for the remaining term of the contract, of its obligations to an extent and in a manner that will provide significant savings to the Corporation while permitting the owner of the facility reasonable time to lease such space to another person:".

Pub. L. 99-198, § 1167(b), in sentence beginning "Notwithstanding any other provision of law" substituted "Commodity Credit Corporation shall, to the maximum extent practicable, in consultation with the Secretary of State, and upon terms and conditions prescribed or approved by the Secretary of Agriculture, accept strategic and critical materials" for "Commodity Credit Corporation is authorized, upon terms and conditions prescribed or approved by the Secretary of Agriculture, to accept strategic and critical materials"; in sentence beginning "Insofar as practicable" substituted "the Secretary shall: (1) use normal commercial trade channels; (2) take action to avoid displacing usual marketings of United States agricultural commodities and the products thereof; (3) take reasonable precautions to prevent the resale or transshipment to other countries, or use for other than domestic use in the importing country, of agricultural commodities used for such exchange; and (4) give priority" for "normal commerical trade channels shall be utilized and priority shall be given"; inserted sentence reading "The Corporation may solicit bids from, and utilize, private trading firms to effect such exchange of goods."; in sentence beginning "Strategic and critical materials" substituted "in the same fiscal year such materials are transferred" for "when transferred"; and inserted sentence beginning "If the volume of petroleum products" and sentence beginning "the terms and conditions" relating to acquisition of petroleum products for placement in the Strategic Petroleum Reserve and terms and conditions of each exchange.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 1516, 1692; title 16 sections 3811, 3821; title 21 section 881a; title 50 section 98c.

§ 714c. Specific powers of Corporation

In the fulfillment of its purposes and in carrying out its annual budget programs submitted to and approved by the Congress pursuant to chapter 91 of title 31, the Corporation is authorized to use its general powers only to—

[*See main edition for text of* (a) *to* (e)]

(f) Export or cause to be exported, or aid in the development of foreign markets for, agricultural commodities (including fish and fish products, without regard to whether such fish are harvested in aquacultural operations).

[*See main edition for text of* (g) *and concluding par.*]

(As amended Nov. 8, 1984, Pub. L. 98-623, title IV, § 405(a), 98 Stat. 3409.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-623 inserted "(including fish and fish products, without regard to whether such fish are harvested in aquacultural operations)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-623 to be considered as having taken effect before Sept. 8, 1982, for purposes of section 135 of Pub. L. 97-253 (set out as a note under section 612c of Title 7, Agriculture) see section 405(d) of Pub. L. 98-623, set out as a note under section 1707a of Title 7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 713a-14 of this title; title 7 sections 1707a, 1736n; title 16 sections 3811, 3821; title 21 section 881a.

CHAPTER 15C—ALASKA NATURAL GAS TRANSPORTATION

§ 719h. Judicial review

[*See main edition for text of* (a) *and* (b)]

(c) Exclusive jurisdiction of the Special Court; barred claims; conclusiveness of environmental impact statements

[*See main edition for text of* (1)]

(2) Repealed. Pub. L. 98-620, title IV, § 402(16), Nov. 8, 1984, 98 Stat. 3358.

[*See main edition for text of* (3)]

(As amended Pub. L. 98-620, title IV, § 402(16), Nov. 8, 1984, 98 Stat. 3358.)

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98-620 struck out par. (2) which required that any such proceeding had to be assigned for hearing and completed at the earliest possible date, would, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at that time, and had to be expedited in every way by such court and such court had to render its decision relative to any claim within 90 days from the date such claim was brought unless such court determined that a longer period of time was required to satisfy requirements of the United States Constitution.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 20—REGULATION OF INSURANCE

§ 1014. Effect on other laws

Nothing contained in this chapter shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the Nation-

al Labor Relations Act [29 U.S.C. 151 et seq.], or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], or the Act of June 5, 1920, known as the Merchant Marine Act, 1920 [46 App. U.S.C. 861 et seq. and 911 et seq.].

(Mar. 9, 1945, ch. 20, § 4, 59 Stat. 34.)

REFERENCES IN TEXT

The Act of July 5, 1935, as amended, known as the National Labor Relations Act, referred to in text, is act July 5, 1935, ch. 372, 49 Stat. 449, as amended which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

The Act of June 25, 1938, as amended, known as the Fair Labor Standards Act, referred to in text, is classified principally to chapter 8 (§ 201 et seq.) of Title 29. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

The Act of June 5, 1920, known as the Merchant Marine Act, 1920, referred to in text, is classified generally to chapters 24 and 25 (§§ 861 et seq. and 911 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see References in Text note set out under section 889 of Title 46, Appendix, and Tables.

CODIFICATION

Section is set out in this supplement to reflect the transfer of the Merchant Marine Act, 1920, referred to in text, to Title 46, Appendix, Shipping.

CHAPTER 21—NATIONAL POLICY ON EMPLOYMENT AND PRODUCTIVITY

§ 1022a. Medium-term economic goals and policies respecting full employment and balanced growth

REFERENCES IN TEXT

CETA, referred to in subsec. (f)(2)(B), means the Comprehensive Employment and Training Act, Pub. L. 93-203, Dec. 28, 1973, 87 Stat. 839, as amended, which was classified generally to chapter 17 (§ 801 et seq.) of Title 29, Labor, and was repealed by section 184(a)(1) of the Job Training Partnership Act, Pub. L. 97-300, title I, Oct. 13, 1982, 96 Stat. 1357. The Job Training Partnership Act is classified principally to chapter 19 (§ 1501 et seq.) of Title 29. Section 183 of Pub. L. 97-300, classified to section 1592 of Title 29, provided in part that references in any other statute to the Comprehensive Employment and Training Act shall be deemed to refer to the Job Training Partnership Act. Section 705(a) of the Comprehensive Employment and Training Act of 1973 was classified to section 985 of Title 29, and was omitted from the Code in the general revision of Pub. L. 93-203 by Pub. L. 95-524, Oct. 27, 1978, 92 Stat. 1909.

§ 1023. Council of Economic Advisers

EXTENSION OF TERM OF PRESIDENT'S ECONOMIC POLICY ADVISORY BOARD

Term of the President's Economic Policy Advisory Board extended until Sept. 30, 1985, see Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the President's Economic Policy Advisory Board extended until Sept. 30, 1987, see Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

CHAPTER 22—TRADE-MARKS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 18 section 2320; title 36 section 380; title 48 section 1643.

SUBCHAPTER I—THE PRINCIPAL REGISTER

§ 1051. Registration; application; payment of fees; designation of resident for service of process and notice

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-620, title I, § 101, Nov. 8, 1984, 98 Stat. 3335, provided that: "This title [amending sections 1064 and 1127 of this title and enacting provisions set out as a note under section 1064 of this title] may be cited as the 'Trademark Clarification Act of 1984'."

§ 1064. Cancellation of registration

A petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed by any person who believes that he is or will be damaged by the registration of a mark on the principal register established by this chapter, or under the Act of March 3, 1881, or the Act of February 20, 1905—

[*See main edition for text of* (a) *and* (b)]

(c) at any time if the registered mark becomes the common descriptive name of an article or substance, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 1054 of this title or of subsections (a), (b), or (c) of section 1052 of this title for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used. A registered mark shall not be deemed to be the common descriptive name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the common descriptive name of goods or services in connection with which it has been used; or

[*See main edition for text of* (d) *and* (e)]

Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in subsections (c) and (e) of this section any mark registered on the principal register established by this chapter, and the prescribed fee shall not be required.

(As amended Nov. 8, 1984, Pub. L. 98-620, title I, § 102, 98 Stat. 3335.)

AMENDMENTS

1984—Par. (c). Pub. L. 98-620 added provision that a registered mark shall not be deemed to be the common descriptive name of goods or services solely

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because such mark is also used as a name of or to identify a unique product or service, and that the primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the common descriptive name of goods or services in connection with which it has been used.

FINALITY OF JUDGMENTS PRIOR TO NOVEMBER 8, 1984

Section 104 of title I of Pub. L. 98–620 provided that: "Nothing in this title [amending sections 1064 and 1127 of this title and enacting provisions set out as a note under section 1051 of this title] shall be construed to provide a basis for reopening of any final judgment entered prior to the date of enactment of this title [Nov. 8, 1984]."

§ 1071. Appeal to courts

(a) Persons entitled to appeal; United States Court of Appeals for the Federal Circuit; waiver of civil action; election of civil action by adverse party; procedure

[*See main edition for text of (1)*]

(2) When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the Patent and Trademark Office a written notice of appeal directed to the Commissioner, within such time after the date of the decision from which the appeal is taken as the Commissioner prescribes, but in no case less than 60 days after that date.

(3) The Commissioner shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the Patent and Trademark Office. The court may request that the Commissioner forward the original or certified copies of such documents during pendency of the appeal. In an ex parte case, the Commissioner shall submit to that court a brief explaining the grounds for the decision of the Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Commissioner and the parties in the appeal.

(4) The United States Court of Appeals for the Federal Circuit shall review the decision from which the appeal is taken on the record before the Patent and Trademark Office. Upon its determination the court shall issue its mandate and opinion to the Commissioner, which shall be entered of record in the Patent and Trademark Office and shall govern the further proceedings in the case.

[*See main edition for text of (b)*]

(As amended Nov. 8, 1984, Pub. L. 98–620, title IV, § 414(b), 98 Stat. 3363.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98–620 substituted provisions requiring the appellant to file a written notice of appeal in the Patent and Trademark Office directed to the Commissioner for provisions requiring the appellant to file the notice of appeal with the Commissioner, and struck out provision which required the notice of appeal to specify the party or parties taking the appeal, to designate the decision or part thereof appealed from, and to state that the appeal was being taken to the United States Court of Appeals for the Federal Circuit.

Subsec. (a)(3). Pub. L. 98–620 substituted provisions requiring the Commissioner to transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the Patent and Trademark Office for provisions which required the Commissioner to transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant, and any additional papers and evidence specified by the appellee, and added provision that the court may request that the Commissioner forward the original or certified copies of such documents during the pendency of the appeal.

Subsec. (a)(4). Pub. L. 98–620 substituted provisions requiring the court to review the decision from which the appeal is taken on the record before the Patent and Trademark Office, and, upon its determination, to issue its mandate and opinion to the Commissioner for provisions which required the court to decide such appeal on the evidence produced before the Patent and Trademark Office and to return to the Commissioner a certificate of its proceedings and decision.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 applicable to proceedings pending in the Patent and Trademark Office on Nov. 8, 1984, and to appeals pending in the United States Court of Appeals for the Federal Circuit on that date, see section 414(c) of Pub. L. 98–620, set out as a note under section 142 of Title 35, Patents.

SUBCHAPTER III—GENERAL PROVISIONS

§ 1114. Remedies; infringement; innocent infringement by printers and publishers

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1116, 1117 of this title.

§ 1116. Injunctive relief

(a) Jurisdiction; service

The several courts vested with jurisdiction of civil actions arising under this chapter shall have power to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent and Trademark Office. Any such injunction may include a provision directing the defendant to file with the court and serve on the plaintiff within thirty days after the service on the defendant of such injunction, or such extended period as the court may direct, a report in writing under oath setting forth in detail the manner and form in which the defendant has complied with the injunction. Any such injunction granted upon hearing, after notice to the defendant, by any district court of the United States, may be served on the parties against whom such injunction is granted anywhere in the United States where they may be found, and shall be operative and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other United States district court in whose jurisdiction the defendant may be found.

(b) Transfer of certified copies of court papers

The said courts shall have jurisdiction to enforce said injunction, as provided in this chapter, as fully as if the injunction had been granted by the district court in which it is sought to

be enforced. The clerk of the court or judge granting the injunction shall, when required to do so by the court before which application to enforce said injunction is made, transfer without delay to said court a certified copy of all papers on file in his office upon which said injunction was granted.

(c) Notice to Commissioner

It shall be the duty of the clerks of such courts within one month after the filing of any action, suit, or proceeding arising under the provisions of this chapter to give notice thereof in writing to the Commissioner setting forth in order so far as known the names and addresses of the litigants and the designating number or numbers of the registration or registrations upon which the action, suit, or proceeding has been brought, and in the event any other registration be subsequently included in the action, suit, or proceeding by amendment, answer, or other pleading, the clerk shall give like notice thereof to the Commissioner, and within one month after the decision is rendered, appeal taken or a decree issued the clerk of the court shall give notice thereof to the Commissioner, and it shall be the duty of the Commissioner on receipt of such notice forthwith to endorse the same upon the file wrapper of the said registration or registrations and to incorporate the same as a part of the contents of said file wrapper.

(d) Civil actions arising out of use of counterfeit marks

(1)(A) In the case of a civil action arising under section 1114(1)(a) of this title or section 380 of title 36 with respect to a violation that consists of using a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services, the court may, upon ex parte application, grant an order under subsection (a) of this section pursuant to this subsection providing for the seizure of goods and counterfeit marks involved in such violation and the means of making such marks, and records documenting the manufacture, sale, or receipt of things involved in such violation.

(B) As used in this subsection the term "counterfeit mark" means—

(i) a counterfeit of a mark that is registered on the principal register in the United States Patent and Trademark Office for such goods or services sold, offered for sale, or distributed and that is in use, whether or not the person against whom relief is sought knew such mark was so registered; or

(ii) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which the remedies of this chapter are made available by reason of section 380 of title 36;

but such term does not include any mark or designation used in connection with goods or services of which the manufacture or producer was, at the time of the manufacture or production in question authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation.

(2) The court shall not receive an application under this subsection unless the applicant has given such notice of the application as is reasonable under the circumstances to the United States attorney for the judicial district in which such order is sought. Such attorney may participate in the proceedings arising under such application if such proceedings may affect evidence of an offense against the United States. The court may deny such application if the court determines that the public interest in a potential prosecution so requires.

(3) The application for an order under this subsection shall—

(A) be based on an affidavit or the verified complaint establishing facts sufficient to support the findings of fact and conclusions of law required for such order; and

(B) contain the additional information required by paragraph (5) of this subsection to be set forth in such order.

(4) The court shall not grant such an application unless—

(A) the person obtaining an order under this subsection provides the security determined adequate by the court for the payment of such damages as any person may be entitled to recover as a result of a wrongful seizure or wrongful attempted seizure under this subsection; and

(B) the court finds that it clearly appears from specific facts that—

(i) an order other than an ex parte seizure order is not adequate to achieve the purposes of section 1114 of this title;

(ii) the applicant has not publicized the requested seizure;

(iii) the applicant is likely to succeed in showing that the person against whom seizure would be ordered used a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services;

(iv) an immediate and irreparable injury will occur if such seizure is not ordered;

(v) the matter to be seized will be located at the place identified in the application;

(vi) the harm to the applicant of denying the application outweighs the harm to the legitimate interests of the person against whom seizure would be ordered of granting the application; and

(vii) the person against whom seizure would be ordered, or persons acting in concert with such person, would destroy, move, hide, or otherwise make such matter inaccessible to the court, if the applicant were to proceed on notice to such person.

(5) An order under this subsection shall set forth—

(A) the findings of fact and conclusions of law required for the order;

(B) a particular description of the matter to be seized, and a description of each place at which such matter is to be seized;

(C) the time period, which shall end not later than seven days after the date on which such order is issued, during which the seizure is to be made;

(D) the amount of security required to be provided under this subsection; and

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(E) a date for the hearing required under paragraph (10) of this subsection.

(6) The court shall take appropriate action to protect the person against whom an order under this subsection is directed from publicity, by or at the behest of the plaintiff, about such order and any seizure under such order.

(7) Any materials seized under this subsection shall be taken into the custody of the court. The court shall enter an appropriate protective order with respect to discovery by the applicant of any records that have been seized. The protective order shall provide for appropriate procedures to assure that confidential information contained in such records is not improperly disclosed to the applicant.

(8) An order under this subsection, together with the supporting documents, shall be sealed until the person against whom the order is directed has an opportunity to contest such order, except that any person against whom such order is issued shall have access to such order and supporting documents after the seizure has been carried out.

(9) The court shall order that a United States marshal or other law enforcement officer is to serve a copy of the order under this subsection and then is to carry out the seizure under such order. The court shall issue orders, when appropriate, to protect the defendant from undue damage from the disclosure of trade secrets or other confidential information during the course of the seizure, including, when appropriate, orders restricting the access of the applicant (or any agent or employee of the applicant) to such secrets or information.

(10)(A) The court shall hold a hearing, unless waived by all the parties, on the date set by the court in the order of seizure. That date shall be not sooner than ten days after the order is issued and not later than fifteen days after the order is issued, unless the applicant for the order shows good cause for another date or unless the party against whom such order is directed consents to another date for such hearing. At such hearing the party obtaining the order shall have the burden to prove that the facts supporting findings of fact and conclusions of law necessary to support such order are still in effect. If that party fails to meet that burden, the seizure order shall be dissolved or modified appropriately.

(B) In connection with a hearing under this paragraph, the court may make such orders modifying the time limits for discovery under the Rules of Civil Procedure as may be necessary to prevent the frustration of the purposes of such hearing.

(11) A person who suffers damage by reason of a wrongful seizure under this subsection has a cause of action against the applicant for the order under which such seizure was made, and shall be entitled to recover such relief as may be appropriate, including damages for lost profits, cost of materials, loss of good will, and punitive damages in instances where the seizure was sought in bad faith, and, unless the court finds extenuating circumstances, to recover a reasonable attorney's fee. The court in its discretion may award prejudgment interest on relief recovered under this paragraph, at an annual interest rate established under section 6621 of title 26, commencing on the date of service of the claimant's pleading setting forth the claim under this paragraph and ending on the date such recovery is granted, or for such shorter time as the court deems appropriate.

(As amended Oct. 12, 1984, Pub. L. 98–473, title II, § 1503(1), 98 Stat. 2179.)

REFERENCES IN TEXT

The Rules of Civil Procedure, referred to in subsec. (d)(10)(B), probably means the Federal Rules of Civil Procedure, which are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1984—Pub. L. 98–473 designated first, second, and third undesignated pars. as subsecs. (a), (b), and (c), respectively and added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1117, 1118 of this title.

§ 1117. Recovery for violation of rights; profits, damages and costs; attorney fees; treble damages

(a) When a violation of any right of the registrant of a mark registered in the Patent and Trademark Office shall have been established in any civil action arising under this chapter, the plaintiff shall be entitled, subject to the provisions of sections 1111 and 1114 of this title, and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty. The court in exceptional cases may award reasonable attorney fees to the prevailing party.

(b) In assessing damages under subsection (a) of this section, the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever is greater, together with a reasonable attorney's fee, in the case of any violation of section 1114(1)(a) of this title or section 380 of title 36 that consists of intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark (as defined in section 1116(d) of this title), in connection with the sale, offering for sale, or distribution of goods or services. In such cases, the court may in its discretion award prejudgment interest on such amount at an annual interest rate estab-

lished under section 6621 of title 26, commencing on the date of the service of the claimant's pleadings setting forth the claim for such entry and ending on the date such entry is made, or for such shorter time as the court deems appropriate.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1503(2), 98 Stat. 2182.)

AMENDMENTS

1984—Pub. L. 98-473 designated existing provisions as subsec. (a) and added subsec. (b).

§ 1118. Destruction of infringing articles

In any action arising under this chapter, in which a violation of any right of the registrant of a mark registered in the Patent and Trademark Office shall have been established, the court may order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of the defendant, bearing the registered mark or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same, shall be delivered up and destroyed. The party seeking an order under this section for destruction of articles seized under section 1116(d) of this title shall give ten days' notice to the United States attorney for the judicial district in which such order is sought (unless good cause is shown for lesser notice) and such United States attorney may, if such destruction may affect evidence of an offense against the United States, seek a hearing on such destruction or participate in any hearing otherwise to be held with respect to such destruction.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1503(3), 98 Stat. 2182.)

AMENDMENTS

1984—Pub. L. 98-473 added "The party seeking an order under this section for destruction of articles seized under section 1116(d) of this title shall give ten days' notice to the United States attorney for the judicial district in which such order is sought (unless good cause is shown for lesser notice) and such United States attorney may, if such destruction may affect evidence of an offense against the United States, seek a hearing on such destruction or participate in any hearing otherwise to be held with respect to such destruction."

§ 1127. Construction and definitions; intent of chapter

In the construction of this chapter, unless the contrary is plainly apparent from the context—

[*See main edition for text of second to ninth pars.*]

The term "trademark" includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify and distinguish his goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

The term "service mark" means a mark used in the sale or advertising of services to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

[*See main edition for text of twelfth to fifteenth pars.*]

A mark shall be deemed to be "abandoned"—

(a) When its use has been discontinued with intent not to resume. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie abandonment.

(b) When any course of conduct of the registrant, including acts of omission as well as commission, causes the mark to lose its significance as an indication of origin. Purchaser motivation shall not be a test for determining abandonment under this subparagraph.

[*See main edition for text of last six pars.*]

(As amended Nov. 8, 1984, Pub. L. 98-620, title I, § 103, 98 Stat. 3335.)

AMENDMENTS

1984—Pub. L. 98-620, § 103(1), in definition of "trademark" substituted "trademark" for "trademark", and substituted "identify and distinguish his goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown" for "identify his goods and distinguish them from those manufactured or sold by others".

Pub. L. 98-620, § 103(2), in definition of "service mark" substituted "The term 'service mark' means a mark used in the sale or advertising of services to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown" for "The term 'service mark' means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others".

Pub. L. 98-620, § 103(3), added provision that purchaser motivation shall not be a test for determining abandonment in par. (a) of the definition of "abandoned".

CHAPTER 30—HAZARDOUS SUBSTANCES

§ 1261. Definitions

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-491, § 1, Oct. 17, 1984, 98 Stat. 2269, provided: "That this Act [amending section 1274 of this title] may be cited as the 'Toy Safety Act of 1984'."

§ 1274. Remedies respecting banned hazardous substances

[*See main edition for text of (a) and (b)*]

(c) Discretionary remedial activities available to Commission; orders; contents

(1) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (e) of this section) that any toy or other article intended for use by children that is not a banned

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hazardous substance contains a defect which creates a substantial risk of injury to children (because of the pattern of defect, the number of defective toys or such articles distributed in commerce, the severity of the risk, or otherwise) and that notification is required to protect adequately the public from such toy or article, the Commission may order the manufacturer or any distributor or dealer of such toy or article to take any one or more of the following actions:

(A) To give public notice that such defective toy or article contains a defect which creates a substantial risk of injury to children.

(B) To mail such notice to each person who is a manufacturer, distributor, or dealer of such toy or article.

(C) To mail such notice to every person to whom the person giving notice knows such toy or article was delivered or sold.

An order under this paragraph shall specify the form and content of any notice required to be given under the order.

(2) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (e) of this section) that any toy or other article intended for use by children that is not a banned hazardous substance contains a defect which creates a substantial risk of injury to children (because of the pattern of defect, the number of defective toys or such articles distributed in commerce, the severity of the risk, or otherwise) and that action under this paragraph is in the public interest, the Commission may order the manufacturer, distributor, or dealer to take whichever of the following actions the person to whom the order is directed elects:

(A) If repairs to or changes in the toy or article can be made so that it will not contain a defect which creates a substantial risk of injury to children, to make such repairs or changes.

(B) To replace such toy or article with a like or equivalent toy or article which does not contain a defect which creates a substantial risk of injury to children.

(C) To refund the purchase price of such toy or article (less a reasonable allowance for use, if such toy or article has been in the possession of the consumer for 1 year or more (i) at the time of public notice under paragraph (1)(A), or (ii) at the time the consumer receives actual notice that the toy or article contains a defect which creates a substantial risk of injury to children, whichever first occurs).

An order under this paragraph may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking the action which such person has elected to take. The Commission shall specify in the order the person to whom refunds must be made if the person to whom the order is directed elects to take the action described in subparagraph (C). If an order under this paragraph is directed to more than one person, the Commission shall specify which person has the election under this paragraph. An order under this paragraph may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States), or from doing any combination of such actions, with respect to the toy or article with respect to which the order was issued.

(d) Charge for remedy; reimbursement for expenses

(1) No charge shall be made to any person (other than a manufacturer, distributor, or dealer) who avails himself of any remedy provided under an order issued under subsection (b) or (c) of this section, and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or dealer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such remedy.

(2) An order issued under subsection (a), (b), or (c) of this section with respect to a toy, article or substance may require any person who is a manufacturer, distributor, or dealer of the toy, article or substance to reimburse any other person who is a manufacturer, distributor, or dealer of such toy, article or substance for such other person's expenses in connection with carrying out the order, if the Commission determines such reimbursement to be in the public interest.

(e) Hearing; representative of class

An order under subsection (a), (b), or (c) of this section may be issued only after an opportunity for a hearing in accordance with section 554 of title 5, except that, if the Commission determines that any person who wishes to participate in such hearing is a part of a class or participants who share an identity of interest, the Commission may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Commission if such class fails to designate such a representative).

(f) "Manufacturer" defined

For purposes of this section (1) the term "manufacturer" includes an importer for resale, and (2) a dealer who sells at wholesale an article or substance shall with respect to that sale be considered the distributor of that article or substance.

(As amended Pub. L. 98-491, § 2, Oct. 17, 1984, 98 Stat. 2269.)

REFERENCES IN TEXT

General headnote 2 to the Tariff Schedules of the United States, referred to in subsecs. (b), (c)(2), is set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-491, § 2(a)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98-491, § 2(a)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 98-491, § 2(b), added "or (c)" after "subsection (b)".

Subsec. (d)(2). Pub. L. 98-491, § 2(c), (d), substituted "a toy, article" for "an article", "toy, article" for "arti-

cle" in two places, and "subsection (a), (b), or (c)" for "subsection (a) or (b)".

Subsec. (e). Pub. L. 98-491, § 2(a)(2), (d), redesignated subsec. (d) as (e) and substituted "subsection (a), (b), or (c)" for "subsection (a) or (b)". Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 98-491, § 2(a)(1), redesignated subsec. (e) as (f).

CHAPTER 34—ANTITRUST CIVIL PROCESS

Chapter Referred to in Other Sections

This chapter is referred to in section 18a of this title; title 18 sections 1505, 1905; title 42 section 6272; title 44 section 3518; title 46 App. section 1702; title 50 App. section 2158a.

CHAPTER 36—CIGARETTE LABELING AND ADVERTISING

Sec.

1335a. List of cigarette ingredients; annual submission to Secretary; transmittal to Congress; confidentiality.
1336. Authority of Federal Trade Commission; unfair or deceptive acts or practices.
1337. Reports to Congress by the Secretary and Federal Trade Commission.
1341. Smoking, research, education and information.
(a) Establishment of program; Secretary; functions.
(b) Interagency Committee on Smoking and Health; composition; chairman; compensation; staffing and other assistance.
(c) Report to Congress; contents.

§ 1331. Congressional declaration of policy and purpose

It is the policy of the Congress, and the purpose of this chapter, to establish a comprehensive Federal Program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health, whereby—

(1) the public may be adequately informed about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and in each advertisement of cigarettes; and

[*See main edition for text of* (2)]

(As amended Pub. L. 98-474, § 6(a), Oct. 12, 1984, 98 Stat. 2204.)

Amendments

1984—Par. (1). Pub. L. 98-474 substituted "about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and in each advertisement;" for "that cigarette smoking may be hazardous to health by inclusion of a warning to that effect on each package of cigarettes;".

Effective Date

Section 12, formerly 11, of Pub. L. 89-92 as renumbered by Pub. L. 98-474, § 5(a), Oct. 12, 1984, 98 Stat. 2203, provided that: "This Act [this chapter] shall take effect on January 1, 1966."

Short Title of 1984 Amendment

Section 1 of Pub. L. 98-474 provided that: "This Act [enacting sections 1335a and 1341 of this title, amending sections 1331, 1332, 1333, 1336, and 1337 of this title, and enacting provisions set out as notes under sections 1331, 1333, and 1335a of this title] may be cited as the 'Comprehensive Smoking Education Act'."

Separability of Provisions

Section 13, formerly 12, of Pub. L. 89-92 as added by section 2 of Pub. L. 91-222, and renumbered Pub. L. 98-474, § 5(a), Oct. 12, 1984, 98 Stat. 2203, provided that: "If any provision of this Act [this chapter] or the application thereof to any person or circumstances is held invalid, the other provisions of this Act [this chapter] and the application of such provisions to other persons or circumstances shall not be affected thereby."

Congressional Statement of Purpose

Section 2 of Pub. L. 98-474 provided that: "It is the purpose of this Act [see Short Title of 1984 Amendment note above] to provide a new strategy for making Americans more aware of any adverse health effects of smoking, to assure the timely and widespread dissemination of research findings and to enable individuals to make informed decisions about smoking."

§ 1332. Definitions

As used in this chapter—

[*See main edition for text of* (1) *to* (7)]

(8) The term "brand style" means a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration on the cigarette, or packaging.

(9) The term "Secretary" means the Secretary of Health and Human Services.

(As amended Pub. L. 98-474, § 6(b), Oct. 12, 1984, 98 Stat. 2204; Pub. L. 99-92, § 11(b), Aug. 16, 1985, 99 Stat. 403.)

Amendments

1985—Pars. (8), (9). Pub. L. 99-92 added par. (8) and redesignated former par. (8) as (9).

1984—Par. (8). Pub. L. 98-474 added par. (8).

§ 1333. Labeling; requirements; conspicuous statement

(a) Required warnings; packages; advertisements; billboards

(1) It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.

SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.

SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.

SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

(2) It shall be unlawful for any manufacturer or importer of cigarettes to advertise or cause to be advertised (other than through the use of outdoor billboards) within the United States any cigarette unless the advertising bears, in accordance with the requirements of this section, one of the following labels:

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SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.
SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.
SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.
SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

(3) It shall be unlawful for any manufacturer or importer of cigarettes to advertise or cause to be advertised within the United States through the use of outdoor billboards any cigarette unless the advertising bears, in accordance with the requirements of this section, one of the following labels:
SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, And Emphysema.
SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Health Risks.
SURGEON GENERAL'S WARNING: Pregnant Women Who Smoke Risk Fetal Injury And Premature Birth.
SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

(b) Conspicuous statement; label statement format; outdoor billboard statement format

(1) Each label statement required by paragraph (1) of subsection (a) of this section shall be located in the place label statements were placed on cigarette packages as of October 12, 1984. The phrase "Surgeon General's Warning" shall appear in capital letters and the size of all other letters in the label shall be the same as the size of such letters as of October 12, 1984. All the letters in the label shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material on the package.

(2) The format of each label statement required by paragraph (2) of subsection (a) of this section shall be the format required for label statements in cigarette advertising as of October 12, 1984, except that the phrase "Surgeon General's Warning" shall appear in capital letters, the area of the rectangle enclosing the label shall be 50 per centum larger in size with a corresponding increase in the size of the type in the label, the width of the rule forming the border around the label shall be twice that in effect on October 12, 1984, and the label may be placed at a distance from the outer edge of the advertisement which is one-half the distance permitted on Octrober 12, 1984. Each label statement shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material in the advertisement.

(3) The format and type style of each label statement required by paragraph (3) of subsection (a) of this section shall be the format and type style required in outdoor billboard advertising as of October 12, 1984. Each such label statement shall be printed in capital letters of the height of the tallest letter in a label statement on outdoor advertising of the same dimension on October 12, 1984. Each such label statement shall be enclosed by a black border which is located within the perimeter of the format required in outdoor billboard advertising of the same dimension on October 12, 1984, and the width of which is twice the width of the vertical element of any letter in the label statement within the border.

(c) Rotation of label statement; plan; submission to Federal Trade Commission

(1) Except as provided in paragraph (2), the label statements specified in paragraphs (1), (2), and (3) of subsection (a) of this section shall be rotated by each manufacturer or importer of cigarettes quarterly in alternating sequence on packages of each brand of cigarettes manufactured by the manufacturer or importer and in the advertisements for each such brand of cigarettes in accordance with a plan submitted by the manufacturer or importer and approved by the Federal Trade Commission. The Federal Trade Commission shall approve a plan submitted by a manufacturer or importer of cigarettes which will provide the rotation required by this subsection and which assures that all of the labels required by paragraphs (1), (2), and (3) will be displayed by the manufacturer or importer at the same time.

(2)(A) A manufacturer or importer of cigarettes may apply to the Federal Trade Commission to have the label rotation described in subparagraph (C) apply with respect to a brand style of cigarettes manufactured or imported by such manufacturer or importer if—

(i) the number of cigarettes of such brand style sold in the fiscal year of the manufacturer or importer preceding the submission of the application is less than one-fourth of 1 percent of all the cigarettes sold in the United States in such year, and

(ii) more than one-half of the cigarettes manufactured or imported by such manufacturer or importer for sale in the United States are packaged into brand styles which meet the requirements of clause (i).

If an application is approved by the Commission, the label rotation described in subparagraph (C) shall apply with respect to the applicant during the one-year period beginning on the date of the application approval.

(B) An applicant under subparagraph (A) shall include in its application a plan under which the label statements specified in paragraph (1) of subsection (a) of this section will be rotated by the applicant manufacturer or importer in accordance with the label rotation described in subparagraph (C).

(C) Under the label rotation which a manufacturer or importer with an approved application may put into effect each of the labels specified in paragraph (1) of subsection (a) of this section shall appear on the packages of each brand style of cigarettes with respect to which the application was approved an equal number of times within the twelve-month period beginning on the date of the approval by the Commission of the application.

(d) Application; disbributors; retailers

Subsection (a) of this section does not apply to a distributor or a retailer of cigarettes who does not manufacture, package, or import cigarettes for sale or distribution within the United States.

(As amended Pub. L. 98-474, § 4(a), Oct. 12, 1984, 98 Stat. 2201; Pub. L. 99-92, § 11[(a)](1), (2), Aug. 16, 1985, 99 Stat. 402; Pub. L. 99-117, § 11(d), Oct. 7, 1985, 99 Stat. 495.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-92 designated existing provisions as par. (1) and, as so designated, substituted "Except as provided in paragraph (2), the" for "The label", and added par. (2).

Subsec. (c)(2)(A). Pub. L. 99-117 substituted "brand style" for "brand" in provisions preceding cl. (i).

1984-Pub. L. 98-474 amended section generally, designating existing provisions as subsec. (a) and in subsec. (a) as so designated expanding choice of warnings to be placed on cigarette packaging and further expanding scope of places that must contain warnings to include advertisements and outdoor billboards, and adding subsecs. (b) to (d).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 11(c) of Pub. L. 99-92 provided that:

"(1) The amendments made by subsection (a) [probably refers to undesignated par. preceding subsec. (b), amending subsec. (c) of this section] shall take effect October 12, 1985, except that—

"(A) on and after the date of the enactment of this Act [Aug. 16, 1985] a manufacturer or importer of cigarettes may apply to the Federal Trade Commission to have the label rotation specified in section 4(c)(2) of the Federal Cigarette Labeling and Advertising Act [subsec. (c)(2) of this section], as amended by subsection (a), apply to its brand styles of cigarettes and the Commission may take action on such an application, and

"(B) a manufacturer or importer of cigarettes may elect to have the amendments apply at an earlier date or dates selected by the manufacturer or importer.

"(2) The Federal Trade Commission may, upon application of a manufacturer or importer of cigarettes with an approved application under section 4(c)(2) of the Federal Cigarette Labeling and Advertising Act [subsec. (c)(2) of this section], as amended by subsection (a), extend the effective date specified in paragraph (1) to January 11, 1986. The Commission may approve an application for such an extension only if the Commission determines that the effective date specified in such paragraph (1) would cause unreasonable economic hardship to the applicant. Section 4 of the Federal Cigarette Labeling and Advertising Act [this section], as in effect before October 12, 1985, shall apply with respect to a manufacturer or importer with an application approved under this paragraph."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 4(b) of Pub. L. 98-474 provided that: "The amendment made by subsection (a) [amending this section] shall take effect upon the expiration of a one-year period beginning on the date of the enactment of this Act [Oct. 12, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1334, 1336 of this title.

§ 1335a. List of cigarette ingredients; annual submission to Secretary; transmittal to Congress; confidentiality

(a) Each person who manufactures, packages, or imports cigarettes shall annually provide the Secretary with a list of the ingredients added to tobacco in the manufacture of cigarettes which does not identify the company which uses the ingredients or the brand of cigarettes which contain the ingredients. A person or group of persons required to provide a list by this subsection may designate an individual or entity to provide the list required by this subsection.

(b)(1) At such times as the Secretary considers appropriate, the Secretary shall transmit to the Congress a report, based on the information provided under subsection (a) of this section, respecting—

(A) a summary of research activities and proposed research activities on the health effects of ingredients added to tobacco in the manufacture of cigarettes and the findings of such research;

(B) information pertaining to any such ingredient which in the judgement [1] of the Secretary poses a health risk to cigarette smokers; and

(C) any other information which the Secretary determines to be in the public interest.

(2)(A) Any information provided to the Secretary under subsection (a) of this section shall be treated as trade secret or confidential information subject to section 552(b)(4) of title 5 and section 1905 of title 18 and shall not be revealed, except as provided in paragraph (1), to any person other than those authorized by the Secretary in carrying out their official duties under this section.

(B) Subparagraph (A) does not authorize the withholding of a list provided under subsection (a) of this section from any duly authorized subcommittee or committee of the Congress. If a subcommittee or committee of the Congress requests the Secretary to provide it such a list, the Secretary shall make the list available to the subcommittee or committee and shall, at the same time, notify in writing the person who provided the list of such request.

(C) The Secretary shall establish written procedures to assure the confidentiality of information provided under subsection (a) of this section. Such procedures shall include the designation of a duly authorized agent to serve as custodian of such information. The agent—

(i) shall take physical possession of the information and, when not in use by a person authorized to have access to such information, shall store it in a locked cabinet or file, and

(ii) shall maintain a complete record of any person who inspects or uses the information.

Such procedures shall require that any person permitted access to the information shall be instructed in writing not to disclose the information to anyone who is not entitled to have access to the information.

[1] So in original. Probably should be "judgment".

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(Pub. L. 89-92, § 7, as added Pub. L. 98-474, § 5(a), Oct. 12, 1984, 98 Stat. 2203.)

PRIOR PROVISIONS

A prior section 7 of Pub. L. 89-92 was redesignated section 8 by section 5(a) of Pub. L. 98-474 and is classified to section 1336 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 5(b) of Pub. L. 98-474 provided that: "Section 7 of the Federal Cigarette Labeling and Advertising Act [this section] added by subsection (a) shall take effect upon the expiration of the one-year period beginning on the date of the enactment of this Act [Oct. 12, 1984]."

§ 1336. Authority of Federal Trade Commission; unfair or deceptive acts or practices

Nothing in this chapter (other than the requirements of section 1333 of this title) shall be construed to limit, restrict, expand, or otherwise affect the authority of the Federal Trade Commission with respect to unfair or deceptive acts or practices in the advertising of cigarettes.

(Pub. L. 89-92, § 8, formerly § 7, July 27, 1965, 79 Stat. 283; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89; renumbered and amended Pub. L. 98-474, §§ 5(a), 6(c), Oct. 12, 1984, 98 Stat. 2203, 2204; Pub. L. 99-92, § 12, Aug. 16, 1985, 99 Stat. 404.)

PRIOR PROVISIONS

A prior section 8 of Pub. L. 89-92 was redesignated section 9 by section 5(a) of Pub. L. 98-474 and is classified to section 1337 of this title.

AMENDMENTS

1985—Pub. L. 99-92 struck out "(b)" after "1333".

1984—Pub. L. 98-474 amended section generally, striking out subsecs. (a) and (c) which dealt with the authority of the Federal Trade Commission with respect to its pending trade regulation rule proceeding relating to cigarette advertising and its authority to issue trade regulation rules or to require an affirmative statement in any cigarette advertisement, which left the provisions of former subsec. (b) to constitute this section.

§ 1337. Reports to Congress by the Secretary and Federal Trade Commission

(a) The Secretary shall transmit a report to the Congress not later than January 1, 1971, and annually thereafter, concerning (1) current information in the health consequences of smoking, and (2) such recommendations for legislation as he may deem appropriate.

(b) The Federal Trade Commission shall transmit a report to the Congress not later than January 1, 1971, and annually thereafter, concerning (1) current practices and methods of cigarette advertising and promotion, and (2) such recommendations for legislation as it may deem appropriate.

(Pub. L. 89-92, § 9, formerly § 8, July 27, 1965, 79 Stat. 284; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89; renumbered and amended Pub. L. 98-474, §§ 5(a), 6(d), Oct. 12, 1984, 98 Stat. 2203, 2205.)

PRIOR PROVISIONS

A prior section 9 of Pub. L. 89-92 was redesignated section 10 by section 5(a) of Pub. L. 98-474 and is classified to section 1338 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-474, § 6(d)(1), (2), substituted "Secretary" for "Secretary of Health, Education, and Welfare" and redesignated cls. (A) and (B) as pars. (1) and (2), respectively.

Subsec. (b). Pub. L. 98-474, § 6(d)(3), struck out cl. (A) "the effectiveness of cigarette labeling," and redesignated cls. (B) and (C) as pars. (1) and (2), respectively.

§ 1338. Criminal penalty

[See main edition for text]

(Pub. L. 89-92, § 10, formerly § 9, July 27, 1965, 79 Stat. 284; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89; renumbered Pub. L. 98-474, § 5(a), Oct. 12, 1984, 98 Stat. 2203.)

PRIOR PROVISIONS

A prior section 10 of Pub. L. 89-92 was redesignated section 11 by section 5(a) of Pub. L. 98-474 and is classified to section 1339 of this title.

§ 1339. Injunction proceedings

[See main edition for text]

(Pub. L. 89-92, § 11, formerly § 10, July 27, 1965, 79 Stat. 284; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89; renumbered Pub. L. 98-474, § 5(a), Oct. 12, 1984, 98 Stat. 2203.)

PRIOR PROVISIONS

Two prior sections 11 of Pub. L. 89-92 were redesignated section 12 by section 5(a) of Pub. L. 98-474 and are classified to section 1340 of this title and as an Effective Date note under section 1331 of this title.

§ 1340. Cigarettes for export

[See main edition for text]

(Pub. L. 89-92, § 12, formerly § 11, as added Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89, and renumbered Pub. L. 98-474, § 5(a), Oct. 12, 1984, 98 Stat. 2203.)

CODIFICATION

Another section 12 of Pub. L. 89-92, July 27, 1965, 79 Stat. 284, is set out as an Effective Date note under section 1331 of this title.

PRIOR PROVISIONS

A prior section 12 of Pub. L. 89-92 was redesignated section 13 by section 5(a) of Pub. L. 98-474 and is set out as a Separability of Provisions note under section 1331 of this title.

§ 1341. Smoking, research, education and information

(a) Establishment of program; Secretary; functions

The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall establish and carry out a program to inform the public of any dangers to human health presented by cigarette smoking. In carrying out such program, the Secretary shall—

(1) conduct and support research on the effect of cigarette smoking on human health and develop materials for informing the public of such effect;

(2) coordinate all research and educational programs and other activities within the De-

partment of Health and Human Services (hereinafter in this section referred to as the "Department") which relate to the effect of cigarette smoking on human health and coordinate, through the Interagency Committee on Smoking and Health (established under subsection (b) of this section), such activities with similar activities of other Federal agencies and of private agencies;

(3) establish and maintain a liaison with appropriate private entities, other Federal agencies, and State and local public agencies respecting activities relating to the effect of cigarette smoking on human health;

(4) collect, analyze, and disseminate (through publications, bibliographies, and otherwise) information, studies, and other data relating to the effect of cigarette smoking on human health, and develop standards, criteria, and methodologies for improved information programs related to smoking and health;

(5) compile and make available information on State and local laws relating to the use and consumption of cigarettes; and

(6) undertake any other additional information and research activities which the Secretary determines necessary and appropriate to carry out this section.

(b) Interagency Committee on Smoking and Health; composition; chairman; compensation; staffing and other assistance

(1) To carry out the activities described in paragraphs (2) and (3) of subsection (a) of this section there is established an Interagency Committee on Smoking and Health. The Committee shall be composed of—

(A) members appointed by the Secretary from appropriate institutes and agencies of the Department, which may include the National Cancer Institute, the National Heart, Lung, and Blood Institute, the National Institute of Child Health and Human Development, the National Institute on Drug Abuse, the Health Resources and Services Administration, and the Centers for Disease Control;

(B) at least one member appointed from the Federal Trade Commission, the Department of Education, the Department of Labor, and any other Federal agency designated by the Secretary, the appointment of whom shall be made by the head of the entity from which the member is appointed; and

(C) five members appointed by the Secretary from physicians and scientists who represent private entities involved in informing the public about the health effects of smoking.

The Secretary shall designate the chairman of the Committee.

(2) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistance,[2] in the manner provided by sections 5702 and 5703 of title 5.

(3) The Secretary shall make available to the Committee such staff, information, and other assistance as it may require to carry out its activities effectively.

(c) Report to Congress; contents

The Secretary shall transmit a report to Congress not later than January 1, 1986, and biennially thereafter which shall contain—

(1) an overview and assessment of Federal activities undertaken to inform the public of the health consequences of smoking and the extent of public knowledge of such consequences,

(2) a description of the Secretary's and Committee's activities under subsection (a) of this section,

(3) information regarding the activities of the private sector taken in response to the effects of smoking on health, and

(4) such recommendations as the Secretary may consider appropriate.

(Pub. L. 98-474, § 3, Oct. 12, 1984, 98 Stat. 2200; Pub. L. 99-92, § 13, Aug. 16, 1985, 99 Stat. 404.)

CODIFICATION

Section was enacted as part of the Comprehensive Smoking Education Act, and not as part of the Federal Cigarette Labeling and Advertising Act which comprises this chapter.

AMENDMENTS

1985—Subsec. (c). Pub. L. 99-92 substituted "1986" for "1985".

CHAPTER 38—TRAFFIC AND MOTOR VEHICLE SAFETY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1920, 2002 of this title; title 18 sections 511, 512; title 42 section 4905; title 49 section 105; title 49 App. sections 1652, 1655.

SUBCHAPTER I—MOTOR VEHICLE SAFETY STANDARDS

PART A—GENERAL PROVISIONS

§ 1391. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2052 of this title; title 49 App. section 2505.

PART B—DISCOVERY, NOTIFICATION, AND REMEDY OF MOTOR VEHICLE DEFECTS

§ 1415. Enforcement of notification and remedy orders

(a) Civil actions; venue; change of venue; consolidation

An action under section 1399(a) of this title to restrain a violation of an order issued under section 1412(b) of this title, or under section 1398 of this title to collect a civil penalty with respect to a violation of such an order, or any other civil action with respect to such an order, may be brought only in the United States district court for the District of Columbia or the

[2] So in original. Probably should be "subsistence,".

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United States district court for a judicial district in the State of incorporation (if any) of the manufacturer to which the order applies; unless on motion of any party the court orders a change of venue to any other district court for good cause shown. All actions (including enforcement actions) brought with respect to the same order under section 1412(b) of this title shall be consolidated in an action in a single judicial district, in accordance with an order of the court in which the first such action is brought (or if such first action is transferred to another court, by order of such other court).

[See main edition for text of (b) to (d)]

(As amended Pub. L. 98-620, title IV, § 402(17), Nov. 8, 1984, 98 Stat. 3358.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-620 struck out designation "(1)" after "(a)" and struck out par. (2) which required the court to expedite the disposition of any civil action to which this subsection applied.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER III—RESEARCH AND TEST FACILITIES

§ 1431. Facilities for research and testing in traffic safety

(a) Authorization to construct; approval of plans

The Secretary of Transportation is authorized to plan, design, and construct (including the alteration of existing facilities) facilities suitable to conduct research, development, and compliance and other testing in traffic safety (including highway safety and motor vehicle safety), except that no appropriation shall be made for any such planning, designing, or construction involving an expenditure in excess of $100,000 if such planning, designing, or construction has not been approved by resolutions adopted in substantially the same form by the Committees on Energy and Commerce and on Public Works and Transportation of the House of Representatives, and by the Committees on Commerce, Science and Transportation and on Environment and Public Works of the Senate. For the purpose of securing consideration of such approval the Secretary shall transmit to Congress a prospectus of the proposed facility including (but not limited to)—

[See main edition for text of (1) to (4); (b)]

(Pub. L. 89-563, title III, § 301, as added Pub. L. 91-265, § 7, May 22, 1970, 84 Stat. 263, and amended H. Res. 988, Jan. 3, 1975; S. Res. 4, Feb. 4, 1977; H. Res. 549, Mar. 25, 1980.)

CHANGE OF NAME

The Committee on Public Works of the House of Representatives was changed to the Committee on Public Works and Transportation of the House of Representatives, effective Jan. 3, 1975, by House Resolution 988, Ninety-third Congress.

CHAPTER 40—DEPARTMENT OF COMMERCE

Sec.
1529. Relinquishment of legislative jurisdiction over certain lands.

§ 1511. Bureaus in Department

REORGANIZATION PLAN NO. 4 OF 1970

Eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, as amended Pub. L. 94-461, § 4(c)(1), Oct. 8, 1976, 90 Stat. 1969; Pub. L. 95-219, § 3(a)(1), Dec. 28, 1977, 91 Stat. 1613; Pub. L. 98-498, title III, § 320(c)(3), Oct. 19, 1984, 98 Stat. 2309

[See main edition for text]

§ 1516. Statistical information

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2276.

§ 1516a. Statistics relating to social, health, and economic conditions of Americans of Spanish origin or descent

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2276.

§ 1517. Transfer of statistical or scientific work

METEOROLOGICAL SATELLITE (METSAT) AND ASSOCIATED GROUND SYSTEMS; EXPENDITURE OF FUNDS TO DEVELOP PROPOSALS TO TRANSFER OWNERSHIP TO PRIVATE ENTITIES PROHIBITED

Pub. L. 98-166, title I, § 101, Nov. 28, 1983, 97 Stat. 1076, provided that: "No funds made available by this Act, or any other Act, may be used—

"(1) by the Source Evaluation Board for Civil Space Remote Sensing as established by the Secretary of Commerce to develop or issue a request for proposal to transfer the ownership or lease the use of any meteorological satellite (METSAT) or associated ground system to any private entity; or

"(2) by the National Oceanic and Atmospheric Administration to transfer the ownership of any meteorological satellite (METSAT) or associated ground system to any private entity."

CIVIL LAND REMOTE SENSING SATELLITE SYSTEM; TERMINATION

Pub. L. 98-52, title II, § 202, July 15, 1983, 97 Stat. 285, provided that: "Notwithstanding title II of the National Aeronautics and Space Administration Authorization Act, 1983 [Pub. L. 97-324, set out as a note below], the Secretary of Commerce shall not transfer the ownership or management of any civil land, meteorological, or ocean remote sensing space satellite system and associated ground system equipment unless, in addition to any other requirement of law—

"(1) the Secretary of Commerce or his designee has presented, in writing, to the Speaker of the House of Representatives and the President of the Senate, and to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a comprehensive statement of recommended policies, procedures, conditions, and limitations to which any transfer should be subject; and

"(2) the Congress thereafter enacts a law which contains such policies, procedures, conditions, or limitations (or a combination thereof) as it deems appropriate for any such transfer."

Pub. L. 97-324, title II, § 201, Oct. 15, 1982, 96 Stat. 1601, as amended by Pub. L. 98-365, title VI, § 608, July 17, 1984, 98 Stat. 466, provided that:

"(a) The Secretary of Commerce is authorized to plan and provide for the management and operation of civil remote-sensing space systems, which may include the Landsat 4 and 5 satellites and associated ground system equipment transferred from the National Aeronautics and Space Administration; to provide for user fees; and to plan for the transfer of the operation of civil remote-sensing space systems to the private sector when in the national interest.

[*See main edition for text of (b) to (d)*]

§ 1529. Relinquishment of legislative jurisdiction over certain lands

Notwithstanding any other law, the Secretary of Commerce, whenever the Secretary considers it desirable, may relinquish to a State, or to a Commonwealth, territory, or possession of the United States, all or part of the legislative jurisdiction of the United States over lands or interests under the Secretary's control in that State, Commonwealth, territory, or possession. Relinquishment of legislative jurisdiction under this section may be accomplished—

(1) by filing with the Governor (or, if none exists, with the chief executive officer) of the State, Commonwealth, territory, or possession concerned a notice of relinquishment to take effect upon acceptance of the notice; or

(2) as required by the laws of the State, Commonwealth, territory, or possession.

(Pub. L. 98-623, title IV, § 406, Nov. 8, 1984, 98 Stat. 3409.)

CHAPTER 41—CONSUMER CREDIT PROTECTION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 11 section 523.

SUBCHAPTER I—CONSUMER CREDIT COST DISCLOSURE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 12 sections 1464, 2199, 2610; title 20 section 1087-1.

PART A—GENERAL PROVISIONS

§ 1607. Administrative enforcement

(a) Enforcing agencies

Compliance with the requirements imposed under this subchapter shall be enforced under

[*See main edition for text of (1) and (2)*]

(3) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the National Credit Union Administration Board with respect to any Federal credit union.

(4) the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.], by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act.

[*See main edition for text of (5) and (6); (b) to (e)*]

(Pub. L. 90-321, title I, § 108, May 29, 1968, 82 Stat. 150; Pub. L. 91-206, § 3, Mar. 10, 1970, 84 Stat. 49; Pub. L. 93-495, title IV, § 403, Oct. 28, 1974, 88 Stat. 1517; Pub. L. 95-630, title V, § 501, Nov. 10, 1978, 92 Stat. 3680; Pub. L. 96-221, title VI, § 608(a), (c), Mar. 21, 1980, 94 Stat. 171, 173; Pub. L. 98-443, § 9(n), Oct. 4, 1984, 98 Stat. 1708.)

AMENDMENTS

1984—Subsec. (a)(4). Pub. L. 98-443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

"National Credit Union Administration Board" was substituted for "Director of the Bureau of Federal Credit Unions" in subsec. (a)(3) pursuant to section 3 of Pub. L. 91-206 and section 501 of Pub. L. 95-630 [12 U.S.C. 1752a] which transferred the functions of the Bureau of Federal Credit Unions, and the Director thereof, to the National Credit Union Administration and vested the authority for management of the Administration in the National Credit Union Administration Board.

All functions, powers, and duties of the Civil Aeronautics Board under subsec. (a)(4) of this section were transferred to the Secretary of Transportation by section 1553(a)(5), of Title 49, Appendix, Transportation, effective Jan. 1, 1985.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1640, 1641 of this title; title 20 section 1087-1; title 49 App. section 1553.

PART B—CREDIT TRANSACTIONS

§ 1635. Right of rescission as to certain transactions

[*See main edition for text of (a) to (d)*]

(e) Exempted transactions; reapplication of provisions

This section does not apply to—

(1) a residential mortgage transaction as defined in section 1602(w) of this title;

(2) a transaction which constitutes a refinancing or consolidation (with no new advances) of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property;

(3) a transaction in which an agency of a State is the creditor; or

(4) advances under a preexisting open end credit plan if a security interest has already been retained or acquired and such advances are in accordance with a previously established credit limit for such plan.

[*See main edition for text of (f) and (g)*]

(As amended Pub. L. 98-479, title II, § 205, Oct. 17, 1984, 98 Stat. 2234.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-479 redesignated par. (1) as subsec. (e), redesignated subpars. (A), (B), (C), and (D) of par. (1) as pars. (1), (2), (3), and (4), respectively, and struck out par. (2) which read "The provisions of paragraph (1)(D) shall cease to be effective 3

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years after the effective date of the Truth in Lending Simplification Reform Act."

PART D—CREDIT BILLING

§ 1666f. Inducements to cardholders by sellers of cash discounts for payments by cash, check or similar means; credit card surcharge prohibition; finance charge for sales transactions involving cash discounts

(a) Cash discounts

With respect to credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract, or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.

[*See main edition for text of (b)*]

(Pub. L. 90-321, title I, § 167, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515, and amended Pub. L. 94-222, § 3(c)(1), Feb. 27, 1976, 90 Stat. 197; Pub. L. 97-25, title I, § 101, July 27, 1981, 95 Stat. 144.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-222 temporarily designated existing provisions as par. (1) and added par. (2). See Termination Date of 1976 Amendment note below.

TERMINATION DATE OF 1976 AMENDMENT

Section 3(c)(2) of Pub. L. 94-222, as amended by Pub. L. 95-630, title XV, § 1501, Nov. 10, 1978, 92 Stat. 3713; Pub. L. 97-25, title II, § 201, July 27, 1981, 95 Stat. 44, provided that: "The amendments made by paragraph (1) [amending subsec. (a) of this section] shall cease to be effective on February 27, 1984."

SUBCHAPTER II—RESTRICTIONS ON GARNISHMENT

§ 1673. Restriction on garnishment

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1675 of this title; title 42 sections 665, 666.

SUBCHAPTER III—CREDIT REPORTING AGENCIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 18 section 1030; title 20 section 1080.

§ 1681a. Definitions; rules of construction

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1692d, 1692e of this title; title 18 section 1030; title 26 sections 6103, 7609; title 31 section 3701; title 38 section 3301; title 42 section 666.

§ 1681s. Administrative enforcement

[*See main edition for text of (a)*]

(b) Other administrative bodies

Compliance with the requirements imposed under this subchapter with respect to consumer reporting agencies and persons who use consumer reports from such agencies shall be enforced under—

[*See main edition for text of (1) to (4)*]

(5) the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.], by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act; and

[*See main edition for text of (6); (c)*]

(As amended Pub. L. 98-443, § 9(n), Oct. 4, 1984, 98 Stat. 1708.)

AMENDMENTS

1984—Subsec. (b)(5). Pub. L. 98-443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board under subsec. (b)(5) of this section were transferred to the Secretary of Transportation by section 1553(a)(5) of Title 49, Appendix, Transportation, effective Jan. 1, 1985.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 App. section 1553.

SUBCHAPTER IV—EQUAL CREDIT OPPORTUNITY

§ 1691c. Administrative enforcement

(a) Enforcing agencies

Compliance with the requirements imposed under this subchapter shall be enforced under:

[*See main edition for text of (1) to (4)*]

(5) The Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.], by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that Act.

[*See main edition for text of (6) to (9); (b) to (d)*]

(As amended Pub. L. 98-443, § 9(n), Oct. 4, 1984, 98 Stat. 1708.)

AMENDMENTS

1984—Subsec. (a)(5). Pub. L. 98-443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board under subsec. (a)(5) of this section were transferred to the Secretary of Transportation by section 1553(a)(5) of Title 49, Appendix, Transportation, effective Jan. 1, 1985.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1691e, 1691f of this title; title 49 App. section 1553.

SUBCHAPTER V—DEBT COLLECTION PRACTICES

§ 1692l. Administrative enforcement

[*See main edition for text of* (a)]

(b) Applicable provisions of law

Compliance with any requirements imposed under this subchapter shall be enforced under—

[*See main edition for text of* (1) *and* (2)]

(3) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the National Credit Union Administration Board with respect to any Federal credit union;

(4) subtitle IV of title 49, by the Interstate Commerce Commission with respect to any common carrier subject to such subtitle;

(5) the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.], by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that Act; and

[*See main edition for text of* (6); (c) *and* (d)]

(Pub. L. 90-321, title VIII, § 814, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 881, and amended Pub. L. 95-630, title V, § 501, Nov. 10, 1978, 92 Stat. 3680; Pub. L. 98-443, § 9(n), Oct. 4, 1984, 98 Stat. 1708.)

AMENDMENTS

1984—Subsec. (b)(5). Pub. L. 98-443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

"National Credit Union Administration Board" was substituted for "Administrator of the National Credit Union Administration" in subsec. (b)(3) pursuant to section 501 of Pub. L. 95-630 [12 U.S.C. 1752a] which vested authority for management of the National Credit Union Administration in the National Credit Union Administration Board.

All functions, powers, and duties of the Civil Aeronautics Board under subsec. (b)(5) of this section were transferred to the Secretary fo Transportation by section 1553(a)(5) of Title 49, Appendix, Transportation, effective Jan. 1, 1985.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1692m of this title; title 49 App. section 1553.

SUBCHAPTER VI—ELECTRONIC FUND TRANSFERS

§ 1693n. Criminal liability

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1693m of this title; title 18 section 511.

CHAPTER 42—INTERSTATE LAND SALES

§ 1715. Administration

[*See main edition for text of* (a)]

(b) Hearings

All hearings shall be public and appropriate records thereof shall be kept, and any order issued after such hearing shall be based on the record made in such hearing which shall be conducted in accordance with the provisions of subchapter II of chapter 5, and chapter 7, of title 5.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-479, title II, § 202(d), Oct. 17, 1984, 98 Stat. 2228.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-479 substituted "subchapter II of chapter 5, and chapter 7, of title 5" for "the Administrative Procedure Act".

CHAPTER 46—MOTOR VEHICLE INFORMATION AND COST SAVINGS

SUBCHAPTER VI—THEFT PREVENTION

Sec.

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Sec.
2033. Voluntary vehicle identification standards.
(a) Authority to promulgate.
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(d) Relief from requirements.
2034. Three-year and five-year studies regarding motor vehicle theft.
(a) Three-year report.
(b) Five-year report.
(c) Bases of reports.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2512 of this title; title 18 section 511.

§ 1901. Definitions

For the purpose of this chapter (except subchapter V and except as provided in section 2021 of this title):

[*See main edition for text of (1) to (18)*]

(As amended Pub. L. 98-547, title I, § 101(b), Oct. 25, 1984, 98 Stat. 2767.)

AMENDMENTS

1984—Pub. L. 98-547 inserted "and except as provided in section 2021 of this title" in provisions before par. (1).

SHORT TITLE OF 1984 AMENDMENT

Section 1(a) of Pub. L. 98-547 provided that: "This Act [enacting sections 2021 to 2034 of this title, sections 511, 512, 553, and 2320 of Title 18, Crimes and Criminal Procedure, and section 1627 of Title 19, Customs Duties, amending section 1901 of this title and sections 1961, 2311, and 2313 of Title 18, and enacting provisions set out as a note under section 2021 of this title] may be cited as the 'Motor Vehicle Theft Law Enforcement Act of 1984'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 sections 511, 513.

SUBCHAPTER V—IMPROVING AUTOMOTIVE EFFICIENCY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1901, 2023 of this title; title 26 section 6427.

§ 2001. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2002, 2004, 2006, 2012, 2021 of this title; title 26 section 4064; title 42 section 6291.

§ 2003. Calculation of average fuel economy

[*See main edition for text of (a)*]

(b) Automobile categories

[*See main edition for text of (1) and (2)*]

(3) [*See main edition for text of (A) to (D)*]

(E) [*See main edition for text of (i)*]

(ii) The judgment of the court affirming, remanding, or setting aside, in whole or in part, any such decision shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. Application therefor shall be made within 30 days after entry of such judgment.

(iii) Notwithstanding any other provision of law, a decision of the Secretary on an exemption pursuant to this paragraph shall not be subject to judicial or administrative review except as provided in this paragraph.

[*See main edition for text of (F), (4), (c) to (f)*]

(As amended Pub. L. 98-620, title IV, § 402(18), Nov. 8, 1984, 98 Stat. 3358.)

AMENDMENTS

1984—Subsec. (b)(3)(E)(ii) to (iv). Pub. L. 98-620 redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which had provided that any such proceeding had to be assigned for a hearing and completed at the earliest possible date and had to be expedited in every possible way by such court and that the court had to render its decision in any such proceeding within 60 days after the date of filing the petition for review unless the court determined that a longer period of time was necessary to satisfy the requirements of the Constitution.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 2004. Judicial review

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2002, 2030 of this title.

SUBCHAPTER VI—THEFT PREVENTION

§ 2021. Definitions

For purposes of this subchapter:

(1) The term "passenger motor vehicle" does not include any multipurpose passenger vehicle (including any vehicle commonly known as a "passenger van").

(2) The term "line" means a name which a manufacturer applies to a group of motor vehicle models of the same make which have the same body or chassis, or otherwise are similar in construction or design.

(3) The term "existing line" means any line introduced into commerce before the beginning of the 2-year period specified in section 2023(a)(1)(A) of this title.

(4) The term "new line" means any line introduced into commerce on or after the beginning of the 2-year period specified in section 2023(a)(1)(A) of this title.

(5) The term "first purchaser" means first purchaser for purposes other than resale.

(6) The term "covered major part" means any major part selected in accordance with sections 2022(d)(1)(B) and 2023 of this title for coverage by the vehicle theft prevention standard issued under section 2022 of this title.

(7) The term "major part" means—

(A) the engine;

(B) the transmission;

(C) each door allowing entrance or egress to the passenger compartment;

(D) the hood;

(E) the grille;

(F) each bumper;

(G) each front fender;
(H) the deck lid, tailgate, or hatchback (whichever is present);
(I) rear quarter panels;
(J) the trunk floor pan;
(K) the frame or, in the case of a unitized body, the supporting structure which serves as the frame; and
(L) any other part of a passenger motor vehicle which the Secretary, by rule, determines is comparable in design or function to any of the parts listed in subparagraphs (A) through (K).

(8) The term "major replacement part" means any major part—
(A) which is not installed in or on a motor vehicle at the time of its delivery to the first purchaser, and
(B) the equitable or legal title to which has not been transferred to any first purchaser.

(9) The term "model year" has the meaning given such term under section 2001(12) of this title.
(10) The term "vehicle theft prevention standard" means a minimum performance standard for the identification of—
(A) major parts of new motor vehicles, and
(B) major replacement parts,

by inscribing or affixing numbers or symbols to such parts.

(Pub. L. 92–513, title VI, § 601, as added Pub. L. 98–547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2755.)

CONGRESSIONAL DECLARATION OF PURPOSE OF 1984 AMENDMENT

Section 2 of Pub. L. 98–547 provided that: "It is the purpose of this Act [enacting this subchapter, sections 511, 512, 553, and 2320 of Title 18, Crimes and Criminal Procedure, and section 1627 of Title 19, Customs Duties, amending section 1901 of this title and sections 1961, 2311, and 2313 of Title 18, and enacting a provision set out as a note under section 1901 of this title]—
"(1) to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft;
"(2) to augment the Federal criminal penalties imposed upon persons trafficking in stolen motor vehicles;
"(3) to encourage decreases in premiums charged consumers for motor vehicle theft insurance; and
"(4) to reduce opportunities for exporting or importing stolen motor vehicles and off-highway mobile equipment."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1901 of this title.

§ 2022. Theft prevention standards

(a) Authority to promulgate

The Secretary shall by rule promulgate, in accordance with this section, a vehicle theft prevention standard which conforms to the requirements of this subchapter and which applies with respect to—
(1) the covered major parts which are installed by manufacturers into passenger motor vehicles in lines designated under section 2023 of this title as high theft lines; and
(2) the major replacement parts for the major parts described in paragraph (1).

(b) Criteria

The standard under this section shall be practicable, and shall provide relevant objective criteria.

(c) Proposed and final rules establishing standard

(1) Not later than 3 months after October 25, 1984, the Secretary shall prescribe and publish a proposed vehicle theft prevention standard.
(2) As soon as practicable after the 30th day following the publication of the proposed standard under paragraph (1), but not later than 6 months after October 25, 1984, the Secretary shall promulgate a final rule establishing such a standard.
(3) The Secretary may, for good cause, extend the 3-month and 6-month periods under paragraphs (1) and (2) if the Secretary publishes the reasons therefor. Either such period may not, in the aggregate, be extended by more than 5 months.
(4) Such standard shall take effect not earlier than 6 months after the date such final rule is prescribed, except that the Secretary may prescribe an earlier effective date if the Secretary—
(A) finds, for good cause shown, that the earlier date is in the public interest, and
(B) publishes the reasons for such finding.

(5) The standard may apply only with respect to—
(A) major parts which are installed by the motor vehicle manufacturer in any passenger motor vehicle which has a model year designation later than the calendar year in which such standard takes effect, and
(B) major replacement parts manufactured after such standard takes effect.

(d) Required identification

(1) In the case of major parts installed by the motor vehicle manufacturer, the standard under this section may not require—
(A) any part to have more than a single identification, and
(B) any motor vehicle to have identification of more than 14 of its major parts.

(2) In the case of major replacement parts, the standard under this section may not require—
(A) identification of any part which is not designed as a replacement for a major part required to be identified under such standard, and
(B) the inscribing or affixing of any identification other than a symbol identifying the manufacturer and a common symbol identifying the part as a major replacement part.

(e) Recordkeeping requirements

Nothing in this subchapter shall be construed to grant authority to require any person to keep records or make reports, except as expressly provided in sections 2023(c), 2025(b), 2026(a), and 2032 of this title.

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(Pub. L. 92-513, title VI, § 602, as added Pub. L. 98-547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2756.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021, 2023, 2024, 2025, 2026, 2027, 2028, 2031, 2033 of this title.

§ 2023. Designation of high theft vehicle lines and parts

(a) Categories

(1) For purposes of the standard under section 2022 of this title, the following motor vehicle lines are high theft lines:

(A) passenger motor vehicles of any line which is determined under subsection (b) of this section to have had a new passenger motor vehicle theft rate in the 2 calendar years immediately preceding the year in which the final standard is promulgated which exceeds the median theft rate for all new passenger motor vehicle thefts in such 2-year period;

(B) passenger motor vehicles of any line initially introduced into commerce in the United States at any time after the beginning of the 2-year period specified in subparagraph (A) which is determined under paragraph (2) to be likely to have a theft rate exceeding such median theft rate; and

(C) passenger motor vehicles of any line which is below the median theft rate (in the case of existing lines) or which is likely to be below the median theft rate (in the case of new lines) if the major parts contained in such vehicles are determined under paragraph (2) to be interchangeable with the majority of the major parts which are subject to the standard and which are contained in the motor vehicles of a line subject to the standard pursuant to subparagraph (A) or (B); except that such standard shall not apply to such major parts of any line specified by this paragraph if all the passenger motor vehicles of lines—

(i) which are or are likely to be below the median theft rate, and

(ii) which contain parts which are interchangeable with the major parts of the line involved,

account (in the case of existing lines) or the Secretary determines are likely to account (in the case of new lines) for more than 90 percent of the total annual production of all lines of that manufacturer which contain those interchangeable parts.

(2) The specific lines, and the major parts of the vehicles within such lines, which are to be subject to the standard may be selected by agreement between that manufacturer and the Secretary. If the manufacturer and the Secretary disagree as to such selection, the Secretary shall select such lines and parts, after notice to the manufacturer and opportunity for written comment, and subject to the confidentiality requirements of this subchapter.

(3) Notwithstanding paragraph (1), of those passenger motor vehicle lines initially introduced by a manufacturer into commerce in the United States before the effective date of the standard, no more than 14 of the lines of any manufacturer shall be selected as high theft lines under paragraph (1)(A) and (B). Any such selection shall be made under paragraph (2) within one year after October 25, 1984.

(4) The Secretary shall prescribe reasonable procedures designed to assure that, to the maximum extent practicable, any selection under paragraph (2) or (3) is made at least 6 months before the first applicable model year beginning after such selection.

(5) A manufacturer shall not be required to begin to comply with the standard pursuant to any selection made under paragraph (2) or (3) for a model year beginning earlier than 6 months after the date of selection.

(b) Determination of theft rate

(1) For purposes of subsection (a) of this section, the theft rate for passenger motor vehicles of a line shall be determined by a fraction, the numerator of which is the number of new passenger motor vehicle thefts for that line during the 2 calendar years specified in subsection (a)(1)(A) of this section, and the denominator of which is the sum of the respective production volumes of all passenger motor vehicles of that line (as reported to the Environmental Protection Agency under subchapter V of this chapter) which are of the 2 model years having the same model-year designations as the 2 calendar years specified in subsection (a)(1)(A) of this section and which are distributed for sale in commerce within the United States.

(2) For purposes of subsection (a) of this section, the median theft rate for all new passenger motor vehicle thefts during such 2-year period is that theft rate midway between the highest and the lowest theft rates determined under paragraph (1). If there is an even number of theft rates determined under paragraph (1), the median theft rate is the arithmetic average of the two adjoining theft rates midway between the highest and the lowest of such theft rates.

(3) Immediately upon enactment of this subchapter, and periodically thereafter, the Secretary, in consultation with the Director of the Federal Bureau of Investigation, shall obtain from the most reliable source or sources accurate and timely theft and recovery data and publish such data for review and comment. To the greatest extent possible, the Secretary shall utilize theft data reported by Federal, State, or local police. After such publication and opportunity for comment, the Secretary shall utilize the theft data to determine the median theft rate under this subsection. The Secretary and such Director shall take such actions as may be necessary to improve the accuracy, reliability, and timeliness of such data, including ensuring that vehicles represented as stolen are in fact stolen.

(4) In calculating the median theft rate, the Secretary shall take into account the theft rate of lines which are exempted by reason of the 14-line limitation in subsection (a)(3) of this section.

(5) As used in this section, the term "new passenger motor vehicle thefts", when used with

respect to any calendar year, refers to those thefts in the United States in such year which are of passenger motor vehicles with the same model-year designation as that calendar year.

(c) Need for manufacturer information

The Secretary shall, by rule, require each manufacturer to provide information necessary to select pursuant to subsection (a)(2) of this section the high theft lines and the major parts to be subject to the standard.

(d) Power of Secretary

Except as provided in section 2025 of this title, the Secretary may not render the standard inapplicable to any line which at any time has been subject to the standard.

(Pub. L. 92-513, title VI, § 603, as added Pub. L. 98-547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2757.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021, 2022, 2029 of this title.

§ 2024. Cost limitation

(a) Maximum cost to manufacturer

The standard under section 2022 of this title may not—

(1) impose costs upon any manufacturer of motor vehicles to comply with such standard in excess of $15 per motor vehicle, or

(2) impose costs upon any manufacturer of major replacement parts to comply with such standard in excess of such reasonable lesser amount per major replacement part as the Secretary specifies in such standard.

(b) Computation of manufacturer's costs

In the case of any manufacturer engaged in identifying engines or transmissions on October 25, 1984, in a manner which substantially complies with the requirements of the theft prevention standard promulgated under section 2022 of this title—

(1) the costs of identifying engines and transmissions shall not be taken into account in calculating such manufacturer's costs under subsection (a) of this section; and

(2) the manufacturer shall not be required, pursuant to the standard or any subsequent modification, to conform to any identification system for engines and transmissions which imposes greater costs on the manufacturer than are incurred under the identification system used by the manufacturer on October 25, 1984.

(c) Adjustment of costs

(1) At the beginning of each calendar year commencing on or after January 1, 1985, as there becomes available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Secretary and publish in the Federal Register the percentage difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period. Effective for model years beginning in such calendar year, the amounts specified under subsections (a)(1) and (2) of this section shall be adjusted by such percentage difference.

(2) For purposes of paragraph (1)—

(A) The term "base period" means calendar year 1984.

(B) The term "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

(Pub. L. 92-513, title VI, § 604, as added Pub. L. 98-547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2758.)

§ 2025. Exemption for vehicles equipped with antitheft devices

(a) Grounds

(1) Any manufacturer may petition the Secretary for an exemption from the application of any of the requirements of the vehicle theft prevention standard under section 2022 of this title for any line or lines of passenger motor vehicles which are equipped as standard equipment with an antitheft device which the Secretary determines is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of such standard.

(2) For the initial model year to which such standard applies, the Secretary may not grant an exemption for more than 2 lines of any manufacturer. For each subsequent model year, the Secretary may grant exemption for not more than 2 additional lines of any manufacturer, and such exemption shall not affect the validity of the exemption of any line previously exempted under this paragraph.

(3) For purposes of paragraph (1), the term "standard equipment" means equipment which is installed in a vehicle at the time it is delivered from the manufacturer and which is not an accessory or other item which the first purchaser customarily has the option to have installed.

(b) Procedure

Any such petition shall be filed with the Secretary not later than 8 months before the commencement of production for the first model year covered by the petition. Such petition shall include—

(1) a detailed description of such device,

(2) the reasons for the manufacturer's conclusion that such device will be effective in reducing and deterring theft of motor vehicles, and

(3) such additional information as the Secretary determines may be reasonably required to make the determination specified in subsection (a)(1) of this section.

(c) Time of determination

Such determination shall be made, based upon substantial evidence, within 120 days after the date of filing of such petition. The Secretary may approve such petition in whole or in part. If the Secretary fails to make such determination within such time period, the petition shall be considered approved, and the manufacturer shall be exempt from the appli-

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cation of such standard for the subsequent model year.

(d) Rescission of exemption

Nothing in this section shall preclude the Secretary from rescinding any such exemption for any model year after the model year in which such rescission occurs if the Secretary determines that such device has not been as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the standard under section 2022 of this title, except that such rescission shall not be effective until at least 6 months after the manufacturer receives written notice from the Secretary of such rescission.

(e) "Antitheft device" defined

As used in this section, the term "antitheft device" means a device to reduce or deter theft which is in addition to the theft-deterrent devices required by Federal motor vehicle safety standard numbered 114 (49 CFR 571.114) which the manufacturer believes will be effective in reducing or deterring theft of motor vehicles, and which does not utilize any signaling device which is reserved by a provision of any State law for use on police, emergency, or official vehicles, or on school buses.

(Pub. L. 92-513, title VI, § 605, as added Pub. L. 98-547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2759.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2022, 2023 of this title.

§ 2026. Determination of compliance of manufacturer

(a) Recordkeeping requirements

Every manufacturer of any motor vehicle any part of which is subject to the standard under section 2022 of this title, and any manufacturer of major replacement parts subject to such standard, shall—

(1) establish and maintain such records, make such reports, and provide such items and information as the Secretary may reasonably require to enable the Secretary to determine whether such manufacturer has acted or is acting in compliance with this subchapter and such standard, and

(2) upon request of an officer or employee duly designated by the Secretary, permit such officer or employee to inspect (A) vehicles and major parts which are subject to such standard, and (B) appropriate books, papers, records, and documents relevant to determining whether such manufacturer has acted or is acting in compliance with this subchapter and any motor vehicle theft prevention standard promulgated pursuant to this subchapter; such manufacturer shall make available all such items and information in accordance with such reasonable rules as the Secretary may prescribe.

(b) Notice and inspection

For purposes of enforcing this subchapter, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, may enter and inspect any facility in which motor vehicles containing major parts subject to such standard, or major replacement parts subject to such standard, are manufactured, held for introduction into interstate commerce, or are held for sale after such introduction. Each such inspection shall be conducted at reasonable times and in a reasonable manner and shall be commenced and completed with reasonable promptness.

(c) Certificate of compliance

(1) Every manufacturer of a motor vehicle subject to the standard promulgated under section 2022 of this title, and every manufacturer of any major replacement part subject to such standard, shall furnish at the time of delivery of such vehicle or part a certification that such vehicle or replacement part conforms to the applicable motor vehicle theft prevention standard. Such certification shall accompany such vehicle or replacement part until delivery to the first purchaser. The Secretary may issue rules prescribing the manner and form of such certification.

(2) Paragraph (1) shall not apply to any motor vehicle or major replacement part—

(A) which is intended solely for export,

(B) which is so labeled or tagged on the vehicle or replacement part itself and on the outside of the container, if any, until exported, and

(C) which is exported.

(d) Notice of error

If a manufacturer obtains knowledge that (1) the identification applied, to conform to the standard under section 2022 of this title, to any major part installed by the manufacturer in a motor vehicle during its assembly, or to any major replacement part manufactured by the manufacturer, contains an error, and (2) such motor vehicle or major replacement part has been distributed in interstate commerce, the manufacturer shall furnish notification of such error to the Secretary.

(Pub. L. 92-513, title VI, § 606, as added Pub. L. 98-547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2760.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2022, 2027 of this title.

§ 2027. Prohibited acts

(a) No person shall—

(1) manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States—

(A) any motor vehicle subject to the standard under section 2022 of this title, or

(B) any major replacement part subject to such standard,

which is manufactured on or after the date the standard under section 2022 of this title takes effect under this subchapter for such vehicle or major replacement part unless it is in conformity with such standard;

(2) fail to comply with any rule prescribed by the Secretary under this subchapter;

(3) fail to keep specified records or refuse access to or copying of records, or fail to make reports or provide items or information, or fail or refuse to permit entry or inspection, as required by this subchapter; or

(4) fail to—

(A) furnish certification required by section 2026(c) of this title, or

(B) issue a certification required by section 2026(c) of this title if such person knows, or in the exercise of due care has reason to know, that such certification is false or misleading in a material respect.

(b) Subsection (a)(1) of this section shall not apply to any person who establishes that he did not have reason to know in the exercise of due care that the vehicle or major replacement part is not in conformity with an applicable theft prevention standard.

(Pub. L. 92-513, title VI, § 607, as added Pub. L. 98-547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2761.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2028 of this title.

§ 2028. Enforcement provisions; maximum penalties; injunctive relief

(a)(1) Whoever violates section 2027(a) of this title may be assessed a civil penalty of not to exceed $1,000 for each violation. The failure of more than one part of a single motor vehicle to conform to an applicable motor vehicle theft prevention standard shall constitute only a single violation.

(2) Any such penalty shall be assessed by the Secretary and collected in a civil action brought by the Attorney General of the United States. Any such civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered.

(3) The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the United States to the person charged.

(4) The maximum civil penalty shall not exceed $250,000 for any related series of violations.

(b)(1) Upon petition by the Attorney General on behalf of the United States, the United States district courts shall have jurisdiction, for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this subchapter, or to restrain the sale, offer for sale, or the introduction or delivery for introduction in interstate commerce, or the importation into the United States, of—

(A) any passenger motor vehicle containing a major part, or

(B) any major replacement part,

which is subject to the standard under section 2022 of this title and is determined, before the sale of such vehicle or such major replacement part to a first purchaser, not to conform to such standard. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford the person an opportunity to present his views, and except in the case of a knowing and willful violation, shall afford the person reasonable opportunity to achieve compliance. The failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

(2) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this subsection, which violation also constitutes a violation of this subchapter, trial shall be by the court, or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(3) Actions under paragraph (1) and under subsection (a) of this section may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district in which the defendant is an inhabitant or wherever the defendant may be found.

(4) In any actions brought under paragraph (1) and under subsection (a) of this section, subpenas for witnesses who are required to attend a United States district court may run into any other district.

(Pub. L. 92-513, title VI, § 608, as added Pub. L. 98-547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2762.)

REFERENCES IN TEXT

Rule 65 of the Federal Rules of Civil Procedure, referred to in subsec. (b)(1), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 42 of the Federal Rules of Criminal Procedure, referred to in subsec. (b)(2), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

§ 2029. Confidentiality of information

All information reported to, or otherwise obtained by, the Secretary or the Secretary's representative under this subchapter which contains or relates to a trade secret or other matter referred to in section 1905 of title 18 or in section 552(b)(4) of title 5 shall be considered confidential for the purpose of the applicable section of this subchapter, except that such information may be disclosed to other officers or employees concerned with carrying out this title or when relevant in any proceeding under this subchapter (other than a proceeding under section 2023(a)(2) or (3) of this title). Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under the Secretary's control from any committee of the Congress.

(Pub. L. 92-513, title VI, § 609, as added Pub. L. 98-547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2763.)

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§ 2030. Judicial review

Any person who may be adversely affected by any provision of any standard or other rule under this subchapter may obtain judicial review of such standard or rule in accordance with section 2004 of this title. Nothing in this section shall preclude the availability to any person of other remedies provided by law in the case of any standard, rule, or other action under this subchapter.

(Pub. L. 92-513, title VI, § 610, as added Pub. L. 98-547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2763.)

§ 2031. Coordination with State and local law

Whenever a vehicle theft prevention standard established under section 2022 of this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle, or major replacement part, any vehicle theft prevention standard which is not identical to such vehicle theft prevention standard.

(Pub. L. 92-513, title VI, § 611, as added Pub. L. 98-547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2763.)

§ 2032. Insurance reports and information

(a) Required information

(1) In order to—

(A) prevent or discourage the theft of motor vehicles, particularly those vehicles which are stolen for the removal of certain parts,

(B) prevent or discourage the sale and distribution in interstate commerce of used parts that are removed from such vehicles, and

(C) help reduce the cost to consumers of comprehensive insurance coverage for motor vehicles,

each insurer of such coverage (or their designated agents) shall provide to the Secretary the information required by this subsection. Such information shall be provided annually, beginning 2 years after October 25, 1984.

(2) Such information shall include—

(A) the thefts and recoveries (in whole or in part) of motor vehicles;

(B) the number of vehicles which have been recovered intact;

(C) the rating rules and plans, such as loss data and rating characteristics, used by such insurers to establish premiums for comprehensive insurance coverage for motor vehicles, including the basis for such premiums, and premium penalties for motor vehicles considered by such insurers as more likely to be stolen;

(D) the actions taken by such insurers to reduce such premiums, including changes in rate levels for automobile comprehensive coverages, due to a reduction in thefts of motor vehicles;

(E) the actions taken by such insurers to assist in deterring or reducing thefts of motor vehicles; and

(F) such other information as the Secretary may require to administer this subchapter and to make the report and findings required by this subchapter.

The information on thefts and recoveries of such vehicles shall include an explanation about how such information is obtained by the insurer, the accuracy and timeliness of such information, and the use made of such information, including the extent to which such information is reported, including the frequency of such reporting, to national, public, and private entities, such as the Federal Bureau of Investigation and State and local police.

(3) For purposes of this section, the term "insurer" includes any person which has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles.

(4) The Secretary shall exempt from the requirements of this section, for one or more years, any insurer if the Secretary determines that such insurer should be exempted because—

(A) the cost of preparing and furnishing reports and information is excessive in relation to the size of the business of the insurer, and

(B) such reports and information will not significantly contribute to carrying out the purposes of this subchapter.

(5)(A) Subject to subparagraph (B), the Secretary shall, by rule, exempt from the requirements of this section small insurers if the Secretary finds that such exemption will not significantly affect the validity or usefulness of the information collected and compiled under this section, nationally or State-by-State.

(B) The Secretary may not, under subparagraph (A), exempt any person who is considered an insurer under this section solely by reason of paragraph (3).

(C)(i) Subject to clause (ii), for purposes of this paragraph, the term "small insurer" means any insurer whose premiums for motor vehicle insurance issued directly or through any affiliate, including any pooling arrangement established under State law or regulation for the issuance of motor vehicle insurance, account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. The regulations under this paragraph shall provide that eligibility as a small insurer shall be based on the most recent calendar year for which adequate data is available, and that, once attained, such eligibility shall continue without further demonstration of qualification for one or more years, as the Secretary considers appropriate.

(ii) For purposes of the reporting requirements under this section for an insurer's operations within any State, the term "small insurer" shall not include any insurer whose premiums for motor vehicle insurance issued directly or through any affiliate, including any pooling arrangement described in clause (i), account for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within such State.

(b) Periodic compilations

The information obtained by the Secretary under this section shall be periodically compiled and (subject to section 552 of title 5) published by the Secretary in a form that will be helpful to the public, including Federal, State, and local police, and Congress.

(c) Consultation with State and insurance regulatory agencies

The Secretary shall consult with such State and insurance regulatory agencies and other agencies and associations, both public and private, as the Secretary deems appropriate.

(d) Reduced claims payment

If, in paying claims pursuant to adjustment or negotiations between the insurer and the insured for any stolen motor vehicle, any insurer reduces such payment by the amount of the value, salvage or otherwise, of any part subject to the standard which is recovered and such reduction is not made at the express election of the insured, the insurer shall promptly report such action in writing to the Secretary.

(e) Prescribed form for information

The information required by this section shall be furnished in such form as the Secretary shall prescribe by regulation or otherwise.

(f) "Motor vehicle" defined

For purposes of this section, the term "motor vehicle" includes trucks, multipurpose passenger vehicles, and motorcycles.

(Pub. L. 92-513, title VI, § 612, as added Pub. L. 98-547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2763.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2022 of this title.

§ 2033. Voluntary vehicle identification standards

(a) Authority to promulgate

The Secretary may, by rule, promulgate a vehicle theft prevention standard under which any person may elect to inscribe or affix an identifying number or symbol on major parts of any motor vehicle manufactured or owned by such person for purposes of section 511 [1] of title 18 and related provisions. Such standard may include provisions for registration of such identification with the Secretary or any person designated by the Secretary.

(b) Criteria

The standard under this section shall be practicable, and shall provide relevant objective criteria.

(c) Voluntary compliance

Compliance with such standard shall be voluntary, and any failure to comply shall not be subject to penalty or enforcement under this subchapter.

(d) Relief from requirements

Compliance with such standard shall not relieve any manufacturer of any requirement under the standard under section 2022 of this title.

(Pub. L. 92-513, title VI, § 613, as added Pub. L. 98-547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2765.)

REFERENCES IN TEXT

Section 511 of title 18, referred to in subsec. (a), probably refers to the section 511 of Title 18, Crimes and Criminal Procedure, relating to altering or removing motor vehicle identification numbers, which was enacted by Pub. L. 98-537, title II, § 201(a), Oct. 25, 1984, 98 Stat. 2768.

§ 2034. Three-year and five-year studies regarding motor vehicle theft

(a) Three-year report

(1) Not later than 3 years after October 25, 1984, the Secretary shall submit a report to the Congress which includes the information and legislative recommendations required under paragraphs (2) and (3).

(2) The report required by this subsection shall include—

(A) data on the number of trucks, multipurpose passenger vehicles, and motorcycles, stolen and recovered annually, compiled by model, make, and line for all such motor vehicles distributed for sale in interstate commerce;

(B) information on the extent to which trucks, multipurpose passenger vehicles, and motorcycles, stolen annually are dismantled to recover parts or are exported;

(C) a description of the market for such stolen parts;

(D) information concerning the premiums charged by insurers of comprehensive insurance coverage of trucks, multipurpose passenger vehicles, or motorcycles, including any increase in such premiums charged because any such motor vehicle is a likely candidate for theft; and

(E) an assessment of whether the identification of parts of trucks, multipurpose passenger vehicles, and motorcycles is likely to have (i) a beneficial impact in decreasing the rate of theft of such vehicles; (ii) improve the recovery rate of such vehicles; (iii) decrease the trafficking in stolen parts of such vehicles; (iv) stem the export and import of such stolen vehicles or parts; or (v) benefits which exceed the costs of such identification.

(3) The report under this subsection shall recommend to Congress whether, and to what extent, the identification of trucks, multipurpose passenger vehicles, and motorcycles should be required by statute.

(b) Five-year report

(1) Not later than 5 years after the promulgation of the standard required by this subchapter, the Secretary shall submit a report to the Congress which includes the information and legislative recommendations required under paragraphs (2) and (3).

(2) The report required by this subsection shall include—

(A) information about the methods and procedures used by public and private entities for

[1] See References in Text note below.

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collecting, compiling, and disseminating information concerning the theft and recovery of motor vehicles, including classes thereof, and about the reliability, accuracy, and timeliness of such information, and how such information can be improved;

(B) data on the number of motor vehicles stolen and recovered annually, compiled by the class of vehicle, model, make, and line for all such motor vehicles distributed for sale in interstate commerce;

(C) information on the extent to which motor vehicles stolen annually are dismantled to recover parts or are exported;

(D) a description of the market for such stolen parts;

(E) information concerning the costs to manufacturers, as well as to purchasers of passenger motor vehicles, in complying with the standard promulgated under this subchapter, as well as the identification of the beneficial impacts of the standard and the monetary value of any such impacts, and the extent to which such monetary value is greater than the costs;

(F) information concerning the experience of Federal, State, and local officials in making arrests and successfully prosecuting persons for violations of the provisions of law set forth in titles II and III of the Motor Vehicle Theft Law Enforcement Act of 1984, in preventing or reducing the number, and rate of, thefts of motor vehicles that are dismantled for parts subject to this subchapter, and in preventing or reducing the availability of used parts that are stolen from motor vehicles subject to this subchapter;

(G) information concerning the premiums charged by insurers of comprehensive insurance coverage of motor vehicles subject to this subchapter, including any increase in such premiums charged because a motor vehicle is a likely candidate for theft, and the extent to which such insurers have reduced for the benefit of consumers such premiums as a result of this subchapter or have foregone premium increases as a result of this subchapter;

(H) information concerning the adequacy and effectiveness of Federal and State laws aimed at preventing the distribution and sale of used parts that have been removed from stolen motor vehicles and the adequacy of systems available to enforcement personnel for tracing parts to determine if they have been stolen from a motor vehicle;

(I) an assessment of whether the identification of parts of other classes of motor vehicles is likely to have (i) a beneficial impact in decreasing the rate of theft of such vehicles; (ii) improve the recovery rate of such vehicles; (iii) decrease the trafficking in stolen parts of such vehicles; (iv) stem the export and import of such stolen vehicles, parts, or components; or (v) benefits which exceed the costs of such identification; and

(J) other pertinent and reliable information available to the Secretary concerning the impact, including the beneficial impact, of this title and titles II and III of the Motor Vehicle Theft Law Enforcement Act of 1984 on law enforcement, consumers, and manufacturers.

(3) The report submitted under this subsection to the Congress shall include recommendations for (A) continuing the standard established by this subchapter without change, (B) modifying this subchapter to cover more or fewer lines of passenger motor vehicles, (C) modifying this subchapter to cover other classes of motor vehicles, or (D) terminating the standard for all future motor vehicles. The report may include, as appropriate, legislative and administrative recommendations.

(c) Bases of reports

(1) The reports under subsections (a) and (b) of this section shall each be based on (A) the information reported under this subchapter by insurers of motor vehicles and manufacturers of such vehicles and major replacement parts, (B) information provided by the Federal Bureau of Investigation, (C) experience obtained in the implementation, administration, and enforcement of this subchapter, (D) experience gained by the Government under titles II and III of the Motor Vehicle Theft Law Enforcement Act of 1984, and (E) any other reliable and relevant information available to the Secretary.

(2) In preparing each such report, the Secretary shall consult with the Attorney General of the United States and with State and local law enforcement officials, as appropriate.

(3) The report under subsection (b) of this section shall (A) cover a period of at least four years subsequent to the promulgation of the standard required by this subchapter, and (B) reflect any information, as appropriate, from the report under subsection (a) of this section updated from the time of such report.

(4) At least 90 days before submitting each such report to Congress, the Secretary shall publish the proposed report for public review and for an opportunity for written comment of at least 45 days. The Secretary shall consider such comments in preparing the final report and shall include a summary of such comments with the final report.

(Pub. L. 92-513, title VI, § 614, as added Pub. L. 98-547, title I, § 101(a), Oct. 25, 1984, 98 Stat. 2765.)

REFERENCES IN TEXT

The Motor Vehicle Theft Law Enforement Act of 1984, referred to in subsecs. (b)(2)(F), (J) and (c)(1)(D), is Pub. L. 98-547, Oct. 25, 1984, 98 Stat. 2754. Titles II and III of that act enacted sections 511, 512, 553, and 2320 of Title 18, Crimes and Criminal Procedure, and section 1627 of Title 19, Customs Duties, and amended sections 1961, 2311, and 2313 of Title 18. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 1901 of this title and Tables.

CHAPTER 47—CONSUMER PRODUCT SAFETY

§ 2052. Definitions

(a) For purposes of this chapter:

(1) The term "consumer product" means any article, or component part thereof, produced or distributed (i) for sale to a consumer

for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include—

[*See main edition for text of (A) to (F)*]

(G) boats which could be subjected to safety regulation under chapter 43 of title 46; vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in section 2101(1) of title 46) to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under any statute referred to in this subparagraph,

[*See main edition for text of (H) and (I), concluding par., (2) to (14); (b); credits*]

REFERENCES IN TEXT

Title 52 of the Revised Statutes, referred to in subsec. (a)(1)(G), consisted of R.S. §§ 4399 to 4500, which were classified to sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230 to 234, 239, 240, 361, 362, 364, 371 to 373, 375 to 382, 384, 385, 391, 391a, 392 to 394, 399 to 404, 405 to 416, 435 to 440, 451 to 453, 460, 461 to 463, 464, 466, 467 to 482, and 489 to 498 of former Title 46, Shipping. For complete classification of R.S. §§ 4399 to 4500 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46, Shipping, by Pub. L. 98-89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, Shipping, see Table at beginning of Title 46.

CODIFICATION

In subsec. (a)(1)(G), "chapter 43 of title 46" and "section 2101(1) of title 46" were substituted for "the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 et seq.)" and "section 3(8) of the Federal Boat Safety Act of 1971 [46 U.S.C. 1452(8)]", respectively, on authority of Pub. L. 98-89, § 2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

§ 2054. Product safety information and research

CIGARETTE SAFETY ACT OF 1984

Pub. L. 98-567, Oct. 30, 1984, 98 Stat. 2925, provided: "That this Act [this note] may be cited as the 'Cigarette Safety Act of 1984'.

"SEC. 2. (a) There is established the Interagency Committee on Cigarette and Little Cigar Fire Safety (hereinafter in this Act referred to as the 'Interagency Committee') which shall consist of—

"(1) the Chairman of the Consumer Product Safety Commission, who shall be the Chairman of the Interagency Committee;

"(2) the United States Fire Administrator in the Federal Emergency Management Agency, who shall be the Vice Chairman of the Interagency Committee; and

"(3) the Assistant Secretary of Health in the Department of Health and Human Services.

"(b) The Interagency Committee shall direct, oversee, and review the work of the Technical Study Group on Cigarette and Little Cigar Fire Safety (established under section 3) conducted under section 4 and shall make such policy recommendations to the Congress as it deems appropriate. The Interagency Committee may retain and contract with such consultants as it deems necessary to assist the Study Group in carrying out its functions under section 4. The Interagency Committee may request the head of any Federal department or agency to detail any of the personnel of the department or agency to assist the Interagency Committee or the Study Group in carrying out its responsibilities. The authority of the Interagency Committee to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

"(c) For the purpose of carrying out section 4, the Interagency Committee or the Study Group, with the advice and consent of the Interagency Committee, may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Interagency Committee or the Study Group considers appropriate.

"SEC. 3. (a) There is established the Technical Study Group on Cigarette and Little Cigar Fire Safety (hereinafter in this Act referred to as the 'Study Group') which shall consist of—

"(1) one scientific or technical representative each from the Consumer Product Safety Commission, the Center for Fire Research of the National Bureau of Standards, the National Cancer Institute, the Federal Trade Commission, and the Federal Emergency Management Agency, the appointment of whom shall be made by the heads of those agencies;

"(2) four scientific or technical representatives appointed by the Chairman of the Interagency Committee, by and with the advice and consent of the Interagency Committee, from a list of individuals submitted by the Tobacco Institute;

"(3) two scientific or technical representatives appointed by the Chairman of the Interagency Committee, by and with the advice and consent of the Interagency Committee, who are selected from lists of individuals submitted by the following organizations: the American Burn Association, the American Public Health Association, and the American Medical Association;

"(4) two scientific or technical representatives appointed by the Chairman of the Interagency Committee, by and with the advice and consent of the Interagency Committee, who are selected from lists of individuals submitted by the following organizations: the National Fire Protection Association, the International Association of Fire Chiefs, the International Association of Fire Fighters, the International Society of Fire Service Instructors, and the National Volunteer Fire Council; and

"(5) one scientific or technical representative appointed by the Chairman of the Interagency Committee, by and with the advice and consent of the Interagency Committee, from lists of individuals submitted by the Business and Institutional Furniture Manufacturers Association and one scientific or technical representative appointed by the Chairman, by and with the advice and consent of the Interagency Committee, from lists of individuals submitted by the American Furniture Manufacturers Association.

"(b) The persons appointed to serve on the Study Group may designate, with the advice and consent of the Interagency Committee, from among their number such persons to serve as team leaders, coordinators, or chairpersons as they deem necessary or appropriate to carry out the Study Group's functions under section 4.

"SEC. 4. The Study Group shall undertake, subject to oversight and review by the Interagency Committee, such studies and other activities as it considers necessary and appropriate to determine the technical and commercial feasibility, economic impact, and

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other consequences of developing cigarettes and little cigars that will have a minimum propensity to ignite upholstered furniture or mattresses. Such activities include identification of the different physical characteristics of cigarettes and little cigars which have an impact on the ignition of upholstered furniture and mattresses, an analysis of the feasibility of altering any pertinent characteristics to reduce ignition propensity, and an analysis of the possible costs and benefits, both to the industry and the public, associated with any such product modification.

"SEC. 5. The Interagency Committee shall submit one year after the date of enactment of this Act [Oct. 30, 1984] a status report to the Senate and the House of Representatives describing the activities undertaken under section 4 during the preceding year. The Interagency Committee shall submit a final technical report, prepared by the Study Group, to the Senate and the House of Representatives not later than thirty months after the date of enactment of this Act [Oct. 30, 1984]. The Interagency Committee shall provide to the Congress, within sixty days after the submission of the final technical report, any policy recommendations the Interagency Committee deems appropriate. The Interagency Committee and the Study Group shall terminate one month after submission of the policy recommendations prescribed by this section.

"SEC. 6. (a) Any information provided to the Interagency Committee or to the Study Group under section 4 which is designated as trade secret or confidential information shall be treated as trade secret or confidential information subject to section 552(b)(4) of title 5, United States Code, and section 1905 of title 18, United States Code, and shall not be revealed, except as provided under subsection (b). No member of the Study Group or Interagency Committee, and no person assigned to or consulting with the Study Group, shall disclose any such information to any person who is not a member of, assigned to, or consulting with, the Study Group or Interagency Committee unless the person submitting such information specifically and in writing authorizes such disclosure.

"(b) Subsection (a) does not authorize the withholding of any information from any duly authorized subcommittee or committee of the Congress, except that if a subcommittee or committee of the Congress requests the Interagency Committee to provide such information, the Chairman of the Interagency Committee shall notify the person who provided the information of such a request in writing.

"(c) The Interagency Committee shall, on the vote of a majority of its members, adopt reasonable procedures to protect the confidentiality of trade secret and confidential information, as defined in this section.

"SEC. 7. As used in this Act, the terms 'cigarettes' and 'little cigars' have the meanings given such terms by section 3 of the Federal Cigarette Labeling and Advertising Act [15 U.S.C. 1332]."

§ 2080. Limitations on jurisdiction of Consumer Product Safety Commission

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (a), is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

CHAPTER 49—FIRE PREVENTION AND CONTROL

§ 2214. Public safety awards

[See main edition for text of (a)]

(b) Description

[See main edition for text of (1)]

(2) The Secretary's Award shall be presented by the Secretary or by the Attorney General to public safety officers for distinguished service in the field of public safety.

(c) Selection

The Secretary and the Attorney General shall advise and assist the President in the selection of individuals to whom the President's Award shall be tendered and in the course of performing such duties they shall seek and review nominations for such awards which are submitted to them by Federal, State, county, and local government officials. They shall annually transmit to the President the names of those individuals determined by them to merit the award, together with the reasons therefor. Recipients of the President's Award shall be selected by the President.

[See main edition for text of (d)]

(e) Award

(1) Each President's Award shall consist of—

(A) a medal suitably inscribed, bearing such devices and emblems, and struck from such material as the Secretary of the Treasury, after consultation with the Secretary and the Attorney General deems appropriate. The Secretary of the Treasury shall cause the medal to be struck and furnished to the President; and

[See main edition for text of (B), (2)]

(f) Regulations

The Secretary and the Attorney General are authorized and directed to issue jointly such regulations as may be necessary to carry out this section.

[See main edition for text of (g)]

(As amended Pub. L. 98-241, title II, § 202, Mar. 22, 1984, 98 Stat. 96.)

AMENDMENTS

1984—Subsecs. (b)(2), (c), (e)(1)(A), (f). Pub. L. 98-241 struck out ", the Secretary of Defense," after "Secretary" wherever appearing.

§ 2216. Authorization of appropriations

[See main edition for text of (a) to (d)]

(e) Except as otherwise specifically provided with respect to the payment of claims under section 2210 of this title, to carry out the purposes of this chapter, there are authorized to be appropriated—

(1) $15,720,000 for the fiscal year ending September 30, 1984, and $20,983,000 for the fiscal year ending September 30, 1985; and

(2) such further sums as may be necessary in each of the fiscal years ending September 30, 1984, and September 30, 1985, for adjustments required by law in salaries, pay, retirement, and employee benefits incurred in the conduct of activities for which funds are authorized by paragraph (1) of this subsection.

The funds authorized under this subsection shall be in addition to funds authorized in any other law for research and development at the

Fire Research Center of the National Bureau of Standards.

(f) Except as otherwise specifically provided with respect to the payment of claims under section 2210 of this title, to carry out the purposes of this chapter, there is authorized to be appropriated $22,037,000 for the fiscal year ending September 30, 1986.

(As amended Pub. L. 98-241, title II, § 201, Mar. 22, 1984, 98 Stat. 95; Pub. L. 99-97, Sept. 26, 1985, 99 Stat. 465.)

AMENDMENTS

1985—Subsec. (f). Pub. L. 99-97 added subsec. (f).
1984—Subsec. (e). Pub. L. 98-241 added subsec. (e).

CHAPTER 51—NATIONAL PRODUCTIVITY AND QUALITY OF WORKING LIFE

SUBCHAPTER I—FINDINGS, PURPOSE, AND POLICY; DEFINITIONS

§ 2401. Congressional findings

EXECUTIVE ORDER No. 12332

Ex. Ord. No. 12332, Nov. 10, 1981, 46 F.R. 55913, which established the National Productivity Advisory Committee, and provided for its membership, functions, etc. and was extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, was revoked by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 52—ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION

§ 2509. Loan guarantees

[See main edition for text of (a) to (h)]

(i) Citizenship of applicant; corporations; waiver

An applicant seeking a guarantee under this section must be a citizen or national of the United States. A corporation, partnership, firm, or association shall not be deemed to be a citizen or national of the United States unless the Secretary of Energy determines that it satisfactorily meets all the requirements of section 802 of title 46, Appendix, for determining such citizenship, except that the provisions in section 802(a) of title 46, Appendix, concerning (1) the citizenship of officers or directors of a corporation, and (2) the interest required to be owned in the case of a corporation, association, or partnership operating a vessel in the coastwise trade, shall not be applicable. The Secretary of Energy, in consultation with the Secretary of State, may waive such requirements in the case of a corporation, partnership, firm, or association, controlling interest in which is owned by citizens of countries which are participants in the International Energy Agreement.

[See main edition for text of (j); credits]

CODIFICATION

Subsec. (i) is set out in this supplement to reflect the transfer of section 802 of title 46, referred to in text, to title 46, Appendix, Shipping.

CHAPTER 53—TOXIC SUBSTANCES CONTROL

§ 2605. Regulation of hazardous chemical substances and mixtures

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2603, 2604, 2606 to 2608, 2611, 2612, 2614, 2616 to 2620, 2623, 2630 of this title; title 42 section 6925.

§ 2622. Employee protection

[See main edition for text of (a) to (c)]

(d) Enforcement

Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary shall file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory and exemplary damages.

[See main edition for text of (e)]

(As amended Pub. L. 98-620, title IV, § 402(19), Nov. 8, 1984, 98 Stat. 3358.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-620 struck out provision that civil actions brought under this subsection had to be heard and decided expeditiously.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 2625. Administration

[See main edition for text of (a) to (f)]

(g) Assistant Administrator

[See main edition for text of (1)]

(2) The Assistant Administrator to be appointed under paragraph (1) shall be in addition to the Assistant Administrators of the Environmental Protection Agency authorized by section 1(d) of Reorganization Plan No. 3 of 1970.

(As amended Pub. L. 98-80, § 2(c)(2)(A), Aug. 23, 1983, 97 Stat. 485.)

AMENDMENTS

1983—Subsec. (g)(2). Pub. L. 98-80 struck out "(A)" before "be in addition" and ", and (B) be compensated at the rate of pay authorized for such Assistant Administrators" after "No. 3 of 1970".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 4370a.

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CHAPTER 58—FULL EMPLOYMENT AND BALANCED GROWTH

SUBCHAPTER I—STRUCTURAL ECONOMIC POLICIES AND PROGRAMS INCLUDING TREATMENT OF RESOURCE RESTRAINTS

§ 3116. Job training, counseling and reservoirs of employment projects

REFERENCES IN TEXT

CETA, referred to in subsecs. (b) and (c)(1), means the Comprehensive Employment and Training Act of 1973, Pub. L. 93-203, Dec. 28, 1973, 87 Stat. 839, as amended, which was classified generally to chapter 17 (§ 801 et seq.) of Title 29, Labor, and was repealed by section 184(a)(1) of the Job Training Partnership Act, Pub. L. 97-300, title I, Oct. 13, 1982, 96 Stat. 1357. The Job Training Partnership Act is classified principally to chapter 19 (§ 1501 et seq.) of Title 29. Section 183 of Pub. L. 97-300, classified to section 1592 of Title 29, provided in part that references in any other statute to the Comprehensive Employment and Training Act shall be deemed to refer to the Job Training Partnership Act. Section 110 of CETA was classified to section 820 of Title 29 and was omitted from the Code in the general revision of Pub. L. 93-203 by Pub. L. 95-524, Oct. 27, 1978, 92 Stat. 1909.

SUBCHAPTER III—GENERAL PROVISIONS

§ 3151. Nondiscrimination

REFERENCES IN TEXT

Section 705(a) of CETA, referred to in subsec. (d), means section 705(a) of the Comprehensive Employment and Training Act, Pub. L. 93-203, title VII, Dec. 28, 1973, 87 Stat. 879, which was classified to section 985(a) of Title 29, Labor, and was omitted from the Code in the general revision of Pub. L. 93-203 of 1973 by Pub. L. 95-524, Oct. 27, 1978, 92 Stat. 1909. The Act was repealed by section 184(a)(1) of the Job Training Partnership Act, Pub. L. 97-300, title I, Oct. 13, 1982, 96 Stat. 1357. The Job Training Partnership Act is classified principally to chapter 19 (§ 1501 et seq.) of Title 29. Section 183 of Pub. L. 97-300, classified to section 1592 of Title 29, provided in part that references in any other statute to the Comprehensive Employment and Training Act shall be deemed to refer to the Job Training Partnership Act.

CHAPTER 60—NATURAL GAS POLICY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 717x, 717y of this title; title 26 section 29; title 42 section 7255.

SUBCHAPTER I—WELLHEAD PRICING

PART A—WELLHEAD PRICE CONTROLS

§ 3313. Ceiling price for new, onshore production wells

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3315, 3331, 3332, 3343, 3375, 3413, 3431 of this title; title 26 section 29.

§ 3317. Ceiling price for high-cost natural gas

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3315, 3331, 3343, 3373, 3375, 3413, 3431 of this title; title 26 section 29.

PART B—DECONTROL OF CERTAIN NATURAL GAS PRICES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3311, 3317, 3431 of this title; title 26 section 29.

SUBCHAPTER V—ADMINISTRATION, ENFORCEMENT, AND REVIEW

§ 3413. Determinations for qualifying under certain categories of natural gas

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3312, 3313, 3317, 3318 of this title; title 26 sections 29, 613A.

CHAPTER 63—TECHNOLOGY INNOVATION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 30 section 1805.

§ 3705. Centers for Industrial Technology

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3703, 3704, 3707, 3708, 3709, 3713 of this title; title 30 section 1805.

CHAPTER 65—PRODUCT LIABILITY RISK RETENTION

§ 3901. Definitions

[See main edition for text of (a)]

(b) Nothing in this chapter shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and the definitions of product liability and product liability insurance under any State law shall not be applied for the purposes of this chapter, including recognition or qualification of risk retention groups or purchasing groups.

(As amended Pub. L. 98-193, Dec. 1, 1983, 97 Stat. 1344.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-193 substituted provision that nothing in this chapter would be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and that the definitions of product liability and product liability insurance under any State law would not be applied for the purposes of this chapter, including recognition or qualification of risk retention groups or purchasing groups for provision that the definition of product liability in this section would not be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State.

CHAPTER 66—PROMOTION OF EXPORT TRADE

SUBCHAPTER III—EXPORT PROMOTION PROGRAMS

Sec.
4051. Requirement of prior authorization.
(a) General rule.
(b) Exception for later legislation authorizing obligations or expenditures.
(c) Provisions must be specifically superseded.
(d) "Export promotion program" defined.

Sec.
4052. Authorization of appropriations.
4053. Barter arrangements.
(a) Report on status of Federal barter programs.
(b) Authorities of President.
(c) Other provisions of law not affected.
(d) Conventional markets not to be displaced by barters.
(e) Report to Congress.

SUBCHAPTER II—EXPORT TRADE CERTIFICATES OF REVIEW

§ 4011. Export trade promotion duties of Secretary of Commerce

FEDERAL COAL EXPORT COMMISSION

Pub. L. 99-83, title XIII, § 1304, Aug. 8, 1985, 99 Stat. 282, provided that:

"(a) ESTABLISHMENT.—The Secretary of Commerce shall establish, within ninety days after the date of enactment of this Act [Aug. 8, 1985], a Federal Coal Export Commission (hereafter in this section referred to as the 'Commission').

"(b) MEMBERSHIP.—The Commission shall be composed of thirty members appointed by the Secretary of Commerce, as follows:

"(1) FEDERAL GOVERNMENT REPRESENTATIVES.—Ten members shall be representatives of the International Trade Administration, the Department of Energy, the Department of State, the Department of Transportation, the Office of the United States Trade Representative, and a Federal institution involved in export financing.

"(2) PRIVATE SECTOR REPRESENTATIVES.—

"(A) Five members shall be representatives of export coal producers, including traders and brokers.

"(B) Five members shall be representatives of coal labor.

"(C) Five members shall be representatives of transporters of export coal, including representatives of rail and barge carriers and port authorities.

"(D) Five members shall be representatives of institutions having a substantial interest in United States export coal financing.

"(c) EXPENSES.—Members of the Commission shall serve without pay. While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

"(d) COOPERATION.—All Federal departments and agencies are authorized to cooperate with the Commission and to furnish information, appropriate personnel, and such assistance as may be agreed upon by the Commission and the Federal department or agency involved.

"(e) ACTIVITIES.—The Commission shall convene not less than four times a year for consultation on activities leading to increased cooperation among entities involved in United States coal exports, with the goal of expanding the United States share of the international coal market. Activities of the Commission shall include, but are not limited to, the identification of—

"(1) diplomatic channels to facilitate the exportation of United States coal and methods to increase the coordination of diplomatic efforts relating to such exports;

"(2) domestic and international impediments to coal exports;

"(3) foreign markets for United States export coal, with emphasis on increasing United States coal sales to developing nations and expanding the participation of the United States International Development Cooperation Agency in such an effort;

"(4) availability of, and methods of, financing United States coal exports, including the feasibility of increasing Federal export financial and economic assistance; and

"(5) methods to promote, market, and coordinate United States coal on the international market.

The Commission shall also examine the potential for small-and medium-sized coal companies to enter the export coal trade through export trading companies with respect to the marketing, transportation, and financial services which such trading companies may provide pursuant to the Export Trading Company Act of 1982 [15 U.S.C. 4001 et seq.].

"(f) REPORT.—The Commission shall submit to the President and the Congress, within two years after its first meeting, a report which details its findings pursuant to subsection (e) and, based upon such findings, makes recommendations which would lead to the expansion of the United States share of the international metallurgical and steam coal market.

"(g) TERMINATION.—The Commission shall cease to exist upon submission of its report pursuant to subsection (f)."

SUBCHAPTER III—EXPORT PROMOTION PROGRAMS

§ 4051. Requirement of prior authorization

(a) General rule

Notwithstanding any other provision of law, money appropriated to the Department of Commerce for expenses to carry out any export promotion program may be obligated or expended only if—

(1) the appropriation thereof has been previously authorized by law enacted on or after July 12, 1985; or

(2) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

(b) Exception for later legislation authorizing obligations or expenditures

To the extent that legislation enacted after the making of an appropriation to carry out any export promotion program authorizes the obligation or expenditure thereof, the limitation contained in subsection (a) of this section shall have no effect.

(c) Provisions must be specifically superseded

The provisions of this section shall not be superseded except by a provision of law enacted after July 12, 1985, which specifically repeals, modifies, or supersedes the provisions of this section.

(d) "Export promotion program" defined

For purposes of this subchapter, the term "export promotion program" means any activity of the Department of Commerce designed to stimulate or assist United States businesses in marketing their goods and services abroad competitively with businesses from other countries, including, but not limited to—

(1) trade development (except for the trade adjustment assistance program) and dissemination of foreign marketing opportunities and other marketing information to United States producers of goods and services, in-

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cluding the expansion of foreign markets for United States textiles and apparel and any other United States products;

(2) the development of regional and multilateral economic policies which enhance United States trade and investment interests, and the provision of marketing services with respect to foreign countries and regions;

(3) the exhibition of United States goods in other countries; and

(4) the operations of the United States and Foreign Commercial Service, or any successor agency.

(Pub. L. 99-64, title II, § 201, July 12, 1985, 99 Stat. 157.)

CODIFICATION

Section was enacted as part of the Export Administration Amendments Act of 1985, and not as part of Pub. L. 97-290 which enacted this chapter.

§ 4052. Authorization of appropriations

There is authorized to be appropriated $113,273,000 for each of the fiscal years 1985 and 1986 to the Department of Commerce to carry out export promotion programs.

(Pub. L. 99-64, title II, § 202, July 12, 1985, 99 Stat. 158.)

CODIFICATION

Section was enacted as part of the Export Administration Amendments Act of 1985, and not as part of Pub. L. 97-290 which enacted this chapter.

§ 4053. Barter arrangements

(a) Report on status of Federal barter programs

The Secretary of Agriculture and the Secretary of Energy shall, not later than 90 days after July 12, 1985, submit to the Congress a report on the status of Federal programs relating to the barter or exchange of commodities owned by the Commodity Credit Corporation for materials and products produced in foreign countries. Such report shall include details of any changes necessary in existing law to allow the Department of Agriculture and, in the case of petroleum resources, the Department of Energy, to implement fully any barter program.

(b) Authorities of President

The President is authorized—

(1) to barter stocks of agricultural commodities acquired by the Government for petroleum and petroleum products, and for other materials vital to the national interest, which are produced abroad, in situations in which sales would otherwise not occur; and

(2) to purchase petroleum and petroleum products, and other materials vital to the national interest, which are produced abroad and acquired by persons in the United States through barter for agricultural commodities produced in and exported from the United States through normal commercial trade channels.

(c) Other provisions of law not affected

In the case of any petroleum, petroleum products, or other materials vital to the national interest, which are acquired under subsection (b) of this section, nothing in this section shall be construed to render inapplicable the provisions of any law then in effect which apply to the storage, distribution, or use of such petroleum, petroleum products, or other materials vital to the national interest.

(d) Conventional markets not to be displaced by barters

The President shall take steps to ensure that, in making any barter described in subsection (a) or (b)(1) of this section or any purchase authorized by subsection (b)(2) of this section, existing export markets for agricultural commodities operating on conventional business terms are safeguarded from displacement by the barter described in subsection (a), (b)(1), or (b)(2) of this section, as the case may be. In addition, the President shall ensure that any such barter is consistent with the international obligations of the United States, including the General Agreement on Tariffs and Trade.

(e) Report to Congress

The Secretary of Energy shall report to the Congress on the effect on energy security and on domestic energy supplies of any action taken under this section which results in the acquisition by the Government of petroleum or petroleum products. Such report shall be submitted to the Congress not later than 90 days after such acquisition.

(Pub. L. 99-64, title II, § 203, July 12, 1985, 99 Stat. 158.)

CODIFICATION

Section was enacted as part of the Export Administration Amendments Act of 1985, and not as part of Pub. L. 97-290 which enacted this chapter.

CHAPTER 67—ARCTIC RESEARCH AND POLICY

Sec.

4101. Congressional findings and declaration of purposes.
4102. Arctic Research Commission.
(a) Establishment.
(b) Membership.
(c) Terms of office; vacancies; hold-over status.
(d) Compensation and travel expenses; Federal employee status; meetings; observer-designees.
4103. Duties of Commission; publication of guidelines; report to Congress.
4104. Cooperation with Commission.
(a) Acquisition of information from Federal agencies; withholding authorization.
(b) Utilization of facilities and services; reimbursement; avoidance of duplication.
(c) Consultations with Commission prior to major Federal actions.
4105. Administration.
4106. Implementation of Arctic research policy.
(a) National Science Foundation and Director; functions.
(b) Interagency Arctic Research Policy Committee; establishment; represented agencies; Chairperson.
4107. Duties of Interagency Committee; report to Congress.
4108. Arctic research plan.

Sec.
4109. Coordination and review of budget requests; Office of Science and Technology Policy; Office of Management and Budget.
4110. Authorization of appropriations; new spending authority.
4111. "Arctic" defined.

§ 4101. Congressional findings and declaration of purposes

(a) The Congress finds and declares that—

(1) the Arctic, onshore and offshore, contains vital energy resources that can reduce the Nation's dependence on foreign oil and improve the national balance of payments;

(2) as the Nation's only common border with the Soviet Union, the Arctic is critical to national defense;

(3) the renewable resources of the Arctic, specifically fish and other seafood, represent one of the Nation's greatest commercial assets;

(4) Arctic conditions directly affect global weather patterns and must be understood in order to promote better agricultural management throughout the United States;

(5) industrial pollution not originating in the Arctic region collects in the polar air mass, has the potential to disrupt global weather patterns, and must be controlled through international cooperation and consultation;

(6) the Arctic is a natural laboratory for research into human health and adaptation, physical and psychological, to climates of extreme cold and isolation and may provide information crucial for future defense needs;

(7) atmospheric conditions peculiar to the Arctic make the Arctic a unique testing ground for research into high latitude communications, which is likely to be crucial for future defense needs;

(8) Arctic marine technology is critical to cost-effective recovery and transportation of energy resources and to the national defense;

(9) the United States has important security, economic, and environmental interests in developing and maintaining a fleet of icebreaking vessels capable of operating effectively in the heavy ice regions of the Arctic;

(10) most Arctic-rim countries, particularly the Soviet Union, possess Arctic technologies far more advanced than those currently available in the United States;

(11) Federal Arctic research is fragmented and uncoordinated at the present time, leading to the neglect of certain areas of research and to unnecessary duplication of effort in other areas of research;

(12) improved logistical coordination and support for Arctic research and better dissemination of research data and information is necessary to increase the efficiency and utility of national Arctic research efforts;

(13) a comprehensive national policy and program plan to organize and fund currently neglected scientific research with respect to the Arctic is necessary to fulfill national objectives in Arctic research;

(14) the Federal Government, in cooperation with State and local governments, should focus its efforts on the collection and characterization of basic data related to biological, materials, geophysical, social, and behavioral phenomena in the Arctic;

(15) research into the long-range health, environmental, and social effects of development in the Arctic is necessary to mitigate the adverse consequences of that development to the land and its residents;

(16) Arctic research expands knowledge of the Arctic, which can enhance the lives of Arctic residents, increase opportunities for international cooperation among Arctic-rim countries, and facilitate the formulation of national policy for the Arctic; and

(17) the Alaskan Arctic provides an essential habitat for marine mammals, migratory waterfowl, and other forms of wildlife which are important to the Nation and which are essential to Arctic residents.

(b) The purposes of this chapter are—

(1) to establish national policy, priorities, and goals and to provide a Federal program plan for basic and applied scientific research with respect to the Arctic, including natural resources and materials, physical, biological and health sciences, and social and behavioral sciences;

(2) to establish an Arctic Research Commission to promote Arctic research and to recommend Arctic research policy;

(3) to designate the National Science Foundation as the lead agency responsible for implementing Arctic research policy; and

(4) to establish an Interagency Arctic Research Policy Committee to develop a national Arctic research policy and a five year plan to implement that policy.

(Pub. L. 98-373, title I, § 102, July 31, 1984, 98 Stat. 1242.)

SHORT TITLE

Section 101 of title I of Pub. L. 98-373 provided that: "This title [enacting this chapter] may be cited as the 'Arctic Research and Policy Act of 1984'."

EX. ORD. NO. 12501. ARCTIC RESEARCH

Ex. Ord. No. 12501, Jan. 28, 1985, 50 F.R. 4191, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Arctic Research and Policy Act of 1984 (Title I of Public Law 98-373) ("the Act") [15 U.S.C. 4101 et seq.], it is hereby ordered as follows:

SECTION 1. *Establishment of Arctic Research Commission.* There is established the Arctic Research Commission.

SEC. 2. *Membership of the Commission.* (a) The Commission shall be composed of five members appointed by the President, as follows:

(1) three members appointed from among individuals from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social, and behavioral sciences;

(2) one member appointed from among indigenous residents of the Arctic who are representative of the needs and interests of Arctic residents and who live in areas directly affected by Arctic resources development; and

(3) one member appointed from individuals familiar with the Arctic and representative of the needs and interests of private industry undertaking resource development in the Arctic.

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The Director of the National Science Foundation shall serve as a nonvoting *ex officio* member of the Commission. The President shall designate a Chairperson from among the five voting members of the Commission.

(b) In making initial appointments to the Commission, the President shall designate one member to serve for a term of two years, two members to serve for terms of three years, and two members to serve for terms of four years as provided by Section 103(c) of the Act [15 U.S.C. 4102(c)]. Upon the expiration of these initial terms of office, the term of office of each member of the Commission shall be four years.

(c) Each of the Federal agencies represented on the Interagency Committee established by Section 7 of this Order may designate a representative to participate as an observer with the Commission. These representatives shall report to and advise the Commission on the activities of their agencies relating to Arctic research.

SEC. 3. *Meetings of the Commission.* The Commission shall meet at the call of the Chairman or a majority of its members. The Commission annually shall conduct at least one public meeting in the State of Alaska.

SEC. 4. *Functions of the Commission.* (a) The Commission shall:

(1) develop and recommend an integrated national Arctic research policy;

(2) assist, in cooperation with the Interagency Arctic Research Policy Committee established by Section 7 of this Order, in establishing a national Arctic research program plan to implement the Arctic research policy;

(3) facilitate cooperation between the Federal government and State and local governments with respect to Arctic research;

(4) review Federal research programs in the Arctic and suggest improvements in coordination among programs;

(5) recommend methods to improve logistical planning and support for Arctic research as may be appropriate;

(6) suggest methods for improving efficient sharing and dissemination of data and information on the Arctic among interested public and private institutions;

(7) offer other recommendations and advice to the Interagency Arctic Research Policy Committee as it may find appropriate; and

(8) cooperate with the Governor of the State of Alaska, and with agencies and organizations of that State which the Governor may designate, with respect to the formulation of Arctic research policy.

(b) Not later than January 31 of each year, the Commission shall:

(1) submit to the President and Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year; and

(2) publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Arctic Research Policy Committee in the performance of its duties.

SEC. 5. *Responsibilities of Federal Agencies.* (a) The heads of Executive agencies shall, to the extent permitted by law, and in accordance with Section 105 of the Act [15 U.S.C. 4104], provide the Commission such information as it may require for purposes of carrying out its functions.

(b) The heads of Executive agencies shall, upon reimbursement to be agreed upon by the Commission and the agency head, permit the Commission to utilize their facilities and services to the extent that the facilities and services are needed for the establishment and development of an Arctic research policy. The Commission shall take every feasible step to avoid duplication of effort.

(c) All Federal agencies shall consult with the Commission before undertaking major Federal actions relating to Arctic research.

SEC. 6. *Administration of the Commission.* Members of the Commission who are otherwise employed for compensation shall serve without compensation for their work on the Commission, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service. Members of the Commission who are not otherwise employed for compensation shall be compensated for each day the member is engaged in actual performance of duties as a member, not to exceed 90 days of service each calendar year, at a rate equal to the daily equivalent of the rate for GS–16 of the General Schedule.

SEC. 7. *Establishment of Interagency Arctic Research Policy Committee.* There is established the Interagency Arctic Research Policy Committee (the "Interagency Committee"). The National Science Foundation shall serve as lead agency on the Interagency Committee and shall be responsible for implementing Arctic research policy.

SEC. 8. *Membership of the Interagency Committee.* The Interagency Committee shall be composed of representatives of the following Federal agencies or their designees:

(a) National Science Foundation;
(b) Department of Commerce;
(c) Department of Defense;
(d) Department of Energy;
(e) Department of the Interior;
(f) Department of State;
(g) Department of Transportation;
(h) Department of Health and Human Services;
(i) National Aeronautics and Space Administration;
(j) Environmental Protection Agency;
(k) Office of Science and Technology Policy; and
(*l*) any other Executive agency that the Director of the National Science Foundation shall deem appropriate. The Director of the National Science Foundation or his designee shall serve as Chairperson of the Interagency Committee.

SEC. 9. *Functions of the Interagency Committee.* (a) The Interagency Committee shall:

(1) survey Arctic research conducted by Federal, State, and local agencies, universities, and other public and private institutions to help determine priorities for future Arctic research, including natural resources and materials, physical and biological sciences, and social and behavioral sciences;

(2) work with the Commission to develop and establish an integrated national Arctic research policy that will guide Federal agencies in developing and implementing their research programs in the Arctic;

(3) consult with the Commission on:

(a) the development of the national Arctic research policy and the 5-year plan implementing the policy;

(b) Arctic research programs of Federal agencies;

(c) recommendations of the Commission on future Arctic research; and

(d) guidelines for Federal agencies for awarding and administering Arctic research grants;

(4) develop a 5-year plan to implement the national policy, as provided in section 109 of the Act [15 U.S.C. 4108];

(5) provide the necessary coordination, data, and assistance for the preparation of a single integrated, coherent, and multi-agency budget request for Arctic research, as provided in section 110 of the Act [15 U.S.C. 4109];

(6) facilitate cooperation between the Federal government and State and local governments in Arctic research, and recommend the undertaking of neglected areas of research;

(7) coordinate and promote cooperative Arctic scientific research programs with other nations, subject to the foreign policy guidance of the Secretary of State;

(8) cooperate with the Governor of the State of Alaska in fulfilling its responsibilities under the Act; and

(9) promote Federal interagency coordination of all Arctic research activities, including:

(a) logistical planning and coordination; and

(b) the sharing of data and information associated with Arctic research, subject to section 552 of title 5, United States Code.

(b) Not later than January 31, 1986, and biennially thereafter, the Interagency Committee shall submit to the Congress through the President a report concerning:

(1) its activities and accomplishments since its last report; and

(2) the activities of the Commission, detailing with particularity the recommendations of the Commission with respect to Federal activities in Arctic research.

SEC. 10. *Public Participation.* The Interagency Committee will provide public notice of its meetings and an opportunity for the public to participate in the development and implementation of national Arctic research policy.

SEC. 11. *Administration of Interagency Committee.* Each agency represented on the Committee shall, to the extent permitted by law and subject to the availability of funds, provide the Committee with such administrative services, facilities, staff, and other support services as may be necessary for effective performance of its functions.

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§ 4102. Arctic Research Commission

(a) Establishment

The President shall establish an Arctic Research Commission (hereafter referred to as the "Commission").

(b) Membership

(1) The Commission shall be composed of five members appointed by the President, with the Director of the National Science Foundation serving as a nonvoting, ex officio member. The members appointed by the President shall include—

(A) three members appointed from among individuals from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social, and behavioral sciences;

(B) one member appointed from among indigenous residents of the Arctic who are representative of the needs and interests of Arctic residents and who live in areas directly affected by Arctic resource development; and

(C) one member appointed from among individuals familiar with the Arctic and representative of the needs and interests of private industry undertaking resource development in the Arctic.

(2) The President shall designate one of the appointed members of the Commission to be chairperson of the Commission.

(c) Terms of office; vacancies; hold-over status

(1) Except as provided in paragraph (2) of this subsection, the term of office of each member of the Commission appointed under subsection (b)(1) of this section shall be four years.

(2) Of the members of the Commission originally appointed under subsection (b)(1) of this section—

(A) one shall be appointed for a term of two years;

(B) two shall be appointed for a term of three years; and

(C) two shall be appointed for a term of four years.

(3) Any vacancy occurring in the membership of the Commission shall be filled, after notice of the vacancy is published in the Federal Register, in the manner provided by the preceding provisions of this section, for the remainder of the unexpired term.

(4) A member may serve after the expiration of the member's term of office until the President appoints a successor.

(5) A member may serve consecutive terms beyond the member's original appointment.

(d) Compensation and travel expenses; Federal employee status; meetings; observer-designees

(1) Members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5. A member of the Commission not presently employed for compensation shall be compensated at a rate equal to the daily equivalent of the rate for GS–16 of the General Schedule under section 5332 of title 5 for each day the member is engaged in the actual performance of his duties as a member of the Commission, not to exceed 90 days of service each year. Except for the purposes of chapter 81 of title 5 (relating to compensation for work injuries) and chapter 171 of title 28 (relating to tort claims), a member of the Commission shall not be considered an employee of the United States for any purpose.

(2) The Commission shall meet at the call of its Chairman or a majority of its members.

(3) Each Federal agency referred to in section 4106(b) of this title may designate a representative to participate as an observer with the Commission. These representatives shall report to and advise the Commission on the activities relating to Arctic research of their agencies.

(4) The Commission shall conduct at least one public meeting in the State of Alaska annually.

(Pub. L. 98-373, title I, § 103, July 31, 1984, 98 Stat. 1243.)

§ 4103. Duties of Commission; publication of guidelines; report to Congress

(a) The Commission shall—

(1) develop and recommend an integrated national Arctic research policy;

(2) in cooperation with the Interagency Arctic Research Policy Committee established under section 4106 of this title, assist in establishing a national Arctic research program plan to implement the Arctic research policy;

(3) facilitate cooperation between the Federal Government and State and local governments with respect to Arctic research;

(4) review Federal research programs in the Arctic and suggest improvements in coordination among programs;

(5) recommend methods to improve logistical planning and support for Arctic research

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as may be appropriate and in accordance with the findings and purposes of this chapter;

(6) suggest methods for improving efficient sharing and dissemination of data and information on the Arctic among interested public and private institutions;

(7) offer other recommendations and advice to the Interagency Committee established under section 4106 of this title as it may find appropriate; and

(8) cooperate with the Governor of the State of Alaska and with agencies and organizations of that State which the Governor may designate with respect to the formulation of Arctic research policy.

(b) Not later than January 31 of each year, the Commission shall—

(1) publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Committee established under section 4106 of this title in the performance of its duties; and

(2) submit to the President and to the Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year.

(Pub. L. 98-373, title I, § 104, July 31, 1984, 98 Stat. 1244.)

§ 4104. Cooperation with Commission

(a) Acquisition of information from Federal agencies; withholding authorization

(1) The Commission may acquire from the head of any Federal agency unclassified data, reports, and other nonproprietary information with respect to Arctic research in the possession of the agency which the Commission considers useful in the discharge of its duties.

(2) Each agency shall cooperate with the Commission and furnish all data, reports, and other information requested by the Commission to the extent permitted by law; except that no agency need furnish any information which it is permitted to withhold under section 552 of title 5.

(b) Utilization of facilities and services; reimbursement; avoidance of duplication

With the consent of the appropriate agency head, the Commission may utilize the facilities and services of any Federal agency to the extent that the facilities and services are needed for the establishment and development of an Arctic research policy, upon reimbursement to be agreed upon by the Commission and the agency head and taking every feasible step to avoid duplication of effort.

(c) Consultations with Commission prior to major Federal actions

All Federal agencies shall consult with the Commission before undertaking major Federal actions relating to Arctic research.

(Pub. L. 98-373, title I, § 105, July 31, 1984, 98 Stat. 1245.)

§ 4105. Administration

The Commission may—

(1) in accordance with the civil service laws and subchapter III of chapter 53 of title 5, appoint and fix the compensation of an Executive Director and necessary additional staff personnel, but not to exceed a total of seven compensated personnel;

(2) procure temporary and intermittent services as authorized by section 3109 of title 5;

(3) enter into contracts and procure supplies, services, and personal property; and

(4) enter into agreements with the General Services Administration for the procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in amounts to be agreed upon by the Commission and the Administrator of the General Services Administration.

(Pub. L. 98-373, title I, § 106, July 31, 1984, 98 Stat. 1245.)

REFERENCES IN TEXT

The civil service laws, referred to in par. (1), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

§ 4106. Implementation of Arctic research policy

(a) National Science Foundation and Director; functions

The National Science Foundation is designated as the lead agency responsible for implementing Arctic research policy, and the Director of the National Science Foundation shall insure that the requirements of section 4107 of this title are fulfilled.

(b) Interagency Arctic Research Policy Committee; establishment; represented agencies; Chairperson

(1) The President shall establish an Interagency Arctic Research Policy Committee (hereinafter referred to as the "Interagency Committee").

(2) The Interagency Committee shall be composed of representatives of the following Federal agencies or offices:

(A) the National Science Foundation;
(B) the Department of Commerce;
(C) the Department of Defense;
(D) the Department of Energy;
(E) the Department of the Interior;
(F) the Department of State;
(G) the Department of Transportation;
(H) the Department of Health and Human Services;
(I) the National Aeronautics and Space Administration;
(J) the Environmental Protection Agency; and
(K) any other agency or office deemed appropriate.

(3) The representative of the National Science Foundation shall serve as the Chairperson of the Interagency Committee.

(Pub. L. 98-373, title I, § 107, July 31, 1984, 98 Stat. 1246.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4102, 4103 of this title.

§ 4107. Duties of Interagency Committee; report to Congress

(a) The Interagency Committee shall—

(1) survey Arctic research conducted by Federal, State, and local agencies, universities, and other public and private institutions to help determine priorities for future Arctic research, including natural resources and materials, physical and biological sciences, and social and behavioral sciences;

(2) work with the Commission to develop and establish an integrated national Arctic research policy that will guide Federal agencies in developing and implementing their research programs in the Arctic;

(3) consult with the Commission on—

(A) the development of the national Arctic research policy and the 5-year plan implementing the policy;

(B) Arctic research programs of Federal agencies;

(C) recommendations of the Commission on future Arctic research; and

(D) guidelines for Federal agencies for awarding and administering Arctic research grants;

(4) develop a 5-year plan to implement the national policy, as provided for in section 4108 of this title;

(5) provide the necessary coordination, data, and assistance for the preparation of a single integrated, coherent, and multiagency budget request for Arctic research as provided for in section 4109 of this title;

(6) facilitate cooperation between the Federal Government and State and local governments in Arctic research, and recommend the undertaking of neglected areas of research in accordance with the findings and purposes of this chapter;

(7) coordinate and promote cooperative Arctic scientific research programs with other nations, subject to the foreign policy guidance of the Secretary of State;

(8) cooperate with the Governor of the State of Alaska in fulfilling its responsibilities under this chapter;

(9) promote Federal interagency coordination of all Arctic research activities, including—

(A) logistical planning and coordination; and

(B) the sharing of data and information associated with Arctic research, subject to section 552 of title 5; and

(10) provide public notice of its meetings and an opportunity for the public to participate in the development and implementation of national Arctic research policy.

(b) Not later than Janua y 31, 1986, and biennially thereafter, the Interagency Committee shall submit to the Congress through the President, a brief, concise report containing—

(1) a statement of the activities and accomplishments of the Interagency Committee since its last report; and

(2) a description of the activities of the Commission, detailing with particularity the recommendations of the Commission with respect to Federal activities in Arctic research.

(Pub. L. 98-373, title I, § 108, July 31, 1984, 98 Stat. 1246.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4106, 4109 of this title.

§ 4108. Arctic research plan

(a) The Interagency Committee, in consultation with the Commission, the Governor of the State of Alaska, the residents of the Arctic, the private sector, and public interest groups, shall prepare a comprehensive 5-year program plan (hereinafter referred to as the "Plan") for the overall Federal effort in Arctic research. The Plan shall be prepared and submitted to the President for transmittal to the Congress within one year after July 31, 1984, and shall be revised biennially thereafter.

(b) The Plan shall contain but need not be limited to the following elements:

(1) an assessment of national needs and problems regarding the Arctic and the research necessary to address those needs or problems;

(2) a statement of the goals and objectives of the Interagency Committee for national Arctic research;

(3) a detailed listing of all existing Federal programs relating to Arctic research, including the existing goals, funding levels for each of the 5 following fiscal years, and the funds currently being expended to conduct the programs;

(4) recommendations for necessary program changes and other proposals to meet the requirements of the policy and goals as set forth by the Commission and in the Plan as currently in effect; and

(5) a description of the actions taken by the Interagency Committee to coordinate the budget review process in order to ensure interagency coordination and cooperation in (A) carrying out Federal Arctic research programs, and (B) eliminating unnecessary duplication of effort among these programs.

(Pub. L. 98-373, title I, § 109, July 31, 1984, 98 Stat. 1247.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4107, 4109 of this title.

§ 4109. Coordination and review of budget requests; Office of Science and Technology Policy; Office of Management and Budget

(a) The Office of Science and Technology Policy shall—

(1) review all agency and department budget requests related to the Arctic transmitted pursuant to section 4107(a)(5) of this title, in accordance with the national Arctic research policy and the 5-year program under section 4107(a)(2) and section 4108 of this title, respectively; and

(2) consult closely with the Interagency Committee and the Commission to guide the Office of Science and Technology Policy's efforts.

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(b)(1) The Office of Management and Budget shall consider all Federal agency requests for research related to the Arctic as one integrated, coherent, and multiagency request which shall be reviewed by the Office of Management and Budget prior to submission of the President's annual budget request for its adherence to the Plan. The Commission shall, after submission of the President's annual budget request, review the request and report to Congress on adherence to the Plan.

(2) The Office of Management and Budget shall seek to facilitate planning for the design, procurement, maintenance, deployment, and operations of icebreakers needed to provide a platform for Arctic research by allocating all funds necessary to support icebreaking operations, except for recurring incremental costs associated with specific projects, to the Coast Guard.

(Pub. L. 98-373, title I, § 110, July 31, 1984, 98 Stat. 1248.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4107 of this title.

§ 4110. Authorization of appropriations; new spending authority

(a) There are authorized to be appropriated such sums as may be necessary for carrying out this chapter.

(b) Any new spending authority (within the meaning of section 651 of title 2) which is provided under this chapter shall be effective for any fiscal year only to such extent or in such amounts as may be provided in appropriation Acts.

(Pub. L. 98-373, title I, § 111, July 31, 1984, 98 Stat. 1248.)

§ 4111. "Arctic" defined

As used in this chapter, the term "Arctic" means all United States and foreign territory north of the Arctic Circle and all United States territory north and west of the boundary formed by the Porcupine, Yukon, and Kuskokwim Rivers; all contiguous seas, including the Arctic Ocean and the Beaufort, Bering, and Chukchi Seas; and the Aleutian chain.

(Pub. L. 98-373, title I, § 112, July 31, 1984, 98 Stat. 1248.)

CHAPTER 68—LAND REMOTE-SENSING COMMERCIALIZATION

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 49 App. section 2605.

SUBCHAPTER I—DECLARATION OF FINDINGS, PURPOSES, AND POLICIES

§ 4201. Congressional findings

The Congress finds and declares that—

(1) the continuous civilian collection and utilization of land remote-sensing data from space are of major benefit in managing the Earth's natural resources and in planning and conducting many other activities of economic importance;

(2) the Federal Government's experimental Landsat system has established the United States as the world leader in land remote-sensing technology;

(3) the national interest of the United States lies in maintaining international leadership in civil remote sensing and in broadly promoting the beneficial use of remote-sensing data;

(4) land remote sensing by the Government or private parties of the United States affects international commitments and policies and national security concerns of the United States;

(5) the broadest and most beneficial use of land remote-sensing data will result from maintaining a policy of nondiscriminatory access to data;

(6) competitive, market-driven private sector involvement in land remote sensing is in the national interest of the United States;

(7) use of land remote-sensing data has been inhibited by slow market development and by the lack of assurance of data continuity;

(8) the private sector, and in particular the "value-added" industry, is best suited to develop land remote-sensing data markets;

(9) there is doubt that the private sector alone can currently develop a total land remote-sensing system because of the high risk and large capital expenditure involved;

(10) cooperation between the Federal Government and private industry can help assure both data continuity and United States leadership;

(11) the time is now appropriate to initiate such cooperation with phased transition to a fully commercial system;

(12) such cooperation should be structured to involve the minimum practicable amount of support and regulation by the Federal Government and the maximum practicable amount of competition by the private sector, while assuring continuous availability to the Federal Government of land remote-sensing data;

(13) certain Government oversight must be maintained to assure that private sector activities are in the national interest and that the international commitments and policies of the United States are honored; and

(14) there is no compelling reason to commercialize meteorological satellites at this time.

(Pub. L. 98-365, title I, § 101, July 17, 1984, 98 Stat. 451.)

SHORT TITLE

Section 1 of Pub. L. 98-365 provided: "That this Act [enacting this chapter and amending a provision set out as a note under section 1517 of this title] may be cited as the 'Land Remote-Sensing Commercialization Act of 1984'."

§ 4202. Congressional declaration of purpose

The purposes of this chapter are to—

(1) guide the Federal Government in achieving proper involvement of the private sector by providing a framework for phased

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commercialization of land remote sensing and by assuring continuous data availability to the Federal Government;

(2) maintain the United States worldwide leadership in civil remote sensing, preserve its national security, and fulfill its international obligations;

(3) minimize the duration and amount of further Federal investment necessary to assure data continuity while achieving commercialization of civil land remote sensing;

(4) provide for a comprehensive civilian program of research, development, and demonstration to enhance both the United States capabilities for remote sensing from space and the application and utilization of such capabilities; and

(5) prohibit commercialization of meteorological satellites at this time.

(Pub. L. 98-365, title I, § 102, July 17, 1984, 98 Stat. 452.)

§ 4203. Policy

(a) Acquisition by United States and dissemination of unenhanced remote-sensing data

It shall be the policy of the United States to preserve its right to acquire and disseminate unenhanced remote-sensing data.

(b) Availability of civilian unenhanced remote-sensing data to all potential users

It shall be the policy of the United States that civilian unenhanced remote-sensing data be made available to all potential users on a nondiscriminatory basis and in a manner consistent with applicable antitrust laws.

(c) Commercial operations; retention by Government of essentially public service functions

It shall be the policy of the United States both to commercialize those remote-sensing space systems that properly lend themselves to private sector operation and to avoid competition by the Government with such commercial operations, while continuing to preserve our national security, to honor our international obligations, and to retain in the Government those remote-sensing functions that are essentially of a public service nature.

(Pub. L. 98-365, title I, § 103, July 17, 1984, 98 Stat. 452.)

References in Text

The antitrust laws, referred to in subsec. (b), are classified generally to chapter 1 (§ 1 et seq.) of this title.

§ 4204. Definitions

For purposes of this chapter:

(1) The term "Landsat system" means Landsats 1, 2, 3, 4, and 5, and any related ground equipment, systems, and facilities, and any successor civil land remote-sensing space systems operated by the United States Government prior to the commencement of the six-year period described in subchapter III of this chapter.

(2) The term "Secretary" means the Secretary of Commerce.

(3)(A) The term "nondiscriminatory basis" means without preference, bias, or any other special arrangement (except on the basis of national security concerns pursuant to section 4277 of this title) regarding delivery, format, financing, or technical considerations which would favor one buyer or class of buyers over another.

(B) The sale of data is made on a nondiscriminatory basis only if (i) any offer to sell or deliver data is published in advance in such manner as will ensure that the offer is equally available to all prospective buyers; (ii) the system operator has not established or changed any price, policy, procedure, or other term or condition in a manner which gives one buyer or class of buyer de facto favored access to data; (iii) the system operator does not make unenhanced data available to any purchaser on an exclusive basis; and (iv) in a case where a system operator offers volume discounts, such discounts are no greater than the demonstrable reductions in the cost of volume sales. The sale of data on a nondiscriminatory basis does not preclude the system operator from offering discounts other than volume discounts to the extent that such discounts are consistent with the provisions of this paragraph.

(C) The sale of data on a nondiscriminatory basis does not require (i) that a system operator disclose names of buyers or their purchases; (ii) that a system operator maintain all, or any particular subset of, data in a working inventory; or (iii) that a system operator expend equal effort in developing all segments of a market.

(4) The term "unenhanced data" means unprocessed or minimally processed signals or film products collected from civil remote-sensing space systems. Such minimal processing may include rectification of distortions, registration with respect to features of the Earth, and calibration of spectral response. Such minimal processing does not include conclusions, manipulations, or calculations derived from such signals or film products or combination of the signals or film products with other data or information.

(5) The term "system operator" means a contractor under subchapter II or subchapter III of this chapter or a license holder under subchapter IV of this chapter.

(Pub. L. 98-365, title I, § 104, July 17, 1984, 98 Stat. 452.)

Section Referred to in Other Sections

This section is referred to in section 4271 of this title.

SUBCHAPTER II—OPERATION AND DATA MARKETING OF LANDSAT SYSTEM

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 4204, 4223, 4224 of this title.

§ 4211. Operation by Secretary; contracting authority

(a) The Secretary shall be responsible for—

(1) the Landsat system, including the orbit, operation, and disposition of Landsats 1, 2, 3, 4, and 5; and

(2) provision of data to foreign ground stations under the terms of agreements between the United States Government and nations that operate such ground stations which are in force on the date of commencement of the contract awarded pursuant to this subchapter.

(b) The provisions of this section shall not affect the Secretary's authority to contract for the operation of part or all of the Landsat system, so long as the United States Government retains—

(1) ownership of such system;

(2) ownership of the unenhanced data; and

(3) authority to make decisions concerning operation of the system.

(Pub. L. 98-365, title II, § 201, July 17, 1984, 98 Stat. 453.)

§ 4212. Contract for marketing of unenhanced data

(a) Provisions of contracts

In accordance with the requirements of this subchapter, the Secretary, by means of a competitive process and to the extent provided in advance by appropriation Acts, shall contract with a United States private sector party (as defined by the Secretary) for the marketing of unenhanced data collected by the Landsat system. Any such contract—

(1) shall provide that the contractor set the prices of unenhanced data;

(2) may provide for financial arrangements between the Secretary and the contractor including fees for operating the system, payments by the contractor as an initial fee or as a percentage of sales receipts, or other such considerations;

(3) shall provide that the contractor will offer to sell and deliver unenhanced data to all potential buyers on a nondiscriminatory basis;

(4) shall provide that the contractor pay to the United States Government the full purchase price of any unenhanced data that the contractor elects to utilize for purposes other than sale;

(5) shall be entered into by the Secretary only if the Secretary has determined that such contract is likely to result in net cost savings for the United States Government; and

(6) may be reawarded competitively after the practical demise of the space segment of the Landsat system, as determined by the Secretary.

(b) Specification that contractor may use, maintain, repair or modify elements of Landsat system

Any contract authorized by subsection (a) of this section may specify that the contractor use, and, at his own expense, maintain, repair, or modify, such elements of the Landsat system as the contractor finds necessary for commercial operations.

(c) Transmission to Congressional committees of decision to contract

Any decision or proposed decision by the Secretary to enter into any such contract shall be transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives for their review. No such decision or proposed decision shall be implemented unless (A) a period of thirty calendar days has passed after the receipt by each such committee of such transmittal, or (B) each such committee before the expiration of such period has agreed to transmit and has transmitted to the Secretary written notice to the effect that such committee has no objection to the decision or proposed decision. As part of the transmittal, the Secretary shall include information on the terms of the contract described in subsection (a) of this section.

(d) Factors determining "United States private sector party"

In defining "United States private sector party" for purposes of this chapter, the Secretary may take into account the citizenship of key personnel, location of assets, foreign ownership, control, influence, and other such factors.

(Pub. L. 98-365, title II, § 202, July 17, 1984, 98 Stat. 454.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4213, 4214, 4222, 4272, 4278 of this title.

§ 4213. Conditions of competition for contract

(a) Publication of standards by Secretary

The Secretary shall, as part of the advertisement for the competition for the contract authorized by section 4212 of this title, identify and publish the international obligations, national security concerns (with appropriate protection of sensitive information), domestic legal considerations, and any other standards or conditions which a private contractor shall be required to meet.

(b) Selection of contractor

In selecting a contractor under this subchapter, the Secretary shall consider—

(1) ability to market aggressively unenhanced data;

(2) the best overall financial return to the Government, including the potential cost savings to the Government that are likely to result from the contract;

(3) ability to meet the obligations, concerns, considerations, standards, and conditions identified under subsection (a) of this section;

(4) technical competence, including the ability to assure continuous and timely delivery of data from the Landsat system;

(5) ability to effect a smooth transition with the contractor selected under subchapter III of this chapter; and

(6) such other factors as the Secretary deems appropriate and relevant.

(c) Competitive and subsequent competitive process

If, as a result of the competitive process required by section 4212(a) of this title, the Secretary receives no proposal which is acceptable under the provisions of this subchapter, the Secretary shall so certify and fully report such finding to the Congress. As soon as practicable

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but not later than thirty days after so certifying and reporting, the Secretary shall reopen the competitive process. The period for the subsequent competitive process shall not exceed one hundred and twenty days. If, after such subsequent competitive process, the Secretary receives no proposal which is acceptable under the provisions of this subchapter, the Secretary shall so certify and fully report such finding to the Congress. In the event that no acceptable proposal is received, the Secretary shall continue to market data from the Landsat system.

(d) Combining of contracts

A contract awarded under section 4212 of this title may, in the discretion of the Secretary, be combined with the contract required by subchapter III of this chapter, pursuant to section 4224(b) of this title.

(Pub. L. 98-365, title II, § 203, July 17, 1984, 98 Stat. 454.)

§ 4214. Sale of data; entitlement to revenue; continuation after end of space segment

(a) After the date of the commencement of the contract described in section 4212(a) of this title, the contractor shall be entitled to revenues from sales of copies of data from the Landsat system, subject to the conditions specified in sections 4271 and 4272 of this title.

(b) The contractor may continue to market data previously generated by the Landsat system after the demise of the space segment of that system.

(Pub. L. 98-365, title II, § 204, July 17, 1984, 98 Stat. 455.)

§ 4215. Foreign ground stations; contract provisions

(a) The contract under this subchapter shall provide that the contractor shall act as the agent of the Secretary by continuing to supply unenhanced data to foreign ground stations for the life, and according to the terms, of those agreements between the United States Government and such foreign ground stations that are in force on the date of the commencement of the contract.

(b) Upon the expiration of such agreements, or in the case of foreign ground stations that have no agreement with the United States on the date of commencement of the contract, the contract shall provide—

(1) that unenhanced data from the Landsat system shall be made available to foreign ground stations only by the contractor; and

(2) that such data shall be made available on a nondiscriminatory basis.

(Pub. L. 98-365, title II, § 205, July 17, 1984, 98 Stat. 455.)

SUBCHAPTER III—PROVISION OF DATA CONTINUITY AFTER THE LANDSAT SYSTEM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4204, 4213, 4272 of this title.

§ 4221. Purposes and definition

(a) Purpose

It is the purpose of this subchapter—

(1) to provide, in an orderly manner and with minimal risk, for a transition from Government operation to private, commercial operation of civil land remote-sensing systems; and

(2) to provide data continuity for six years after the practical demise of the space segment of the Landsat system.

(b) "Data continuity" defined

For purposes of this subchapter, the term "data continuity" means the continued availability of unenhanced data—

(1) including data which are from the point of view of a data user—

(A) functionally equivalent to the multispectral data generated by the Landsat 1 and 2 satellites; and

(B) compatible with such data and with equipment used to receive and process such data; and

(2) at an annual volume at least equal to the Federal usage during fiscal year 1983.

(c) Providing data continuity

Data continuity may be provided using whatever technologies are available.

(Pub. L. 98-365, title III, § 301, July 17, 1984, 98 Stat. 456.)

§ 4222. Data continuity and availability

The Secretary shall solicit proposals from United States private sector parties (as defined by the Secretary pursuant to section 4212 of this title) for a contract for the development and operation of a remote-sensing space system capable of providing data continuity for a period of six years and for marketing unenhanced data in accordance with the provisions of sections 4271 and 4272 of this title. Such proposals, at a minimum, shall specify—

(1) the quantities and qualities of unenhanced data expected from the system;

(2) the projected date upon which operations could begin;

(3) the number of satellites to be constructed and their expected lifetimes;

(4) any need for Federal funding to develop the system;

(5) any percentage of sales receipts or other returns offered to the Federal Government;

(6) plans for expanding the market for land remote-sensing data; and

(7) the proposed procedures for meeting the national security concerns and international obligations of the United States in accordance with section 4277 of this title.

(Pub. L. 98-365, title III, § 302, July 17, 1984, 98 Stat. 456.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4223 of this title.

§ 4223. Awarding of the contract

(a) Secretary to contract for capability of providing data continuity

(1) In accordance with the requirements of this subchapter, the Secretary shall evaluate the proposals described in section 4222 of this title and, by means of a competitive process and to the extent provided in advance by appropriation Acts, shall contract with the United States private sector party for the capability of providing data continuity for a period of six years and for marketing unenhanced data.

(2) Before commencing space operations the contractor shall obtain a license under subchapter IV of this chapter.

(b) Factors in analysis of expected outcome of proposals

As part of the evaluation described in subsection (a) of this section, the Secretary shall analyze the expected outcome of each proposal in terms of—

(1) the net cost to the Federal Government of developing the recommended system;

(2) the technical competence and financial condition of the contractor;

(3) the availability of such data after the expected termination of the Landsat system;

(4) the quantities and qualities of data to be generated by the recommended system;

(5) the contractor's ability to supplement the requirement for data continuity by adding, at the contractor's expense, remote-sensing capabilities which maintain United States leadership in remote sensing;

(6) the potential to expand the market for data;

(7) expected returns to the Federal Government based on any percentage of data sales or other such financial consideration offered to the Federal Government in accordance with section 4225 of this title;

(8) the commercial viability of the proposal;

(9) the proposed procedures for satisfying the national security concerns and international obligations of the United States;

(10) the contractor's ability to effect a smooth transition with any contractor selected under subchapter II of this chapter; and

(11) such other factors as the Secretary deems appropriate and relevant.

(c) Transmission to Congressional committees of decision to contract

Any decision or proposed decision by the Secretary to enter into any such contract shall be transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives for their review. No such decision or proposed decision shall be implemented unless (1) a period of thirty calendar days has passed after the receipt by each such committee of such transmittal, or (2) each such committee before the expiration of such period has agreed to transmit and has transmitted to the Secretary written notice to the effect that such committee has no objection to the decision or proposed decision. As part of the transmittal, the Secretary shall include the information specified in subsection (a) of this section.

(d) Competitive process

If, as a result of the competitive process required by this section, the Secretary receives no proposal which is acceptable under the provisions of this subchapter, the Secretary shall so certify and fully report such finding to the Congress. As soon as practicable but not later than thirty days after so certifying and reporting, the Secretary shall reopen the competitive process. The period for the subsequent competitive process shall not exceed one hundred and eighty days. If, after such subsequent competitive process, the Secretary receives no proposal which is acceptable under the provisions of this subchapter, the Secretary shall so certify and fully report such finding to the Congress. Not earlier than ninety days after such certification and report, the Secretary may assure data continuity by procurement and operation by the Federal Government of the necessary systems, to the extent provided in advance by appropriation Acts.

(Pub. L. 98-365, title III, § 303, July 17, 1984, 98 Stat. 456.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4278 of this title.

§ 4224. Terms of contract; determination by Secretary as to whether contract meets purposes of subchapter II

(a) Any contract entered into pursuant to this subchapter—

(1) shall be entered into as soon as practicable, allowing for the competitive procurement process required by this subchapter;

(2) shall, in accordance with criteria determined and published by the Secretary, reasonably assure data continuity for a period of six years, beginning as soon as practicable in order to minimize any interruption of data availability;

(3) shall provide that the contractor will offer to sell and deliver unenhanced data to all potential buyers on a nondiscriminatory basis;

(4) shall not provide a guarantee of data purchases from the contractor by the Federal Government;

(5) may provide that the contractor utilize, on a space-available basis, a civilian United States Government satellite or vehicle as a platform for a civil land remote-sensing space system, if—

(A) the contractor agrees to reimburse the Government immediately for all related costs incurred with respect to such utilization, including a reasonable and proportionate share of fixed, platform, data transmission, and launch costs; and

(B) such utilization would not interfere with or otherwise compromise intended civilian Government missions, as determined by the agency responsible for the civilian platform; and

(6) may provide financial support by the United States Government, for a portion of the capital costs required to provide data con-

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tinuity for a period of six years, in the form of loans, loan guarantees, or payments pursuant to section 255 of title 41.

(b)(1) Without regard to whether any contract entered into under this subchapter is combined with a contract under subchapter II of this chapter, the Secretary shall promptly determine whether the contract entered into under this subchapter reasonably effectuates the purposes and policies of subchapter II of this chapter. Such determination shall be submitted to the President and the Congress, together with a full statement of the basis for such determination.

(2) If the Secretary determines that such contract does not reasonably effectuate the requirements of subchapter II of this chapter, the Secretary shall promptly carry out the provisions of such subchapter to the extent provided in advance in appropriations Acts.

(Pub. L. 98-365, title III, § 304, July 17, 1984, 98 Stat. 458.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4213, 4225, 4226, 4246 of this title.

§ 4225. Marketing; incentive provisions; continuation by contractor of data sales or operation of civil remote-sensing systems

(a) In order to promote aggressive marketing of land remote-sensing data, any contract entered into pursuant to this subchapter may provide that the percentage of sales paid by the contractor to the Federal Government shall decrease according to stipulated increases in sales levels.

(b) After the six-year period described in section 4224(a)(2) of this title, the contractor may continue to sell data. If licensed under subchapter IV of this chapter, the contractor may continue to operate a civil remote-sensing space system.

(Pub. L. 98-365, title III, § 305, July 17, 1984, 98 Stat. 458.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4223 of this title.

§ 4226. Report

Two years after the date of the commencement of the six-year period described in section 4224(a)(2) of this title, the Secretary shall report to the President and to the Congress on the progress of the transition to fully private financing, ownership, and operation of remote-sensing space systems, together with any recommendations for actions, including actions necessary to ensure United States leadership in civilian land remote sensing from space.

(Pub. L. 98-365, title III, § 306, July 17, 1984, 98 Stat. 459.)

§ 4227. Termination of subchapter

The authority granted to the Secretary by this subchapter shall terminate ten years after July 17, 1984.

(Pub. L. 98-365, title III, § 307, July 17, 1984, 98 Stat. 459.)

SUBCHAPTER IV—LICENSING OF PRIVATE REMOTE-SENSING SPACE SYSTEMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4204, 4223, 4225, 4272, 4275 of this title.

§ 4241. General authority

(a) Licensing private sector parties; authority of Secretary; limitations

(1) In consultation with other appropriate Federal agencies, the Secretary is authorized to license private sector parties to operate private remote-sensing space systems for such period as the Secretary may specify and in accordance with the provisions of this subchapter.

(2) In the case of a private space system that is used for remote sensing and other purposes, the authority of the Secretary under this subchapter shall be limited only to the remote-sensing operations of such space system.

(b) Grant of license; conditions

No license shall be granted by the Secretary unless the Secretary determines in writing that the applicant will comply with the requirements of this chapter, any regulations issued pursuant to this chapter, and any applicable international obligations and national security concerns of the United States.

(c) Review of applications by Secretary

The Secretary shall review any application and make a determination thereon within one hundred and twenty days of the receipt of such application. If final action has not occurred within such time, the Secretary shall inform the applicant of any pending issues and of actions required to resolve them.

(d) Denial of licenses; Secretary to refrain from denying to protect licensees from competition

The Secretary shall not deny such license in order to protect any existing licensee from competition.

(Pub. L. 98-365, title IV, § 401, July 17, 1984, 98 Stat. 459.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4242 of this title.

§ 4242. Licensing requirements for operation

(a) No person who is subject to the jurisdiction or control of the United States may, directly or through any subsidiary or affiliate, operate any private remote-sensing space system without a license pursuant to section 4241 of this title.

(b) Any license issued pursuant to this subchapter shall specify, at a minimum, that the licensee shall comply with all of the requirements of this chapter and shall—

(1) operate the system in such manner as to preserve and promote the national security of the United States and to observe and imple-

ment the international obligations of the United States in accordance with section 4277 of this title;

(2) make unenhanced data available to all potential users on a nondiscriminatory basis;

(3) upon termination of operations under the license, make disposition of any satellites in space in a manner satisfactory to the President;

(4) promptly make available all unenhanced data which the Secretary may request pursuant to section 4272 of this title;

(5) furnish the Secretary with complete orbit and data collection characteristics of the system, obtain advance approval of any intended deviation from such characteristics, and inform the Secretary immediately of any unintended deviation;

(6) notify the Secretary of any agreement the licensee intends to enter with a foreign nation, entity, or consortium involving foreign nations or entities;

(7) permit the inspection by the Secretary of the licensee's equipment, facilities, and financial records;

(8) surrender the license and terminate operations upon notification by the Secretary pursuant to section 4243(a)(1) of this title; and

(9)(A) notify the Secretary of any "value added" activities (as defined by the Secretary by regulation) that will be conducted by the licensee or by a subsidiary or affiliate; and

(B) if such activities are to be conducted, provide the Secretary with a plan for compliance with the provisions of this chapter concerning nondiscriminatory access.

(Pub. L. 98-365, title IV, § 402, July 17, 1984, 98 Stat. 459.)

§ 4243. Administrative authority of the Secretary; review of adverse action on license application; judicial review of final actions

(a) In order to carry out the responsibilities specified in this subchapter, the Secretary may—

(1) grant, terminate, modify, condition, transfer, or suspend licenses under this subchapter, and upon notification of the licensee may terminate licensed operations on an immediate basis, if the Secretary determines that the licensee has substantially failed to comply with any provision of this chapter, with any regulation issued under this chapter, with any terms, conditions, or restrictions of such license, or with any international obligations or national security concerns of the United States;

(2) inspect the equipment, facilities, or financial records of any licensee under this subchapter;

(3) provide penalties for noncompliance with the requirements of licenses or regulations issued under this subchapter, including civil penalties not to exceed $10,000 (each day of operation in violation of such licenses or regulations constituting a separate violation);

(4) compromise, modify, or remit any such civil penalty;

(5) issue subpenas for any materials, documents, or records, or for the attendance and testimony of witnesses for the purpose of conducting a hearing under this section;

(6) seize any object, record, or report where there is probable cause to believe that such object, record, or report was used, is being used, or is likely to be used in violation of this chapter or the requirements of a license or regulation issued thereunder; and

(7) make investigations and inquiries and administer to or take from any person an oath, affirmation, or affidavit concerning any matter relating to the enforcement of this chapter.

(b) Any applicant or licensee who makes a timely request for review of an adverse action pursuant to subsection (a)(1), (a)(3), or (a)(6) of this section shall be entitled to adjudication by the Secretary on the record after an opportunity for an agency hearing with respect to such adverse action. Any final action by the Secretary under this subsection shall be subject to judicial review under chapter 7 of title 5.

(Pub. L. 98-365, title IV, § 403, July 17, 1984, 98 Stat. 460.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4242 of this title.

§ 4244. Regulatory authority of the Secretary

The Secretary may issue regulations to carry out the provisions of this subchapter. Such regulations shall be promulgated only after public notice and comment in accordance with the provisions of section 553 of title 5.

(Pub. L. 98-365, title IV, § 404, July 17, 1984, 98 Stat. 461.)

§ 4245. Agency activities

(a) Licensing private remote-sensing space systems; conditions

A private sector party may apply for a license to operate a private remote-sensing space system which utilizes, on a space-available basis, a civilian United States Government satellite or vehicle as a platform for such system. The Secretary, pursuant to the authorities of this subchapter, may license such system if it meets all conditions of this subchapter and—

(1) the system operator agrees to reimburse the Government immediately for all related costs incurred with respect to such utilization, including a reasonable and proportionate share of fixed, platform, data transmission, and launch costs; and

(2) such utilization would not interfere with or otherwise compromise intended civilian Government missions, as determined by the agency responsible for such civilian platform.

(b) Offers of assistance by Secretary

The Secretary may offer assistance to private sector parties in finding appropriate opportunities for such utilization.

(c) Agreements by Federal agencies; utilization of systems

To the extent provided in advance by appropriation Acts, any Federal agency may enter

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into agreements for such utilization if such agreements are consistent with such agency's mission and statutory authority, and if such remote-sensing space system is licensed by the Secretary before commencing operation.

(d) Research and development

The provisions of this section do not apply to activities carried out under subchapter V of this chapter.

(e) Authority of Federal Communications Commission

Nothing in this subchapter shall affect the authority of the Federal Communications Commission pursuant to the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.).

(Pub. L. 98-365, title IV, § 405, July 17, 1984, 98 Stat. 461.)

REFERENCES IN TEXT

The Communications Act of 1934, referred to in subsec. (e), is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§ 151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

§ 4246. Termination of subchapter

If, five years after the expiration of the six-year period described in section 4224(a)(2) of this title, no private sector party has been licensed and continued in operation under the provisions of this subchapter, the authority of this subchapter shall terminate.

(Pub. L. 98-365, title IV, § 406, July 17, 1984, 98 Stat. 461.)

SUBCHAPTER V—RESEARCH AND DEVELOPMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4245 of this title.

§ 4261. Continued Federal research and development

(a) Research by National Aeronautics and Space Administration

(1) The Administrator of the National Aeronautics and Space Administration is directed to continue and to enhance such Administration's programs of remote-sensing research and development.

(2) The Administrator is authorized and encouraged to—

(A) conduct experimental space remote-sensing programs (including applications demonstration programs and basic research at universities);

(B) develop remote-sensing technologies and techniques, including those needed for monitoring the Earth and its environment; and

(C) conduct such research and development in cooperation with other Federal agencies and with public and private research entities (including private industry, universities, State and local governments, foreign governments, and international organizations) and to enter into arrangements (including joint ventures) which will foster such cooperation.

(b) Continuing programs conducted by Secretary of Commerce

(1) The Secretary is directed to conduct a continuing program of—

(A) research in applications of remote-sensing;

(B) monitoring of the Earth and its environment; and

(C) development of technology for such monitoring.

(2) Such program may include support of basic research at universities and demonstrations of applications.

(3) The Secretary is authorized and encouraged to conduct such research, monitoring, and development in cooperation with other Federal agencies and with public and private research entities (including private industry, universities, State and local governments, foreign governments, and international organizations) and to enter into arrangements (including joint ventures) which will foster such cooperation.

(c) Research programs by Departments of Agriculture and Interior

(1) In order to enhance the United States ability to manage and utilize its renewable and nonrenewable resources, the Secretary of Agriculture and the Secretary of the Interior are authorized and encouraged to conduct programs of research and development in the applications of remote sensing using funds appropriated for such purposes.

(2) Such programs may include basic research at universities, demonstrations of applications, and cooperative activities involving other Government agencies, private sector parties, and foreign and international organizations.

(d) Research programs by Federal agencies

Other Federal agencies are authorized and encouraged to conduct research and development on the use of remote sensing in fulfillment of their authorized missions, using funds appropriated for such purposes.

(e) Joint report to Congress

The Secretary and the Administrator of the National Aeronautics and Space Administration shall, within one year after July 17, 1984, and biennially thereafter, jointly develop and transmit to the Congress a report which includes (1) a unified national plan for remote-sensing research and development applied to the Earth and its atmosphere; (2) a compilation of progress in the relevant ongoing research and development activities of the Federal agencies; and (3) an assessment of the state of our knowledge of the Earth and its atmosphere, the needs for additional research (including research related to operational Federal remote-sensing space programs), and opportunities available for further progress.

(Pub. L. 98-365, title V, § 501, July 17, 1984, 98 Stat. 461.)

SIMILAR PROVISIONS

Provisions similar to those of subsec. (a) of this section were contained in Pub. L. 98-361, title I, § 108,

July 16, 1984, 98 Stat. 426, the National Aeronautics and Space Administration Authorization Act, 1985.

§ 4262. Use of experimental data

Data gathered in Federal experimental remote-sensing space programs may be used in related research and development programs funded by the Federal Government (including applications programs) and cooperative research programs, but not for commercial uses or in competition with private sector activities, except pursuant to section 4263 of this title.

(Pub. L. 98-365, title V, § 502, July 17, 1984, 98 Stat. 462.)

§ 4263. Sale of experimental data

Data gathered in Federal experimental remote-sensing space programs may be sold en bloc through a competitive process (consistent with national security interests and international obligations of the United States and in accordance with section 4277 of this title) to any United States entity which will market the data on a nondiscriminatory basis.

(Pub. L. 98-365, title V, § 503, July 17, 1984, 98 Stat. 463.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4262 of this title.

SUBCHAPTER VI—GENERAL PROVISIONS

§ 4271. Nondiscriminatory data availability; public availability of terms and conditions for data sales

(a) Any unenhanced data generated by any system operator under the provisions of this chapter shall be made available to all users on a nondiscriminatory basis in accordance with the requirements of this chapter.

(b) Any system operator shall make publicly available the prices, policies, procedures, and other terms and conditions (but, in accordance with section 4204(3)(C) of this title, not necessarily the names of buyers or their purchases) upon which the operator will sell such data.

(Pub. L. 98-365, title VI, § 601, July 17, 1984, 98 Stat. 463.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4214, 4222 of this title.

§ 4272. Archiving of data

(a) Statement of purpose

It is in the public interest for the United States Government—

(1) to maintain an archive of land remote-sensing data for historical, scientific, and technical purposes, including long-term global environmental monitoring;

(2) to control the content and scope of the archive; and

(3) to assure the quality, integrity, and continuity of the archive.

(b) Secretary to provide for data archiving

The Secretary shall provide for long-term storage, maintenance, and upgrading of a basic, global, land remote-sensing data set (hereinafter referred to as the "basic data set") and shall follow reasonable archival practices to assure proper storage and preservation of the basic data set and timely access for parties requesting data. The basic data set which the Secretary assembles in the Government archive shall remain distinct from any inventory of data which a system operator may maintain for sales and for other purposes.

(c) Determination of content of data set by Secretary

In determining the initial content of, or in upgrading, the basic data set, the Secretary shall—

(1) use as a baseline the data archived on July 17, 1984;

(2) take into account future technical and scientific developments and needs;

(3) consult with and seek the advice of users and producers of remote-sensing data and data products;

(4) consider the need for data which may be duplicative in terms of geographical coverage but which differ in terms of season, spectral bands, resolution, or other relevant factors;

(5) include, as the Secretary considers appropriate, unenhanced data generated either by the Landsat system, pursuant to subchapter III of this chapter, or by licensees under subchapter IV of this chapter;

(6) include, as the Secretary considers appropriate, data collected by foreign ground stations or by foreign remote-sensing space systems; and

(7) ensure that the content of the archive is developed in accordance with section 4277 of this title.

(d) Requests for data to archive by Secretary

Subject to the availability of appropriations, the Secretary shall request data needed for the basic data set and pay to the providing system operator reasonable costs for reproduction and transmission. A system operator shall promptly make requested data available in a form suitable for processing for archiving.

(e) Sale of archived data by system operators

Any system operator shall have the exclusive right to sell all data that the operator provides to the United States remote-sensing data archive for a period to be determined by the Secretary but not to exceed ten years from the date the data are sensed. In the case of data generated from the Landsat system prior to the implementation of the contract described in section 4212(a) of this title, any contractor selected pursuant to section 4212 of this title shall have the exclusive right to market such data on behalf of the United States Government for the duration of such contract. A system operator may relinquish the exclusive right and consent to distribution from the archive before the period of exclusive right has expired by terminating the offer to sell particular data.

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(f) Public domain of data after expiration of period of exclusive right to sell

After the expiration of such exclusive right to sell, or after relinquishment of such right, the data provided to the United States remote-sensing data archive shall be in the public domain and shall be made available to requesting parties by the Secretary at prices reflecting reasonable costs of reproduction and transmittal.

(g) Use of Government facilities by Secretary

In carrying out the functions of this section, the Secretary shall, to the extent practicable and as provided in advance by appropriation Acts, use existing Government facilities.

(Pub. L. 98-365, title VI, § 602, July 17, 1984, 98 Stat. 463.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4214, 4222, 4242 of this title.

§ 4273. Nonreproduction

Unenhanced data distributed by any system operator under the provisions of this chapter may be sold on the condition that such data will not be reproduced or disseminated by the purchaser.

(Pub. L. 98-365, title VI, § 603, July 17, 1984, 98 Stat. 464.)

§ 4274. Reimbursement for assistance

The Administrator of the National Aeronautics and Space Administration, the Secretary of Defense and the heads of other Federal agencies may provide assistance to system operators under the provisions of this chapter. Substantial assistance shall be reimbursed by the operator, except as otherwise provided by law.

(Pub. L. 98-365, title VI, § 604, July 17, 1984, 98 Stat. 464.)

§ 4275. Acquisition of equipment

The Secretary may, by means of a competitive process, allow a licensee under subchapter IV of this chapter or any other private party to buy, lease, or otherwise acquire the use of equipment from the Landsat system, when such equipment is no longer needed for the operation of such system or for the sale of data from such system. Officials of other Federal civilian agencies are authorized and encouraged to cooperate with the Secretary in carrying out the provisions of this section.

(Pub. L. 98-365, title VI, § 605, July 17, 1984, 98 Stat. 464.)

§ 4276. Radio frequency allocation

(a) Assignment of radio frequencies to Landsat

Within thirty days after July 17, 1984, the President (or the President's delegee, if any, with authority over the assignment of frequencies to radio stations or classes of radio stations operated by the United States) shall make available for nongovernmental use spectrum presently allocated to Government use, for use by United States Landsat and commercial remote-sensing space systems. The spectrum to be so made available shall conform to any applicable international radio or wire treaty or convention, or regulations annexed thereto. Within ninety days thereafter, the Federal Communications Commission shall utilize appropriate procedures to authorize the use of such spectrum for nongovernmental use. Nothing in this section shall preclude the ability of the Commission to allocate additional spectrum to commercial land remote-sensing space satellite system use.

(b) Filing application with Federal Communications Commission

To the extent required by the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.), an application shall be filed with the Federal Communications Commission for any radio facilities involved with the commercial remote-sensing space system.

(c) Time limits for granting frequencies

It is the intent of Congress that the Federal Communications Commission complete the radio licensing process under the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.), upon the application of any private sector party or consortium operator of any commercial land remote-sensing space system subject to this chapter, within one hundred and twenty days of the receipt of an application for such licensing. If final action has not occurred within one hundred and twenty days of the receipt of such an application, the Federal Communications Commission shall inform the applicant of any pending issues and of actions required to resolve them.

(d) Development and construction of systems; authority not required

Authority shall not be required from the Federal Communications Commission for the development and construction of any United States land remote-sensing space system (or component thereof), other than radio transmitting facilities or components, while any licensing determination is being made.

(e) Frequency allocations to be consistent with international obligations and public interest

Frequency allocations made pursuant to this section by the Federal Communications Commission shall be consistent with international obligations and with the public interest.

(Pub. L. 98-365, title VI, § 606, July 17, 1984, 98 Stat. 465.)

REFERENCES IN TEXT

The Communications Act of 1934, referred to in subsecs. (b) and (c), is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§ 151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

§ 4277. Consultation

(a) Consultation with Secretary of Defense on national security matters

The Secretary shall consult with the Secretary of Defense on all matters under this chap-

ter affecting national security. The Secretary of Defense shall be responsible for determining those conditions, consistent with this chapter, necessary to meet national security concerns of the United States and for notifying the Secretary promptly of such conditions.

(b) Consultations with Secretary of State on international obligations

(1) The Secretary shall consult with the Secretary of State on all matters under this chapter affecting international obligations. The Secretary of State shall be responsible for determining those conditions, consistent with this chapter, necessary to meet international obligations and policies of the United States and for notifying the Secretary promptly of such conditions.

(2) Appropriate Federal agencies are authorized and encouraged to provide remote-sensing data, technology, and training to developing nations as a component of programs of international aid.

(3) The Secretary of State shall promptly report to the Secretary any instances outside the United States of discriminatory distribution of data.

(c) Reimbursement of system operators for certain costs

If, as a result of technical modifications imposed on a system operator on the basis of national security concerns, the Secretary, in consultation with the Secretary of Defense or with other Federal agencies, determines that additional costs will be incurred by the system operator, or that past development costs (including the cost of capital) will not be recovered by the system operator, the Secretary may require the agency or agencies requesting such technical modifications to reimburse the system operator for such additional or development costs, but not for anticipated profits. Reimbursements may cover costs associated with required changes in system performance, but not costs ordinarily associated with doing business abroad.

(Pub. L. 98-365, title VI, § 607, July 17, 1984, 98 Stat. 465.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4204, 4222, 4242, 4263, 4272 of this title.

§ 4278. Authorization of appropriations

(a) There are authorized to be appropriated to the Secretary $295,000,000 for fiscal years 1985 through 1989, of which not more than $125,000,000 shall be available for fiscal years 1985 and 1986, for the purpose of carrying out the provisions of this chapter. Such sums shall remain available until expended, but shall not become available until the time periods specified in sections 4212(c) and 4223(c) of this title have expired.

(b) The authorization provided for under subsection (a) of this section shall be in addition to moneys authorized pursuant to title II of the National Aeronautics and Space Administration Authorization Act, 1983.

(Pub. L. 98-365, title VI, § 609, July 17, 1984, 98 Stat. 466; Pub. L. 99-62, July 11, 1985, 99 Stat. 118.)

REFERENCES IN TEXT

Title II of the National Aeronautics and Space Administration Authorization Act, 1983, referred to in subsec. (b), is title II of Pub. L. 97-324, Oct. 15, 1982, 96 Stat. 1601, as amended, which is set out as a note under section 1517 of this title.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-62 substituted "$295,000,000 for fiscal years 1985 through 1989, of which not more than $125,000,000 shall be available for fiscal years 1985 and 1986," for $75,000,000 for fiscal year 1985".

SUBCHAPTER VII—PROHIBITION OF COMMERCIALIZATION OF WEATHER SATELLITES

§ 4291. Prohibition

Neither the President nor any other official of the Government shall make any effort to lease, sell, or transfer to the private sector, commercialize, or in any way dismantle any portion of the weather satellite systems operated by the Department of Commerce or any successor agency.

(Pub. L. 98-365, title VII, § 701, July 17, 1984, 98 Stat. 466.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4292 of this title.

§ 4292. Future considerations

Regardless of any change in circumstances subsequent to July 17, 1984, even if such change makes it appear to be in the national interest to commercialize weather satellites, neither the President nor any official shall take any action prohibited by section 4291 of this title unless this subchapter has first been repealed.

(Pub. L. 98-365, title VII, § 702, July 17, 1984, 98 Stat. 467.)

CHAPTER 69—COOPERATIVE RESEARCH

Sec.
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Sec.

(g) Admissibility into evidence; disclosure of conduct; publication of notice; supporting or answering claims under antitrust laws.

§ 4301. Definitions

(a) For purposes of this chapter:

(1) The term "antitrust laws" has the meaning given it in subsection (a) of section 12 of this title, except that such term includes section 45 of this title to the extent that such section 45 of this title applies to unfair methods of competition.

(2) The term "Attorney General" means the Attorney General of the United States.

(3) The term "Commission" means the Federal Trade Commission.

(4) The term "person" has the meaning given it in subsection (a) of section 12 of this title.

(5) The term "State" has the meaning given it in section 15g(2) of this title.

(6) The term "joint research and development venture" means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of—

(A) theoretical analysis, experimentation, or systematic study of phenomena or observable facts,

(B) the development or testing of basic engineering techniques,

(C) the extension of investigative findings or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes,

(D) the collection, exchange, and analysis of research information, or

(E) any combination of the purposes specified in subparagraphs (A), (B), (C), and (D),

and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture, but does not include any activity specified in subsection (b) of this section.

(b) The term "joint research and development venture" excludes the following activities involving two or more persons:

(1) exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required to conduct the research and development that is the purpose of such venture,

(2) entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production or marketing by any person who is a party to such venture of any product, process, or service, other than the production or marketing of proprietary information developed through such venture, such as patents and trade secrets, and

(3) entering into any agreement or engaging in any other conduct—

(A) to restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture, or

(B) to restrict or require participation by such party in other research and development activities,

that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture.

(Pub. L. 98-462, § 2, Oct. 11, 1984, 98 Stat. 1815.)

SHORT TITLE

Section 1 of Pub. L. 98-462 provided that: "This Act [enacting this chapter] may be cited as the 'National Cooperative Research Act of 1984'."

§ 4302. Rule of reason standard

In any action under the antitrust laws, or under any State law similar to the antitrust laws, the conduct of any person in making or performing a contract to carry out a joint research and development venture shall not be deemed illegal per se; such conduct shall be judged on the basis of its reasonableness, taking into account all relevant factors affecting competition, including, but not limited to, effects on competition in properly defined, relevant research and development markets.

(Pub. L. 98-462, § 3, Oct. 11, 1984, 98 Stat. 1816.)

§ 4303. Limitation on recovery

(a) Amount recoverable

Notwithstanding section 15 of this title and in lieu of the relief specified in such section, any person who is entitled to recovery on a claim under such section shall recover the actual damages sustained by such person, interest calculated at the rate specified in section 1961 of title 28 on such actual damages as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney's fee pursuant to section 4304 of this title if such claim—

(1) results from conduct that is within the scope of a notification that has been filed under section 4305(a) of this title for a joint research and development venture, and

(2) is filed after such notification becomes effective pursuant to section 4305(c) of this title.

(b) Recovery by States

Notwithstanding section 15c of this title, and in lieu of the relief specified in such section, any State that is entitled to monetary relief on a claim under such section shall recover the total damage sustained as described in subsection (a)(1) of such section, interest calculated at the rate specified in section 1961 of title 28 on such total damage as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney's

fee pursuant to section 15c of this title if such claim—

(1) results from conduct that is within the scope of a notification that has been filed under section 4305(a) of this title for a joint research and development venture, and

(2) is filed after such notification becomes effective pursuant to section 4305(c) of this title.

(c) Conduct similar under State law

Notwithstanding any provision of any State law providing damages for conduct similar to that forbidden by the antitrust laws, any person who is entitled to recovery on a claim under such provision shall not recover in excess of the actual damages sustained by such person, interest calculated at the rate specified in section 1961 of title 28 on such actual damages as specified in subsection (d) of this section, and the cost of suit attributable to such claim, including a reasonable attorney's fee pursuant to section 4304 of this title if such claim—

(1) results from conduct that is within the scope of a notification that has been filed under section 4305(a) of this title for a joint research and development venture, and

(2) is filed after notification has become effective pursuant to section 4305(c) of this title.

(d) Interest

Interest shall be awarded on the damages involved for the period beginning on the earliest date for which injury can be established and ending on the date of judgment, unless the court finds that the award of all or part of such interest is unjust in the circumstances.

(e) Applicability

This section shall be applicable only if the challenged conduct of a person defending against a claim is not in violation of any decree or order, entered or issued after October 11, 1984, in any case or proceeding under the antitrust laws or any State law similar to the antitrust laws challenging such conduct as part of a joint research and development venture.

(Pub. L. 98–462, § 4, Oct. 11, 1984, 98 Stat. 1816.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4305 of this title.

§ 4304. Award of costs, including attorney's fees, to substantially prevailing party; offset

(a) Notwithstanding sections 15 and 26 of this title, in any claim under the antitrust laws, or any State law similar to the antitrust laws, based on the conducting of a joint research and development venture, the court shall, at the conclusion of the action—

(1) award to a substantially prevailing claimant the cost of suit attributable to such claim, including a reasonable attorney's fee, or

(2) award to a substantially prevailing party defending against any such claim the cost of suit attributable to such claim, including a reasonable attorney's fee, if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith.

(b) The award made under subsection (a) of this section may be offset in whole or in part by an award in favor of any other party for any part of the cost of suit, including a reasonable attorney's fee, attributable to conduct during the litigation by any prevailing party that the court finds to be frivolous, unreasonable, without foundation, or in bad faith.

(Pub. L. 98–462, § 5, Oct. 11, 1984, 98 Stat. 1817.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4303 of this title.

§ 4305. Disclosure of joint research and development venture

(a) Written notifications; filing

Any party to a joint research and development venture, acting on such venture's behalf, may, not later than 90 days after entering into a written agreement to form such venture or not later than 90 days after October 11, 1984, whichever is later, file simultaneously with the Attorney General and the Commission a written notification disclosing—

(1) the identities of the parties to such venture, and

(2) the nature and objectives of such venture.

Any party to such venture, acting on such venture's behalf, may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4303 of this title. In order to maintain the protections of section 4303 of this title, such venture shall, not later than 90 days after a change in its membership, file simultaneously with the Attorney General and the Commission a written notification disclosing such change.

(b) Publication; Federal Register; notice

Except as provided in subsection (e) of this section, not later than 30 days after receiving a notification filed under subsection (a) of this section, the Attorney General or the Commission shall publish in the Federal Register a notice with respect to such venture that identifies the parties to such venture and that describes in general terms the area of planned activity of such venture. Prior to its publication, the contents of such notice shall be made available to the parties to such venture.

(c) Effect of notice

If with respect to a notification filed under subsection (a) of this section, notice is published in the Federal Register, then such notification shall operate to convey the protections of section 4303 of this title as of the earlier of—

(1) the date of publication of notice under subsection (b) of this section, or

(2) if such notice is not so published within the time required by subsection (b) of this section, after the expiration of the 30-day period beginning on the date the Attorney General or the Commission receives the ap-

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plicable information described in subsection (a) of this section.

(d) Exemption; disclosure; information

Except with respect to the information published pursuant to subsection (b) of this section—

(1) all information and documentary material submitted as part of a notification filed pursuant to this section, and

(2) all other information obtained by the Attorney General or the Commission in the course of any investigation, administrative proceeding, or case, with respect to a potential violation of the antitrust laws by the joint research and development venture with respect to which such notification was filed,

shall be exempt from disclosure under section 552 of title 5, and shall not be made publicly available by any agency of the United States to which such section applies except in a judicial or administrative proceeding in which such information and material is subject to any protective order.

(e) Withdrawal of notification

Any person who files a notification pursuant to this section may withdraw such notification before notice of the joint research and development venture involved is published under subsection (b) of this section. Any notification so withdrawn shall not be subject to subsection (b) of this section and shall not confer the protections of section 4303 of this title on any person with respect to whom such notification was filed.

(f) Judicial review; inapplicable with respect to notifications

Any action taken or not taken by the Attorney General or the Commission with respect to notifications filed pursuant to this section shall not be subject to judicial review.

(g) Admissibility into evidence; disclosure of conduct; publication of notice; supporting or answering claims under antitrust laws

(1) Except as provided in paragraph (2), for the sole purpose of establishing that a person is entitled to the protections of section 4303 of this title, the fact of disclosure of conduct under subsection (a) of this section and the fact of publication of a notice under subsection (b) of this section shall be admissible into evidence in any judicial or administrative proceeding.

(2) No action by the Attorney General or the Commission taken pursuant to this section shall be admissible into evidence in any such proceeding for the purpose of supporting or answering any claim under the antitrust laws or under any State law similar to the antitrust laws.

(Pub. L. 98-462, § 6, Oct. 11, 1984, 98 Stat. 1818.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4303 of this title.

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CHAPTER 1—THE NATIONAL PARKS, MILITARY PARKS, MONUMENTS, AND SEASHORES

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SUBCHAPTER I—NATIONAL PARK SERVICE

§ 1. Service created; director; other employees

Short Title of 1983 Amendment

Pub. L. 98-141, § 1, Oct. 31, 1983, 97 Stat. 909, provided: "That this Act [amending sections 459b-8, 459g-7, and 460x-14 of this title and sections 872, 874, 875, 880, and 885 of Title 40, Public Buildings, Property, and Works, repealing section 433e of this title, and amending a provision set out as a note under section 433c of this title] may be cited as the 'Public Lands and National Parks Act of 1983'."

Section Referred to in Other Sections

This section is referred to in sections 1a-1, 1c, 3, 4, 19ff, 20, 20f, 21b, 45f, 79i, 80d, 81g, 81h, 90c, 108, 111c, 119, 158, 159b, 160f, 197, 201b, 205a, 221b, 222, 230e, 231c, 245, 254, 264, 271d, 272d, 273d, 281d, 282a, 283c, 284a, 291b, 342, 345, 346a-2, 355a, 391b-1, 396b, 396d, 397d, 398c, 401, 403-3, 403b, 404b, 406d-2, 407a, 407q, 408b, 409e, 410b, 410w, 410z-4, 410aa-2, 410bb-1, 410ee, 410ff-3, 410gg-2, 410hh-2, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 423h-2, 423*l*, 423o, 426m, 428d-3, 428o, 429a-2, 430m, 430w, 430cc, 430hh, 430*ll*, 430ss, 433b, 433j, 441c, 442, 445c, 447c, 450, 450e-1, 450n, 450q, 450t, 450y-1, 450y-6, 450bb-1, 450cc-1, 450dd-1, 450ee-1, 450ff-2, 450hh-2, 450jj-5, 450mm-3, 450*oo*-9, 450pp-1, 459a-1, 459b-6, 459c-4, 459d-4, 459h-4, 459i-5, 459j-4, 460, 460a-2, 460m-5, 460m-12, 460m-15, 460s-5, 460w-5, 460x-5, 460bb-3, 460cc-2, 460dd-3, 460ee, 460ff-3, 460ii-2, 460kk, 467b, 698c, 698i, 1133, 1902, 3125 of this title; title 30 section 1014; title 40 sections 319c, 803, 804; title 48 section 1705.

§ 1a-1. National Park System: administration; declaration of findings and purpose

References in Text

This Act, referred to in text, means Pub. L. 91-383, Aug. 18, 1970, 84 Stat. 825, as amended. As originally enacted, Pub. L. 91-383 contained sections 1 to 4, the first 3 of which enacted sections 1a-1 and 1a-2 and amended sections 1b and 1c of this title. Pub. L. 94-458 amended Pub. L. 91-383 by adding sections 5 to 12, which enacted sections 1a-3 to 1a-7, amended sections 17j, 460n-5, 463, 470a, and 559, and repealed sections 10, 10a, 17b-1, and 415 of this title. For complete classification of this Act to the Code, see Tables.

§ 1a-6. Law enforcement personnel within National Park System

References in Text

This Act, referred to in subsec. (d), is Pub. L. 91-383, Aug. 18, 1970, 84 Stat. 825, as amended. As originally enacted, Pub. L. 91-383 contained sections 1 to 4, the first 3 of which enacted sections 1a-1 and 1a-2 and amended sections 1b and 1c of this title. Pub. L. 94-458 amended Pub. L. 91-383 by adding sections 5 to 12, which enacted sections 1a-3 to 1a-7, amended sections 17j, 460n-5, 463, 470a, and 559, and repealed sections 10, 10a, 17b-1, and 415 of this title. For complete classification of this Act to the Code, see Tables.

Cross References

Park Police uniforms to display U.S. flag emblem or colors, see section 210a of Title 40, Public Buildings, Property, and Works.

§ 1a-8. Maintenance management system

(a) Implementation and elements

Beginning in fiscal year 1985, the National Park Service shall implement a maintenance management system into the maintenance and operations programs of the National Park System. For purposes of this section the term "maintenance management system" means a system that contains but is not limited to the following elements:

(1) a work load inventory of assets including detailed information that quantifies for all assets (including but not limited to buildings, roads, utility systems, and grounds that must be maintained) the characteristics affecting the type of maintenance work performed;

(2) a set of maintenance tasks that describe the maintenance work in each unit of the National Park System;

(3) a description of work standards including frequency of maintenance, measurable quality standard to which assets should be maintained, methods for accomplishing work, required labor, equipment and material resources, and expected worker production for each maintenance task;

(4) a work program and performance budget which develops an annual work plan identifying maintenance needs and financial resources to be devoted to each maintenance task;

(5) a work schedule which identifies and prioritizes tasks to be done in a specific time period and specifies required labor resources;

(6) work orders specifying job authorizations and a record of work accompliished which can be used to record actual labor and material costs; and

(7) reports and special analyses which compare planned versus actual accomplishments and costs and can be used to evaluate maintenance operations.

(b) Reports to Congressional committees; contents

The National Park Service shall transmit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, at the end of each fiscal year, a copy of a report summarizing the status of implementation of a maintenance management system until such a system has been implemented.

The report shall incorporate the following information:

(1) the number of units in the National Park System that have implemented a maintenance management system during the period;

(2) contract costs versus management efficiencies achieved;

(3) the total amount of dollars spent on contracts for services; and

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(4) estimation of the total value of benefits achieved through greater management efficiency.

(Pub. L. 98-540, § 4, Oct. 24, 1984, 98 Stat. 2719.)

§ 1e. National Capital region arts and cultural affairs; grant program

There is hereby established under the direction of the National Park Service a program to support and enhance artistic and cultural activities in the National Capital region. Eligibility for grants shall be limited to organizations of demonstrated national significance which meet at least two of the additional following criteria:

(1) an annual operating budget in excess of $1,000,000;

(2) an annual audience or visitation of at least 200,000 people;

(3) a paid staff of at least one hundred persons; or

(4) eligibility under the Historic Sites Act of 1935 (16 U.S.C. 462(e)).

Public or private colleges and universities are not eligible for grants under this program.

Grants awarded under this section may be used to support general operations and maintenance, security, or special projects. No organization may receive a grant in excess of $500,000 in a single year.

The Director of the National Park Service shall establish an application process, appoint a review panel of five qualified persons, at least a majority of whom reside in the National Capital region, and develop other program guidelines and definitions as required.

The contractual amounts required for the support of Ford's Theater and Wolf Trap Farm Park for the Performing Arts shall be available within the amount herein provided without regard to any other provisions of this section.

(Pub. L. 98-473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1844.)

REFERENCES IN TEXT

The Historic Sites Act of 1935, referred to in text, which is also known as the Historic Sites, Buildings, and Antiquities Act, is act Aug. 21, 1935, ch. 593, 49 Stat. 666, as amended, which is classified to sections 461 to 467 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

CROSS REFERENCES

National Capital arts and cultural affairs grant program under the direction of the National Endowment for the Humanities, see section 956a of Title 20, Education.

§ 2. National parks, reservations, and monuments; supervision

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1c, 3, 4, 19ff, 20, 20f, 21b, 45f, 79i, 80d, 81g, 81h, 90c, 108, 111c, 119, 158, 159b, 160f, 197, 201b, 205a, 221b, 222, 230e, 231c, 245, 254, 264, 271d, 272d, 273d, 281d, 282a, 283c, 284a, 291b, 342, 345, 346a-2, 355a, 391b-1, 396b, 396d, 397d, 401, 403-3, 403b, 404b, 406d-2, 407a, 408b, 409e, 410b, 410w, 410z-4, 410ee, 410ff-3, 410gg-2, 410hh-2, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 423h-2, 423*l*, 423*o*, 426m, 428d-3, 428*o*, 429a-2, 430m, 430cc, 430hh, 430*ll*, 430ss, 433b, 433j, 441c, 442, 445c, 447c, 450, 450e-1, 450q, 450t, 450y-1, 450y-6, 450bb-1, 450cc-1, 450dd-1, 450ee-1, 450ff-2, 450hh-2, 450jj-5, 450mm-3, 450*oo*-9, 450pp-1, 459a-1, 459b-6, 459c-6, 459d-4, 459h-4, 459i-5, 460, 460m-5, 460m-12, 460m-15, 460s-5, 460w-5, 460bb-3, 460cc-2, 460dd-3, 460ee, 460ii-2, 460kk, 467b, 698c, 698i, 1133, 3125 of this title; title 30 section 1014; title 40 sections 319c, 803, 804; title 48 section 1705.

§ 3. Rules and regulations of national parks, reservations, and monuments; timber; leases

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1c, 4, 19ff, 20, 20f, 21b, 22, 45f, 47-1, 61, 63, 79i, 80d, 81g, 81h, 90c, 108, 111c, 112, 119, 158, 159b, 160f, 195, 197, 201b, 205a, 221b, 222, 230e, 231c, 245, 254, 264, 271d, 272d, 273d, 281d, 282a, 283c, 284a, 291b, 342, 345, 346a-2, 355a, 391b-1, 394, 396b, 396d, 397d, 401, 403-3, 403b, 404b, 406d-2, 407a, 408b, 409e, 410b, 410w, 410z-4, 410ee, 410ff-3, 410gg-2, 410hh-2, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 423h-2, 423*l*, 423*o*, 426m, 428d-3, 428*o*, 429a-2, 430m, 430cc, 430hh, 430*ll*, 430ss, 433b, 433j, 441c, 442, 445c, 447c, 450, 450e-1, 450q, 450t, 450y-1, 450y-6, 450bb-1, 450cc-1, 450dd-1, 450ee-1, 450ff-2, 450hh-2, 450jj-5, 450mm-3, 450*oo*-9, 450pp-1, 459a-1, 459b-6, 459c-6, 459d-4, 459h-4, 459i-5, 460, 460m-5, 460m-12, 460m-15, 460s-5, 460w-5, 460bb-3, 460cc-2, 460dd-3, 460ee, 460ii-2, 460kk, 467b, 698c, 698i, 1133, 3125 of this title; title 30 section 1014; title 40 sections 319c, 803, 804; title 48 section 1705.

§ 4. Rights-of-way through public lands

The provisions of sections 1, 2, and 3 of this title shall not affect or modify the provisions of section 79 of this title.

(Aug. 25, 1916, ch. 408, § 4, 39 Stat. 536.)

REFERENCES IN TEXT

Section 79 of this title, referred to in text, was in the original a reference to act Feb. 15, 1901, ch. 372, 31 Stat. 790. For further details, see Codification note set out under section 79 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1c, 3, 19ff, 20, 20f, 21b, 45f, 79i, 80d, 81g, 81h, 90c, 108, 111c, 119, 158, 159b, 160f, 197, 201b, 205a, 221b, 222, 230e, 231c, 245, 254, 264, 271d, 272d, 273d, 281d, 282a, 283c, 284a, 291b, 342, 345, 346a-2, 355a, 391b-1, 396b, 396d, 397d, 401, 403-3, 403b, 404b, 406d-2, 407a, 408b, 409e, 410b, 410w, 410z-4, 410ee, 410ff-3, 410gg-2, 410hh-2, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 423h-2, 423*l*, 423*o*, 426m, 428d-3, 428*o*, 429a-2, 430m, 430cc, 430hh, 430*ll*, 430ss, 433b, 433j, 441c, 442, 445c, 447c, 450, 450e-1, 450q, 450t, 450y-1, 450y-6, 450bb-1, 450cc-1, 450dd-1, 450ee-1, 450ff-2, 450hh-2, 450jj-5, 450mm-3, 450*oo*-9, 450pp-1, 459a-1, 459b-6, 459c-6, 459d-4, 459h-4, 459i-5, 460, 460m-5, 460m-12, 460m-15, 460s-5, 460w-5, 460bb-3, 460cc-2, 460dd-3, 460ee, 460ii-2, 460kk, 467b, 698c, 698i, 1133, 3125 of this title; title 30 section 1014; title 40 sections 319c, 803, 804; title 48 section 1705.

§ 18b. Advisory committee for promotion of tourist travel; expenses

The Secretary of Commerce is authorized to create an advisory committee to consist of a representative from each of the Departments of State, Agriculture, and Commerce, the Interstate Commerce Commission, and the Department of Transportation, as may be designated by such Departments or agencies, respectively, and such additional members, representatives of the various sections of the Nation, including

transportation and accommodations agencies, not to exceed six members, to be appointed by the Secretary of Commerce to serve at his pleasure. Meetings of the committee shall be held at the request of the Secretary for the purpose of making recommendations concerning the promotion of tourist travel under the provisions of sections 18 to 18d of this title. The members of the committee shall receive no compensation for their services as members, but shall be entitled to reimbursement for such necessary travel and other expenses in connection with their attendance at committee meetings as may be authorized or approved by the Secretary.

(As amended Oct. 4, 1984, Pub. L. 98-443, § 9(o), 98 Stat. 1708.)

AMENDMENTS

1984—Pub. L. 98-443 struck out "the Civil Aeronautics Authority," after "the Interstate Commerce Commission,".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board under this section were transferred to the Secretary of Transportation by section 1553(a)(10) of Title 49, Appendix, Transportation, effective Jan. 1, 1985. The Civil Aeronautics Authority, created and established by act June 23, 1938, ch. 601, title II, § 201, 52 Stat. 980, was redesignated as the Civil Aeronautics Board by Reorg. Plan No. IV of 1940, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1235. Said section 201 of act June 23, 1938 and section 7 of Reorg. Plan No. IV of 1940, were repealed by Pub. L. 85-726, title XIV, § 1401(b), (c), Aug. 23, 1958, 72 Stat. 806. The Civil Aeronautics Board was continued as an agency of the United States by section 201 of Pub. L. 85-726 which is classified to section 1321 of Title 49, Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18a, 18c, 18d of this title; title 49 App. section 1553.

SUBCHAPTER II—VOLUNTEERS IN PARKS PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1246, 1250 of this title.

§ 18g. Creation of program

The Secretary of the Interior (hereinafter referred to as the Secretary) is authorized to recruit, train, and accept without regard to the civil service classification laws, rules, or regulations the services of individuals without compensation as volunteers for or in aid of interpretive functions, or other visitor services or activities in and related to areas administered by the Secretary through the National Park Service. In accepting such services of individuals or volunteers, the Secretary shall not permit the use of volunteers in hazardous duty or law enforcement work or in policymaking processes, or to displace any employee: *Provided*, That the services of individuals whom the Secretary determines are skilled in performing hazardous activities may be accepted.

(As amended Pub. L. 98-540, § 1(b), Oct. 24, 1984, 98 Stat. 2718.)

AMENDMENTS

1984—Pub. L. 98-540 restricted the activities of volunteers except in the case of skilled individuals.

§ 18j. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subchapter, but not more than $1,000,000 shall be appropriated in any one year.

(As amended Pub. L. 98-540, § 1(a), Oct. 24, 1984, 98 Stat. 2718.)

AMENDMENTS

1984—Pub. L. 98-540 substituted "$1,000,000" for "$250,000".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1(a) of Pub. L. 98-540 provided in part that: "The amendment made by this subsection [amending this section] shall apply with respect to fiscal years beginning after September 30, 1984."

SUBCHAPTER IV—CONCESSIONS FOR ACCOMMODATIONS, FACILITIES, AND SERVICES IN AREAS ADMINISTERED BY NATIONAL PARK SERVICE

§ 20b. Protection of concessioner's investment

TERMINATION FOR CAUSE CLAUSES IN CONCESSIONAIRE CONTRACTS

Provisions prohibiting the Park Service from entering into future concessionaire contracts, including renewals, that do not include a termination for cause clause that provides for possible extinguishment of possessory interests excluding depreciated book value of concessionaire investments without compensation were contained in the following appropriation acts:

Pub. L. 99-190, § 101(d) [title I, § 100], Dec. 19, 1985, 99 Stat. 1224, 1228.

Pub. L. 98-473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1842.

Pub. L. 98-146, title I, § 100, Nov. 4, 1983, 97 Stat. 923.

SUBCHAPTER VI—SEQUOIA AND YOSEMITE NATIONAL PARKS

§ 46. Yosemite National Park; lands segregated from and included in Sierra National Forest; rights-of-way over

All those tracts or parcels of ground described in section 471c of this title, but not included within the metes and bounds of the land hereinafter described are included and made a part of the Sierra National Forest, namely: The tracts of land in the State of California known and described as follows: Beginning at the point where the middle of the channel of the South Fork of the Merced River intersects the line between sections 3 and 4, township 4 south, range 20 east, Mount Diablo base and meridian; thence northerly along section lines through the middle of townships 3 and 4 south, range 20 east, to the northwest corner of section 3, township 3 south, range 20 east; thence westerly

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along township line to the southwest corner of section 33, township 2 south, range 20 east; thence northerly along section lines to the northwest corner of section 21, said township; thence westerly along section lines to the southwest corner of section 18, said township; thence southerly along range line to the southeast corner of the northeast quarter of section 24, township 2 south, range 19 east; thence westerly to the southwest corner of the northeast quarter of section 24, said township; thence southerly to the southeast corner of the southwest quarter of section 24, said township; thence westerly along section lines to the southwest corner of section 23, said township; thence northerly along section lines to the northwest corner of the southwest quarter of section 14, said township; thence easterly to the northeast corner of the southeast quarter of section 14, said township; thence northerly along section line to the northwest corner of section 13, said township; thence easterly along section line to the northeast corner of section 13, said township; thence northerly along range line to the northwest corner of the southwest quarter of section 7, township 2, south, range 20 east; thence easterly to the northeast corner of the southeast quarter of section 7, said township; thence southerly along section line to the northwest corner of section 17, said township; thence easterly along section lines to the northeast corner of section 16, said township; thence northerly along section lines to the northwest corner of section 3, said township; thence westerly along township line to the southwest corner of section 33, township 1 south, range 20 east; thence northerly along section lines to the northwest corner of section 21, said township; thence westerly along section lines to the southwest corner of section 18, said township; thence northerly along range line to the northwest corner of section 6, said township; thence westerly along Mount Diablo base line to the southwest corner of section 34, township 1 north, range 19 east; thence northerly along section lines through the middle of townships 1 and 2 north, range 19 east, to the point of intersection with the summit of the divide between Cherry Creek on the west and Eleanor and Fall Creeks on the east; thence along the summit of said divide in a northeasterly direction to the summit of the Sierra Nevada Mountains; thence southeasterly along the summit of the Sierra Nevada Mountains to the divide between the Merced and San Joaquin Rivers; thence southwesterly along said divide to the point of intersection with the south boundary of township 4 south, range 23 east, Mount Diablo base and meridian; thence westerly along township line to the point of intersection with the middle of the channel of the South Fork of the Merced River; thence westerly down the middle of said river to the place of beginning. The lands above described are reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and set apart as reserved forest lands, subject to all the provisions of sections 55, 61, 471c and 471d of this title. The Secretary of the Interior may require the payment of such price as he may deem proper for privileges on the land herein segregated from the Yosemite National Park and made a part of the Sierra National Forest accorded under section 79 of this title, relating to rights of way over certain parks, reservations, and other lands, and other acts concerning rights of way over public lands; and the moneys received from the privileges accorded on the lands herein segregated and included in the Sierra National Forest shall be paid into the Treasury of the United States as provided by law. The forest lands herein set aside and reserved shall be known as the "Yosemite National Park."

(Feb. 7, 1905, ch. 547, § 1, 33 Stat. 702.)

REFERENCES IN TEXT

Section 79 of this title, referred to in text, was in the original a reference to act Feb. 15, 1901, ch. 372, 31 Stat. 790. For further details, see Codification note set out under section 79 of this title.

ADDITIONS TO YOSEMITE NATIONAL PARK

The following provisions authorized the addition of lands to Yosemite National Park:

Pub. L. 98–425, title I, § 105(a)(2), (d), Sept. 28, 1984, 98 Stat. 1626.

§ 47. Additional lands excluded from Yosemite National Park and added to Sierra National Forest

That portion of the Yosemite National Park lying between the boundary line described in section 46 of this title and the line next herein described is excluded from said park and the said portion so described added to and made a part of the Sierra National Forest, to wit: Beginning at the point on the line between sections 35 and 36, township 4 south, range 21 east, where same intersects the middle of the channel of the South Fork of the Merced River; thence north on section line to the southwest corner of section 25; thence west on section lines to the southwest corner of section 28; thence north on section line to the northwest corner of section 28; thence west on section line to the quarter-section corner between sections 20 and 29; thence north through the middle of section 20 to the center thereof; thence east through the middle of section 20 to the quarter-section corner between sections 20 and 21; thence north on section line to the quarter-section corner between sections 16 and 17; thence west through middle of section 17 to the center thereof; thence north through the middle of sections 17, 8, and 5 to the quarter-section corner of north boundary of section 5 on township boundary, all in township 4 south, range 21 east; thence north through the middle of section 32, township 3 south, range 21 east, to the center thereof; thence west through the middle of section 32, said township, and section 36, township 3 south, range 20 east, to the quarter-section corner between sections 35 and 36; thence north on section line to the quarter-section corner between sections 25 and 26; thence east through the middle of section 25 to the center thereof; thence north through the middle of sections 25 and 24 to the center of section 24; thence west through the middle of sections 24, 23, and 22 to the quarter-section corner between sections 21 and 22, township 3 south, range 20 east, on the present western

boundary of the Yosemite National Park. The above-indicated portion of land so made a part of the Sierra National Forest shall be subject to all of the Acts of Congress with relation thereto. The Secretary of the Interior may require the payment of such price as he may deem proper for privileges on the land herein segregated from the Yosemite National Park and made a part of the Sierra National Forest accorded under section 79 of this title, relating to rights-of-way over certain parks, reservations, and other lands, and other sections concerning right-of-way over public lands. In the grant of any right-of-way for railway purposes across the lands placed under this measure within the Sierra National Forest it shall be stipulated that no logs or timber shall be hauled over the same without the consent of the Secretary of the Interior and under regulations to be promulgated by him.

(June 11, 1906, No. 27, § 1, 34 Stat. 831.)

REFERENCES IN TEXT

Section 79 of this title, referred to in text, was in the original a reference to act Feb. 15, 1901, ch. 372, 31 Stat. 790. For further details, see Codification note set out under section 79 of this title.

§ 79. Rights-of-way for public utilities

The Secretary of the Interior is authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant national parks, California, for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed fifty feet on each side of the marginal limits thereof, or not to exceed fifty feet on each side of the center line of such pipes and pipe lines, electrical, telegraph, and telephone lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: *Provided*, That such permits shall be allowed within or through any of said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the Department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: *Provided further*, That all permits given hereunder for telegraph and telephone purposes shall be subject to the provision of title sixty-five of the Revised Statutes of the United States, and amendments thereto, regulating rights of way for telegraph companies over the public domain: *And provided further*, That any permission given by the Secretary of the Interior under the provisions of this section may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public land, reservation, or park.

(Feb. 15, 1901, ch. 372, 31 Stat. 790.)

CODIFICATION

Section, insofar as it relates to rights-of-way through public lands, forests, and reservations, and the Yosemite, Sequoia, and General Grant National Parks is also set out as section 959 of Title 43, Public Lands, and insofar as it related to rights-of-way through national forests was also set out as section 522 of this title which was omitted from the Code.

GENERAL GRANT NATIONAL PARK ABOLISHED

Act Mar. 4, 1940, ch. 40, § 2, 54 Stat. 43, which is classified to section 80a of this title, abolished the General Grant National Park and added the lands to the Kings Canyon National Park as the General Grant grove section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4, 46, 47, 193, 225, 349, 393 of this title.

SUBCHAPTER VII—REDWOOD NATIONAL PARK

§ 79c. Acquisition of land

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 79c-1, 79e, 79f, 79g, 79k, 79m of this title.

§ 79g. Contract authorization within prescribed cost limits; installments: duration, interest; provisions for payment of judgments and compromise settlements applicable to judgments against United States

[*See main edition for text of* (*a*)]

(b) Judgments against the United States, including final partial judgments and compromise settlements of claims referred to the Attorney General for defense of suits against the United States, for amounts in excess of the deposit in court in actions under section 79c of this title shall be paid in accordance with the provisions of section 1304 of title 31, and section 2414 of title 28. Final partial judgments and compromise settlements are payable only after certification by the Attorney General to the Comptroller General that it is in the interest of the United States to do so.

(As amended Pub. L. 99-151, title II, § 203, Nov. 13, 1985, 99 Stat. 807.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-151, in amending subsec. (b) generally, added provisions relating to final partial judgments and compromise settlements, substituted reference to actions under section 79c of this title for reference to condemnation actions, and deleted reference to section 2517 of title 28.

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SUBCHAPTER VIII—KINGS CANYON NATIONAL PARK

§ 80. Establishment; boundaries; preservation of rights of citizens

ADDITIONS TO KINGS CANYON NATIONAL PARK

The following provision authorized the addition of lands to Kings Canyon National Park:
Pub. L. 98-425, title I, § 105(a)(1), Sept. 28, 1984, 98 Stat. 1626.

SUBCHAPTER XXI—ROCKY MOUNTAIN NATIONAL PARK

§ 193. Claims and rights under land laws not affected; rights-of-way for irrigation and other purposes

Nothing herein contained shall affect any valid claim, location, or entry under the land laws of the United States, existing on January 26, 1915, whether for homestead, mineral, right-of-way, or any other purpose whatsoever, or shall affect the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land. Whenever consistent with the primary purposes of the park, section 79 of this title shall be applicable to the lands included within the park.

(Jan. 26, 1915, ch. 19, § 2, 38 Stat. 800; Jan. 26, 1931, ch. 47, § 7, 46 Stat. 1044.)

REFERENCES IN TEXT

Section 79 of this title, referred to in text, was in the original a reference to act Feb. 15, 1901, ch. 372, 31 Stat. 790. For further details, see Codification note set out under section 79 of this title.

SUBCHAPTER XXIV—GRAND CANYON NATIONAL PARK

§ 225. Laws applicable; easements and rights-of-ways

Whenever consistent with the primary purposes of Grand Canyon National Park, section 79 of this title and subsequent Acts shall be applicable to the lands included within the park. The Secretary of the Interior may, in his discretion and upon such conditions as he may deem proper, grant easements or rights of way for railroads upon or across the park.

(Feb. 26, 1919, ch. 44, § 5, 40 Stat. 1178.)

REFERENCES IN TEXT

Section 79 of this title, referred to in text, was in the original a reference to act Feb. 15, 1901, ch. 372, 31 Stat. 790. For further details, see Codification note set out under section 79 of this title.

SUBCHAPTER XXXIV—GUADALUPE MOUNTAINS NATIONAL PARK

§ 283b. Establishment of park and property rights

REFERENCES IN TEXT

The Mineral Leasing Act for Acquired Lands, referred to in subsec. (c), is act Aug. 7, 1947, ch. 513, 61 Stat. 913, as amended, which is classified generally to chapter 7 (§ 351 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 351 of Title 30 and Tables.

SUBCHAPTER XXXV—WOLF TRAP FARM PARK

§ 284c. Financial assistance for reconstruction of Center

INCREASE IN LOAN CEILING; FUNDS REIMBURSED TO FOUNDATION TO BE REPAID TO SECRETARY

Pub. L. 99-190, § 101(d) [title I, § 100], Dec. 19, 1985, 99 Stat. 1224, 1231, provided: "That the loan ceiling established under section 4(b) of Public Law 97-310, the Wolf Trap Farm Park Act, as amended [16 U.S.C. 284c(b)], is increased to $9,500,000. Notwithstanding the loan repayment provisions of Public Law 97-310 [16 U.S.C. 284c to 284j], the dollar amount of items paid for by the Wolf Trap Foundation from funds provided by the additional loan authority in this section that is subsequently reimbursed to the Foundation by a court award or insurance settlement shall be repaid to the Secretary of the Interior by the Wolf Trap Foundation within 90 days of the date of the court award or insurance settlement."

SUBCHAPTER XXXIX—DENALI NATIONAL PARK

§ 349. Rights-of-way

Whenever consistent with the primary purposes of Denali National Park, section 79 of this title shall be applicable to the lands included within the park.

(Feb. 26, 1917, ch. 121, § 3, 39 Stat. 938; Dec. 2, 1980, Pub. L. 96-487, title II, § 202(3)(a), 94 Stat. 2382.)

REFERENCES IN TEXT

Section 79 of this title, referred to in text, was in the original a reference to act Feb. 15, 1901, ch. 372, 31 Stat. 790. For further details, see Codification note set out under section 79 of this title.

§ 353a. Repealed. Pub. L. 97-468, title VI, § 615(a)(1), Jan. 14, 1983, 96 Stat. 2577

Section, acts Mar. 12, 1914, ch. 37, § 1, as added Mar. 29, 1940, ch. 74, 54 Stat. 80; Dec. 2, 1980, Pub. L. 96-487, title II, § 202(3)(a), 94 Stat. 2382, authorized the appropriation of not to exceed $30,000 for the construction and operation of facilities for visitors and residents to the Denali National Park in Alaska.

EFFECTIVE DATE OF REPEAL

Section repealed effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(a) of Pub. L. 97-468.

SUBCHAPTER XLI—HAWAII NATIONAL PARK

§ 393. Entries under land laws; rights-of-way; lands excluded

Nothing herein contained shall affect any valid claim, location, or entry existing under the land laws of the United States prior to August 1, 1916, whether for homestead, mineral, right-of-way, or any other purpose whatsoever, or shall affect the rights of any such claimant, locator, or entryman to the full use and enjoyment of his land. Whenever consistent with the primary purposes of the park, section 79 of this title shall be applicable to the lands included within the park. The Secretary

of the Interior may, in his discretion and upon such conditions as he may deem wise, grant easements or rights-of-way for steam, electric, or similar transportation upon or across the park. No lands located within the park boundaries held in private or municipal ownership prior to August 1, 1916, shall be affected by or subject to the provisions of this section and sections 391 and 394 of this title.

(Aug. 1, 1916, ch. 264, §§ 2, 3, 39 Stat. 433, 434.)

REFERENCES IN TEXT

Section 79 of this title, referred to in text, was in the original a reference to act Feb. 15, 1901, ch. 372, 31 Stat. 790. For further details, see Codification note set out under section 79 of this title.

SUBCHAPTER XLII-A—KALOKO-HONOKOHAU NATIONAL HISTORICAL PARK

§ 396d. Park

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 396e, 396f of this title.

§ 396f. Acquisition of private lands; creation of surplus property accounts; transfer and sale of accounts

Notwithstanding any other provision of law, the Secretary of the Interior is authorized and shall seek to acquire the private lands described in section 396d(a) of this title, by crediting a surplus property account, to be established in the name of each landowner, in the amount of the acquisition price for such landowner's lands. The National Park Service shall update the existing appraisals for the parcels and, based on the approved appraised values, shall negotiate with the landowners for acquisition prices. Each owner may, using such credits in his surplus property account, bid, as any other bidder for surplus property, wherever located, in accordance with the Federal Property and Administrative Services Act of 1949 [40 U.S.C. 471 et seq.]. The Administrator of the General Services Administration shall establish each landowner's surplus property account and shall adjust the credits in such accounts to reflect successful bids under this section. Title to the lands described in this section shall pass to the Government at the time of establishment of the surplus property accounts. The credits in any of the surplus property accounts may be transferred or sold in whole or in part at any time by the landowner to any other party, thereby vesting such party with all the rights of the landowner, and after such transfer, the landowner shall notify the Administrator of the transfer. At any time the Secretary may purchase the balance of any surplus property account subject to the availability of appropriated funds.

(Pub. L. 98-146, title III, § 317, Nov. 4, 1983, 97 Stat. 954.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in text, is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of that Act relating to management and disposal of Government property are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

SUBCHAPTER LIX-F—ALASKAN NATIONAL PARKS

§ 410hh-1. Additions to existing areas

The following units of the National Park System are hereby expanded:

[*See main edition for text of (1) and (2)*]

(3)(a) Mount McKinley National Park, by the addition of an area containing approximately two million four hundred and twenty-six thousand acres of public land, and approximately one million three hundred and thirty thousand acres of additional public land is hereby established as Denali National Preserve, both as generally depicted on map numbered DENA-90,007, and dated July 1980 and the whole is hereby redesignated as Denali National Park and Preserve. The park additions and preserve shall be managed for the following purposes, among others: To protect and interpret the entire mountain massif, and additional scenic mountain peaks and formations; and to protect habitat for, and populations of fish and wildlife including, but not limited to, brown/grizzly bears, moose, caribou, Dall sheep, wolves, swans and other waterfowl; and to provide continued opportunities, including reasonable access, for mountain climbing, mountaineering and other wilderness recreational activities. Subsistence uses by local residents shall be permitted in the additions to the park where such uses are traditional in accordance with the provisions in subchapter II of chapter 51 of this title.

[*See main edition for text of (b) and (c)*]

(As amended Pub. L. 97-468, title VI, § 615(b)(5), Jan. 14, 1983, 96 Stat. 2578.)

AMENDMENTS

1983—Subsec. (3)(a). Pub. L. 97-468 struck out provision that the portion of the Alaska Railroad right-of-way within the park be subject to such laws and regulations applicable to the protection of fish and wildlife and other park values as the Secretary, with the concurrence of the Secretary of Transportation, might determine.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-468 became effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97-468.

SUBCHAPTER LIX-H—KALAUPAPA NATIONAL HISTORICAL PARK

§ 410jj-3. Acquisition of lands and interests

REFERENCES IN TEXT

Subsection (c) of section 460*l*-22, referred to in subsec. (a), was redesignated subsection (d) and a new subsection (c) was added by Pub. L. 98-506, § 2, Oct. 19, 1984, 98 Stat. 2338.

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SUBCHAPTER LIX-J—WOMEN'S RIGHTS NATIONAL HISTORICAL PARK

§ 410*ll*. Establishment

[*See main edition for text of (a) and (b)*]

(c) Designation; composition

To carry out the purpose of this section there is hereby established the Women's Rights National Historical Park (hereinafter in this section referred to as the "park"). The park shall consist initially of the following designated sites in Seneca Falls and Waterloo, New York:

[*See main edition for text of (1) to (7)*]

(8) McClintock House and related structures, 14 and 16 East Williams Street, Waterloo; and

(9) Hunt House, 401 East Main Street, Waterloo.

(d) Acquisition of lands and interests

The Secretary is authorized to acquire by donation, purchase with donated or appropriated funds, transfer from any other Federal agency, or exchange lands and interests therein within sites designated as part of the park, except that the Secretary may not acquire the fee simple title to the land comprising the sites designated in paragraphs (7) and (9) of subsection (c) of this section. Lands and interests therein owned by a State or political subdivision thereof may be acquired only by donation. Within two years of the acquisition of the property listed in subsection (c)(8) of this section the Secretary shall have removed all structures from the property that are not relevant to the historic integrity of the McClintock House.

[*See main edition for text of (e) to (i)*]

(As amended Pub. L. 98-402, Aug. 28, 1984, 98 Stat. 1478.)

AMENDMENTS

1984—Subsec. (c)(8). Pub. L. 98-402, § 1(a), substituted "McClintock House and related structures, 14 and 16 East Williams Street" for "McClintock House, 16 East Williams Street".

Subsec. (d). Pub. L. 98-402, § 1(b), substituted "paragraphs (7) and (9)" for "paragraphs (7) through (9)", and added "Within two years of the acquisition of the property listed in subsection (c)(8) of this section the Secretary shall have removed all structures from the property that are not relevant to the historic integrity of the McClintock House."

SUBCHAPTER LXI—NATIONAL AND INTERNATIONAL MONUMENTS AND MEMORIALS

§ 431. National monuments; reservation of lands; relinquishment of private claims

BLACK CANYON OF THE GUNNISON NATIONAL MONUMENT

The boundaries for the Black Canyon of the Gunnison National Monument were established by Pub. L. 98-357, July 13, 1984, 98 Stat. 397.

§ 433c. Acceptance of donations of lands and funds; acquisition of land

AUTHORIZATION OF APPROPRIATIONS

Section 4 of Pub. L. 92-568, as amended by Pub. L. 95-625, title I, § 101(21), Nov. 10, 1978, 92 Stat. 3472; Pub. L. 98-141, § 7(a), Oct. 31, 1983, 97 Stat. 910; Pub. L. 98-181, title I, § 1401, Nov. 30, 1983, 97 Stat. 1294, provided that: "There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act [enacting section 433f-1, amending sections 433a to 433c and 433e, and repealing section 433d of this title, and enacting provisions set out as a note hereunder], but not more than $370,000 shall be appropriated for the acquisition of lands and interests in lands and not more than $10,500,000 shall be appropriated for development. The sums authorized in this section shall be available for acquisition and development undertaken subsequent to the approval of this Act [such sections]."

§ 433e. Repealed. Pub. L. 98-141, § 7(b), Oct. 31, 1983, 97 Stat. 910

Section, act June 2, 1936, ch. 477, § 5, 49 Stat. 1395; Oct. 26, 1972, Pub. L. 92-568, § 1, 86 Stat. 1181, provided that employees of the Perry's Victory Memorial Commission on June 2, 1936, could, in the discretion of the Secretary of the Interior, be employed by the National Park Service in the administration, protection, and development of the memorial.

§ 450hh-1. Designation; acquisition of additional lands; lands excluded

Upon a determination by the Secretary of the Interior that sufficient land and interests in land situated on the island have been acquired by the United States for the establishment of a suitable national monument, such acquired property, and any Federal properties on the island that are not required for other public purposes, shall be established as the "Saint Croix Island International Historic Site". An order of the Secretary of the Interior, constituting notice of such determination, shall be published in the Federal Register. Following establishment of the national monument, other properties situated upon the island may become a part of the monument upon acquisition of title to such properties by the United States, and Federal properties situated upon the island, upon a determination by the agency administering such Federal properties that they are no longer required by that agency, may be transferred to the Secretary of the Interior by such agency to become a part of the national monument. Notice of the addition of any such properties to the monument shall be published in the Federal Register by the Secretary of the Interior. There shall be excluded from the national monument, for such time as the United States Coast Guard shall consider it to be necessary, any portion of the island which is being used and which is required for the purposes of a Coast Guard light station.

(As amended Sept. 25, 1984, Pub. L. 98-422, 98 Stat. 1615.)

CHANGE OF NAME

Pub. L. 98-422 provided:

"That (a) in recognition of its historic significance to the United States and Canada, the Saint Croix Island National Monument in the State of Maine is hereby

redesignated as the 'Saint Croix Island International Historic Site'.

"(b) Any reference in a law, map, regulation, document, record, or other paper of the United States to such monument shall be deemed to be a reference to the 'Saint Croix Island International Historic Site'.

"(c) Nothing in this joint resolution shall affect the status of the 'Saint Croix Island International Historic Site' as a national monument and a unit of the National Park System."

§ 450jj. Jefferson National Expansion Memorial; authorization

Short Title of 1984 Amendment

Pub. L. 98-398, title II, § 203, Aug. 24, 1984, 98 Stat. 1472, provided that: "This title [enacting sections 450jj-3 to 450jj-9 of this title, enacting provisions set out as a note under section 450jj-3 of this title, and amending provisions set out as a note under this section] may be cited as the 'Jefferson National Expansion Memorial Amendments Act of 1984'."

Authorization of Appropriations; Federal and Non-Federal Ratio of Expenditures

Section 11, formerly section 4, of act May 17, 1954, as amended by Pub. L. 85-936, Sept. 6, 1958, 72 Stat. 1794; Pub. L. 89-269, Oct. 19, 1965, 79 Stat. 991; Pub. L. 94-578, title II, § 201(6), Oct. 21, 1976, 90 Stat. 2733; and renumbered and amended by Pub. L. 98-398, title II, § 201(b), Aug. 24, 1984, 98 Stat. 1471, provided that:

"(a) There is hereby authorized to be appropriated not to exceed $32,750,000 to carry out the purposes of this Act [sections 450jj to 450jj-9 of this title]: *Provided*, That funds authorized to be appropriated by this Act shall be expended by the United States for construction of the memorial in the ratio of $3 of Federal funds for each $1 of money contributed hereafter by the city of Saint Louis or other non-Federal source for purposes of the memorial, and for such purposes the Secretary is authorized to accept from the said city or other non-Federal sources, and to utilize for purposes of this Act, any money so contributed: *Provided further*, That the value of any land hereafter contributed by the city of Saint Louis shall be excluded from the computation of the city's share.

"(b) For the purposes of the East Saint Louis portion of the Memorial, there is hereby authorized to be appropriated not to exceed $1,000,000 for land acquisition and not to exceed $1,250,000 for development, of which not to exceed $500,000 shall be available only for landscaping and only for expenditure in the ratio of one dollar of Federal funds to one dollar of non-Federal funds: *Provided*, That no funds authorized to be appropriated hereunder may be appropriated prior to the approval by the Secretary of the plan developed by the Commission.

"(c) Funds appropriated under subsection (b) of this section shall remain available until expended.

"(d) Authority to enter into contracts or make payments under this Act shall be effective for any fiscal year only to the extent that appropriations are available for that purpose."

Section Referred to in Other Sections

This section is referred to in sections 450jj-1, 450jj-2, 450jj-4, 450jj-5, 450jj-6, 450jj-8, 450jj-9 of this title.

§ 450jj-1. Construction of memorial

(a) Plan; contracts; employment and compensation of personnel

The memorial authorized herein shall be constructed in general, in accordance with the plan approved by the United States Territorial Expansion Memorial Commission on May 25, 1948. The Secretary of the Interior is authorized to enter into such contracts as may be necessary to carry out the purposes of sections 450jj to 450jj-9 of this title. The Secretary is also authorized to employ, in his discretion, by contract or otherwise, landscape architects, architects, engineers, sculptors, artists, other expert consultants, or firms, partnerships, or associations thereof, and to include in any such contract provision for the utilization of the services and facilities, and the payment of the travel and other expenses, of their respective organizations, in accordance with the usual customs of the several professions and at the prevailing rates for such services and facilities, without regard to the civil-service laws or regulations, chapter 51 and subchapter III of chapter 53 of title 5, section 5 of title 41, or any other law or regulation relating to either employment or compensation.

[*See main edition for text of* (b) *and* (c); *credit*]

References in Text

Herein, referred to in subsec. (a), means act May 17, 1954, which is generally classified to sections 450jj to 450jj-9 of this title. For complete classification of this Act to the Code, see Tables.

Codification

Subsec. (a) is set out in this supplement to correct translations appearing in the main edition.

§ 450jj-2. Railroad agreement as condition precedent to undertaking memorial project

References in Text

Herein, referred to in text, means act May 17, 1954, which is generally classified to sections 450jj to 450jj-9 of this title. For complete classification of this Act to the Code, see Tables.

§ 450jj-3. Designation of additional land by Secretary; manner of acquiring additional land

(a) The Secretary of the Interior is further authorized to designate for addition to the Jefferson National Expansion Memorial (hereinafter in sections 450jj-3 to 450jj-9 of this title referred to as the "Memorial") not more than one hundred acres in the city of East Saint Louis, Illinois, contiguous with the Mississippi River and between the Eads Bridge and the Poplar Street Bridge, as generally depicted on the map entitled "Boundary Map, Jefferson National Expansion Memorial", numbered MWR-366/80,004, and dated February 9, 1984, which shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. The additional acreage authorized by this section is in recognition of the historical significance of the Memorial site to the westward expansion of the United States and the historical linkage of this site on the Mississippi in both Missouri and Illinois to such expansion, the international recognition of the Gateway Arch, designed by Eero Saarinen, as one of the world's great sculptural and architectural achievements, and the increasing use of the Memorial site by millions of people from all over the United States and the world.

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(b) Within the area designated in accordance with this section, the Secretary of the Interior may acquire lands and interests in lands by donation, purchase with donated or appropriated funds, or exchange, except that lands owned by the State of Illinois or any political subdivision thereof may be acquired only by donation.

(May 17, 1954, ch. 204, § 4, as added Aug. 24, 1984, Pub. L. 98-398, title II, § 201(a), 98 Stat. 1467.)

PRIOR PROVISIONS

A prior section 4 of act May 17, 1954, was renumbered as section 11 by Pub. L. 98-398, title II, § 201(b)(1), Aug. 24, 1984, 98 Stat. 1472, and is set out as a note under section 450jj of this title.

COMPLIANCE WITH CONGRESSIONAL BUDGET ACT

Section 202 of title II of Pub. L. 98-398 provided that: "Any provision of this title (or any amendment made by this title) [enacting sections 450jj-3 to 450jj-9 of this title and enacting and amending provisions set out as notes under section 450jj of this title] which, directly or indirectly, authorizes the enactment of new budget authority described in section 402(a) of the Congressional Budget Act of 1974 [2 U.S.C. 652(a)] shall be effective only for fiscal years beginning after September 30, 1983."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 450jj-4, 450jj-5, 450jj-9 of this title.

§ 450jj-4. Transfer of land

Where appropriate in the discretion of the Secretary of the Interior, he may transfer by lease or otherwise, to any appropriate person or governmental entity, land owned by the United States (or any interest therein) which has been acquired by the Secretary under section 450jj-3 of this title. Any such transfer shall be consistent with the management plan for the area and with the requirements of section 460*l*-22 of this title and shall be subject to such conditions and restrictions as the Secretary deems necessary to carry out the purposes of sections 450jj to 450jj-9 of this title, including terms and conditions which provide for—

(1) the continuation of existing uses of the land which are compatible with the Memorial,

(2) the protection of the important historical resources of the leased area, and

(3) the retention by the Secretary of such access and development rights as the Secretary deems necessary to provide for appropriate visitor use and resource management.

In transferring any lands or interest in lands under this section, the Secretary shall take into account the views of the Commission established under section 450jj-7 of this title.

(May 17, 1954, ch. 204, § 5, as added Aug. 24, 1984, Pub. L. 98-398, title II, § 201(a), 98 Stat. 1468.)

PRIOR PROVISIONS

A prior section 5 of act May 17, 1954, which contained a limitation on the appropriation authorization and a prohibition on expenditure of Government funds and which was classified as a note under section 450jj of this title, was eliminated by the amendment made by Pub. L. 85-936, Sept. 6, 1958, 72 Stat. 1794.

§ 450jj-5. Administration of Memorial; cooperation with State and local governments and private sector

Lands and interests in lands acquired pursuant to section 450jj-3 of this title shall, upon acquisition, be a part of the Memorial. The Secretary of the Interior shall administer the Memorial in accordance with sections 450jj to 450jj-9 of this title and the provisions of law generally applicable to units of the national park system, including sections 1 and 2 to 4 of this title and sections 461 to 467 of this title. In the development, management, and operation of that portion of the Memorial which is added to the Memorial under section 450jj-3 of this title, the Secretary shall, to the maximum extent feasible, utilize the assistance of State and local government agencies and the private sector. For such purposes, the Secretary may, consistent with the management plan for the area, enter into cooperative agreements with the State, with any political subdivision of the State, or with any person. Any such cooperative agreement shall, at a minimum, establish procedures for providing notice to the Secretary of any action proposed by the State, such political subdivision, or such person, which may affect the area.

(May 17, 1954, ch. 204, § 6, as added Aug. 24, 1984, Pub. L. 98-398, title II, § 201(a), 98 Stat. 1468.)

§ 450jj-6. Jefferson National Expansion Memorial Commission

(a) Establishment

There is hereby established the Jefferson National Expansion Memorial Commission (hereinafter in sections 450jj-6 to 450jj-9 of this title referred to as the "Commission").

(b) Composition

The Commission shall be composed of twenty members as follows:

(1) The county executive of Saint Louis County, Missouri, ex officio, or a delegate.

(2) The chairman of the Saint Clair County Board of Supervisors, Illinois, ex officio, or a delegate.

(3)(A) The executive director of the Bi-State Development Agency, Saint Louis, Missouri, ex officio, or a delegate.

(B) A member of the Bi-State Development Agency, Saint Louis, Missouri, who is not a resident of the same State as the executive director of such agency, appointed by a majority of the members of such agency, or a delegate.

(4) The mayor of the city of East Saint Louis, Illinois, ex officio, or a delegate.

(5) The mayor of Saint Louis, Missouri, ex officio, or a delegate.

(6) The Governor of the State of Illinois, ex officio, or a delegate.

(7) The Governor of the State of Missouri, ex officio, or a delegate.

(8) The Secretary of the Interior, ex officio, or a delegate.

(9) The Secretary of Housing and Urban Development, ex officio, or a delegate.

(10) The Secretary of Transportation, ex officio, or a delegate.

(11) The Secretary of the Treasury, ex officio, or a delegate.

(12) The Secretary of Commerce, ex officio, or a delegate.

(13) The Secretary of the Smithsonian Institution, ex officio, or a delegate.

(14) Three individuals appointed by the Secretary of the Interior from a list of individuals nominated by the mayor of East Saint Louis, Illinois, and the Governor of the State of Illinois.

(15) Three individuals appointed by the Secretary of the Interior from a list of individuals nominated by the mayor of Saint Louis, Missouri, and the Governor of the State of Missouri.

Individuals nominated for appointment under paragraphs (14) and (15) shall be individuals who have knowledge and experience in one or more of the fields of parks and recreation, environmental protection, historic preservation, cultural affairs, tourism, economic development, city planning and management, finance, or public administration. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(c) Term of office of members

(1) Except as provided in paragraphs (2) and (3), members of the Commission shall be appointed for terms of three years.

(2) Of the members of the Commission first appointed under paragraphs (14) and (15) of subsection (c) of this section—

(A) two shall be appointed for terms of one year;

(B) two shall be appointed for terms of two years; and

(C) two shall be appointed for terms of three years;

as designated by the Secretary of the Interior at the time of appointment.

(3) Any member of the Commission appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member of the Commission may serve after the expiration of his term until his successor has taken office.

(d) Compensation of members; travel expenses and per diem

Members of the Commission shall receive no pay on account of their service on the Commission, but while away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.

(e) Chairperson

The chairperson of the Commission shall be elected by the members of the Commission.

(f) Assistance from Federal agencies

Upon request of the Commission, the head of any Federal agency represented by members on the Commission may detail any of the personnel or [1] such agency, or provide administrative services to the Commission to assist the Commission in carrying out the Commission's duties under section 450jj-7 of this title.

(g) Gifts, bequests, or donations

The Commission may, for the purposes of carrying out the Commission's duties under section 450jj-7 of this title, seek, accept, and dispose of gifts, bequests, or donations of money, personal property, or services, received from any source.

(h) Termination; extension

(1) Except as provided in paragraph (2), the Commission shall terminate on the day occurring ten years after August 24, 1984.

(2) The Secretary of the Interior may extend the life of the Commission for a period of not more than five years beginning on the day referred to in paragraph (1) if the Commission determines that such extension is necessary in order for the Commission to carry out sections 450jj to 450jj-9 of this title.

(May 17, 1954, ch. 204, § 7, as added Aug. 24, 1984, Pub. L. 98-398, title II, § 201(a), 98 Stat. 1469.)

§ 450jj-7. Development and management plan for East Saint Louis, Illinois, portion of Memorial

(a) Within two years from August 24, 1984, the Commission shall develop and transmit to the Secretary a development and management plan for the East Saint Louis, Illinois, portion of the Memorial. The plan shall include—

(1) measures for the preservation of the area's resources;

(2) indications of types and general intensities of development (including visitor circulation and transportation patterns, systems, and modes) associated with public enjoyment and use of the area, including general locations, timing of implementation, and cost estimates;

(3) identification of any implementation commitments for visitor carrying capacities for all areas of the area;

(4) indications of potential modifications to the external boundaries of the area, the reasons therefore,[2] and cost estimates;

(5) measures and commitments for insuring that the development, management, and operation of the area in the State of Illinois are compatible with the portion of the Memorial in the State of Missouri;

(6) opportunities and commitments for cooperative activities in the development, management, and operation of the East Saint Louis portion of the Memorial with other Federal, State, and local agencies, and the private sector; and

(7) effective and appropriate ways to increase local participation in the management of the East Saint Louis portion of the Memorial to help reduce the day-to-day operational and management responsibilities of the Na-

[1] So in original. Probably should be "of".

[2] So in original. Probably should be "therefor,".

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tional Park Service and to increase opportunities for local employment.

(b) The plan shall also identify and include—

(1) needs, opportunities, and commitments for the aesthetic and economic rehabilitation of the entire East Saint Louis, Illinois, waterfront and adjacent areas, in a manner compatible with and complementary to, the Memorial, including the appropriate commitments and roles of the Federal, State, and local governments and the private sector; and

(2) cost estimates and recommendations for Federal, State, and local administrative and legislative actions.

In carrying out its duties under this section, the Commission shall take into account Federal, State, and local plans and studies respecting the area, including the study by the National Park Service on the feasibility of a museum of American ethnic culture to be a part of any development plans for the Memorial.

(May 17, 1954, ch. 204, § 8, as added Aug. 24, 1984, Pub. L. 98-398, title II, § 201(a), 98 Stat. 1470.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 450jj-4, 450jj-6, 450jj-8 of this title.

§ 450jj-8. Approval of plan by Secretary; transmission of notice of approval to Congressional committees

(a) Upon completion of the plan, the Commission shall transmit the plan to the secretary [3] for his review and approval of its adequacy and appropriateness. In order to approve the plan, the Secretary must be able to find affirmatively that:

(1) The plan addresses all elements outlined in section 450jj-7 of this title;

(2) The plan is consistent with the Saint Louis, Missouri, portion of the Memorial;

(3) There are binding commitments to fund land acquisition and development, including visitor circulation and transportation systems and modes, in amounts sufficient to completely implement the plan as recommended by the Commission from sources other than funds authorized to be appropriated in sections 450jj to 450jj-9 of this title; and

(4) There are binding commitments to fund or provide the equivalent of all costs in excess of $350,000 per annum for the continued management, operation, and protection of the East Saint Louis, Illinois, portion of the Memorial.

(b) The Secretary shall transmit in writing a notice of his approval and his certification as to the existence and nature of funding commitments contained in the approved plan to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate.

(May 17, 1954, ch. 204, § 9, as added Aug. 24, 1984, Pub. L. 98-398, title II, § 201(a), 98 Stat. 1471.)

[3] So in original. Probably should be "Secretary".

§ 450jj-9. Activities in Memorial area pending submission of plan

Pending submission of the Commission's plan, any Federal entity conducting or supporting significant activities directly affecting East Saint Louis, Illinois, generally and the site specifically referred to in section 450jj-3 of this title shall—

(1) consult with the Secretary of the Interior and the Commission with respect to such activities;

(2) cooperate with the Secretary of the Interior and the Commission in carrying out their duties under sections 450jj to 450jj-9 of this title, and to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(3) to the maximum extent practicable, conduct or support such activities in a manner which the Secretary determines will not have an adverse effect on the Memorial.

(May 17, 1954, ch. 204, § 10, as added Aug. 24, 1984, Pub. L. 98-398, title II, § 201(a), 98 Stat. 1471.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 450jj-1, 450jj-2, 450jj-3, 450jj-4, 450jj-5, 450jj-6, 450jj-8 of this title.

SUBCHAPTER LXIII—NATIONAL SEASHORE RECREATIONAL AREAS

§ 459b-8. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 459b to 459b-8 of this title; except that no more than $42,917,575 shall be appropriated for the acquisition of land and waters and improvements thereon, and interests therein, and incidental costs relating thereto, in accordance with the provisions of such sections.

(As amended Pub. L. 98-141, § 3, Oct. 31, 1983, 97 Stat. 909.)

AMENDMENTS

1983—Pub. L. 98-141 substituted "$42,917,575" for "$33,500,000".

§ 459e. Fire Island National Seashore

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-482, § 1, Oct. 17, 1984, 98 Stat. 2255, provided: "That this Act [amending sections 459e-1 and 459e-2 of this title] may be cited as the 'Fire Island National Seashore Amendments Act of 1984'."

§ 459e-1. Acquisition of property

[See main edition for text of (a) to (g)]

(h) Sale of property acquired by condemnation; excepted properties; proceeds available for acquisition of property

(1)(A) The Secretary shall sell any property described in subparagraph (B) of this paragraph acquired by condemnation under sections 459e to 459e-9 of this title to the highest bidder; except that—

(i) no property shall be sold at less than its fair market value; and

(ii) no property shall be sold unless it is sold subject to covenants or other restrictions that will ensure that the use of such property conforms—

(I) to the standards specified in regulations issued under section 459e-2(a) of this title which are in effect at the time of such sale, and

(II) to any approved zoning ordinance or amendment thereof to which such property is subject.

(B) The property referred to in subparagraph (A) of this paragraph is any property within the boundaries of the national seashore as delineated on the map mentioned in section 459e of this title except—

(i) property within the Dune district referred to in subsection (g) of this section;

(ii) beach or waters and adjoining land within the exempt communities referred to in the first sentence of subsection (e) of this section; and

(iii) property within the eight-mile area described in the second sentence of subsection (e) of this section; and

(iv) any property acquired prior to October 1, 1982, that the Secretary determines should be retained to further the purpose of sections 459e to 459e-9 of this title.

(2) Notwithstanding any other provision of law, all moneys received from sales under paragraph (1) of this subsection may be retained and shall be available to the Secretary, without further appropriation, only for purposes of acquiring property under sections 459e to 459e-9 of this title.

(i) Injunctive relief; termination

(1) Upon or after the commencement of any action for condemnation with respect to any property under sections 459e to 459e-9 of this title, the Secretary, through the Attorney General of the United States, may apply to the United States District Court for the Eastern District of New York for a temporary restraining order or injunction to prevent any use of, or construction upon, such property that—

(A) fails, or would result in a failure of such property, to conform to the standards specified in regulations issued under section 459e-2(a) of this title in effect at the time such use or construction began; or

(B) in the case of undeveloped tracts in the Dune district referred to in subsection (g) of this section, would result in such undeveloped property not being maintained in its natural state.

(2) Any temporary restraining order or injunction issued pursuant to such an application shall terminate in accordance with the provisions of section 459e-2(g) of this title.

(As amended Pub. L. 98-482, § 2, Oct. 17, 1984, 98 Stat. 2255.)

REFERENCES IN TEXT

Section 459e-8, included within "sections 459e to 459e-9" referred to in subsecs. (a), (e), (f), (h), (i), was omitted from the Code.

AMENDMENTS

1984—Subsecs. (h), (i). Pub. L. 98-482 added subsecs. (h) and (i).

§ 459e-2. Zoning regulations

[*See main edition for text of* (a)]

(b) Commercial or industrial use prohibition; size, location or use restrictions for commercial, residential, and other structures; reconciliation of population with protection of natural resoruces

The standards specified in such regulations shall have the object of (1) prohibiting new commercial or industrial uses, other than commercial or industrial uses which the Secretary considers are consistent with the purposes of sections 459e to 459e-9 of this title, of all property within the national seashore, and (2) promoting the protection and development for purposes of sections 459e to 459e-9 of this title of the land within the national seashore by means of limitations or restrictions on the size, location or use of any commercial, residential, and other structures. In accomplishing these objectives, such standards shall seek to reconcile the population density of the seashore on October 17, 1984, with the protection of the natural resources of the Seashore [1] consistent with the purposes for which it has been established as provided by sections 459e to 459e-9 of this title.

[*See main edition for text of* (c) *and* (d)]

(e) Termination of suspension of authority for acquisition by condemnation because of nonconforming variances and uses

In the case of any property, including improved property but excluding undeveloped property in the Dune district referred to in section 459e-1(g) of this title, with respect to which the Secretary's authority to acquire by condemnation has been suspended under sections 459e to 459e-9 of this title if—

(1) such property is, after October 17, 1984, made the subject of a variance under, or becomes for any reason an exception to, any applicable zoning ordinance approved under this section; and

(2) such variance or exception results, or will result, in such property being used in a manner that fails to conform to any applicable standard contained in regulations of the Secretary issued pursuant to this section and in effect at the time such variance or exception took effect;

then the suspension of the Secretary's authority to acquire such property by condemnation shall automatically cease.

[*See main edition for text of* (f)]

(g) Injunctive relief; termination

Notwithstanding any other provision of sections 459e to 459e-9 of this title, the Secretary of the Interior, acting through the Attorney General of the United States, may apply to the

[1] So in original. Probably should be "seashore".

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United States District Court for the Eastern District of New York for a temporary restraining order or injunction to prohibit the use of, including construction upon, any property within the seashore in a manner that—

(1) will cause or is likely to cause significant harm to the natural resources of the seashore, or

(2) is inconsistent with the purposes for which the seashore was established.

Except to the extent the Court may deem necessary in extraordinary circumstances, no such order or injunction shall continue in effect for more than one hundred and eighty days. During the period of such order or injunction, the Secretary shall diligently and in good faith negotiate with the owner of the property to assure that following termination of the order or injunction, the inconsistent use is abated or the significant harm to the natural resources is mitigated.

(As amended Pub. L. 98-482, §§ 3-5, Oct. 17, 1984, 98 Stat. 2256.)

REFERENCES IN TEXT

Section 459e-8, included within "sections 459e to 459e-9" referred to in subsecs. (a), (b), (d), (e), (g), was omitted from the Code.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-482, § 4, substituted "by means of limitations or restrictions on the size, location or use of any commerical, residential, and other structures" for "by means of acreage, frontage, and setback requirements" and required that the standards seek to reconcile the population density of the seashore on Oct. 17, 1984, with the protection of the natural resources of the seashore.

Subsec. (e). Pub. L. 98-482, § 3, designated part of existing provisions as pars. (1) and (2), made the provisions applicable to any property, and excluded undeveloped property in the Dune district.

Subsec. (g). Pub. L. 98-482, § 5, added subsec. (g).

§ 459g-7. Authorization of appropriations; master plan to Congressional committees; time; contents

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of sections 459g to 459g-7 of this title, not to exceed $13,903,000 for acquisition of lands and interests therein, of which no more than $1,000,000 may be expended for acquisition of lands owned by Core Banks Club Properties, Incorporated. For development of essential public facilities there are authorized to be appropriated not more than $2,935,000. On or before January 1, 1978, the Secretary shall develop and transmit to the Committees on Interior and Insular Affairs of the United States Congress a final master plan for the full development of the seashore consistent with the preservation objectives of sections 459g to 459g-7 of this title, indicating—

[*See main edition for text of (1) to (3)*]

(As amended Pub. L. 98-141, § 4, Oct. 31, 1983, 97 Stat. 909.)

AMENDMENTS

1983—Pub. L. 98-141 substituted "$13,903,000" for "$7,903,000".

§ 459i. Cumberland Island National Seashore; establishment; boundary revisions; notification of Congressional committees, publication in Federal Register

In order to provide for public outdoor recreation use and enjoyment of certain significant shoreline lands and waters of the United States, and to preserve related scenic, scientific and historical values, there is established in the State of Georgia the Cumberland Island National Seashore (hereinafter referred to as the "seashore") consisting of the area generally depicted on the drawing entitled "Boundary Map, Cumberland Island National Seashore", numbered CUIS 40,000E, and dated January 1978, which shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. The Secretary of the Interior (hereinafter referred to as the "Secretary") may after notifying the Committees on Interior and Insular Affairs of the United States House of Representatives and United States Senate in writing, make minor adjustments in the boundary of the seashore from time to time by publication of a revised drawing or other boundary description in the Federal Register, but the total acreage within the boundaries shall not exceed forty thousand five hundred acres.

(As amended Pub. L. 98-170, Nov. 29, 1983, 97 Stat. 1116.)

AMENDMENTS

1983—Pub. L. 98-170 substituted "CUIS 40,000E" for "CUIS 40,000D".

SUBCHAPTER LXVIII—NATIONAL CONSERVATION RECREATIONAL AREAS

§ 460k-3. Charges and fees; permits; regulations; penalties; enforcement

AMENDMENT OF SECTION

Pub. L. 98-473, title II, §§ 221, 235(a)(1), Oct. 12, 1984, 98 Stat. 2028, 2031, as amended, provided that, effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 (Nov. 1, 1987), this section is amended by deleting "petty offense (18 U.S.C. 1)" and substituting "misdemeanor". See Effective Date note set out under section 3551 of Title 18, Crimes and Criminal Procedure.

SUBCHAPTER LXIX—OUTDOOR RECREATION PROGRAMS

PART B—LAND AND WATER CONSERVATION FUND

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1c, 398f, 429b-4, 460*l*-5a, 460y-9, 460ll-4, 469h, 470b, 471i, 577h, 1225, 1247, 1249, 1251, 1273, 1278, 1282, 1534, 3505 of this title; title 7 section 1011; title 26 section 9503; title 40 section 885; title 40 App. section 214; title 42 sections 1962c-2, 3534; title 43 sections 1457a, 1712; title 46 section 13101.

§ 460*l*–8. Financial assistance to States

REFERENCES IN TEXT

The Housing Act of 1961, referred to in subsec. (g), is Pub. L. 87-70, June 30, 1961, 75 Stat. 149, as amended. Title VII of the Housing Act of 1961 was classified generally to chapter 8C (§ 1500 et seq.) of Title 42, The Public Health and Welfare, and was omitted from the Code pursuant to section 5316 of Title 42 which terminated authority to make grants or loans under title VII of that Act after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title of 1961 Amendment note set out under section 1701 of Title 12, Banks and Banking, and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 460*l*–17, 1250 of this title; title 42 section 3338.

§ 460*l*–9. Allocation of land and water conservation fund moneys for Federal purposes

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 160k, 429b, 460*l*–10a, 460*l*–17, 460p–2, 460v–7, 460ii–4, 541e, 543a of this title.

PART C—WATER RESOURCES PROJECTS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 43 sections 508, 1527, 1541.

PART D—LAND TRANSFERS

§ 460*l*–22. Conveyance of property and interests in property in national park system and miscellaneous areas

[*See main edition for text of* (a) *and* (b)]

(c) Solid waste disposal operations prohibited; exceptions; regulations

In order to protect the air, land, water, and natural and cultural values of the National Park System and the property of the United States therein, no solid waste disposal site (including any site for the disposal of domestic or industrial solid wastes) may be operated within the boundary of any unit of the National Park System, other than—

(1) a site which was operating as of September 1, 1984, or

(2) a site used only for disposal of wastes generated within that unit of the park system so long as such site will not degrade any of the natural or cultural resources of such park unit.

The Secretary of the Interior shall promulgate regulations to carry out the provisions of this subsection, including reasonable regulations to mitigate the adverse effects of solid waste disposal sites in operation as of September 1, 1984, upon property of the United States.

(d) Proceeds credited to land and water conservation fund

The proceeds received from any conveyance under this section shall be credited to the land and water conservation fund in the Treasury of the United States.

(As amended Pub. L. 98-506, § 2, Oct. 19, 1984, 98 Stat. 2338.)

AMENDMENTS

1984—Subsecs. (c), (d). Pub. L. 98-506 added subsec. (c) and redesignated former subsec. (c) as (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1c, 410bb-1, 410jj-3, 450jj-4, 460*l*-5a of this title.

SUBCHAPTER LXXII—LAKE MEAD NATIONAL RECREATION AREA

§ 460n–8. United States magistrate: appointment; functions; practice and procedure; probation; fees

AMENDMENT OF SECTION

Pub. L. 98-473, title II, §§ 222, 235(a)(1), Oct. 12, 1984, 98 Stat. 2028, 2031, as amended, provided that, effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 (Nov. 1, 1987), this section is amended, in the first paragraph, by deleting "commissioner" each place it appears and substituting "magistrate"; and, in the second paragraph, by amending the first sentence to read: "The functions of the magistrate shall include the trial and sentencing of persons charged with the commission of misdemeanors and infractions as defined in section 3581 of title 18." See Effective Date note set out under section 3551 of Title 18, Crimes and Criminal Procedure.

SUBCHAPTER LXXXII—SLEEPING BEAR DUNES NATIONAL LAKESHORE

§ 460x–14. Authorization of appropriations; adjustments

There are authorized to be appropriated not more than $84,149,558 for the acquisition of lands and interests in lands and not more than $18,769,000 (June 1970 prices) for development, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the type of construction involved herein.

(As amended Pub. L. 98-141, § 5, Oct. 31, 1983, 97 Stat. 909; Pub. L. 98-505, Oct. 19, 1984, 98 Stat. 2337.)

AMENDMENTS

1984—Pub. L. 98-505 substituted "$84,149,558" for "$82,149,558".

1983—Pub. L. 98-141 substituted "$82,149,558" for "$66,153,000".

SUBCHAPTER XCIII—CHATTAHOOCHEE RIVER NATIONAL RECREATION AREA

§ 460ii. Statement of purposes; establishment; composition and boundaries; boundary revisions; publication in Federal Register; total area; corridor as area of national concern

The Congress finds the natural, scenic, recreation, historic, and other values of a forty-eight-mile segment of the Chattahoochee River and certain adjoining lands in the State of Georgia from Buford Dam downstream to Peachtree Creek are of special national significance, and that such values should be preserved

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and protected from developments and uses which would substantially impair or destroy them. In order to assure such preservation and protection for public benefit and enjoyment, there is hereby established the Chattahoochee River National Recreation Area (hereinafter referred to as the "recreation area"). The recreation area shall consist of the river and its bed together with the lands, waters, and interests therein within the boundary generally depicted on the map entitled "Chattahoochee River National Recreation Area", numbered CHAT-20,003, and dated September 1984, which shall be on file and available for public inspection in the office of the National Park Service, Department of the Interior. Following reasonable notice in writing to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate of his intention to do so, the Secretary of the Interior (hereinafter referred to as the "Secretary") may, by publication of a revised map or other boundary description in the Federal Register, (1) make minor revisions in the boundary of the recreation area, and (2) revise the boundary to facilitate access to the recreation area, or to delete lands which would be of little or no benefit to the recreation area due to the existence of valuable improvements completely constructed prior to August 15, 1978. The total area, exclusive of the river and its bed, within the recreation area may not exceed approximately 6,800 acres. For purposes of facilitating Federal technical and other support to State and local governments to assist State and local efforts to protect the scenic, recreational, and natural values of a 2,000 foot wide corridor adjacent to each bank of the Chattahoochee River and its impoundments in the 48-mile segment referred to above, such corridor is hereby declared to be an area of national concern.

(As amended Pub. L. 98-568, § 1(a), (b), Oct. 30, 1984, 98 Stat. 2928.)

AMENDMENTS

1984—Pub. L. 98-568 substituted "CHAT-20,003, and dated September 1984" for "CHAT-20,000, and dated July 1976" and "approximately 6,800 acres" for "six thousand three hundred acres" and added provision declaring the corridor area to be an area of national concern.

COMPLIANCE WITH CONGRESSIONAL BUDGET ACT

Section 2 of Pub. L. 98-568 provided that: "Any provision of any amendment made by this Act [enacting section 460ii-5 of this title and amending sections 460ii, 460ii-1, 460ii-3 and 460ii-4 of this title] which, directly or indirectly, authorizes the enactment of new budget authority described in section 402(a) of the Congressional Budget Act of 1974 [2 U.S.C. 652(a)] shall be effective only for fiscal years beginning after September 30, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 460ii-1, 460ii-3, 460ii-4 of this title.

§ 460ii-1. Acquisition of property

[*See main edition for text of* (a) *to* (e)]

(f) Land exchanges authority; publication of progress report in Federal Register; termination of authority; boundary revision exclusions

(1) The Secretary shall exchange those federally owned lands identified on the map referenced in section 460ii of this title as "exchange lands" for non-Federal lands which are within the boundaries of the recreation area. The values of the lands exchanged under this subsection shall be equal, or shall be equalized in the same manner as provided in section 1716 of title 43.

(2) At three year intervals after October 30, 1984, the Secretary shall publish in the Federal Register a progress report on the land exchanges which have taken place and the exchanges which are likely to take place under the authority of this subsection. Such report shall identify the lands which are unsuitable for exchange pursuant to such authority.

(3) Effective on the date ten years after October 30, 1984, the exchange authority of paragraph (1) shall terminate. The exchange lands identified under paragraph (1) which have not been exchanged prior to such date shall be retained in Federal ownership as a part of the recreation area.

(4) The Secretary shall publish a revision of the boundary map referred to in section 460ii of this title to exclude from the boundaries of the recreation area any exchange lands which are used to acquire non-Federal lands under paragraph (3).

(As amended Pub. L. 98-568, § 1(c), Oct. 30, 1984, 98 Stat. 2928.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-568 added subsec. (f).

§ 460ii-3. Federal supervision of water resources projects

[*See main edition for text of* (a) *to* (c)]

(d) Mitigation funds for adverse impacts; excepted lands; limitation of amount; replacement lands

(1) Notwithstanding any other authority of law, any department, agency, or instrumentality of the United States or of the State of Georgia, or any other entity which may construct any project recommended in the study entitled "Metropolitan Atlanta Water Resources Management Study, Georgia: Report of Chief of Engineers," dated June 1, 1982, which directly adversely impacts any lands within the authorized recreation boundaries of the Bowman's Island tract as shown on the map numbered and dated CHAT-20,003, September 1984, which were in Federal ownership as of September 1, 1984, shall, upon request by the Secretary, mitigate such adverse impacts. It is expressly provided that use of or adverse impact upon any other lands within the recreation area as result of any such project shall not require mitigation. Mitigation required by this paragraph shall be provided by payment to the United States of a sum not to exceed $3,200,000. The mitigation funds paid pursuant to this paragraph shall be utilized by the Secretary for the acquisition of replacement lands. Such re-

placement lands shall be acquired only after consultation with the Governor of Georgia.

(2) In acquiring replacement lands under paragraph (1) priority shall be given to acquisition of lands within the recreation area boundary and those lands within or adjacent to the 2,000 foot wide corridor referred to in section 460ii of this title. Any lands acquired pursuant to this subsection lying outside the boundaries of the recreation area shall, upon acquisition, be included within the recreation area and transferred to the Secretary for management under this subchapter and chapter 43 of this title. The Secretary shall publish a revised boundary map to include any lands added to the recreation area pursuant to this subsection.

(3) If lands as described in paragraph (2) are not available for acquisition, other lands within the State of Georgia may be acquired as replacement lands under paragraph (1) if such lands are transferred to the State of Georgia for permanent management for public outdoor recreation.

(As amended Pub. L. 98-568, § 1(d), Oct. 30, 1984, 98 Stat. 2928.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-568 added subsec. (d).

§ 460ii-4. Funding and reporting requirements

(a) Amounts authorized for expending for acquisition of lands and interests in lands

From the appropriations authorized for fiscal year 1978 and succeeding fiscal years pursuant to the Land and Water Conservation Fund Act (78 Stat. 897), as amended [16 U.S.C. 460*l*-4 et seq.], not more than $79,400,000 may be expended for the acquisition of lands and interests in lands authorized to be acquired pursuant to the provisions of this subchapter and chapter 43 of this title. For purposes of section 7(a)(3) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*-9(a)(3)), the statutory ceiling on appropriations under this subsection shall be deemed to be a statutory ceiling contained in a provision of law enacted prior to the convening of the Ninety-sixth Congress.

[*See main edition for text of* (b)]

(c) General management plan for use and development of area; consulting and reporting requirements; contents

Within seven years from August 15, 1978, the Secretary shall, after consulting with the Governor of the State of Georgia, develop and transmit to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate a general management plan for the use and development of the recreation area consistent with the findings and purposes of this subchapter and chapter 43 of this title, indicating:

[*See main edition for text of* (1) *to* (3)]

(d) Federal actions affecting corridor area; procedural requirements: notification of Secretary, Secretary's recommendations or notification of Congressional committees, copies of decisions and recommendations to Congressional committees; concurrence condition; exemptions

(1) Whenever any Federal department, agency, or instrumentality proposes to undertake any action, or provide Federal assistance for any action, or issue any license or permit for an action within the corridor referred to in section 460ii of this title which may have a direct and adverse effect on the natural or cultural resources of the recreation area, the head of such department, agency, or instrumentality shall—

(A) promptly notify the Secretary of the action at the time it is planning the action, preparing an environmental assessment regarding the action, or preparing an environmental impact statement under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] for the action;

(B) provide the Secretary a reasonable opportunity to comment and make recommendations regarding the effect of the Federal action on the natural and cultural resources of the recreation area; and

(C) notify the Secretary of the specific decisions made in respect to the comments and recommendations of the Secretary.

The requirements of this subsection shall be carried out in accordance with procedures established by the Federal agency responsible for undertaking or approving the Federal action. These procedures may utilize the procedures developed by such Agency pursuant to the National Environmental Policy Act [42 U.S.C. 4321 et seq.].

(2) Following receipt of notification pursuant to paragraph (1)(A), the Secretary, after consultation with the Governor of Georgia, shall make such comments and recommendations as the Secretary deems appropriate pursuant to paragraph (1)(B) as promptly as practicable in accordance with the notifying agency's procedures established pursuant to paragraph (1)(A). In any instance in which the Secretary does not provide comments and recommendations under paragraph (1)(B), the Secretary shall notify in writing, the appropriate committees of Congress.

(3) Following receipt of the notifying agency's decisions pursuant to paragraph (1)(C), the Secretary shall submit to the appropriate committees of Congress, including the authorizing committees with primary jurisdiction for the program under which the proposed action is being taken, a copy of the notifying agency's specific decisions made pursuant to paragraph (1)(C), along with a copy of the comments and recommendations made pursuant to paragraph (1)(B).

(4) In any instance in which the Secretary has not been notified of a Federal agency's proposed action within the corridor, and on his or her own determination finds that such action may have a significant adverse effect on the natural or cultural resources of the recreation

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area, the Secretary shall notify the head of such Federal agency in writing. Upon such notification by the Secretary, such agency shall promptly comply with the provisions of subparagraphs (A), (B), and (C) of paragraph (1) of this subsection.

(5) Each agency or instrumentality of the United States conducting Federal action upon federally owned lands or waters which are administered by the Secretary and which are located within the authorized boundary of the recreation area shall not commence such action until such time as the Secretary has concurred in such action.

(6) The following Federal actions which constitute a major and necessary component of an emergency action shall be exempt from the provisions of this subsection—

(A) those necessary for safeguarding of life and property;

(B) those necessary to respond to a declared state of disaster;

(C) those necessary to respond to an imminent threat to national security; and

(D) those that the Secretary has determined to be not inconsistent with the general management plan for the recreation area.

Actions which are part of a project recommended in the study entitled "Metropolitan Atlanta Water Resources Management Study, Georgia: Report of Chief of Engineers", dated June 1, 1982, and any Federal action which pertains to the control of air space, which is regulated under the Clean Air Act [42 U.S.C. 7401 et seq.], or which is required for maintenance or rehabilitation of existing structures or facilities shall also be exempt from the provisions of this subsection.

(As amended Pub. L. 98-568, § 1(e), Oct. 30, 1984, 98 Stat. 2929.)

REFERENCES IN TEXT

The convening of the Ninety-sixth Congress, referred to in subsec. (a), took place on Jan. 15, 1979.

The National Environmental Policy Act of 1969, referred to in subsec. (d)(1), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Clean Air Act, referred to in subsec. (d)(6), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of Title 42. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-568, § 1(e)(1), substituted "$79,400,000" for "$72,900,000" and added provision respecting applicable statutory ceiling on appropriations.

Subsec. (c). Pub. L. 98-568, § 1(e)(2), substituted "seven years" for "three years".

Subsec. (d). Pub. L. 98-568, § 1(e)(3), added subsec. (d).

§ 460ii-5. Chattahoochee River National Recreation Area Advisory Commission

(a) Establishment; duties; membership: voting members and Park Superintendent as nonvoting member; Chairman

There is hereby established the Chattahoochee River National Recreation Area Advisory Commission (hereinafter in this subchapter and chapter 43 of this title referred to as the "Advisory Commission") to advise the Secretary regarding the management and operation of the area, protection of resources with the recreation area, and the priority of lands to be acquired within the recreation area. The Advisory Commission shall be composed of the following thirteen voting members appointed by the Secretary:

(1) four members appointed from among individuals recommended by local governments—

(A) one of whom shall be recommended by the Board of County Commissioners of Forsyth County;

(B) one of whom shall be recommended by the Board of County Commissioners of Fulton County;

(C) one of whom shall be recommended by the Board of County Commissioners of Cobb County; and

(D) one of whom shall be recommended by the Board of County Commissioners of Gwinnett County;

(2) one member appointed from among individuals recommended by the Governor of Georgia;

(3) one member appointed from among individuals recommended by the Atlanta Regional Commission;

(4) four members appointed from among individuals recommended by a coalition of citizens public interest groups, recreational users, and environmental organizations concerned with the protection and preservation of the Chattahoochee River;

(5) one member appointed from among individuals recommended by the Business Council of Georgia or by a local chamber of commerce in the vicinity of the recreation area; and

(6) two members who represent the general public, at least one of whom shall be a resident of one of the counties referred to in paragraph (1).

In addition, the Park Superintendent for the recreation area shall serve as a nonvoting member of the Advisory Commission. The Advisory Commission shall designate one of its members as Chairman.

(b) Terms of office; reappointment

(1) Except as provided in paragraph (2), members of the Advisory Commission shall serve for terms of three years. Any voting member of the Advisory Commission may be reappointed for one additional three-year term.

(2) The members first appointed under paragraph (1) shall serve for a term of one year. The members first appointed under paragraphs (2), (3), (5), and (6) shall serve for a term of two years.

(c) Meetings

The Advisory Commission shall meet on a regular basis. Notice of meetings and agenda shall be published in local newspapers which have a distribution which generally covers the area affected by the park. Commission meetings shall be held at locations and in such a manner as to insure adequate public involvement.

(d) Compensation and expenses

Members of the Commission shall serve without compensation as such, but the Secretary may pay expenses reasonably incurred in carrying out their responsibilities under this subchapter and chapter 43 of this title on vouchers signed by the Chairman.

(e) Termination

The Advisory Commission shall terminate on the date ten years after October 30, 1984.

(Pub. L. 95-344, title I, § 106, as added Pub. L. 98-568, § 1(f), Oct. 30, 1984, 98 Stat. 2931.)

SUBCHAPTER XCV—SANTA MONICA MOUNTAINS NATIONAL RECREATION AREA

§ 460kk. Recreation area

[See main edition for text of (a) and (b)]

(c) Description; boundary revisions: notice to Congressional committees, publication in Federal Register; acquisition of property: manner, transfer from Federal agency to administrative jurisdiction of Secretary, exchange of lands with city of Los Angeles, development of municipal cultural resource management program; Nike Site transfer to Secretary

[See main edition for text of (1)]

(2)(A) Not later than ninety days after November 10, 1978, the Secretary, after consultation with the Governor of the State of California, the California Coastal Commission, and the Santa Monica Mountains Comprehensive Planning Commission, shall commence acquisition of lands, improvements, waters, or interests therein within the recreation area. Such acquisition may be by donation, purchase with donated or appropriated funds, transfer from any Federal agency, exchange, or otherwise. Except as provided in subparagraph (B), any lands or interests therein owned by the State of California or any political subdivision thereof (including any park district or other public entity) may be acquired only by donation, except that such lands acquired after November 10, 1978, by the State of California or its political subdivisions may be acquired by purchase or exchange if the Secretary determines that the lands were acquired for purposes which further the national interest in protecting the area and that the purchase price or value on exchange does not exceed fair market value on the date that the State acquired the land or interest: *Provided, however,* That the value of any lands acquired by the Secretary under the exception in this sentence shall be deducted from the amount of moneys available for grants to the State under subsection (n) of this section. Notwithstanding any other provision of law, any Federal property located within the boundaries of the recreation area shall, with the concurrence of the head of the agency having custody thereof, be transferred without cost, to the administrative jurisdiction of the Secretary for the purposes of the recreation area.

(B) The Secretary shall negotiate, and carry out, and exchange with the city of Los Angeles (acting through its department of water and power) of [1] certain federally owned lands managed by the Bureau of Land Management in the vicinity of the Haiwee Reservoir in Inyo County for certain lands owned by the city of Los Angeles which are associated with the Upper Franklin Reservoir in the city of Los Angeles. Lands acquired by the Secretary pursuant to such exchange shall be transferred without cost to the administrative jurisdiction of the National Park Service for inclusion within the recreation area. The Secretary shall include in such exchange a provision for an easement to be granted to the city of Los Angeles for the existing water pipeline associated with the Upper Franklin Reservoir and for the city of Los Angeles to provide for replacement water to maintain the water elevations of the Franklin Reservoir to the current levels. The values of lands exchanged under this provision shall be equal, or shall be equalized, in the same manner as provided in section 1716 of title 43.

(C) The city shall assume full responsibility for the protection of cultural resources and shall develop a cultural resource management program for the public lands to be transferred to the city in the vicinity of the Haiwee Reservoir. The program shall be developed in consultation with the Secretary of the Interior, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation.

[See main edition for text of (3); (d) to (t)]

(As amended Pub. L. 98-572, Oct. 30, 1984, 98 Stat. 2946.)

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98-572 designated existing provisions as subpar. (A), added exception clause in third sentence, and added subpars. (B) and (C).

SUBCHAPTER XCVI—RATTLESNAKE NATIONAL RECREATION AREA

§ 460*ll*-3. Land acquisition and exchange

[See main edition for text of (a)]

(b) Exchange of lands for bidding rights on coal lease sales or coal lease modifications; bidding rights as monetary credit; transfer or sale

[See main edition for text of (1) and (2)]

(3) If for any reason, including but not limited to the failure of the Secretary of the Interior to offer for lease lands in the Montana portion of the Powder River Coal Production

[1] So in original.

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Region as defined in the Federal Register of November 9, 1979 (44 F.R. 65196), or the failure of the holder of the bidding rights to submit a successful high bid for any such leases, any bidding rights issued in an exchange under this subchapter have not been exercised within two years from October 31, 1983, the bidding rights may be used as a monetary credit, which shall be considered "money" within the meaning of section 35 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 191), against that portion of bonus payments, rental or royalty payments paid into the Treasury of the United States and retained by the Federal Government on any Federal coal lease won or otherwise held by the applicant, its successors or assigns. The holder of the bidding rights shall pay the balance due on such bonus payments, rental or royalty payments in cash for transmittal to the States in the same manner and in the same amounts as though the entire payment were made in cash under the provisions of the Mineral Leasing Act of 1920 as amended [30 U.S.C. 181 et seq.]. The bidding rights may be transferred or sold at any time by the owner to any other party with all the rights of the owner to the credit, and after such transfer, the owner shall notify the Secretary.

[See main edition for text of (4) and (5); (c) and (d)]

(e) Exchange of land owned by Montana Power Company for bidding rights

The Secretary of the Interior, in consultation with the Secretary of Agriculture, shall consummate the exchange of the lands owned by the Montana Power Company within the boundaries of the Rattlesnake National Recreation Area and Rattlesnake Wilderness by issuing bidding rights to the Montana Power Company which shall equal the negotiated cash equivalent of the fair market value of such Montana Power Company lands, as provided in the agreement of April 4, 1983, signed by the authorized representatives of the Secretary of Agriculture, the Secretary of the Interior and the Montana Power Company, except that adjustments in the "Cash Equivalency Rate" referred to in said agreement shall not exceed a rate determined by the Secretary of the Interior taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the remaining period during which the bidding rights may be used.

(As amended Pub. L. 98-140, § 7, Oct. 31, 1983, 97 Stat. 907.)

REFERENCES IN TEXT

The Mineral Lands Leasing Act of 1920, as amended, referred to in subsec. (b)(3), (5), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified principally to chapter 3A (§ 181 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

CODIFICATION

In subsec. (b)(3), "October 31, 1983" was substituted for "the date of enactment of this Act", meaning the date of enactment of Pub. L. 98-140, section 7(a) of which amended generally subsec. (b)(3), as the probable intent of Congress.

AMENDMENTS

1983—Subsec. (b)(3). Pub. L. 98-140, § 7(a), amended par. (3) generally, substituting "two years from October 31, 1983, the bidding rights may be used as a monetary credit, which shall be considered 'money' within the meaning of section 35 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 191), against that portion of bonus payments, rental or royalty payments paid into the Treasury of the United States and retained by the Federal Government on any Federal coal lease won or otherwise held by the applicant, its successors or assigns" for "three years from October 19, 1980, the holder of the bidding rights may, at its election, use the outstanding bidding rights as a credit against any royalty, rental, or advance royalty payments owed to the United States on any Federal coal lease(s) it may then hold" and adding provisions that the holder of the bidding rights shall pay the balance due on such bonus payments, rental or royalty payments in cash for transmittal to the States in the same manner and in the same amounts as though the entire payment were made in cash under the provisions of the Mineral Leasing Act of 1920 as amended, and that the bidding rights may be transferred or sold at any time by the owner to any other party with all the rights of the owner to the credit, and after such transfer, the owner shall notify the Secretary.

Subsec. (e). Pub. L. 98-140, § 7(b), added subsec. (e).

SUBCHAPTER XCIX—WHITE ROCKS NATIONAL RECREATION AREA

§ 460nn. Congressional findings and policy

(a) Congress finds that—

(1) Vermont is a beautiful but small and rural State, situated near four large cities with combined metropolitan populations of over fifteen million;

(2) geographic and topographic characteristics of Vermont provide opportunities for large numbers of people to experience the beauty of primitive areas, but also place unusual pressure to provide options to maximize the availability of such lands for a variety of forms of recreation;

(3) certain lands designated as the Big Branch and Peru Peak Wilderness Areas by title I of this Act are suitable for inclusion as part of the national recreation area; and

(4) certain other lands in the Green Mountain National Forest not designated as wilderness by this Act are of a predominantly roadless nature and possess outstanding wild values that are important for primitive and semiprimitive recreation, watershed protection, wildlife habitat, ecological study, education, and historic and archeological resources, and are deemed suitable for preservation and protection as part of a national recreation area.

(b) The purpose of this subchapter is to designate certain National Forest System lands in the State of Vermont as the White Rocks National Recreation Area in order to preserve and protect their existing wilderness and wild values and to promote wild forest and aquatic habitat for wildlife, watershed protection, opportunities for primitive and semiprimitive

recreation, and scenic, ecological, and scientific values.

(Pub. L. 98-322, title II, § 201, June 19, 1984, 98 Stat. 256.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(3), (4), is Pub. L. 98-322, June 19, 1984, 98 Stat. 253. Lands in the Green Mountain National Forest were designated as wilderness areas by title I of this Act, and are listed in a table set out under section 1132 of this title. For complete classification of this Act to the Code, see Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 460nn-3 of this title.

§ 460nn-1. Designation of White Rocks National Recreation Area

In furtherance of the findings and purposes of this subchapter, certain lands in the Green Mountain National Forest, Vermont, which comprise approximately thirty-six thousand four hundred acres, as generally depicted on a map entitled "White Rocks National Recreation Area—Proposed", dated September 1983, are hereby designated as the White Rocks National Recreation Area.

(Pub. L. 98-322, title II, § 202, June 19, 1984, 98 Stat. 257.)

§ 460nn-2. Map and description

As soon as practicable after June 19, 1984, the Secretary of Agriculture shall file a map and legal description of the national recreation area designated by this subchapter with the Committee on Interior and Insular Affairs and the Committee on Agriculture of the United States House of Representatives and with the Committee on Agriculture, Nutrition, and Forestry of the United States Senate. Such map and description shall have the same force and effect as if included in this subchapter, except that correction of clerical and typographical errors in such map and description may be made by the Secretary. Such map and description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture.

(Pub. L. 98-322, title II, § 203, June 19, 1984, 98 Stat. 257.)

§ 460nn-3. Administration

(a) Objectives

Subject to valid existing rights, the White Rocks National Recreation Area designated by this subchapter shall be administered by the Secretary of Agriculture in accordance with the findings and purpose of this subchapter and the laws, rules, and regulations applicable to the national forests in a manner compatible with the following objectives:

(1) the continuation of existing primitive and semiprimitive recreational use in a natural environment;

(2) utilization of natural resources shall be permitted only if consistent with the findings and purposes in this subchapter;

(3) preservation and protection of forest and aquatic habitat for fish and wildlife; and

(4) protection and conservation of special areas having uncommon or outstanding wilderness, biological, geological, recreational, cultural, historical or archeological, and scientific, or other values contributing to the public benefit.

(b) Mineral leasing laws

Notwithstanding any other provision of law, federally-owned lands within the White Rocks National Recreation Area as designated by this subchapter are hereby withdrawn from all forms of appropriation under the mineral leasing laws, including all laws pertaining to geothermal leasing, and all amendments thereto.

(c) Hunting, fishing, and trapping

The Secretary shall permit hunting, fishing, and trapping on lands and waters under the Secretary's jurisdiction within the boundaries of the national recreation area designated by this subchapter in accordance with applicable laws of the United States and the State of Vermont.

(d) Comprehensive management plan

Within eighteen months after June 19, 1984, the Secretary shall develop and submit to the Committee on Interior and Insular Affairs and the Committee on Agriculture of the United States House of Representatives and to the Committee on Agriculture, Nutrition, and Forestry of the United States Senate a comprehensive management plan for the national recreation area designated by this subchapter.

(e) Public participation in development of management plan

In conducting the reviews and preparing the comprehensive management plan required by subsection (d) of this section, the Secretary shall provide for full public participation, shall consider the views of all interested agencies, organizations, and individuals, and shall particularly emphasize the values enumerated in section 460nn(a)(4) of this title.

(Pub. L. 98-322, title II, § 204, June 19, 1984, 98 Stat. 257.)

REFERENCES IN TEXT

Mineral leasing laws, referred to in subsec. (b), have been defined in sections 351, 505, 530, and 541e of Title 30, Mineral Lands and Mining, to mean acts Oct. 20, 1914, ch. 330, 38 Stat. 741; Feb. 25, 1920, ch. 85, 41 Stat. 437; Apr. 17, 1926, ch. 158, 44 Stat. 301; and Feb. 7, 1927, ch. 66, 44 Stat. 1057. The act of Oct. 20, 1914, was repealed by Pub. L. 86-252, § 1, Sept. 9, 1959, 73 Stat. 490. The act of Feb. 25, 1920, is popularly known as the Mineral Lands Leasing Act and is classified principally to chapter 3A (§ 181 et seq.) of Title 30. The act of Apr. 17, 1926, is classified generally to subchapter VIII (§ 271 et seq.) of chapter 3A of Title 30. The act of Feb. 7, 1927, is classified principally to subchapter IX (§ 281 et seq.) of chapter 3A of Title 30. For complete classification of these Acts to the Code, see Tables.

Geothermal leasing laws, referred to in subsec. (b), are classified principally to chapter 23 (§ 1001 et seq.) of Title 30.

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SUBCHAPTER C—OREGON CASCADES RECREATION AREA

§ 460oo. Oregon Cascades Recreation Area

(a) Establishment

In order to conserve, protect, and manage, in a substantially undeveloped condition, certain National Forest System lands in the State of Oregon having unique geographic, topographic, biological, ecological features and possessing significant scenic, wildlife, dispersed recreation, and watershed values, there is hereby established, within the Umpqua, Willamette, Winema and Deschutes National Forests, the Oregon Cascades Recreation Area (hereinafter referred to in this subchapter as the "recreation area").

(b) Administration

The recreation area shall comprise approximately one hundred fifty-six thousand nine hundred acres as generally depicted on a map entitled "Oregon Cascades Recreation Area" dated March 1984. Except as otherwise provided in this section, the Secretary of Agriculture (hereinafter referred to as the "Secretary") shall administer and manage the recreation area in accordance with the laws and regulations applicable to the National Forest System so as to enhance scenic and watershed values, wildlife habitat, and dispersed recreation.

(c) Management plan

The recreation area shall be managed in accordance with plans prepared in subsection (g) of this section to:

(1) provide a range of recreation opportunities from primitive to full service developed campgrounds;

(2) provide access for use by the public;

(3) to the extent practicable, maintain the natural and scenic character of the area; and

(4) provide for the use of motorized recreation vehicles.

(d) Mining

(1) Subject to valid existing rights, all mining claims located within the recreation area shall be subject to such reasonable regulations as the Secretary may prescribe to insure that mining activities will, to the maximum extent practicable, be consistent with the purposes for which the recreation area is established. Any patent issued after June 26, 1984, shall convey title only to the minerals together with the right to use the surface of lands for mining purposes subject to such reasonable regulations as the Secretary shall prescribe.

(2) Effective January 1, 1989, and subject to valid existing rights, the lands located within the recreation area are hereby withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to the mineral leasing and geothermal leasing and all amendments thereto.

(e) Allowance of limited activities and facilities

Within the recreation area, the Secretary may permit, under appropriate regulations those limited activities and facilities which he determines necessary for resource protection and management and for visitor safety and comfort, including—

(1) those necessary to prevent and control wildfire, insects, diseases, soil erosion, and other damaging agents including timber harvesting activities necessary to prevent catastrophic mortality from insects, diseases or fire;

(2) those necessary to maintain or improve wildlife habitat, water yield and quality, forage production, and dispersed outdoor recreation opportunities;

(3) livestock grazing, to the extent that such use will not significantly adversely affect the resources of the recreation area;

(4) salvage of major timber mortality caused by fire, insects, disease, blowdown, or other causes when the scenic characteristics of the recreation area are significantly affected, or the health and safety of the public is threatened, or the overall protection of the forested area inside or outside the recreation area might be adversely affected by failure to remove the dead or damaged timber;

(5) those developments or facilities necessary for the public enjoyment and use of the recreation area, when such development or facilities do not detract from the purposes of the recreation area; and

(6) public service land occupancies, including power transmission lines, provided there is no feasible alternative location, and, the Secretary finds that it is in the public interest to locate such facilities within the recreation area.

(f) Wilderness lands

The following lands within the recreation area are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System, and shall, notwithstanding any other provisions of this section, be administered by the Secretary in accordance with the applicable provisions of the Wilderness Act [16 U.S.C. 1131 et seq.]: Certain lands in the Umpqua, Willamette, and Winema National Forests which comprise approximately fifty-five thousand one hundred acres, are generally depicted on a map dated March 1984, entitled "Mount Thielsen Wilderness—Proposed", and which shall be known as the Mount Thielsen Wilderness; and certain lands in the Willamette and Deschutes National Forests, which comprise approximately fifteen thousand seven hundred acres, are generally depicted on a map dated March 1984, entitled "Diamond Peak Wilderness Additions—Proposed", and which are hereby incorporated in, and which shall be deemed to be a part of, the Diamond Peak Wilderness as designated in Public Law 88-577.

(g) Forest plans; integrated management plans

Management direction for the recreation area shall be developed in either the forest plans developed for the Umpqua, Winema, Deschutes and Willamette Forests in accordance with section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended [16 U.S.C. 1604], or in an integrated management plan that shall be prepared within three years from June 26, 1984, and revised in accordance with the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended

[16 U.S.C. 1600 et seq.]. Any plan developed by the Secretary for the recreation area shall identify and designate specific and appropriate areas and routes for the use of motorized recreation vehicles within the recreation area.

(Pub. L. 98-328, § 4, June 26, 1984, 98 Stat. 275.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original "the Act", meaning Pub. L. 98-328, June 26, 1984, 98 Stat. 272, known as the Oregon Wilderness Act of 1984, which enacted this subchapter and provisions listed in a table set out under section 1132 of this title. For complete classification of this Act to the Code, see Tables.

The mining laws, referred to in subsec. (d)(2), are classified generally to Title 30, Mineral Lands and Mining.

Mineral leasing laws, referred to in subsec. (d)(2), have been defined in sections 351, 505, 530, and 541e of Title 30 to mean acts Oct. 20, 1914, ch. 330, 38 Stat. 741; Feb. 25, 1920, ch. 85, 41 Stat. 437; Apr. 17, 1926, ch. 158, 44 Stat. 301; and Feb. 7, 1927, ch. 66, 44 Stat. 1057. The act of Oct. 20, 1914, was repealed by Pub. L. 86-252, § 1, Sept. 9, 1959, 73 Stat. 490. The act of Feb. 25, 1920, is popularly known as the Mineral Lands Leasing Act and is classified principally to chapter 3A (§ 181 et seq.) of Title 30. The act of Apr. 17, 1926, is classified generally to subchapter VIII (§ 271 et seq.) of chapter 3A of Title 30. The act of Feb. 7, 1927, is classified principally to subchapter IX (§ 281 et seq.) of chapter 3A of Title 30. For complete classification of these Acts to the Code, see Tables.

Geothermal leasing laws, referred to in subsec. (d)(2), are classified principally to chapter 23 (§ 1001 et seq.) of Title 30.

The Wilderness Act and Public Law 88-577, referred to in subsec. (f), are Pub. L. 88-577, Sept. 3, 1964, 78 Stat. 890, as amended, which is classified generally to chapter 23 (§ 1131 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1131 of this title and Tables.

The Forest and Rangeland Renewable Resources Planning Act of 1974, referred to in subsec. (g), is Pub. L. 93-378, Aug. 17, 1974, 88 Stat. 476, as amended, which is classified generally to subchapter I (§ 1600 et seq.) of chapter 36 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1600 of this title and Tables.

MAP OF RECREATION AREA

Section 5(a) of Pub. L. 98-328 provided in part that as soon as practicable after June 6, 1984, the Secretary of Agriculture was to file the map referred to in this section with the Committee on Energy and Natural Resources, Senate, and the Committee on Interior and Insular Affairs, House of Representatives, and that such map would have the same force and effect as if included in this section: *Provided*, That correction of clerical and typographical errors in such map could be made. Such map was to be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture; and the Director, Bureau of Land Managmenet, Department of the Interior.

SUBCHAPTER CI—MOUNT BAKER RECREATION AREA

§ 460pp. Mount Baker Recreation Area

(a) Establishment

In order to assure the conservation and protection of certain natural, scenic, historic, pastoral, and fish and wildlife values and to provide for the enhancement of the recreational values associated therewith, the Mount Baker National Recreation Area located in the Mount Baker-Snoqualmie National Forest, Washington, is hereby established.

(b) Acreage

The Mount Baker National Recreation Area (hereafter [1] referred to as the "recreation area") shall comprise approximately eight thousand six hundred acres as generally depicted on the map entitled "Mount Baker National Recreation Area—Proposed", dated March 1984, which shall be on file and available for public inspection in the office of the Chief, Forest Service, Department of Agriculture.

(c) Map and legal description

The Secretary of Agriculture shall, as soon as practicable after July 3, 1984, file a map and a legal description of the recreation area with the Committee on Energy and Natural Resources, United States Senate, and the Committee on Interior and Insular Affairs, House of Representatives, and each such map and legal description shall have the same force and effect as if included in this subchapter: *Provided*, That correction of clerical and typographical errors in such legal description and map may be made. The map and legal description shall be on file and available for public inspection in the office of the Chief of the Forest Service, Department of Agriculture.

(d) Administration

The Secretary shall administer the recreation area in accordance with the laws, rules and regulations applicable to the national forests in such manner as will best provide for (1) public outdoor recreation (including but not limited to snowmobile use); (2) conservation of scenic, natural, historic, and other values contributing to public enjoyment; and (3) such management, utilization, and disposal of natural resources on federally owned lands within the recreation area which are compatible with and which do not significantly impair the purposes for which the recreation area is established.

(Pub. L. 98-339, § 7, July 3, 1984, 98 Stat. 304.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 98-339, July 3, 1984, 98 Stat. 299, known as the Washington State Wilderness Act of 1984, which enacted this subchapter and provisions listed in a table set out under section 1132 of this title. For complete classification of this Act to the Code, see Tables.

SUBCHAPTER CII—ALLEGHENY NATIONAL RECREATION AREA

§ 460qq. Allegheny National Recreation Area

(a) Designation of area; revision of boundaries

In furtherance of the findings and purposes of this subchapter, certain lands in the Allegheny National Forest, Pennsylvania, which comprise approximately twenty-three thousand one hundred acres, as generally depicted on a map entitled "Allegheny National Recreation Area—

[1] So in original. Probably should be "hereinafter".

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Proposed", dated March 1984, are hereby designated as the Allegheny National Recreation Area (hereinafter in this subchapter referred to as the "national recreation area"). The Secretary of Agriculture may revise the boundaries of the national recreation area to correct errors or to include additional lands acquired adjacent to the area.

(b) Description of purposes

The national recreation area shall be managed for the purposes of—

(1) outdoor recreation including, but not limited to, hunting, fishing, hiking, backpacking, camping, nature study, and the use of motorized and nonmotorized boats on the Allegheny Reservoir;

(2) the conservation of fish and wildlife populations and habitat;

(3) the protection of watersheds and the maintenance of free flowing streams and the quality of ground and surface waters in accordance with applicable law;

(4) the conservation of scenic, cultural, and other natural values of the area;

(5) allowing the development of privately owned oil, gas, and mineral resources subject to reasonable conditions prescribed by the Secretary under subsection (c) of this section for the protection of the area; and

(6) minimizing, to the extent practicable, environmental disturbances caused by resource development, consistent with the exercise of private property rights.

(c) Administration; plan of operations

The Secretary shall administer the national recreation area in accordance with the purposes described in subsection (b) of this section and the laws, rules, and regulations applicable to the National Forest System. Subject to valid existing rights, any activity associated with the exploration, development, or transportation of oil, gas, or other minerals shall be subject to such reasonable conditions as the Secretary may prescribe, and in accordance with the management plan described in subsection (d) of this section, to achieve the purposes, described in subsection (b) of this section, of the national recreation area. For any such activity, the Secretary shall require a plan of operations which shall include provisions for adequate reclamation, including, to the extent practicable, revegetation and rehabilitation after each phase of operations is completed.

(d) Management plan

The Secretary shall prepare, and may from time to time amend, a management plan for the national recreation area. The plan may be prepared in conjunction with, or incorporated with, ongoing planning for the Allegheny National Forest in accordance with the National Forest Management Act of 1976. The initial management plan and significant amendments or revisions shall be accompanied by an environmental impact statement prepared in accordance with the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(e) Hunting, fishing, and trapping

The Secretary shall permit hunting, fishing, and trapping within the boundaries of the national recreation area in accordance with applicable Federal and State laws except that the Secretary may designate zones where, and establish periods when, no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment. Except in emergencies, any prohibitions or restrictions made pursuant to this subsection shall be put into effect only after consultation with the appropriate State fish and game department.

(f) Withdrawal of minerals from appropriation and disposition

Subject to valid existing rights, the minerals in all federally owned lands within the national recreation area designated by this subchapter are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing, including all laws pertaining to geothermal leasing, and all amendments thereto.

(g) Other National Forest management areas unaffected

Nothing in this section shall be construed to apply to or have any effect on any other management area of the National Forest System, including any wilderness area or any other national recreation area.

(Pub. L. 98-585, § 6, Oct. 30, 1984, 98 Stat. 3101.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (f), was in the original "this Act", meaning Pub. L. 98-585, Oct. 30, 1984, 98 Stat. 3100, known as the Pennsylvania Wilderness Act of 1984, which enacted this subchapter and provisions listed in a table set out under section 1132 of this title. For complete classification of this Act to the Code, see Tables.

The National Forest Management Act of 1976, referred to in subsec. (d), is Pub. L. 94-588, Oct. 22, 1976, 90 Stat. 2949, as amended. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 1600 of this title and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (d), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The mining laws, referred to in subsec. (f), are classified generally to Title 30, Mineral Lands and Mining.

Mineral leasing laws, referred to in subsec. (f), have been defined in sections 351, 505, 530, and 541e of Title 30, to mean acts Oct. 20, 1914, ch. 330, 38 Stat. 741; Feb. 25, 1920, ch. 85, 41 Stat. 437; Apr. 17, 1926, ch. 158, 44 Stat. 301; and Feb. 7, 1927, ch. 66, 44 Stat. 1057. The act of Oct. 20, 1914, was repealed by Pub. L. 86-252, § 1, Sept. 9, 1959, 73 Stat. 490. The act of Feb. 25, 1920, is popularly known as the Mineral Lands Leasing Act and is classified principally to chapter 3A (§ 181 et seq.) of Title 30. The act of Apr. 17, 1926, is classified generally to subchapter VIII (§ 271 et seq.) of chapter 3A of Title 30. The act of Feb. 7, 1927, is classified principally to subchapter IX (§ 281 et seq.) of chapter 3A of Title 30. For complete classification of these Acts to the Code, see Tables.

Geothermal leasing laws, referred to in subsec. (f), are classified principally to chapter 23 (§ 1001 et seq.) of Title 30.

FINDINGS AND PURPOSE; MAP AND DESCRIPTION

For Congressional findings, statement of purpose, and requirements for filing of maps and legal descriptions under Pub. L. 98-585, Pennsylvania Wilderness Act of 1984, see sections 2, 3, and 7 of Pub. L. 98-585, Oct. 30, 1984, 98 Stat. 3100, 3102.

CHAPTER 1A—HISTORIC SITES, BUILDINGS, OBJECTS, AND ANTIQUITIES

SUBCHAPTER I—GENERAL PROVISIONS

Sec.

469j. Commission for the Preservation of America's Heritage Abroad.
(a) Purpose.
(b) Establishment.
(c) Duties.
(d) Membership.
(e) Meetings.
(f) Compensation and per diem.
(g) Authorities.
(h) Reports.

SUBCHAPTER I—GENERAL PROVISIONS

§ 461. Declaration of national policy

NATIONAL HISTORIC SITES

Historic site	Date designated
Adams National Historic Site, Massachusetts	Dec. 9, 1946
Allegheny Portage Railroad National Historic Site, Pennsylvania (78 Stat. 752)	Aug. 31, 1964
Andersonville National Historic Site, Georgia (84 Stat. 989)	Oct. 16, 1970
Andrew Johnson National Historic Site (77 Stat. 349)	Dec. 11, 1963
Ansley Wilcox House (Theodore Roosevelt Inaugural) National Historic Site (80 Stat. 1101)	Nov. 2, 1966
Bent's Old Fort National Historic Site, Colorado (74 Stat. 155)	June 3, 1960
Boston African American National Historic Site, Massashusetts (94 Stat. 1845)	Oct. 10, 1980
Carl Sandburg Home National Historic Site, North Carolina (82 Stat. 1154)	Oct. 17, 1968
Clara Barton National Historic Site, Maryland (88 Stat. 1461)	Oct. 26, 1974
Edgar Allan Poe National Historic Site, Pennsylvania (92 Stat. 3498)	Nov. 10, 1978
Edison National Historic Site (76 Stat. 428)	Sept. 5, 1962
Eisenhower National Historic Site (33 FR 16031, see also 83 Stat. 274)	Nov. 27, 1967
Eleanor Roosevelt National Historic Site, New York (91 Stat. 171)	May 26, 1977
Eugene O'Neill National Historic Site, California (90 Stat. 2501)	Oct. 18, 1976
Ford's Theatre National Historic Site, District of Columbia (84 Stat. 322)	June 23, 1970
Fort Bowie National Historic Site, Arizona (78 Stat. 681)	Aug. 30, 1964
Fort Davis National Historic Site, Texas (75 Stat. 488)	Sept. 8, 1961
Fort Laramie National Historic Site, Wyoming (74 Stat. 83)	Apr. 29, 1960
Fort Larned National Historic Site, Kansas (78 Stat. 748)	Aug. 31, 1964
Fort Point National Historic Site, California (84 Stat. 970)	Oct. 16, 1970
Fort Raleigh National Historic Site, North Carolina (75 Stat. 384)	Apr. 5, 1941
Fort Saint Marks National Historic Site, Florida (76 Stat. 807)	Oct. 10, 1962
Fort Scott National Historic Site, Kansas (92 Stat. 3548)	Nov. 10, 1978
Fort Scott National Historic Site, Kansas (92 Stat. 1610)	Oct. 19, 1978
Fort Smith National Historic Site, Arkansas (75 Stat. 489)	Sept. 13, 1961
Fort Union Trading Post National Historic Site, North Dakota and Montana (80 Stat. 211)	June 20, 1966
Frederick Law Olmsted National Historic Site, Massachusetts (93 Stat. 664)	Oct. 12, 1979
Friendship Hill National Historic Site, Pennsylvania (92 Stat. 3509)	Nov. 10, 1978
[Georgia O'Keeffe National Historic Site, New Mexico (94 Stat. 1133; Repealed 98 Stat. 1386)]	Sept. 8, 1980
Golden Spike National Historic Site, Utah (79 Stat. 426)	July 30, 1965
Grant-Kohrs Ranch National Historic Site, Montana (86 Stat. 632)	Aug. 25, 1972
Hampton National Historic Site, Maryland	June 22, 1948
Harry S Truman National Historic Site, Missouri (97 Stat. 193)	May 23, 1983
Herbert Hoover National Historic Site, Iowa (79 Stat. 510)	Aug. 12, 1965
Home of Franklin D. Roosevelt National Historic Site, New York	Jan. 15, 1944
Hopewell Village National Historic Site, Pennsylvania	Aug. 3, 1938
Hubbell Trading Post National Historic Site, Arizona (79 Stat. 584)	Aug. 28, 1965
James A. Garfield National Historic Site, Ohio (94 Stat. 3545)	Dec. 28, 1980
Jefferson National Expansion Memorial, National Historical Site, Missouri	Dec. 21, 1935
John Fitzgerald Kennedy National Historic Site, Massachusetts (81 Stat. 29)	May 26, 1967
John Muir National Historic Site, California (78 Stat. 753)	Aug. 31, 1964
Knife River Indian Villages National Historic Site, North Dakota (88 Stat. 1461)	Oct. 26, 1974
Lincoln Home National Historic Site, Illinois (85 Stat. 347)	Aug. 18, 1971
Longfellow National Historic Site, Massachusetts (86 Stat. 791)	Oct. 9, 1972
Maggie L. Walker National Historical Site, Virginia (92 Stat. 3510)	Nov. 10, 1978
Martin Luther King, Junior, National Historic Site, Georgia (94 Stat. 1839)	Oct. 10, 1980
Martin Van Buren National Historic Site, New York (88 Stat. 1462)	Oct. 26, 1974
Mary McLeod Bethune Council House National Historic Site, District of Columbia (96 Stat. 1615)	Oct. 15, 1982
Ninety Six National Historic Site, South Carolina (90 Stat. 1196)	Aug. 19, 1976
Old Philadelphia Custom House National Historic Site, Pennsylvania	May 26, 1939
Palo Alto Battlefield National Historic Site, Texas (92 Stat. 3500)	Nov. 10, 1978
Puukohola Heiau National Historic Site, Hawaii (86 Stat. 562)	Aug. 17, 1972
Saint Gaudens National Historic Site, New Hampshire (78 Stat. 749)	Aug. 31, 1964
Salem Maritime National Historic Site, Massachusetts	Mar. 17, 1938
San Juan National Historic Site, Puerto Rico	Feb. 14, 1949
Saugus Iron Works National Historic Site, Massachusetts (82 Stat. 72)	Apr. 5, 1968
Sewall-Belmont House National Historic Site, District of Columbia (88 Stat. 1463)	Oct. 26, 1974
Springfield Armory National Historic Site, Massachusetts (88 Stat. 1461)	Oct. 26, 1974
Thaddeus Kosciuszko Home National Historic Site, Pennsylvania (86 Stat. 1046)	Oct. 21, 1972
Theodore Roosevelt Inaugural National Historic Site, New York (94 Stat. 3541)	Dec. 28, 1980
Thomas Stone National Historic Site, Maryland (92 Stat. 3510)	Nov. 10, 1978
Tuskegee Institute National Historic Site, Alabama (86 Stat. 1462)	Oct. 26, 1974
Vanderbilt Mansion National Historic Site, New York	Dec. 18, 1940
William Howard Taft National Historic Site, Ohio (83 Stat. 273)	Dec. 2, 1969

For other historic sites included within this title, see General Index.

ILLINOIS AND MICHIGAN CANAL NATIONAL HERITAGE CORRIDOR

Pub. L. 98-398, title I, Aug. 24, 1984, 98 Stat. 1456, provided that:

"SHORT TITLE

"SEC. 101. This title may be cited as the 'Illinois and Michigan Canal National Heritage Corridor Act of 1984'.

"FINDINGS; PURPOSE

"SEC. 102. (a) FINDINGS.—The Congress makes the following findings:

"(1) An abundance of sites and structures within the corridor defined by the Illinois and Michigan Canal from Chicago, Illinois, to LaSalle-Peru, Illinois, symbolize in physical form the cultural evolution from prehistoric aboriginal tribes living in naturally formed ecosystems through European exploration, nineteenth century settlement, commerce, and

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industry right up to present-day social patterns and industrial technology.

"(2) The corridor has become one of the most heavily industrialized regions of the Nation and has potential for further economic expansion and modernization. The area in which the corridor is located is currently experiencing high rates of unemployment and industrial migration. Establishment of the corridor as provided in this Act [probably should be 'this title'] may provide the stimulus required to retain existing industry and to provide further industrial growth and commercial revitalization.

"(3) Despite efforts by the State, political subdivisions of the State, volunteer associations, and private business, the cultural, historical, natural, and recreational resources of the corridor have not realized full potential social value and may be lost without assistance from the Federal Government.

"(b) PURPOSE.—It is the purpose of this title to retain, enhance, and interpret, for the benefit and inspiration of present and future generations, the cultural, historical, natural, recreational, and economic resources of the corridor, where feasible, consistent with industrial and economic growth.

"DEFINITIONS

"SEC. 103. For purposes of this title—

"(1) the term 'canal' means the Illinois and Michigan Canal, as depicted on the map referred to in section 104(b);

"(2) the term 'Commission' means the Illinois and Michigan Canal National Heritage Corridor Commission established in section 105;

"(3) the term 'corridor' means the Illinois and Michigan Canal National Heritage Corridor established in section 104(a);

"(4) the term 'Governor' means the Governor of the State of Illinois;

"(5) the term 'National Park Service report' means the report of the National Park Service, dated November 1981, which contains a conceptual plan and implementation strategies for the corridor;

"(6) the term 'plan' means the goals, objectives, and action statements of the conceptual plan which—

"(A) is contained in the National Park Service report; and

"(B) may be modified by the Commission under section 108(h);

"(7) the term 'political subdivision of the State' means any political subdivision of the State of Illinois, any part of which is located in or adjacent to the corridor, including counties, townships, cities, towns, villages, park districts, and forest preserve districts;

"(8) the term 'Secretary' means the Secretary of the Interior; and

"(9) the term 'State' means the State of Illinois.

"ESTABLISHMENT, BOUNDARIES, AND ADMINISTRATION OF CORRIDOR

"SEC. 104. (a) ESTABLISHMENT.—To carry out the purpose of this title, there is established the Illinois and Michigan Canal National Heritage Corridor.

"(b) BOUNDARIES.—(1) The corridor shall consist of the areas depicted on the map dated May 1983, and numbered IMC–80,000, entitled 'Illinois and Michigan Canal National Heritage Corridor'. Such map shall be on file and available for public inspection in the offices of the Commission and in the offices of the National Park Service.

"(2) Upon a request of the Commission signed by not less than twelve members of the Commission, the Secretary may make minor revisions in the boundaries of the corridor. Any such revision shall take effect upon publication by the Secretary in the Federal Register of a revised boundary map.

"(c) ADMINISTRATION.—The corridor shall be administered in accordance with this Act [probably should be "this title"].

"ESTABLISHMENT OF ILLINOIS AND MICHIGAN CANAL NATIONAL HERITAGE CORRIDOR COMMISSION

"SEC. 105. There is established a commission to be known as the Illinois and Michigan Canal National Heritage Corridor Commission which shall carry out the duties specified in section 109.

"ORGANIZATION OF COMMISSION

"SEC. 106. (a) MEMBERSHIP.—The Commission shall be composed of nineteen members as follows:

"(1) The Director of the National Park Service, ex officio, or a delegate.

"(2) Three individuals, nominated by the Governor and appointed by the Secretary, who will represent the interests of State and local government.

"(3) One member of the board of a forest preserve district, any part of which is located in or adjacent to the corridor, who shall be nominated by the Governor and appointed by the Secretary. Appointments made under this paragraph shall rotate among the three forest preserve districts, parts of which are located in the corridor, in a manner which will ensure fairly equal representation on the Commission for each such district.

"(4) One member of the county board of each county, any part of which is located in the corridor (other than the county which is represented on the Commission by the member appointed under paragraph (5)), who shall be nominated by the Governor and appointed by the Secretary.

"(5) Five individuals, nominated by the Governor and appointed by the Secretary, who will represent the interests of history, archaeology, and historic preservation; of recreation; and of conservation.

"(6) Five individuals, nominated by the Governor and appointed by the Secretary, who will represent the interests of business and industry.

The Secretary may request that additional names be submitted for members appointed pursuant to paragraphs (2) through (6). Members appointed under paragraphs (5) and (6) shall be selected with due consideration to equitable geographic distribution. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

"(b) TERMS.—(1) Except as provided in paragraphs (2) and (3), members of the Commission shall be appointed for terms of three years.

"(2) Of the members of the Commission first appointed under paragraphs (2), (3), (4), (5), and (6) of subsection (a)—

"(A) six shall be appointed for terms of one year;

"(B) six shall be appointed for terms of two years; and

"(C) six shall be appointed for terms of three years, as designated by the Governor at the time of nomination.

"(3) Any member of the Commission appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member of the Commission may serve after the expiration of his term until his successor has taken office.

"(c) COMPENSATION.—Members of the Commission shall receive no pay on account of their service on the Commission, but while away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

"(d) CHAIRPERSON.—(1) The chairperson of the Commission shall be elected by the members of the Commission from among members appointed under paragraphs (5) and (6) of subsection (a).

"(2)(A) Except as provided in subparagraph (B), the term of the chairperson shall be two years.

"(B) If a member is appointed to a term on the Commission which is less than two years and is elected chairperson of the Commission, then such member's term as chairperson shall expire at the end of such member's term on the Commission.

"(e) QUORUM.—(1) Ten members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

"(2) Any member of the Commission may vote by means of a signed proxy exercised by another member of the Commission, but any member so voting shall not be considered present for purposes of establishing a quorum.

"(3) The affirmative vote of not less than ten members of the Commission shall be required to approve the budget of the Commission.

"(f) MEETINGS.—The Commission shall meet at least quarterly at the call of the chairperson or ten of its members. Meetings of the Commission shall be subject to section 552b of title 5, United States Code (relating to open meetings).

"STAFF OF COMMISSION

"SEC. 107. (a) DIRECTOR AND STAFF.—(1) The Commission shall have a Director who shall be appointed by the Commission and who shall be paid at a rate not to exceed the minimum rate of basic pay payable for level GS-15 of the General Schedule.

"(2) The Commission may appoint such additional staff personnel as the Commission considers appropriate and may pay such staff at rates not to exceed the minimum rate of basic pay payable for level GS-15 of the General Schedule. Such staff may include specialists in areas such as interpretation, historic preservation, recreation, conservation, commercial and industrial development and revitalization, financing, and fundraising.

"(3) Except as otherwise provided in this subsection, such Director and staff—

"(A) shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service; and

"(B) shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(b) EXPERTS AND CONSULTANTS.—Subject to such rules as may be adopted by the Commission, the Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates determined by the Commission to be reasonable.

"(c) STAFF OF OTHER AGENCIES.—(1) Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out the Commission's duties under section 109.

"(2) The Commission may accept the services of personnel detailed from the State or any political subdivision of the State and may reimburse the State or such political subdivision for such services.

"POWERS OF COMMISSION

"SEC. 108. (a) HEARINGS.—(1) The Commission may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

"(2) The Commission may not issue subpenas or exercise any subpena authority.

"(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission, if so authorized by the Commission, may take any action which the Commission is authorized to take by this title.

"(c) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

"(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

"(e) USE OF APPROPRIATED AMOUNTS TO OBTAIN FEDERAL FUNDING.—Notwithstanding any other provision of law, for purposes of any law conditioning the receipt of Federal funding on a non-Federal contribution, any portion of the amounts appropriated pursuant to section 116 of this title may, at the election of the Commission, be used as such non-Federal contribution.

"(f) GIFTS.—(1) Except as provided in subsection (g)(2)(B), the Commission may, for purposes of carrying out its duties, seek, accept, and dispose of gifts, bequests, or donations of money, personal property, or services, received from any source.

"(2) For purposes of section 170(c) of the Internal Revenue Code of 1954 [26 U.S.C. 170(c)], any gift to the Commission shall be deemed to be a gift to the United States.

"(g) ACQUISITION OF REAL PROPERTY.—(1) Except as provided in paragraph (2) and except with respect to any leasing of facilities under subsection (c) of this section, the Commission may not acquire any real property or interest in real property.

"(2) Subject to paragraph (3) of this subsection, the Commission may acquire real property, or interests in real property, in the corridor—

"(A) by gift or devise; or

"(B) by purchase from a willing seller.

"(3) Any real property or interest in real property acquired by the Commission under paragraph (2) shall be conveyed by the Commission to an appropriate public or private land managing agency with the consent of such agency, as determined by the Commission. Any such conveyance shall be made—

"(A) as soon as practicable after such acquisition;

"(B) without consideration; and

"(C) on the condition that the real property or interest in real property so conveyed is used for public purposes, consistent with the plan.

"(h) MODIFICATION OF PLAN.—The Commission may modify the plan if the Commission determines that such modification is necessary to carry out the purpose of this Act [this title]. No such modification shall take effect until—

"(1) the State and any political subdivision of the State which would be affected by such modification receives notice of such modification; and

"(2) if such modification is significant (as determined by the Commission) the Commission—

"(A) provides adequate notice (as determined by the Commission) of such modification by publication in the area of the corridor; and

"(B) conducts a public hearing with respect to such modification.

"(i) COOPERATIVE AGREEMENTS.—For purposes of carrying out the plan, the Commission may enter into cooperative agreements with the State, with any political subdivision of the State, or with any person. Any such cooperative agreement shall, at a minimum, establish procedures for providing notice to the Commission of any action proposed by the State, such political subdivision, or such person which may affect the implementation of the plan.

"(j) ADVISORY GROUPS.—The Commission may establish such advisory groups as the Commission deems necessary to ensure open communication with, and assistance from, the State, political subdivisions of the State, and interested persons.

"DUTIES OF COMMISSION

"SEC. 109. (a) IMPLEMENTATION OF PLAN.—The Commission shall implement and support the plan as follows:

"(1)(A) The Commission shall assist the State, any political subdivision of the State, or any nonprofit organization in the appropriate preservation treat-

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ment and renovation (in accordance with the plan) of structures of the canal.

"(B) In providing such assistance, the Commission shall in no way infringe upon the authorities and policies of the State or of any political subdivision of the State concerning the management of canal property.

"(C) In providing such assistance or in carrying out any other provision of this Act [this title], the Commission shall not be required to adopt the specifics recommended in the Historic American Engineering Record study published in April 1981.

"(2)(A) The Commission shall assist the State or any political subdivision of the State in establishing and maintaining intermittent recreational trails which are compatible with economic development interests in the corridor.

"(B) In providing such assistance, the Commission shall in no way infringe upon the authorities and policies of the State or of any political subdivision of the State.

"(3) The Commission shall encourage private owners of property which is located in or adjacent to the corridor to retain voluntarily, as a good neighbor policy, a strip of natural vegetation as a visual screen and natural barrier between recreational trails established under paragraph (2) and development in the corridor.

"(4) The Commission shall assist in the preservation and enhancement of Natural Areas Inventory, prepared by the Illinois Department of Conservation—

"(A) by encouraging private owners of such natural areas to adopt voluntary measures for the preservation of such natural areas; or

"(B) by cooperating with the State or any political subdivision of the State in acquiring, on a willing seller basis, any such natural area.

In providing such assistance, the Commission shall in no way infringe upon the authorities and policies of the State or of any political subdivision of the State.

"(5) The Commission shall assist in the enhancement of public awareness of, and appreciation for, the historical, architectural, and engineering structures in the corridor and the archaeological and geological resources and sites in the corridor—

"(A) by consulting with the Secretary with respect to inventories to be completed by the Secretary under section 112(1);

"(B) by encouraging private owners of structures, sites, and resources identified in such inventories to adopt voluntary measures for the preservation of such structures, sites, and resources; or

"(C) by cooperating with the State or any political subdivision of the State in acquiring, on a willing seller basis, any structure, site, or resource so identified.

"(6) The Commission may assist the State, any political subdivision of the State, or any nonprofit organization in the restoration of any historic building in the corridor.

Such assistance may include providing technical staff assistance for historic preservation and revitalization efforts.

"(7) The Commission shall assist in the interpretation of the cultural and natural resources of the corridor—

"(A) by consulting with the Secretary with respect to the implementation of the Secretary's duties under section 112(2);

"(B) by establishing visitor orientation centers in the corridor;

"(C) by encouraging voluntary cooperation and coordination between the Federal Government, the State, political subdivisions of the State, and nonprofit organizations with respect to ongoing interpretative services in the corridor; and

"(D) by encouraging the State, political subdivisions of the State, and nonprofit organizations to undertake new interpretative initiatives with respect to the corridor.

"(8) The Commission shall assist in establishing recognition for the corridor by actively promoting the cultural, historical, natural, and recreational resources of the corridor on a community, regional, statewide, national, and international basis.

"(b) ENCOURAGEMENT OF ECONOMIC AND INDUSTRIAL DEVELOPMENT.—The Commission shall encourage, by appropriate means, enhanced economic and industrial development in the corridor consistent with the goals of the plan.

"(c) ACCESS ROUTES AND TRAFFIC.—The Commission shall take appropriate action to ensure that—

"(1) access routes to the canal and related sites are clearly identified; and

"(2) traffic in the corridor is routed away from industrial access routes and sites.

"(d) PROTECTIVE FEATURES.—(1) The Commission may finance the installation of a fence, warning sign, or other protective feature in the corridor by the State, by any political subdivision of the State, or by any person if such fence, sign, or other feature is approved by the Commission, any affected governmental body, and the owner and any user of property located adjacent to the property on which such fence, sign, or other feature is to be installed.

"(2) The Commission shall not require the installation of any fence, warning sign, or other protective feature.

"(e) REDUCING EXCESSIVE LIABILITY.—The Commission shall encourage the State to take appropriate action to ensure that owners and users of property located in or adjacent to the corridor will not be subject to excessive liability with respect to activities which are carried out by such owners and users on such property and which affect persons and property in the corridor.

"(f) ANNUAL REPORTS.—Not later than May 15 of each year (other than the year in which this Act is enacted [1984]) the Commission shall publish and submit an annual report concerning the Commission's activities to the Governor and to the Secretary.

"RESTRICTIONS ON COMMISSION

"SEC. 110. (a) RESTRICTIONS ON COMMISSION'S DEVELOPMENT.—(1) The Commission may not develop any site or structure in any area described in paragraph (2) unless such development involves the restoration, rehabilitation, or preservation of a facility existing on the date of the enactment of this Act [Aug. 24, 1984].

"(2) The areas referred to in paragraph (1) are the following areas:

"(A) Any area in the corridor designated by the political subdivision of the State which has primary responsibility for regulating land use in such areas (as determined by the Commission) as suitable for industrial development. Areas so designated may include any area adjacent to the Illinois and Michigan Canal State Park, a conservation site, a historical site, or other visitor area.

"(B) The area of the corridor in Grundy County, Illinois, extending from Morris, Illinois, to the eastern boundary of section 22, Aux Sable Township, but not including—

"(i) lock eight and lock tender's house (identified as sites 1 and 2, respectively, on the map described in section 104(b));

"(ii) Rutherford tavern, the old mule barn, and the historic cemetery (identified as sites 3, 4, and 5, respectively, on such map); and

"(iii) any trail in such area which follows the historic towpath of the canal.

"(C) The area of the corridor in Will County, Illinois, which extends from a line created from Interstate 55 to the center of the sailing line in the Des Plaines River, west on center line of sailing line to the intersection of the line formed by the eastern edge of sections 30 and 31 of Channahon Township

east through Brandon Pool, but not including the trail in such area which follows the historic towpath of the canal.

"(D) The area of the corridor in Will County, Illinois, which extends from the southern boundary of section 14 Lockport Township, to the eastern boundary of section 25, DuPage Township.

"(b) RESTRICTIONS ON DEVELOPMENT OF TRAILS.—The Commission may not develop any new trail along the canal or historic towpath of the canal through industrial sites or railroad rights of way without concurrence of the owner, which—

"(1) are located north of the city of Joliet, Illinois; and

"(2) existed on the date of the enactment of this Act [Aug. 24, 1984].

"TERMINATION OF COMMISSION

"SEC. 111. (a) TERMINATION.—Except as provided in subsection (b), the Commission shall terminate on the day occurring ten years after the date of the enactment of this Act [Aug. 24, 1984].

"(b) EXTENSION.—The Commission may extend the life of the Commission for a period of not more than five years beginning on the day referred to in subsection (a) if, not later than one hundred and eighty days before such day—

"(1) the Commission determines such extension is necessary in order for the Commission to carry out the purpose of this title;

"(2) the Commission submits such proposed extension to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate; and

"(3) the Governor and the Secretary each approve such extension.

"DUTIES OF THE SECRETARY

"SEC. 112. To carry out the purpose of this Act [this title], the Secretary shall have the following duties:

"(1) Not later than September 30, 1985, and in consultation with the Commission, the Secretary shall complete—

"(A) an inventory of sites and structures of historical, architectural, or engineering significance in the corridor; and

"(B) an inventory of sites and resources of archaeological or geological significance in the corridor.

"(2) Not later than September 30, 1986, in consultation with the Commission and in accordance with the plan, the Secretary shall—

"(A) develop a thematic structure for the interpretation of the heritage story of the corridor; and

"(B) design and fabricate interpretative materials based on such thematic structure, including—

"(i) trail guide brochures for exploring such heritage story via private auto, bus, bike, boat, or foot, including brochures for exploring such heritage story in towns along the canal;

"(ii) visitor orientation displays (including video presentations) at eight locations which are fairly distributed along the corridor;

"(iii) a curriculum element for local schools; and

"(iv) an appropriate mobile display depicting such heritage story.

"(3) The Secretary shall, upon request of the Commission, provide technical assistance to the Commission in carrying out the provisions of section 109(a)(6). Such assistance may include recommendations concerning appropriate preservation treatment, adaptive reuse potential, strategies for finding private investors, and tax advantages available with respect to such rehabilitation.

"(4) The Secretary shall make available to interested persons information which explains tax advantages available with respect to the rehabilitation of historical structures in the corridor.

"(5) For each fiscal year during the life of the Commission, the Secretary shall make available to interested persons brochures which explain tax advantages available with respect to the rehabilitation of historical structures in the corridor.

"(6) For each fiscal year during the life of the Commission, the Secretary shall detail to the Commission, on a nonreimbursable basis, two employees of the Department of the Interior to enable the Commission to carry out the Commission's duties under section 109.

"DUTIES OF OTHER FEDERAL ENTITIES

"SEC. 113. Any Federal entity conducting or supporting significant activities directly affecting the corridor shall—

"(1) consult with the Secretary and the Commission with respect to such activities;

"(2) cooperate with the Secretary and the Commission in carrying out their duties under this Act [this title] and, to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

"(3) to the maximum extent practicable, conduct or support such activities in a manner which the Commission determines will not have an adverse effect on the resources cited in the National Park Service report.

"CONVEYANCE OF CANAL TITLE BY UNITED STATES

"SEC. 114. (a) CONVEYANCE TO STATE.—(1) Except as provided in subsection (b), the United States shall convey to the State by quitclaim deed any right, title, or interest of the United States to the real property described in the Act entitled 'An Act relinquishing to the State of Illinois certain right, title, or interest of the United States of America, and for other purposes', approved July 1, 1947 (61 Stat. 237), comprising approximately two thousand six hundred acres. The instrument of conveyance shall require that, except as provided in paragraph (2) such real property be used and occupied only for highway, park, recreational, or other public purposes, including those provided for under this Act [this title]. Such real property may be leased for utility or transmission purposes (or may be transferred or leased for park, recreation, or other public purposes consistent with the plan) if the revenue from any such lease or transfer is used for park and recreational purposes within the corridor.

"(2) The State, or its successors or assigns, may continue to lease for any purpose any portion of the real property described in subsection (a) which was leased on or before February 9, 1984, so long as the revenue from such lease is used for park or recreational purposes within the corridor. Any private person occupying any portion of the real property described in subsection (a) may continue to occupy such real property with the written permission of the State (or of any successor or assign of the State in the case of any property which has been transferred to a successor or assign).

"(3) Except as provided in paragraph (2), if any real property conveyed to the State under this section ceases to be used and occupied as provided in paragraph (1), then any right, title, or interest in the real property not so used and occupied shall revert to the United States. The conveyance by the United States under this subsection shall be subject to the condition that the State of Illinois, its successors, and assigns agree to hold the United States harmless from claims arising from or through the operations of the lands conveyed by the United States due to conditions existing at the time of this conveyance.

"(b) CONSENT OF SECRETARY OF ARMY.—The interests in the canal prism and towpath lands (including reserved lands) in township 37 north, range 11 east, section 14; township 35 north, range 10 east, sections 9 and 16; township 35 north, range 10 east, sections 16,

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20, and 21; township 34 north, range 9 east, section 31; and township 34 north, range 8 east, sections 22, 23, 25, 26, and 36, necessary for the operation and maintenance of the Illinois Waterway navigation project may be conveyed under subsection (a) only with the concurrence of the Secretary of the Army with such conditions as necessary to protect the navigation project.

"EFFECT ON ENVIRONMENTAL AND OTHER STANDARDS; RESTRICTIONS; SAVINGS PROVISIONS

"SEC. 115. (a) EFFECT ON ENVIRONMENTAL AND OTHER STANDARDS.—(1) Nothing in this Act [this title] shall be deemed to impose any environmental, occupational, safety, or other rule, regulation, standard, or permit process which is different from those presently applicable, or which would be applicable, had the corridor not been established.

"(2) The establishment of the corridor shall not impose any change in Federal environmental quality standards. No portion of the corridor which is subject to part C of title I of the Clean Air Act (42 U.S.C. 7470 et seq.), as amended by the Clean Air Act Amendments of 1977 [Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685], may be designated as class 1 for purposes of such part C solely by reason of the establishment of the corridor.

"(3) No State or Federal agency shall impose more restrictive water use designations or water quality standards upon uses of, or discharges to, waters of the State or waters of the United States, within or adjacent to the corridor solely by reason of the establishment of the corridor.

"(4) Nothing in the establishment of the corridor shall abridge, restrict, or alter any applicable rule, regulation, standard or review procedure for permitting of facilities within or adjacent to the corridor.

"(5) Nothing in the establishment of the corridor shall affect the continuing use and operation, as presently located, of all public utilities and common carriers.

"(6) Actions taken under this title to achieve the purposes described in section 102(b) shall emphasize voluntary cooperation.

"(b) RESTRICTIONS ON COMMISSION AND SECRETARY.—Nothing in this title shall be construed to vest in the Commission or the Secretary any authority—

"(1) to require the State, any political subdivision of the State, or any private person to participate in any project or program carried out by the Commission or the Secretary under this title;

"(2) to intervene as a party in any administrative or judicial proceeding concerning the application or enforcement of any regulatory authority of the State or any political subdivision of the State, including any authority relating to land use regulation, environmental quality, licensing, permitting, easements, private land development, or other occupational or access issues;

"(3) to establish or modify any regulatory authority of the State or of any political subdivision of the State, including any authority relating to land use regulation, environmental quality, or pipeline or utility crossings;

"(4) to modify any policy of the State or of any political subdivision of the State; or

"(5) to establish or modify any authority of the State or of any political subdivision of the State with respect to the acquisition of lands or interests in lands.

"(c) SAVINGS PROVISION.—Nothing in this title shall diminish, enlarge, or modify any right of the State or of any political subdivision of the State—

"(1) to exercise civil and criminal jurisdiction within the corridor; or

"(2) to tax persons, corporations, franchises, or property, including minerals and other interests in or on lands or waters within the corridor.

"AUTHORIZATION OF APPROPRIATIONS; ALLOCATION OF AMOUNTS FOR CERTAIN PURPOSES

"SEC. 116. (a) AUTHORIZATION OF APPROPRIATIONS.—(1) For each fiscal year which commences after September 30, 1984, there is authorized to be appropriated—

"(A) to the Commission a sum not to exceed $250,000 to carry out the Commission's duties under this title; and

"(B) to the Secretary such sums as may be necessary to carry out the Secretary's duties under this title.

"(2) Any sum appropriated under paragraph (1) shall remain available until expended.

"(b) ALLOCATION OF AMOUNTS FOR CERTAIN PURPOSES.—Not less than 5 per centum of the aggregate amount available to the Commission from all sources for a fiscal year shall be used for carrying out each of the duties of the Commission specified in subsections (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), and (b) of section 109.

"COMPLIANCE WITH BUDGET ACT

"SEC. 117. Any new spending authority described in subsection (c)(2)(A) of section 401 of the Congressional Budget Act of 1974 [2 U.S.C. 651(c)(2)(A)] which is provided under this title shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1e, 230e, 281e, 282a, 282b, 396d, 397d, 407q, 410u, 410w, 410z-4, 410aa-2, 410bb-1, 410ee, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 430m, 450e-1, 450hh-2, 450jj-5, 450pp-1, 459h-4, 462, 463, 464, 465, 466, 467, 467b, 468, 469, 470a, 1133, 1244, 3206 of this title; title 40 sections 304a-2, 871.

§ 462. Administration by Secretary of the Interior; powers and duties enumerated

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1e, 230e, 281e, 282a, 282b, 396d, 397d, 407q, 410u, 410w, 410z-4, 410aa-2, 410bb-1, 410cc-22, 410cc-32, 410ee, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 430m, 450e-1, 450hh-2, 450jj-5, 450pp-1, 459h-4, 463, 464, 465, 466, 467, 467b, 468, 469, 470a, 1133, 1244 of this title; title 40 sections 304a-2, 871.

§ 463. National Park System Advisory Board

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1e, 230e, 281e, 282a, 282b, 396d, 397d, 407q, 410u, 410w, 410z-4, 410aa-2, 410bb-1, 410ee, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 430m, 450e-1, 450hh-2, 450jj-5, 450pp-1, 459h-4, 462, 464, 465, 466, 467, 467b, 468, 469, 470a, 1133, 1244 of this title; title 40 sections 304a-2, 484, 871.

§ 464. Cooperation with governmental and private agencies

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1e, 230e, 281e, 282a, 282b, 396d, 397d, 407q, 410u, 410w, 410z-4, 410aa-2, 410bb-1, 410ee, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 430m, 450e-1, 450hh-2, 450jj-5, 450pp-1, 459h-4, 462, 463, 465, 466, 467, 467b, 468, 469, 470a, 1133, 1244 of this title; title 40 sections 304a-2, 871.

§ 465. Jurisdiction of States in acquired lands

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1e, 230e, 281e, 282a, 282b, 396d, 397d, 407q, 410u, 410w, 410z-4, 410aa-2, 410bb-1, 410ee, 410ii-5, 410jj-4, 410kk-1, 410*ll*,

430m, 450e-1, 450hh-2, 450jj-5, 450pp-1, 459h-4, 462, 463, 464, 466, 467, 467b, 468, 469, 470a, 1133, 1244 of this title; title 40 sections 304a-2, 871.

§ 466. Authorization of appropriations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1e, 230e, 281e, 282a, 282b, 396d, 397d, 407q, 410u, 410w, 410z-4, 410aa-2, 410bb-1, 410ee, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 430m, 450e-1, 450hh-2, 450jj-5, 450pp-1, 459h-4, 462, 463, 464, 465, 467, 467b, 468, 469, 470a, 1133, 1244 of this title; title 40 sections 304a-2, 871.

§ 467. Conflict of laws

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1e, 230e, 281e, 282a, 282b, 396d, 397d, 407q, 410u, 410w, 410z-4, 410aa-2, 410bb-1, 410ee, 410ii-5, 410jj-4, 410kk-1, 410*ll*, 430m, 450e-1, 450hh-2, 450jj-5, 450pp-1, 459h-4, 462, 463, 464, 465, 466, 467b, 468, 469, 470a, 1133, 1244 of this title; title 40 sections 304a-2, 871.

§ 469j. Commission for the Preservation of America's Heritage Abroad

(a) Purpose

Because the fabric of a society is strengthened by visible reminders of the historical roots of the society, it is in the national interest of the United States to encourage the preservation and protection of the cemeteries, monuments, and historic buildings associated with the foreign heritage of United States citizens.

(b) Establishment

There is established a commission to be known as the Commission for the Preservation of America's Heritage Abroad (hereafter in this section referred to as the "Commission").

(c) Duties

The Commission shall—

(1) identify and publish a list of those cemeteries, monuments, and historic buildings located abroad which are associated with the foreign heritage of United States citizens from eastern and central Europe, particularly those cemeteries, monuments, and buildings which are in danger of deterioration or destruction;

(2) encourage the preservation and protection of such cemeteries, monuments, and historic buildings by obtaining, in cooperation with the Department of State, assurances from foreign governments that the cemeteries, monuments, and buildings will be preserved and protected; and

(3) prepare and disseminate reports on the condition of and the progress toward preserving and protecting such cemeteries, monuments, and historic buildings.

(d) Membership

(1) The Commission shall consist of 21 members appointed by the President, 7 of whom shall be appointed after consultation with the Speaker of the House of Representatives and 7 of whom shall be appointed after consultation with the President pro tempore of the Senate.

(2)(A) Except as provided in subparagraphs (B) and (C), members of the Commission shall be appointed for terms of 3 years.

(B) Of the members first appointed after consultation with the Speaker of the House of Representatives, 5 shall be appointed for a term of 2 years. Of the members first appointed after consultation with the President pro tempore of the Senate, 5 shall be appointed for 2 years.

(C) A member appointed to fill a vacancy on the Commission shall serve for the remainder of the term for which the member's predecessor was appointed.

(D) A member may retain membership on the Commission until the member's successor has been appointed.

(3) The President shall designate the Chairman of the Commission from among its members.

(e) Meetings

The Commission shall meet at least once every three months.

(f) Compensation and per diem

(1) Members of the Commission shall receive no pay on account of their service on the Commission.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.

(g) Authorities

(1) The Commission or any member it authorizes may, for the purposes of carrying out this section, hold such hearings, sit and act at such times and places, request such attendance, take such testimony, and receive such evidence, as the Commission considers appropriate.

(2) The Commission may appoint such personnel (subject to the provisions of title 5 which govern appointments in the competitive service) and may fix the pay of such personnel (subject to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates) as the Commission deems desirable.

(3) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay then in effect for grade GS-18 of the General Schedule (5 U.S.C. 5332(a)).

(4) Upon request of the Commission, the head of any Federal department or agency, including the Secretary of State, may detail, on a reimbursable basis, any of the personnel of such department or agency to the Commission to assist it in carrying out its duties under this section.

(5) The Commission may secure directly from any department or agency of the United States, including the Department of State, any information necessary to enable it to carry out this section. Upon the request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

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(6) The Commission may accept, use, and dispose of gifts or donations of money or property.

(7) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(8) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(h) Reports

The Commission shall transmit an annual report to the President and to each House of Congress as soon as practicable after the end of each fiscal year. Each report shall include a detailed statement of the activities and accomplishments of the Commission during the preceding fiscal year and any recommendations by the Commission for legislation and administrative actions.

(Pub. L. 99-83, title XIII, § 1303, Aug. 8, 1985, 99 Stat. 280.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (g)(2), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (g)(2), (3), is set out under section 5332 of Title 5.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as an Effective Date of 1985 Amendment note under section 2151-1 of Title 22, Foreign Relations and Intercourse.

SUBCHAPTER II—NATIONAL HISTORIC PRESERVATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 19dd, 398f, 1247 of this title; title 42 section 5320; title 43 section 1457a; title 45 sections 1116, 1212.

§ 470c. Apportionment of grant funds

(a) Basis for apportionment

The amounts appropriated and made available for grants to the States for comprehensive statewide historic surveys and plans under this subchapter shall be apportioned among the States by the Secretary on the basis of needs as determined by him.

[*See main edition for text of (b) to (d); credits*]

CODIFICATION

Subsec. (a) is set out in this supplement to correct typographical error appearing in the main edition.

§ 470t. Budget; authorization of appropriations

(a) Time of submission; related department; authorized appropriations

The Council shall submit its budget annually as a related agency of the Department of the Interior. To carry out the provisions of sections 470i to 470v of this title, there is authorized to be appropriated not more than $2,500,000 for each of the fiscal years 1985 through 1989.

[*See main edition for text of (b)*]

(As amended Pub. L. 98-483, Oct. 17, 1984, 98 Stat. 2258.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-483 substituted appropriations authorization of not more than $2,500,000 for each of the fiscal years 1985 through 1989 for prior appropriations authorizations of not more than $1,500,000 to $2,250,000 in increments of $250,000 for fiscal years 1977 through 1980, and not more than $2,500,000 for each of the fiscal years 1981 through 1983.

CHAPTER 2—THE NATIONAL FORESTS

SUBCHAPTER I—ESTABLISHMENT AND ADMINISTRATION

Sec.

539f. Nonprofit organization user of national forest lands.
(a) Permits for organization camps; waiver of charges; performance of services; loss of entitlement.
(b) "Other nonprofit organization" defined.

SUBCHAPTER II—SCENIC-RESEARCH AREAS

543. Mono Basin National Forest Scenic Area; establishment.
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543c. Administration.
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(b) Water rights; protection of geologic, ecologic, and cultural resources; recreational use of Scenic Area; related facilities and programs; scientific study and research; commercial timber harvesting.
(c) Grazing permits.
(d) Cooperative agreements.
(e) Management plan.
(f) Visitor center.
(g) Withdrawal of lands from operation of other Federal laws; regulation of mining claims.
(h) Water rights.
(i) Rights-of-way of city of Los Angeles.
(j) Existing community recreational uses.
543d. Ecological studies; reports to Congressional committees and to Chief of Forest Service; progress reports.
543e. Scenic Area Advisory Board.
(a) Establishment; consultations with Secretary.
(b) Composition and selection.
(c) Terms of appointment.
(d) Initial appointment; Chairman.
(e) Annual meetings and consultations with Secretary or designee.
(f) Compensation; expenses.
(g) Vacancies.
(h) Quorum.
(i) Termination.
543f. Traditional Native American uses.
543g. Authorization of appropriations.
543h. New spending authority.

SUBCHAPTER I—ESTABLISHMENT AND ADMINISTRATION

§ 500. Payment and evaluation of receipts to State or Territory for schools and roads; moneys received; projections of revenues and estimated payments

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 90d, 253, 460p–2, 472a, 499, 508b, 577g, 577g–1, 580k, 1683 of this title; title 31 section 6903.

§ 522. Omitted

CODIFICATION

Section, acts Feb. 15, 1901, ch. 372, 31 Stat. 790; Feb. 1, 1905, ch. 288, § 1, 33 Stat. 628, insofar as it relates to rights-of-way through public lands, forests, and reservations, and the Yosemite, Sequoia, and General Grant National Parks is set out as section 79 of this title and section 959 of Title 43, Public Lands, and insofar as it related to rights-of-way through national forests was set out as this section. Pub. L. 94–579, title VII, § 706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, repealed this section insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System.

§ 539f. Nonprofit organization user of national forest lands

(a) Permits for organization camps; waiver of charges; performance of services; loss of entitlement

Notwithstanding any other provision of law, the Secretary of Agriculture is directed to waive annually without charge all or a portion of payment or rental fees required under terms of a permit for use of certain lands of the National Forest System as organization camps by local units of the Boy Scouts of America or such other nonprofit organization when such local units of the Boy Scouts of America or such nonprofit organization are willing to perform services, as the Secretary prescribes and determines will yield a valuable benefit to the public and to the program of the Secretary of such lands. If the Secretary determines that a local unit of the Boy Scouts of America or such other nonprofit organization has not fully performed such services, such organization shall not be entitled in the subsequent year to waiver under the provisions of this section.

(b) "Other nonprofit organization" defined

The term "other nonprofit organization" shall mean (1) a nonprofit organization holding an exemption under section 501(c) of title 26; and (2) a nonprofit association or nonprofit corporation, which is not controlled or owned by profitmaking corporations or business enterprises, and which is engaged in public or semipublic activity to further public health, safety, or welfare.

(Pub. L. 98–478, § 3, Oct. 16, 1984, 98 Stat. 2216.)

SUBCHAPTER II—SCENIC-RESEARCH AREAS

§ 543. Mono Basin National Forest Scenic Area; establishment

The area in the Mono Basin within and adjacent to the Inyo National Forest in the State of California, as generally depicted on a map entitled "Mono Basin National Forest Scenic Area" dated June 1983, and numbered 1983-3, is hereby designated as the Mono Basin National Forest Scenic Area (hereafter [1] in sections 543 to 543h of this title referred to as the "Scenic Area"). Such map shall be on file and available for public inspection in the office of the Forest Supervisor, Inyo National Forest and in the office of the Chief of the Forest Service, Department of Agriculture. The Secretary of Agriculture (hereinafter in sections 543 to 543h of this title referred to as the "Secretary") may make minor revisions in the boundary of the Scenic Area after publication of notice to that effect in the Federal Register and submission of notice thereof to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such notice shall be published and submitted at least sixty days before the revision is made.

(Pub. L. 98–425, title III, § 301, Sept. 28, 1984, 98 Stat. 1632.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 543b, 543c, 543e, 543g, 543h of this title.

§ 543a. Extension of National Forest boundary

(a) The exterior boundary of the Inyo National Forest is hereby extended to include the area within the boundary of the Scenic Area. Any lands and interests therein acquired pursuant to section 543b of this title shall become part of the National Forest System.

(b) For the purposes of section 460*l*–9(a)(1) of this title, the boundary of the Inyo National Forest, as modified by this section, shall be treated as if it were the boundary of that forest on January 1, 1964.

(Pub. L. 98–425, title III, § 302, Sept. 28, 1984, 98 Stat. 1633.)

§ 543b. Acquisition of lands

(a) Authority of Secretary; exceptions

The Secretary is authorized to acquire all lands and interests therein within the boundary of the Scenic Area by donation, exchange in accordance with sections 543 to 543h of this title or other provisions of law, or purchase with donated or appropriated funds, except that—

(1) any lands or interests therein within the boundary of the Scenic Area which are owned by the State of California or any political subdivision thereof (inciuding the city of Los Angeles) may be acquired only by donation or exchange; and

(2) lands or interests therein within the boundary of the Scenic Area which are not owned by the State of California or any political subdivision thereof (including the city of Los Angeles) may be acquired only with the consent of the owner thereof unless the Sec-

[1] So in original. Probably should be "hereinafter".

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retary determines, after written notice to the owner and after opportunity for comment, that the property is being developed, or proposed to be developed, in a manner which is detrimental to the integrity of the Scenic Area or which is otherwise incompatible with the purposes of sections 543 to 543h of this title.

(b) Guidelines; detrimental or incompatible use

(1) Not later than six months after September 28, 1984, the Secretary shall publish specific guidelines under which determinations shall be made under paragraph (2) of subsection (a) of this section. No use which existed prior to June 1, 1984, within the area included in the Scenic Area shall be treated under such guidelines as a detrimental or incompatible use within the meaning of such paragraph (2).

(2) For purposes of subsection (a)(2) of this section, any development or proposed development of private property within the boundary of the Scenic Area that is significantly different from, or a significant expansion of, development existing as of June 1, 1984, shall be considered by the Secretary as detrimental to the integrity of the Scenic Area. No reconstruction or expansion of a private or commercial building, including—

(A) reconstruction of an existing building,

(B) construction of attached structural additions, not to exceed 100 per centum of the square footage of the original building, and

(C) construction of reasonable support development such as roads, parking, water and sewage systems shall be treated as detrimental to the integrity of the Scenic Area or as an incompatible development within the meaning of paragraph (2) of subsection (a) of this section.

(c) Preparation of environmental assessments

Notwithstanding any other provision of law, the Secretary shall only be required to prepare an environmental assessment of any exchange of mineral or geothermal interest authorized by sections 543 to 543h of this title.

(Pub. L. 98-425, title III, § 303, Sept. 28, 1984, 98 Stat. 1633.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 543a of this title.

§ 543c. Administration

(a) Scenic Area and other lands to be administered as part of Inyo National Forest

(1) Except as otherwise provided in sections 543 to 543h of this title, the Secretary, acting through the Chief of the Forest Service, shall administer the Scenic Area as a separate unit within the boundary of the Inyo National Forest in accordance with the laws, rules, and regulations applicable to the National Forest System. All Bureau of Land Management administered lands that fall within the boundaries of the Scenic Area are hereby added to the Inyo National Forest and shall be administered in accordance with the laws, rules, and regulations applicable to the National Forest System.

(2) In addition, the following parcels administered by the Bureau of Land Management are hereby added to the Inyo National Forest and shall be administered in accordance with the laws, rules, and regulations applicable to the National Forest System:

township 1 south; range 26 east; Mount Diablo Meridian:

east half of southwest quarter and south half of southeast quarter of section 10; and

township 1 north; range 26 east; Mount Diablo Meridian:

southwest quarter of northeast quarter and west half of southeast quarter of section 9;

southwest quarter of southwest quarter of section 15;

southwest quarter of northwest quarter and northwest quarter of southwest quarter of section 25;

north half of southeast quarter of section 26, west half of northwest quarter and northwest quarter of southwest quarter of section 27;

township 1 north; range 27 east; Mount Diablo Meridian:

east half of southeast quarter of section 34;

southwest quarter of northwest quarter of section 35; and

west half of section 30 as intersected by Scenic Area Boundary.

(b) Water rights; protection of geologic, ecologic and cultural resources; recreational use of Scenic Area; related facilities and programs; scientific study and research; commercial timber harvesting

(1) In a manner consistent with the protection of the water rights of the State of California or any political subdivision thereof (including the city of Los Angeles) or of any person to the extent that such water rights have been granted or modified under the laws of the State of California, the Secretary shall manage the Scenic Area to protect its geologic, ecologic, and cultural resources. The Secretary shall provide for recreational use of the Scenic Area and shall provide recreational and interpretive facilities (including trails and campgrounds) for the use of the public which are compatible with the provisions of sections 543 to 543h of this title, and may assist adjacent affected local governmental agencies in the development of related interpretive programs. The Secretary shall permit the full use of the Scenic Area for scientific study and research in accordance with such rules and regulations as he may prescribe.

(2) Except as specifically provided in this subsection, no commercial timber harvesting shall be permitted in the Scenic Area, but the Secretary shall permit the utilization of wood material such as firewood, posts, poles, and Christmas trees by individuals for their domestic purposes under such regulations as he may prescribe to protect the natural and cultural resources of the Scenic Area. The Secretary may take action including the use of commercial timber harvest to the minimum extent neces-

sary to control fires, insects and diseases that might—

(A) endanger irreplaceable features within the Scenic Area, or

(B) cause substantial damage to significant resources adjacent to the Scenic Area.

(c) Grazing permits

The Secretary shall permit those persons holding currently valid grazing permits within the boundary of the Scenic Area to continue to exercise such permits consistent with other applicable law.

(d) Cooperative agreements

The Secretary may enter into cooperative agreements with the State of California and any political subdivision thereof (including the city of Los Angeles) for purposes of protecting Scenic Area resources and administering areas owned by the State or by any such political subdivision which are within the Scenic Area.

(e) Management plan

Within three years after September 28, 1984, the Secretary shall submit to the committees referred to in section 543 of this title, a detailed and comprehensive management plan for the Scenic Area which is consistent with the protection of water rights as provided in subsection (b)(1) of this section. The plan shall include but not be limited to—

(1) an inventory of natural (including geologic) and cultural resources;

(2) general development plans for public use facilities, including cost estimates; and

(3) measures for the preservation of the natural and cultural resources of the Scenic Area in accordance with subsections (a) and (b) of this section.

Such plan shall provide for hunting and fishing (including commercial brine shrimp operations authorized under State law) within the Scenic Area in accordance with applicable Federal and State law, except to the extent otherwise necessary for reasons of public health and safety, the protection of resources, scientific research activities, or public use and enjoyment.

(f) Visitor center

The Secretary is authorized to construct a visitor center in the Scenic Area for the purpose of providing information through appropriate displays, printed material, and other interpretive programs, about the natural and cultural resources of the Scenic Area.

(g) Withdrawal of lands from operation of other Federal laws, regulation of mining claims

(1) Subject to valid existing rights, federally owned lands and interests therein within the Scenic Area are withdrawn from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, from operation of the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], and from disposition under the public land laws.

(2) Subject to valid existing rights, all mining claims located within the Scenic Area shall be subject to such reasonable regulations as the Secretary may prescribe to assure that mining will, to the maximum extent practicable, be consistent with protection of the scenic, scientific, cultural, and other resources of the area, and any patent which may be issued after September 28, 1984, shall convey title only to the minerals together with the right to use the surface of lands for mining purposes subject to such reasonable regulations.

(h) Water rights

Nothing in sections 543 to 543h of this title shall be construed to reserve any water for purposes of the Scenic Area or to affirm, deny, or otherwise affect the present (or prospective) water rights of any person or of the State of California or of any political subdivision thereof (including the city of Los Angeles), nor shall any provision of sections 543 to 543h of this title be construed to cause, authorize, or allow any interference with or infringement of such water rights so long as, and to the extent that, those rights remain valid and enforceable under the laws of the State of California.

(i) Rights-of-way of city of Los Angeles

(1) The Act entitled "An Act authorizing and directing the Secretary of the Interior to sell to the city of Los Angeles, California, certain public lands in California; and granting rights-of-way over public lands and reserved lands to the city of Los Angeles in Mono County in the State of California", approved June 23, 1936 (49 Stat. 1892), is hereby repealed.

(2) The Secretary and the Secretary of the Interior shall grant and convey rights-of-way easements, at no cost, to the city of Los Angeles for those rights-of-way on public lands and national forest lands in Mono County, California, as described and set forth in maps and accompanying descriptions which were—

(A) filed by the city of Los Angeles with the Secretary of the Interior on October 24, 1944, and

(B) accepted as proof of construction on behalf of the United States by the Commissioner of the General Land Office on January 4, 1945.

Such easement conveyances shall provide for the right of the city to continue its present operations and to maintain, reconstruct, and replace all existing water and power facilities located within the bounds of the area described in the maps and descriptions referred to in the preceding sentence. The United States shall reserve in the conveyance easements all rights to use and permit the use by others of the lands so conveyed to the extent that such use does not unreasonably interfere with the rights granted herein to the city of Los Angeles.

(3) The grant in paragraph (2) of this subsection shall become effective upon relinquishment in writing by the city of Los Angeles of its applications dated October 20, 1944, and January 17, 1945, to purchase twenty-three thousand eight hundred and fifty acres of Federal land.

(4) The easements granted under paragraph (2) of this subsection shall provide that whenever the city of Los Angeles ceases to use the land or any part thereof subject to such ease-

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ments for the purposes for which it is currently being used, as of September 28, 1984, all interests in such land or part thereof shall revert to the United States.

(j) Existing community recreational uses

Existing community recreational uses, as of September 28, 1984, shall be permitted at the levels and locations customarily exercised.

(Pub. L. 98-425, title III, § 304, Sept. 28, 1984, 98 Stat. 1634.)

REFERENCES IN TEXT

The mining laws of the United States, referred to in subsec. (g)(1), are classified generally to Title 30, Mineral Lands and Mining.

Mineral leasing laws of the United States, referred to in subsec. (g)(1), have been defined in sections 351, 505, 530, and 541e of Title 30, to mean acts Oct. 20, 1914, ch. 330, 38 Stat. 741; Feb. 25, 1920, ch. 85, 41 Stat. 437; Apr. 17, 1926, ch. 158, 44 Stat. 301; and Feb. 7, 1927, ch. 66, 44 Stat. 1057. The act of Oct. 20, 1914, was repealed by Pub. L. 86-252, § 1, Sept. 9, 1959, 73 Stat. 490. The act of Feb. 25, 1920, is popularly known as the Mineral Lands Leasing Act and is classified principally to chapter 3A (§ 181 et seq.) of Title 30. The act of Apr. 17, 1926, is classified generally to subchapter VIII (§ 271 et seq.) of chapter 3A of Title 30. The act of Feb. 7, 1927, is classified principally to subchapter IX (§ 281 et seq.) of chapter 3A of Title 30. For complete classification of these Acts to the Code, see Tables.

The Geothermal Steam Act of 1970, referred to in subsec. (g)(1), is Pub. L. 91-581, Dec. 24, 1970, 84 Stat. 1566, which is classified principally to chapter 23 (§ 1001 et seq.) of Title 30. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 30 and Tables.

The public land laws, referred to in subsec. (g)(1), are classified generally to Title 43, Public Lands.

The Act entitled "An Act authorizing and directing the Secretary of the Interior to sell to the city of Los Angeles, California, certain public lands in California; and granting rights-of-way over public lands and reserved lands to the city of Los Angeles in Mono County in the State of California", referred to in subsec. (i)(1), is act June 23, 1936, ch. 733, 49 Stat. 1892, which was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 543e, 543f of this title.

§ 543d. Ecological studies; reports to Congressional committees and to Chief of Forest Service; progress reports

The Secretary shall take such steps as may be necessary to, within one hundred and eighty days of September 28, 1984, enter into a contract with the National Academy of Sciences for the purpose of conducting a scientific study of the ecology of the Scenic Area. The study shall provide for consultation with knowledgeable local, State, Federal, and private persons and organizations and shall provide findings and recommendations to the Congress. Such study shall be conducted in accordance with the best scientific methodology (as set forth by the National Academy of Sciences) and shall be transmitted by the National Academy of Sciences to the Committee on Energy and Natural Resources of the United States Senate, to the Committee on Interior and Insular Affairs of the United States House of Representatives, and to the Chief of the Forest Service not later than January 1, 1987. Progress reports regarding the study shall be transmitted to the above committees on January 1, 1985, and January 1 of each year thereafter.

(Pub. L. 98-425, title III, § 305, Sept. 28, 1984, 98 Stat. 1636.)

§ 543e. Scenic Area Adivory Board

(a) Establishment; consultations with Secretary

There is hereby established the Scenic Area Advisory Board (hereinafter referred to as the "Board"). The Secretary shall consult with and seek the advice and recommendations of the Board with respect to—

(1) the administration of the Scenic Area with respect to policies, programs, and activities in accordance with sections 543 to 543h of this title;

(2) the preparation and implementation of the comprehensive management plan; and

(3) the location of the visitor center authorized by section 543c(f) of this title.

(b) Composition and selection

The Board shall be composed of nine members, who shall be selected as follows:

(1) five members appointed by the Mono County Board of Supervisors;

(2) two members appointed by the Governor of California (one of whom shall be an employee of the California Division of Parks and Recreation);

(3) one member appointed by the mayor of the city of Los Angeles; and

(4) one member appointed by the Secretary (who shall be an employee of the Forest Service).

(c) Terms of appointment

Each member of the Board shall be appointed to serve for a term of three years except that the initial appointments shall be for terms as follows:

(1) of those members appointed by the Mono County Board of Supervisors one shall be appointed to serve for a term of one year, two shall be for a term of two years, and two shall be for a term of three years;

(2) of those members appointed by the Governor of California one shall be appointed to serve for a term of one year and one shall be appointed to serve for a term of three years;

(3) the member appointed by the mayor of the city of Los Angeles shall be appointed to serve for a term of two years; and

(4) the member appointed by the Secretary shall be appointed to serve for a term of three years.

(d) Initial appointment; Chairman

The members of the Board shall be appointed within ninety days of September 28, 1984. The members of the Board shall, at their first meeting, elect a Chairman.

(e) Annual meetings and consultations with Secretary or designee

The Secretary, or a designee, shall from time to time, but at least annually, meet and consult

with the Board on matters relating to the administration of the scenic area.[3]

(f) Compensation; expenses

Members of the Board shall serve without compensation as such, but the Secretary is authorized to pay, upon vouchers signed by the Chairman, the expenses reasonably incurred by the Board and its members in carrying out their duties under sections 543 to 543h of this title.

(g) Vacancies

Any vacancy in the Board shall be filled in the same manner in which the original appointment was made.

(h) Quorum

A majority of those members appointed shall constitute a quorum for the conduct of all business of the Board.

(i) Termination

The Board shall terminate ten years from the date of its first meeting.

(Pub. L. 98–425, title III, § 306, Sept. 28, 1984, 98 Stat. 1637.)

§ 543f. Traditional Native American uses

In recognition of the past use of the Scenic Area by Indian people for traditional cultural and religious purposes, the Secretary shall insure nonexclusive access to Scenic Area lands by Indian people for such traditional cultural and religious purposes, including the harvest of the brine fly larvae. Such direction shall be consistent with the purpose and intent of the American Indian Religious Freedom Act of August 11, 1978 (92 Stat. 469) [42 U.S.C. 1996]. As a part of the plan prepared pursuant to section 543c(c) of this title, the Secretary shall, in consultation with appropriate Indian tribes, define the past cultural and religious uses of the Scenic Area by Indians.

(Pub. L. 98–425, title III, § 307, Sept. 28, 1984, 98 Stat. 1638.)

§ 543g. Authorization of appropriations

In addition to other amounts available for such purposes, effective October 1, 1985, there are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of sections 543 to 543h of this title.

(Pub. L. 98–425, title III, § 308, Sept. 28, 1984, 98 Stat. 1638.)

§ 543h. New spending authority

Any new spending authority described in subsection (c)(2)(A) or (B) of section 651 of title 2 which is provided under sections 543 to 543h of this title shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(Pub. L. 98–425, title III, § 309, Sept. 28, 1984, 98 Stat. 1638.)

[3] So in original. Probably should be capitalized.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 543, 543b, 543c, 543e, 543g of this title.

CHAPTER 3—FORESTS; FOREST SERVICE; REFORESTATION; MANAGEMENT

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
580q. National Tree Seed Laboratory; disposition of fees.

SUBCHAPTER I—GENERAL PROVISIONS

§ 558a. Volunteers in the National Forests Program

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 558c, 558d, 1246, 1250 of this title.

§ 558b. Incidental expenses of program volunteers

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 558c, 558d, 1246, 1250 of this title.

§ 558c. Employment status of volunteers

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 558d, 1246, 1250 of this title.

§ 558d. Authorization of appropriations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 558c, 1246, 1250 of this title.

§ 580q. National Tree Seed Laboratory; disposition of fees

Notwithstanding any other provision of law, fees received by the National Tree Seed Laboratory, administered by the Forest Service, United States Department of Agriculture, for the provision of a tree seed testing service, shall be retained and deposited as a reimbursement to current appropriations used to cover the costs of providing such service.

(Pub. L. 99–198, title XVII, § 1772, Dec. 23, 1985, 99 Stat. 1658.)

CHAPTER 3B—SOIL CONSERVATION

§ 590g. Additional policies and purposes of chapter

(a) Purposes enumerated

It is hereby declared to be the policy of this chapter also to secure, and the purposes of this chapter shall also include, (1) preservation and improvement of soil fertility; (2) promotion of the economic use and conservation of land; (3) diminution of exploitation and wasteful and unscientific use of national soil resources; (4) the protection of rivers and harbors against the results of soil erosion in aid of maintaining the navigability of waters and water courses and in aid of flood control; (5) reestablishment, at as rapid a rate as the Secretary of Agriculture determines to be practicable and in the general public interest, of the ratio between the purchasing power of the net income per person on farms and that of the income per person not on

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farms that prevailed during the five-year period August 1909–July 1914, inclusive, as determined from statistics available in the United States Department of Agriculture, and the maintenance of such ratio; (6) prevention and abatement of agricultural-related pollution,[1] and (7) the promotion of energy and water conservation through dry land farming. The powers conferred under this section and sections 590h, 590i, and 590j to 590n of this title shall be used to assist voluntary action calculated to effectuate the purposes specified in this section. Such powers shall not be used to discourage the production of supplies of foods and fibers sufficient to maintain normal domestic human consumption as determined by the Secretary from the records of domestic human consumption in the years 1920 to 1929, inclusive, taking into consideration increased population, quantities of any commodity that were forced into domestic consumption by decline in exports during such period, current trends in domestic consumption and exports of particular commodities, and the quantities of substitutes available for domestic consumption within any general class of food commodities. In carrying out the purposes of this section due regard shall be given to the maintenance of a continuous and stable supply of agricultural commodities adequate to meet consumer demand at prices fair to both producers and consumers.

[*See main edition for text of (b) to (g)*]

(As amended Dec. 23, 1985, Pub. L. 99–198, title XII, § 1253, 99 Stat. 1517.)

AMENDMENTS

1985—Subsec. (a)(7). Pub. L. 99–198 added cl. (7).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 590h, 590h–4, 590i, 590*l*, 590m, 590n, 590o, 590p, 1501 of this title; title 7 sections 1388, 1391, 1392; title 12 section 1150a.

§ 590h. Payments and grants of aid

[*See main edition for text of (a)*]

(b) Conservation and environmental assistance

[*See main edition for text of first to fourth pars.*]

In carrying out the provisions of this section in the States of the Union, except Alaska, and as otherwise directed by law with respect to other programs and functions, the Secretary is directed to utilize the services of local and State committees selected as hereinafter provided; and the Secretary may use the services of such committees in carrying out other programs and functions of the Department of Agriculture. The Secretary shall designate local administrative areas as units for administration of programs under this section. There shall be 3 local administrative areas in each county, except that, in counties with less than one hundred and fifty farmers, the county committee selected as hereinafter provided may reduce the number of local administrative areas to one, and except that the Secretary may include more than one county or parts of different counties in a local administrative area when the Secretary determines that there are insufficient farmers in an area to establish a slate of candidates for a community committee and hold an election. Farmers within any such local administrative area, and participating or cooperating in programs administered within such area, shall elect from among their number a local committee of not more than three members for such area. Each member of a local committee shall be elected for a term of 3 years. Each local committee shall meet (A) once each year and shall receive compensation for such meeting by the Secretary at not less than the level in effect on December 31, 1985, and (B) at the direction of the county committee and with the approval of the State committee, such additional times during the year as may be necessary to carry out this section without compensation. The meetings of a local committee shall be held on different days of the year. The members of the local committees shall, in a county convention, nominate and elect a county committee which shall consist of three members who are farmers in the county. At the first county convention held on or after January 1, 1965, one member of the county committee shall be elected for one year; one member shall be elected for two years; and one member shall be elected for three years. Thereafter, each member of a county committee shall be elected for a term of three years. No member of the county committee shall be elected for more than three consecutive terms (exclusive of any term which began prior to January 1, 1965). The local committees in each county shall (A) in a county in which there is more than one local committee, serve as advisors and consultants to the county committee; (B) periodically meet with the county committee and State committee to be informed on farm program issues; (C) communicate with producers within their communities on issues or concerns regarding farm programs; (D) report to the county committee, the State committee, and other interested persons on changes to, or modifications of, farm programs recommended by producers in their communities; and (E) perform such other functions as are required by law or as the Secretary may specify. The Secretary shall ensure that information concerning changes in Federal laws in effect with respect to agricultural programs and the administration of such laws are communicated in a timely manner to local committees in areas that contain agricultural producers who might be affected by such changes. The local committee shall select a secretary and may utilize the county agricultural extension agent for such purpose. The county committee shall select a secretary who may be the county agricultural extension agent. If such county agricultural extension agent shall not have been elected secretary of such committee, he shall be ex officio a member of the county committee. The county agricultural extension agent shall not have the power to vote. In any county in which there is only one local committee the local committee

[1] So in original. The comma probably should be a semicolon.

shall also be the county committee. In each State there shall be a State committee for the State composed of not less than three or more than five farmers who are legal residents of the State and who are appointed by the Secretary. The State director of the Agricultural Extension Service shall be ex officio a member of such State committee. The ex officio members of the county and State committees shall be in addition to the number of members of such committees hereinbefore specified. The Secretary shall make such regulations as are necessary relating to the selection and exercise of the functions of the respective committees, and to the administration, through such committees, of such programs. In carrying out the provisions of this section, the Secretary shall, as far as practicable, protect the interests of tenants and sharecroppers; is authorized to utilize the agricultural extension service and other approved agencies; shall accord such recognition and encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in existing Acts of Congress and as will tend to promote efficient methods of marketing and distribution; shall not have power to acquire any land or any right or interest therein; shall, in every practicable manner, protect the interests of small producers; and shall in every practical way encourage and provide for soil-conserving and soil-rebuilding practices rather than the growing of soil-depleting crops. Rules and regulations governing payments or grants under this subsection shall be as simple and direct as possible, and, wherever practicable, they shall be classified on two bases: (a) Soil-depleting crops and practices, (b) soil-building crops and practices.

[See main edition for text of sixth to eighth pars.; (c) to (g)]

(As amended Dec. 23, 1985, Pub. L. 99-198, title XVII, §§ 1711(a), 1712, 99 Stat. 1635, 1636.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-198, § 1712, in first sentence of fifth par., substituted "In carrying out the provisions of this section in the States of the Union, except Alaska, and as otherwise directed by law with respect to other programs and functions, the Secretary is directed to utilize the services of local and State committees selected as hereinafter provided; and the Secretary may use the services of such committees in carrying out other programs and functions of the Department of Agriculture" for "In carrying out the provisions of this section in the States of the Union, except Alaska, the Secretary is directed to utilize the services of local and State committees selected as hereinafter provided".

Pub. L. 99-198, § 1711(a)(1), in third sentence of fifth par., substituted "There shall be 3 local administrative areas in each county, except that, in counties with less than one hundred and fifty farmers, the county committee selected as hereinafter provided may reduce the number of local administrative areas to one, and except that the Secretary may include more than one county or parts of different counties in a local administrative area when the Secretary determines that there are insufficient farmers in an area to establish a slate of candidates for a community committee and hold an election" for "No such local area shall include more than one county or parts of different counties".

Pub. L. 99-198, § 1711(a)(2), in fourth sentence of fifth par., struck out "annually" after "shall elect".

Pub. L. 99-198, § 1711(a)(3), in fifth par., added provisions directing that each member of a local committee be elected for a term of 3 years, that each local committee meet (A) once each year and shall receive compensation for such meeting by the Secretary at not less than the level in effect on December 31, 1985, and (B) at the direction of the county committee and with the approval of the State committee, such additional times during the year as may be necessary to carry out this section without compensation, and that the meetings of a local committee shall be held on different days of the year.

Pub. L. 99-198, § 1711(a)(4), in fifth par., added provisions directing that the local committees in each county (A) in a county in which there is more than one local committee, serve as advisors and consultants to the county committee; (B) periodically meet with the county committee and State committee to be informed on farm program issues; (C) communicate with producers within their communities on issues or concerns regarding farm programs; (D) report to the county committee, the State committee, and other interested persons on changes to, or modifications of, farm programs recommended by producers in their communities; and (E) perform such other functions as are required by law or as the Secretary may specify, and that the Secretary ensure that information concerning changes in Federal laws in effect with respect to agricultural programs and the administration of such laws are communicated in a timely manner to local committees in areas that contain agricultural producers who might be affected by such changes.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1711(b)(1) of Pub. L. 99-198 provided that: "The amendments made by this section [amending this section] shall become effective on January 1, 1986, except that the amendments made by clauses (2) and (3) of subsection (a) [amending this section] shall not apply with respect to the term of office of any member of a local committee elected before January 1, 1986."

LOCAL COMMITTEE MEMBER ELECTED BEFORE JANUARY 1, 1986; COMPLETION OF UNEXPIRED TERM IN ADMINISTRATIVE AREA OF RESIDENCE

Section 1711(b)(2) of Pub. L. 99-198 provided that: "If the number of local administrative areas and local committees in a county increases as a result of a change in the number of local administrative areas in the county under section 8(b) of the Soil Conservation and Domestic Allotment Act [subsec. (b) of this section] (as amended by subsection (a)(1)), any member of a local committee in such county elected before January 1, 1986, shall serve the unexpired portion of any term commenced before the date of such increase as a member of the local committee for the administrative area in which such member resides."

CROSS REFERENCES

Wheat acreage diverted to haying and grazing on request of State committees established under subsec. (b) of this section, see section 1445b-1(e)(8) of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 590g, 590h-4, 590*l*, 590m, 590n, 590o, 590p, 590q-3, 1507, 1508, 3416, 3812, 3842 of this title; title 5 sections 3502, 5307, 5334, 5595, 6312, 8331, 8332, 8701, 8901; title 7 sections 1301, 1314c, 1358a, 1359, 1388, 1391, 1392, 1433a, 1441, 1441-1, 1444, 1444-1, 1444d, 1444e, 1445b-1, 1445b-3, 1446, 1462, 1838, 2272; title 12 section 1150a; title 15 section 714b; title 40 App. section 203.

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§ 590i. Surveys and investigations; publication of information

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 590g, 590h, 590h–4, 590m, 590n, 590p of this title; title 7 sections 1388, 1391, 1392; title 12 section 1150a.

§ 590j. "Agricultural commodity" defined

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 590g, 590h, 590h–4, 590m, 590n, 590p of this title; title 7 sections 1388, 1391, 1392; title 12 section 1150a.

§ 590k. Availability of funds

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 590g, 590h, 590h–4, 590m, 590n, 590p of this title; title 7 sections 1388, 1391, 1392; title 12 section 1150a.

§ 590*l*. Expansion of domestic and foreign markets for agricultural commodities; advances for crop insurance; transfer of funds to corporation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 590g, 590h, 590h–4, 590m, 590n, 590p of this title; title 7 sections 1388, 1391, 1392; title 12 section 1150a.

§ 590m. Execution of powers of Secretary by Production and Marketing Administration

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 590g, 590h, 590h–4, 590n, 590p of this title; title 7 sections 1388, 1391, 1392; title 12 section 1150a.

§ 590n. Payments reviewable only by Secretary; form of certificate

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 590g, 590h, 590h–4, 590p of this title; title 7 sections 1388, 1391, 1392; title 12 section 1150a.

§ 590*o*. Authorization of appropriations; distribution of appropriated funds

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 590h, 590h–4, 590n, 590p of this title; title 7 sections 1292, 1301, 1388, 1391, 1392; title 12 section 1150a.

§ 590p. Limitation on obligations incurred; Great Plains conservation program

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 590h, 590h–4, 590n, 590q–3, 1501 of this title; title 7 sections 1388, 1391, 1392; title 12 section 1150a; title 26 section 126.

§ 590q. Coverage; "State" defined; short title

(a) This chapter shall apply to the States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands, and, as used in this chapter, the term "State" includes Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

(b) This chapter may be cited as the "Soil Conservation and Domestic Allotment Act".

(As amended Oct. 5, 1984, Pub. L. 98–454, title VI, § 601(d), 98 Stat. 1736.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–454 added reference to Guam, American Samoa, and the Northern Mariana Islands in two places.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 590h, 590h–4, 590n of this title; title 7 sections 1388, 1391, 1392; title 12 section 1150a.

CHAPTER 4—PROTECTION OF TIMBER, AND DEPREDATIONS

Sec.

618. Timber contract payment modification.
(a) Statement of purpose, authorization, scope, qualifications, financial requirements, etc., for buy-out.
(b) Extension of time for performance of contracts; covered contracts; damages for default.
(c) Monitoring of bidding patterns on timber sale contracts; discouragement of bids; reporting requirements.
(d) Cash down-payment and periodic payments for contracts; effective date.
619. Emergency stumpage rate redeterminations in Alaska.
(a) Application; applicable period.
(b) Competitive effect of modification of contracts.
(c) Excepted contracts.

§ 618. Timber contract payment modification

(a) Statement of purpose, authorization, scope, qualifications, financial requirements, etc., for buy-out

(1) Notwithstanding any other provisions of law, in order to retain jobs, to preserve free competition, to utilize the potential productive capacity of plants, to preserve small communities dependent on a single economic sector to assure an open and competitive market for future sales of Government timber, and to lessen the impact of unemployment, the Secretary of Agriculture for national forest lands and the Secretary of the Interior for public lands under their respective jurisdictions are authorized and directed to permit a requesting purchaser to return to the Government a volume of the purchaser's timber contracts as determined under paragraph (2) upon payment of a buy-out charge from such purchaser in an amount as determined under paragraph (3). The purchaser shall be released from further obligation to cut, remove, and pay for timber under such contract upon payment, or arrangement for payment as provided under paragraph (3)(E), of such buy-out charge and completion of any obligation required pursuant to paragraph (4)(B). The Government does not hereby surrender any other claim against a purchaser which arose under a contract prior to effectuation of this release and not in connection with this release from obligation to cut, harvest and pay for timber.

(2)(A) To qualify for buy-out under this section, a timber sales contract must have been bid prior to January 1, 1982, for an original contract period of 10 years or less, and be held as of June 1, 1984: *Provided*, That any such contract that was defaulted after January 1, 1981

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may qualify for buy-out under this section so long as (i) settlement for damages has not been reached between the purchaser and the United States; and (ii) the purchaser's loss on all of its qualifying timber sales contracts, as determined in paragraph (3)(A), is in excess of 50 per centum of the net book worth of the purchaser. A contract is qualified for buy-out notwithstanding the fact that it was reformed after October 1, 1983, pursuant to Bureau of Land Management Instructional Memorandum 83-743 or is included in a Forest Service multisale plan pursuant to the President's program of July 28, 1983.

(B) A purchaser holding more than twenty-seven million three hundred thousand board feet of net merchantable sawtimber as of January 1, 1982, in qualifying contracts as provided in subparagraph (A) shall be entitled to buy out up to 55 per centum of such timber volume up to a maximum of two hundred million board feet.

(C) A purchaser holding twenty-seven million three hundred thousand or less board feet of net merchantable sawtimber as of January 1, 1982, in qualifying contracts as provided in subparagraph (A) shall be entitled to buy out up to fifteen million board feet of such timber volume or one contract, whichever is greater in volume.

(D) So long as the volume limitation of two hundred million board feet is not exceeded, the percentage limitation of subparagraph (B) or the volume limitation of subparagraph (C) may be exceeded by a volume amount not to exceed the volume of the smallest volume contract bought out by the purchaser if the purchaser could not otherwise attain his percentage or volume entitlement.

(E) Timber returned to the Government pursuant to this subsection shall be available for resale by the Government upon payment, or arrangement for payment, of the buy-out charge and completion of obligations, if any, under paragraph (4)(B).

(3)(A) Sums collected by the appropriate Secretary in connection with the buy-out of contracts pursuant to this subsection shall be deposited in and paid from the Treasury in the same manner as moneys received from timber sales from such lands and shall be determined as follows: The purchaser's loss on any qualifying timber sales contracts shall be determined by the Forest Service or the Bureau of Land Management by subtracting the current delivered log value (as determined oy such agency) from the delivered log cost based on the current contract return (as determined by such agency) of any such contracts. If such loss is—

(i) in excess of 100 per centum of the net book worth of the purchaser, the buy-out cost shall be $10 per one thousand board feet of currently held volume bought out;

(ii) in excess of 50 per centum up to 100 per centum of the net book worth of the purchaser, the buy-out cost shall be 10 per centum of the contract overbid but at least $10 per one thousand board feet of currently held volume bought out; or

(iii) up to 50 per centum or less of the net book worth of the purchaser, the buy-out cost shall be 15 per centum for the purchaser's first one hundred twenty-five million board feet, 20 per centum for additional board feet above one hundred twenty-five million up to one hundred fifty million, 25 per centum for additional board feet above one hundred fifty million up to one hundred seventy-five million, and 30 per centum for additional board feet above one hundred seventy-five million up to two hundred million, of the contract overbid but at least $10 per one thousand board feet of currently held volume bought out.

(B) For purposes of this paragraph, the term "net book worth" does not include the value of any outstanding uncut Federal timber sales contracts.

(C) Net book worth shall be, subject to agency verification, as determined by an independent certified public accountant in accordance with generally accepted accounting standards for the timber industry.

(D) A purchaser may elect to pay the buy-out cost imposed by subparagraph (A)(iii) in lieu of utilizing loss and net book worth determinations.

(E) Where a purchaser is not able to obtain sufficient credit elsewhere to finance the buy-out charge at reasonable rates and terms, purchaser may, upon payment of 5 per centum of the buy-out charge, pay the remainder of the buy-out charge in equal quarterly payments over a period not to exceed 5 years at an interest rate adjusted with each payment equal to the average market yield of outstanding Treasury obligations with remaining years to maturity of five years payment must be secured by bond, deposited securities or other forms of security acceptable to the appropriate Secretary in an amount sufficient to cover the entire buy-out payment.

(F) For purposes of this paragraph, the term "contract overbid" is the difference between the advertised contract rate and the rate the purchaser bid.

(4)(A) Contracts returned pursuant to this subsection under which no harvest has begun shall be returned in full.

(B) Contracts returned to the appropriate Secretary pursuant to this subsection under which harvest has begun, shall be returned conditionally and shall not be considered as part of the outstanding volume of timber under contract for the purposes of this Act. The return shall become final after the purchaser has completed stages of contractual obligations for the units on which the harvest has begun, including work on roads, to logical stopping points as determined by the Secretary after consultation with the purchaser. All remaining unharvested units must be returned.

(C) The appropriate Secretary may reject return of a contract on which harvest has begun if he determines, in his discretion, that the remaining unharvested portion is substantially unrepresentative of the original sale as a whole in terms of species, logging methods, or other appropriate criteria, and that accepting the return of such contract would seriously disadvantage the Government.

(5)(A) Timber from returned or defaulted contracts shall be offered for resale in an orderly fashion as part of, and not in addition to, the normal congressionally authorized timber sales program, and in a manner which does not disrupt regional markets or artificially depress domestic timber prices. Timber from returned or defaulted contracts shall be given preference for resale in the Forest Service timber sales programs.

(B) Timber sales in Forest Service region 6 shall not exceed four billion three hundred million board feet of net merchantable sawtimber in fiscal year 1984.

(C) Beginning in fiscal year 1985 and continuing through fiscal year 1991 or the fiscal year in which timber contract extensions in region 6 granted under the President's program of July 28, 1983 (as constituted on October 16, 1984), are completed, whichever is later, the Secretary of Agriculture shall set, and periodically adjust as necessary, the maximum annual timber sale volume in region 6. Such maximum sale volume shall be set so as to achieve a volume of region 6 net merchantable sawtimber under contract at the end of each fiscal year which does not exceed twelve billion three hundred million board feet: *Provided, however,* That such maximum annual sale volume shall not exceed five billion two hundred million board feet of net merchantable sawtimber. The sale of timber within region 6 shall be made in such a manner as not to result in discriminatory treatment as between different forests in the region.

(6)(A) The Secretary of the Interior and the Secretary of Agriculture shall publish final rules for the implementation of this subsection in the Federal Register within ninety days after October 16, 1984.

(B) Such final rules shall require purchasers to submit buy-out requests to the appropriate Secretary within ninety days after the publication of such rules.

(7)(A) For purposes only of determining a purchaser's buy-out limitation under paragraph (2) and net worth in connection with buy-out cost under paragraph (3), concerns which are affiliates as defined under subparagraph (B) of this paragraph shall be treated as a single entity.

(B) Definition of affiliates: Concerns are affiliates of each other when either directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships.

(C) Definition of purchaser: For the purposes of this Act, a purchaser is the holder of a contract to purchase timber from the Secretary of Agriculture or the Secretary of the Interior.

(b) Extension of time for performance of contracts; covered contracts; damages for default

(1) Timber contracts bid prior to January 1, 1982, not bought out pursuant to subsection (a) of this section and included in the President's program of July 28, 1983, shall not be subject to any further extension of time for performance except as permitted under the President's program of July 28, 1983, as implemented by the Secretary of Agriculture and the Secretary of the Interior, providing for the extension of certain timber sale contracts and requiring the phased harvesting of such extended contracts, which program is hereby ratified except as modified by paragraph (2).

(2) Notwithstanding any other provision of law, timber contracts extended pursuant to the President's program of July 28, 1983, as implemented by the Secretary of Agriculture shall not be subject to inclusion of additional provisions for calculating damages for default.

(c) Monitoring of bidding patterns on timber sale contracts; discouragement of bids; reporting requirements

The Secretary of Agriculture and the Secretary of the Interior shall monitor bidding patterns on timber sale contracts and take action to discourage bidding at such a rate as would indicate that the bidder, if awarded the contract, would be unable to perform the obligations as required, or that the bid is otherwise for the purpose of speculation. Each Secretary shall include in the annual report to Congress information concerning actions taken under this subsection.

(d) Cash down-payment and periodic payments for contracts; effective date

Effective January 1, 1985, in any contract for the sale of timber from the National Forests, the Secretary of Agriculture shall require a cash down-payment at the time the contract is executed and periodic payments to be made over the remaining period of the contract.

(Pub. L. 98–478, § 2, Oct. 16, 1984, 98 Stat. 2213.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(4)(B), (7)(C), is Pub. L. 98–478, Oct. 16, 1984, 98 Stat. 2213, which enacted sections 539f, 618, and 619 of this title and provisions set out as a note under this section. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 1 of Pub. L. 98–478 provided: "That this Act [enacting sections 539f, 618, and 619 of this title] may be cited as 'Federal Timber Contract Payment Modification Act'."

§ 619. Emergency stumpage rate redeterminations in Alaska

(a) Application; applicable period

Emergency stumpage rate redetermination shall be made upon the written application of the purchaser of National Forest timber in Alaska, bid after January 1, 1974, and rates established as a result thereof shall be effective for timber scaled during a period between January 1, 1981, and five years from October 16, 1984.

(b) Competitive effect of modification of contracts

In making the emergency rate redeterminations the Secretary may modify existing contract terms, including the amount of the bid

premium, in order to provide rates which will permit the holders of contracts bid after January 1, 1974, to be competitive with other purchasers of National Forest timber.

(c) Excepted contracts

The provisions of this section shall not apply to contracts held by the holders of 50-year timber sale contracts in Alaska.

(Pub. L. 98-478, § 4, Oct. 16, 1984, 98 Stat. 2217.)

CHAPTER 5A—PROTECTION AND CONSERVATION OF WILDLIFE

SUBCHAPTER III—ENDANGERED SPECIES OF FISH AND WILDLIFE

§ 668dd. National Wildlife Refuge System

NATIONAL WILDLIFE REFUGES

Site of Refuge	*Date Designated*
Alaska Maritime National Wildlife Refuge, Alaska (94 Stat. 2389)	Dec. 2, 1980
Alaska Peninsula National Wildlife Refuge, Alaska (94 Stat. 2385)	Dec. 2, 1980
Arctic National Wildlife Refuge, Alaska (94 Stat. 2390)	Dec. 2, 1980
Atchafalaya National Wildlife Refuge, Louisiana (98 Stat. 2776)	Oct. 26, 1984
Becharof National Wildlife Refuge, Alaska (94 Stat. 2385)	Dec. 2, 1980
Bogue Chitto National Wildlife Refuge, Louisiana-Mississippi (94 Stat. 603)	June 28, 1980
Bon Secour National Wildlife Refuge, Alabama (94 Stat. 483)	June 9, 1980
Brandon Marsh National Wildlife Refuge, Oregon (95 Stat. 1709)	Dec. 29, 1981
Connecticut Coastal National Wildlife Refuge (98 Stat. 2774)	Oct. 26, 1984
Edwin B. Forsythe National Wildlife Refuge, New Jersey (98 Stat. 207)	May 22, 1984
Egmont Key National Wildlife Refuge, Fla. (88 Stat. 295)	July 10, 1974
Great Dismal Swamp National Wildlife Refuge, Virginia and North Carolina (88 Stat. 801)	Aug. 30, 1974
Innoko National Wildlife Refuge, Alaska (94 Stat. 2386)	Dec. 2, 1980
Izembek National Wildlife Refuge, Alaska (94 Stat. 2390)	Dec. 2, 1980
Kanuti National Wildlife Refuge, Alaska (94 Stat. 2386)	Dec. 2, 1980
Kenai National Wildlife Refuge, Alaska (94 Stat. 2391)	Dec. 2, 1980
Kodiak National Wildlife Refuge, Alaska (94 Stat. 2391)	Dec. 2, 1980
Koyukuk National Wildlife Refuge, Alaska (94 Stat. 2386)	Dec. 2, 1980
Minnesota Valley National Wildlife Refuge (90 Stat. 1992)	Oct. 8, 1976
Nowitna National Wildlife Refuge, Alaska (94 Stat. 2387)	Dec. 2, 1980
Protection Island National Wildlife Refuge, Washington (96 Stat. 1623)	Oct. 15, 1982
Sailors' Snug Harbor National Wildlife Refuge, New York (94 Stat. 957)	July 25, 1980
San Francisco Bay National Wildlife Refuge, Calif. (86 Stat. 399)	June 30, 1972
Seal Beach National Wildlife Refuge, Calif. (86 Stat. 633)	Aug. 29, 1972
Selawik National Wildlife Refuge, Alaska (94 Stat. 2387)	Dec. 2, 1980
Tensas River National Wildlife Refuge, Louisiana (94 Stat. 595)	June 28, 1980
Tetlin National Wildlife Refuge, Alaska (94 Stat. 2388)	Dec. 2, 1980
Togiak National Wildlife Refuge, Alaska (94 Stat. 2392)	Dec. 2, 1980
Wyandotte National Wildlife Refuge, Mich. (75 Stat. 243)	Aug. 3, 1961
Yukon Delta National Wildlife Refuge, Alaska (94 Stat. 2392)	Dec. 2, 1980
Yukon Flats National Wildlife Refuge, Alaska (94 Stat. 2388)	Dec. 2, 1980

CHAPTER 5B—WILDLIFE RESTORATION

§ 669g-1. Payment of funds to and cooperation with Puerto Rico, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, and Virgin Islands

The Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Governor of Guam, the Governor of American Samoa, the Governor of the Commonwealth of the Northern Mariana Islands, and the Governor of the Virgin Islands, in the conduct of wildlife-restoration projects, as defined in section 669a of this title, upon such terms and conditions as he shall deem fair, just, and equitable, and is authorized to apportion to Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, out of the money available for apportionment under this chapter, such sums as he shall determine, not exceeding for Puerto Rico one-half of 1 per centum, for Guam one-sixth of 1 per centum, for American Samoa one-sixth of one per centum, for the Commonwealth of the Northern Mariana Islands one-sixth of 1 per centum, and for the Virgin Islands one-sixth of 1 per centum of the total amount apportioned, in any one year, but the Secretary shall in no event require any of said cooperating agencies to pay an amount which will exceed 25 per centum of the cost of any project. Any unexpended or unobligated balance of any apportionment made pursuant to this section shall be available for expenditure in Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, as the case may be, in the succeeding year, on any approved project, and if unexpended or unobligated at the end of such year is authorized to be made available for expenditure by the Secretary of the Interior in carrying out the provisions of the Migratory Bird Conservation Act [16 U.S.C. 715 et seq.].

(As amended July 9, 1984, Pub. L. 98-347, § 2(a), 98 Stat. 321.)

AMENDMENTS

1984—Pub. L. 98-347 inserted "the Governor of American Samoa," after "the Governor of Guam,", "American Samoa," after "Puerto Rico, Guam," in two places, and "for American Samoa one-sixth of one per centum," after "for Guam one-sixth of 1 per centum,".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2(b) of Pub. L. 98-347 provided that: "The amendments made by subsection (a) [amending this section] shall take effect October 1, 1984."

CHAPTER 6—GAME AND BIRD PRESERVES; PROTECTION

§ 698. Big Thicket National Preserve

[See main edition for text of (a) and (b)]

(c) Methods of acquisition of land

The Secretary is authorized to acquire by donation, purchase with donated or appropriated funds, transfer from any other Federal agency, or exchange, any lands, waters, or interests

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therein which are located within the boundaries of the preserve: *Provided*, That any lands owned or acquired by the State of Texas, or any of its political subdivisions, may be acquired by donation only. The Secretary may also acquire, by any of the above methods, approximately 15 acres of land outside of the boundaries of the preserve in the vicinity of the intersection of United States Highway 69 and State Farm-Market Road 420, in Hardin County, Texas, for purposes of a visitor contact and administrative site. After notifying the Committees on Interior and Insular Affairs of the United States Congress, in writing, of his intention to do so and of the reasons therefor, the Secretary may, if he finds that such lands would make a significant contribution to the purposes for which the preserve was created, accept title to any lands, or interests in lands, located outside of the boundaries of the preserve which the State of Texas or its political subdivisions may acquire and offer to donate to the United States or which any private person, organization, or public or private corporation may offer to donate to the United States and he may administer such lands as a part of the preserve after publishing notice to that effect in the Federal Register. Notwithstanding any other provision of law, any federally owned lands within the preserve shall, with the concurrence of the head of the administering agency, be transferred to the administrative jurisdiction of the Secretary for the purposes of sections 698 to 698e of this title, without transfer of funds.

(As amended Pub. L. 98-489, § 1(a), Oct. 17, 1984, 98 Stat. 2267.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-489 authorized acquisition of acreage for a visitor contact and administrative site outside the boundaries of the preserve.

§ 698e. Authorization of appropriations for Big Thicket Preserve

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 698 to 698e of this title, but not to exceed $63,812,000 for the acquisition of lands and interests in lands and not to exceed $7,000,000 for development. Effective October 1, 1984, there is authorized to be appropriated such sums as may be necessary for the acquisition of the visitor contact and administrative site referred to in subsection (c) of section 698 of this title.

(As amended Pub. L. 98-489, § 1(b), Oct. 17, 1984, 98 Stat. 2267.)

AMENDMENTS

1984—Pub. L. 98-489 authorized appropriations for acquisition of a visitor contact and administrative site.

CHAPTER 7—PROTECTION OF MIGRATORY GAME AND INSECTIVOROUS BIRDS

SUBCHAPTER III—MIGRATORY BIRD CONSERVATION

§ 715k-3. Authorization of appropriations for the preservation of wetlands and other waterfowl habitat

In order to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of important wetlands and other waterfowl habitat essential to the preservation of such waterfowl, there is authorized to be appropriated for the period beginning on July 1, 1961, and ending at the close of September 30, 1986, not to exceed $200,000,000.

(As amended Pub. L. 98-200, § 1, Dec. 2, 1983, 97 Stat. 1378; Pub. L. 98-548, title I, § 101, Oct. 26, 1984, 98 Stat. 2774.)

AMENDMENTS

1984—Pub. L. 98-548 substituted "September 30, 1986" for "September 30, 1984".

1983—Pub. L. 98-200 substituted "September 30, 1984" for "September 30, 1983".

§ 715k-5. Advance to migratory bird conservation fund; repayments; acquisition of lands

Funds appropriated pursuant to sections 715k-3 to 715k-5 of this title shall be treated as an advance, without interest, to the migratory bird conservation fund. Such appropriated funds, beginning on October 1, 1986, shall be repaid to the Treasury out of the migratory bird conservation fund, such repayment shall be made in annual amounts comprising 75 per centum of the moneys accruing annually to such fund. In the event the full amount authorized by section 715k-3 of this title is appropriated before October 1, 1986, the repayment of such funds pursuant to this section shall begin with the next full fiscal year. No land shall be acquired with moneys from the migratory bird conservation fund unless the acquisition thereof has been approved by the Governor of the State or appropriate State agency.

(As amended Pub. L. 98-200, § 2, Dec. 2, 1983, 97 Stat. 1378; Pub. L. 98-548, title I, § 102, Oct. 26, 1984, 98 Stat. 2774.)

AMENDMENTS

1984—Pub. L. 98-548 substituted "October 1, 1986" for "October 1, 1984" in two places.

1983—Pub. L. 98-200 substituted "October 1, 1984" for "October 1, 1983" in two places.

SUBCHAPTER IV—HUNTING AND CONSERVATION STAMP TAX

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 668dd, 670b, 670i of this title; title 18 section 504; title 25 section 564w-1.

§ 718. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 718e of this title.

§ 718b. Issuance and sale of stamps; deposit of funds in migratory bird conservation fund; fees; validity; expiration; redemption; "retail dealers" and "hunting year" defined

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 718a, 718e of this title.

§ 718c. Compliance with treaty or convention regulations and State game laws

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 718e of this title.

§ 718d. Disposition of receipts from sale of stamps

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 715k-4, 718b, 718e of this title; title 25 section 564w-1.

§ 718e. Offenses

[*See main edition for text of* (a)]

(b) Alteration and counterfeiting of stamp

Except as provided in clauses (i) and (ii) of section 504(1)(D) of title 18, no person shall alter, mutilate, imitate, or counterfeit any stamp authorized by this subchapter, or imitate or counterfeit any die, plate, or engraving therefor, or make, print, or knowingly use, sell, or have in his possession any such counterfeit, die, plate, or engraving.

(c) Reproduction of migratory bird hunting stamps; regulation by Secretary of the Interior; disposition of proceeds

Notwithstanding the provisions of subsection (b) of this section, or the prohibition in section 474 of title 18, or other provisions of law, the Secretary of the Interior may authorize, with the concurrence of the Secretary of the Treasury,

(1) the color reproduction, or

(2) the black and white reproduction,

of migratory bird hunting stamps authorized by sections 718 to 718b, 718c, 718d, and 718f to 718h of this title, which otherwise satisfies the requirements of clauses (ii) and (iii) of section 504(1) of title 18. Any such reproduction shall be subject to those terms and conditions deemed necessary by the Secretary of the Interior by regulation or otherwise and any proceeds received by the Federal Government as a result of such reproduction shall be paid into the migratory bird conservation fund established under section 718d of this title.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1077(a), (b)(3), 98 Stat. 1054, 1055.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369, § 1077(b)(3), substituted "Except as provided in clauses (i) and (ii) of section 504(1)(D) of title 18, no person" for "No person".

Subsec. (c). Pub. L. 98-369, § 1077(a), added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1077(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section and section 504 of Title 18, Crimes and Criminal Procedure] shall take effect on the date of the enactment of this Act [July 18, 1984]."

§ 718f. Enforcement; authority of United States judges, magistrates, and employees of Department of the Interior

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 716e of this title.

§ 718g. Penalties

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 718e of this title.

§ 718h. Cooperation with States and Territories

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 718e of this title.

CHAPTER 9—FISH AND WILDLIFE SERVICE

Sec.
742c-1. Investment in obligations of the United States; proceeds to be used for fisheries.

CROSS REFERENCES

National Fish and Wildlife Foundation, activities relating to gifts of property in connection with the Fish and Wildlife Service, see section 3701 et seq. of this title.

§ 742c. Loans for financing or refinancing of cost of purchasing, constructing, equipping, maintaining, repairing, or operating commercial fishing vessels or gear

[*See main edition for text of* (a)]

(b) Conditions

Any loans made under the provisions of this section shall be subject to the following restrictions:

[*See main edition for text of* (1) *to* (7)]

(8) Within the meaning of this section, a corporation, partnership, or association shall not be deemed to be a citizen of the United States unless the Secretary determines that it satisfactorily meets all of the requirements set forth in section 802 of title 46, Appendix, for determining the United States citizenship of a corporation, partnership, or association operating a vessel in the coastwise trade.

[*See main edition for text of* (9)]

(c) Fisheries loan fund; interest payments on appropriations available as capital to the fund less average undispersed cash balance

There is created a fisheries loan fund, which shall be used by the Secretary as a revolving fund to make loans for financing and refinancing under this section. Any funds received by the Secretary on or before September 30, 1986, in payment of principal or interest on any loans so made shall be deposited in the fund and be available for making additional loans under this section. Any funds received in the fisheries loan fund after September 30, 1986, and any balance

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remaining therein at the close of September 30, 1986 (at which time the fund shall cease to exist), shall be covered into the Treasury as miscellaneous receipts. There is authorized to be appropriated to the fisheries loan fund the sum of $20,000,000 to provide initial capital.

[*See main edition for text of (d) and (e)*]

(As amended July 12, 1983, Pub. L. 98-44, title I, § 103(a)(1), 97 Stat. 216; Oct. 19, 1984, Pub. L. 98-498, title IV, § 430(1), 98 Stat. 2310.)

CODIFICATION

Subsec. (b)(8) is set out in this supplement to reflect the transfer of section 802 of title 46, referred to in text, to title 46, Appendix.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-498 substituted "September 30, 1986" for "September 30, 1984" wherever appearing.

1983—Subsec. (c). Pub. L. 98-44 substituted "September 30, 1984" for "September 30, 1983" wherever appearing.

LOANS UNDER FISH AND WILDLIFE ACT OF 1956

Pub. L. 96-561, title II, § 221, Dec. 22, 1980, 94 Stat. 3295, as amended by Pub. L. 98-44, title I, § 103(b), July 12, 1983, 97 Stat. 216; Pub. L. 98-498, title IV, § 431, Oct. 19, 1984, 98 Stat. 2310, provided that:

"(a) LOAN AUTHORITY.—During the period beginning on the date of the enactment of this title [Dec. 22, 1980] and ending at the close of September 30, 1986, the Secretary of Commerce (hereinafter in this section referred to as the 'Secretary') may make loans from the fisheries loan fund established under subsection (c) of section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742c) only for the purposes set forth in subsections (b) and (c) of this section. Except to the extent that they are inconsistent with, or contrary to, this section, the provisions of such section 4 shall apply with respect to loans made for such purposes.

"(b) LOANS TO AVOID DEFAULT ON OBLIGATIONS COVERING FISHING VESSELS.—

[*See main edition for text of (1)*]

"(2)(A) Within the 30-day period beginning on the date of the enactment of this title [Dec. 22, 1980] in the case of fiscal year 1981, and before the beginning of each of fiscal years 1982, 1983, 1984, 1985, and 1986, the Secretary shall estimate the number, and the aggregate amount, of loans described in paragraph (1)(A) for which application will likely be made during each of such fiscal years and shall reserve that amount in the fisheries loan fund for the purpose of making such loans during such year (or if such amount is larger than the fund balance, the Secretary shall reserve the whole fund for such purpose).

[*See main edition for text of (B)*]

"(C) At an appropriate time during each of fiscal years 1981, 1982, 1983, 1984, 1985, and 1986, the Secretary shall compare the actual loan experience during that year with the estimate made for that year under subparagraph (A) and if the Secretary determines, on the basis of such comparison, that the demand for loans described in paragraph (1)(A) will be less than estimated, the Secretary shall, for the fiscal year concerned, apply moneys reserved for such loans for the purpose of making loans described in paragraph (1)(B) and, to the extent not utilized for loans described in paragraph (1)(B), for the purpose of making loans under subsection (c).

[*See main edition for text of (3)*]

"(c) LOANS TO COVER OPERATING LOSSES.—(1) If the Secretary determines that moneys will be available in such fisheries loan fund for any of fiscal years 1981, 1982, 1983, 1984, 1985, and 1986, after loans under subsection (b) are provided for for that year, the Secretary may make loans for the purpose of assisting owners and operators of fishing vessels to cover vessel operating expenses in cases where an owner or operator incurs, or may incur, a net operating loss within such fiscal year.

[*See main edition for text of (2)*]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 742c-1, 742k, 1534, 1824 of this title.

§ 742c-1. Investment in obligations of the United States; proceeds to be used for fisheries

All moneys in the Fisheries Loan Fund established under Section [1] 742c of this title shall be invested by the Secretary of Commerce in obligations of the United States, except so much as shall be currently needed for loans or administrative expenses authorized under the Fisheries Loan Fund. All accrued proceeds from such investment shall be, subject to amounts provided in advance by appropriations, credited by the Secretary of the Treasury to the debt of the Secretary of Commerce incurred under section 1105(d) of the Merchant Marine Act, 1936 [46 App. U.S.C. 1275(d)], as amended, in connection with fisheries financing under title XI of the Merchant Marine Act, 1936 [46 App. U.S.C. 1271 et seq.], as amended, for so long as such debt exists. All accrued proceeds from such investment, after such debt has been liquidated, shall be, subject to amounts provided in advance by appropriations, credited to the fisheries portion of the Federal Ship Financing Fund established under section 1102 of the Merchant Marine Act, 1936 [46 App. U.S.C. 1272], as amended, and used for the fisheries purposes provided in title XI of the Merchant Marine Act, 1936, as amended.

(Pub. L. 98-498, title IV, § 432, Oct. 19, 1984, 98 Stat. 2310.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in text, is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended. Title XI of the Merchant Marine Act, 1936, is classified generally to subchapter XI (§ 1271 et seq.) of chapter 27 of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 1245 of Title 46, Appendix, and Tables.

§ 742f. Powers of Secretaries of the Interior and Commerce

[*See main edition for text of (a) and (b)*]

(c) Volunteer services; incidental expenses; Federal employee status; authorization of appropriations

[*See main edition for text of (1) to (5)*]

(6) There are authorized to be appropriated to carry out this subsection $100,000 for the Secretary of the Interior and $50,000 for the Secretary of Commerce for each of the fiscal years 1980, 1981, 1982, 1983, 1984, 1985, and 1986.

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[1] So in original. Probably should not be capitalized.

(As amended July 12, 1983, Pub. L. 98-44, title I, § 103(a)(2), 97 Stat. 216; Oct. 19, 1984, Pub. L. 98-498, title IV, § 430(2), 98 Stat. 2310.)

AMENDMENTS

1984—Subsec. (c)(6). Pub. L. 98-498 substituted "1984, 1985, and 1986" for "and 1984".

1983—Subsec. (c)(6). Pub. L. 98-44 substituted ", 1983, and 1984" for "and 1983".

CROSS REFERENCES

National Fish and Wildlife Foundation, activities relating to gifts of property in connection with the Fish and Wildlife Service, see section 3701 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 460*l*-9, 1534, 3705 of this title.

CHAPTER 9A—PRESERVATION OF FISHERY RESOURCES

§ 757a. Anadromous, Great Lakes, and Lake Champlain fisheries

[See main edition for text of (a) and (b)]

(c) Increase of Federal share

[See main edition for text of (1)]

(2) In the case of any State that has implemented an interstate fisheries management plan for anadromous fishery resources, prepared by an interstate commission, the Federal share of any grant made under this section to carry out activities required by such plan shall be up to 90 percent. For purposes of this paragraph, the term "interstate commission" means—

(A) the commission established by the Atlantic States Marine Fisheries Compact (as consented to and approved by Public Law 80-77 [1]), approved May 4, 1942 (56 Stat. 267);

(B) the commission established by the Pacific Marine Fisheries Compact (as consented to and approved by Public Law 80-232), approved July 24, 1947 (16 [1] Stat. 419); and

(C) the commission established by the Gulf States Marine Fisheries Compact (as consented to and approved by Public Law 81-66), approved May 19, 1949 (63 Stat. 70).

(As amended Pub. L. 98-44, title I, § 104, July 12, 1983, 97 Stat. 216.)

REFERENCES IN TEXT

Public Law 80-77, May 4, 1942, 56 Stat. 267, referred to in subsec. (c)(2)(A), probably means act May 4, 1942, ch. 283 [Public Law 539, 77th Cong.], 56 Stat. 267, which is not classified to the Code.

Public Law 80-232, July 24, 1947, 16 Stat. 419, referred to in subsec. (c)(2)(B), probably means act July 24, 1947, ch. 316 [Public Law 232, 80th Cong.], 61 Stat. 419, which is not classified to the Code.

Public Law 81-66, May 19, 1949, 63 Stat. 70, referred to in subsec. (c)(2)(C), is act May 19, 1949, ch. 128 [Public Law 66, 81st Cong.], 63 Stat. 70, which is not classified to the Code.

AMENDMENTS

1983—Subsec. (c)(2). Pub. L. 98-44 substituted "resources, prepared by an interstate commission" for "resources", substituted "up to 90 percent" for "90 percent", and added provision defining interstate commission for purposes of this paragraph.

[1] So in original. See References in Text note below.

§ 757e. Application to Columbia River basin

Sections 757a to 757g of this title shall not be construed to affect, modify, or apply to the same area as the provisions of sections 755 to 757 of this title. The State of Idaho shall be eligible on an equal standing with other States for Federal funding for purposes authorized by sections 757a to 757f of this title.

(As amended Pub. L. 98-146, title I, § 100, Nov. 4, 1983, 97 Stat. 922.)

CODIFICATION

Although the intent of Congress to amend this section is clear from the directory language of Pub. L. 98-146 which states that the sentence relating to the eligibility of the State of Idaho be added to "16 U.S.C. 757e", that directory language has been editorially interpreted as directing the addition of that sentence to section 5 of Pub. L. 89-304, because Title 16 of the United States Code [this title] has never been enacted into positive law and its sections are therefore not susceptible of amendment as sections of "16 U.S.C.—" and because section 5 of Pub. L. 89-304 is the statute which was classified to, and serves as the source for 16 U.S.C. 757e [this section].

AMENDMENTS

1983—Pub. L. 98-146 added provision that the State of Idaho shall be eligible on an equal standing with other States for Federal funding for purposes authorized by sections 757a to 757f of this title.

§ 757g. Striped bass population studies

[See main edition for text of (a) to (c)]

(d) Funding of studies

There are authorized to be appropriated for the purposes of carrying out the studies described in subsection (a) of this section not to exceed $1,000,000 for the fiscal year ending September 30, 1980, not to exceed $1,750,000 for the fiscal year ending September 30, 1981, not to exceed $2,000,000 for the fiscal year ending September 30, 1982, and not to exceed $1,000,000 for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, and September 30, 1986. Funds authorized to be appropriated by this subsection are in addition to any funds authorized by section 4 which may be used for projects involving or affecting striped bass. If the Secretary considers that the studies described in subsection (a) of this section should be continued after September 30, 1982, the Secretary shall inform the Congress in writing before February 15, 1981, of the reasons why and for how long such continuation is believed to be warranted.

(As amended Pub. L. 98-613, § 10(a), Oct. 31, 1984, 98 Stat. 3190.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-613 substituted "September 30, 1984, September 30, 1985, and September 30, 1986" for "and September 30, 1984".

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§ 758e. Central, Western, and South Pacific Ocean fisheries development program

The Secretary of Commerce (hereafter referred to in sections 758e to 758e-5 of this title as the "Secretary") is authorized to carry out, directly or by contract, with the Pacific Fisheries Development Foundation or other agency or organization, a program for the development of the tuna and other latent fisheries resources of the Central, Western, and South Pacific Ocean. The program shall include, but not be limited to, exploration for, and stock assessment of, tuna and other fish; improvement of harvesting techniques; gear development; biological resource monitoring; and an economic evaluation of the potential for tuna and other fisheries in such area.

(As amended Pub. L. 98-498, title IV, § 410, Oct. 19, 1984, 98 Stat. 2309.)

AMENDMENTS

1984—Pub. L. 98-498 substituted "Pacific Fisheries Development Foundation" for "Pacific Tuna Development Foundation".

CHAPTER 10A—SOCKEYE OR PINK SALMON FISHING

§§ 776 to 776f. Repealed. Pub. L. 99-5, § 13, Mar. 15, 1985, 99 Stat. 15

Section 776, acts July 29, 1947, ch. 345, § 2, 61 Stat. 511; July 11, 1957, Pub. L. 85-102, §§ 1-3, 71 Stat. 293, provided definitions for this chapter. See section 3631 et seq. of this title.

Section 776a, acts July 29, 1947, ch. 345, § 3, 61 Stat. 511; July 11, 1957, Pub. L. 85-102, § 3, 71 Stat. 294, related to unlawful acts by persons or vessels. See section 3631 et seq. of this title.

Section 776b, acts July 29, 1947, ch. 345, § 4, 61 Stat. 512; July 11, 1957, Pub. L. 85-102, § 3, 71 Stat. 294, related to penalties imposed for the omission of or fraudulent returns, records, and reports. See section 3631 et seq. of this title.

Section 776c, acts July 29, 1947, ch. 345, § 5, 61 Stat. 512; July 11, 1957, Pub. L. 85-102, § 3, 71 Stat. 294, related to penalties and forfeitures, and procedures involving violations. See section 3631 et seq. of this title.

Section 776d, acts July 29, 1947, ch. 345, § 6, 61 Stat. 513; July 11, 1957, Pub. L. 85-102, § 3, 71 Stat. 294; Oct. 17, 1968, Pub. L. 90-578, title IV, § 402(b)(2), 82 Stat. 1118; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, provided enforcement procedures for this chapter. See section 3631 et seq. of this title.

Section 776e, acts July 29, 1947, ch. 345, § 7, 61 Stat. 514; July 11, 1957, Pub. L. 85-102, § 4, 71 Stat. 294, related to the cooperation of Federal agencies and the conduct of scientific investigations. See section 3631 et seq. of this title.

Section 776f, acts July 29, 1947, ch. 345, § 8, 61 Stat. 514; Oct. 18, 1972, Pub. L. 92-504, 86 Stat. 907, related to authorizations. See section 3631 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Section 13 of Pub. L. 99-5 provided in part that the repeal of this chapter is effective Dec. 31, 1985.

EFFECTIVE DATE

Section 10 of act July 29, 1947, which provided that this Act [this chapter] shall be effective thirty days from the date of its approval [July 29, 1947], was repealed by Pub. L. 99-5, § 13, Mar. 15, 1985, 99 Stat. 15.

SHORT TITLE

Section 1 of act July 29, 1947, as amended by Pub. L. 85-102, § 3, July 11, 1957, 71 Stat. 294, which provided that this Act [this chapter] may be cited as the "Sockeye Salmon or Pink Salmon Fishing Act of 1947", was repealed by Pub. L. 99-5, § 13, Mar. 15, 1985, 99 Stat. 15.

SAVINGS PROVISION

Section 9 of act July 29, 1947, which provided that if any provision of this Act [this chapter] is held invalid for any cause, such invalidity shall not affect the other provisions hereof, was repealed by Pub. L. 99-5, § 13, Mar. 15, 1985, 99 Stat. 15.

CHAPTER 10B—FISH RESTORATION AND MANAGEMENT PROJECTS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1225, 2904, 2905, 3125 of this title; title 25 sections 1709, 1745; title 26 section 9504.

§ 777. Federal-State relationships

(a) Cooperation between Federal Government and State fish and game departments; expenditure of funds

The Secretary of the Interior is authorized and directed to cooperate with the States through their respective State fish and game departments in fish restoration and management projects as hereinafter set forth: No money apportioned under this chapter to any State, except as hereinafter provided, shall be expended therein until its legislature, or other State agency authorized by the State constitution to make laws governing the conservation of fish, shall have assented to the provisions of this chapter and shall have passed laws for the conservation of fish, which shall include a prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said State fish and game department, except that, until the final adjournment of the first regular session of the legislature held after passage of this chapter, the assent of the governor of the State shall be sufficient. The Secretary of the Interior and the State fish and game department of each State accepting the benefits of this chapter shall agree upon the fish restoration and management projects to be aided in such State under the terms of this chapter, and all projects shall conform to the standards fixed by the Secretary of the Interior.

(b) Allocation of funds by coastal States; formula; "coastal State" defined

Each coastal State, to the extent practicable, shall equitably allocate the following sums between marine fish projects and freshwater fish projects in the same proportion as the estimated number of resident marine anglers and the estimated number of resident freshwater anglers, respectively, bear to the estimated number of all resident anglers in that State:

(1) The additional sums apportioned to such State under this chapter as a result of the taxes imposed by the amendments made by section 1015 of the Tax Reform Act of 1984 on items not taxed under section 4161(a) of title 26 before October 1, 1984.

(2) The sums apportioned to such State under this chapter that are not attributable to any tax imposed by such section 4161(a).

As used in this subsection, the term "coastal State" means any one of the States of Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington. The term also includes the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1014(a)(1), 98 Stat. 1015.)

REFERENCES IN TEXT

Section 1015 of the Tax Reform Act of 1984, referred to in subsec. (b)(1), is section 1015 of Pub. L. 98-369, div. A, title X, July 18, 1984, 98 Stat. 1017, which enacted section 4162 of Title 26, Internal Revenue Code, amended sections 4161 and 6302 of Title 26, and enacted provisions set out as a note under section 4162 of Title 26.

AMENDMENTS

1984—Pub. L. 98-369 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1014(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending sections 777, 777b, 777c to 777e, 777g, and 777k of this title] shall take effect on October 1, 1984, and shall apply with respect to fiscal years beginning after September 30, 1984."

§ 777b. Authorization of appropriations

To carry out the provisions of this chapter for fiscal years after September 30, 1984, there are authorized to be appropriated from the Sport Fish Restoration Account established by section 9504(a) of title 26 the amounts paid, transferred, or otherwise credited to that Account. For purposes of the provision of the Act of August 31, 1951, which refers to this section, such amounts shall be treated as the amounts that are equal to the revenues described in this section. The appropriation made under the provisions of this section for each fiscal year shall continue available during the succeeding fiscal year. So much of such appropriation apportioned to any State for any fiscal year as remains unexpended at the close thereof is authorized to be made available for expenditure in that State until the close of the succeeding fiscal year. Any amount apportioned to any State under the provisions of this chapter which is unexpended or unobligated at the end of the period during which it is available for expenditure on any project is authorized to be made available for expenditure by the Secretary of the Interior in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport and recreation.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1014(a)(2), 98 Stat. 1015.)

REFERENCES IN TEXT

The provision of the Act of August 31, 1951, referred to in text, is set out as a note below.

AMENDMENTS

1984—Pub. L. 98-369 substituted "To carry out the provisions of this chapter for fiscal years after September 30, 1984, there are authorized to be appropriated from the Sport Fish Restoration Account established by section 9504(a) of title 26 the amounts paid, transferred, or otherwise credited to that Account. For purposes of the provision of the Act of August 31, 1951, which refers to this section, such amounts shall be treated as the amounts that are equal to the revenues described in this section" for "To carry out the provisions of this chapter, there is hereby authorized to be appropriated an amount equal to the revenue accruing from tax imposed by section 3406 of the Internal Revenue Code, as heretofore or hereafter extended and amended, on fishing rods, creels, reels, and artificial lures, baits, and flies during the fiscal year ending June 30, 1951, and each fiscal year thereafter".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369, effective Oct. 1, 1984, and applicable with respect to fiscal years beginning after Sept. 30, 1984, see section 1014(b) of Pub. L. 98-369, set out as a note under section 777 of this title.

AVAILABILITY OF FUNDS UNTIL EXPENDED

Section 101 of act Aug. 31, 1951, ch. 375, title I, 65 Stat. 262, provided that: "For carrying out the provisions of the Act of August 9, 1950 (Public Law 681) [this chapter], amounts equal to the revenues described in section 3 of said Act [this section] and credited during the next preceding fiscal year and each fiscal year thereafter, to remain available until expended."

§ 777c. Funds available for expenses of investigations and administration; apportionment of funds among States

So much, not to exceed 6 per centum, of each annual appropriation made in accordance with the provisions of section 777b of this title as the Secretary of the Interior may estimate to be necessary for his expenses in the conduct of necessary investigations, administration, and the execution of this chapter and for aiding in the formulation, adoption, or administration of any compact between two or more States for the conservation and management of migratory fishes in marine or freshwaters shall be deducted for that purpose, and such sum is authorized to be made available therefor until the expiration of the next succeeding fiscal year. The Secretary of the Interior, after making the aforesaid deduction, shall apportion the remainder of the appropriation for each fiscal year among the several States in the following manner: 40 per centum in the ratio which the area of each State including coastal and Great Lakes waters (as determined by the Secretary of the Interior) bears to the total area of all the States, and 60 per centum in the ratio which the number of persons holding paid licenses to fish for sport or recreation in the State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the number of such persons in all the States. Such apportionments shall be adjusted equitably so that no State shall receive less

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than 1 per centum nor more than 5 per centum of the total amount apportioned. Where the apportionment to any State under this section is less than $4,500 annually, the Secretary of the Interior may allocate not more than $4,500 of said appropriation to said State to carry out the purposes of this chapter when said State certifies to the Secretary of the Interior that it has set aside not less than $1,500 from its fish-and-game funds or has made, through its legislature, an appropriation in this amount of said purposes. So much of any sum not allocated under the provisions of this section for any fiscal year is hereby authorized to be made available for expenditure to carry out the purposes of this chapter until the close of the succeeding fiscal year, and if unexpended or unobligated at the end of such year, such sum is hereby authorized to be made available for expenditure by the Secretary of the Interior in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation. The term fiscal year as used in this section shall be a period of twelve consecutive months from October 1 through the succeeding September 30, except that the period for enumeration of persons holding licenses to fish shall be a State's fiscal or license year.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1014(a)(3), 98 Stat. 1015.)

AMENDMENTS

1984—Pub. L. 98-369 revised the deductible amount from not to exceed 8 per centum to not to exceed 6 per centum.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Oct. 1, 1984, and applicable with respect to fiscal years beginning after Sept. 30, 1984, see section 1014(b) of Pub. L. 98-369, set out as a note under section 777 of this title.

SECTIONS REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 777g, 2904, 2905 of this title.

§ 777d. Certification of funds deducted for expenses and amounts apportioned to States

For each fiscal year beginning with the fiscal year ending June 30, 1951, the Secretary of the Interior shall certify to the Secretary of the Treasury, and to each State fish and game department, the sum which he has estimated to be deducted for administering and executing this chapter and the sum which he has apportioned to each State for such fiscal year.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1014(a)(4), 98 Stat. 1015.)

AMENDMENTS

1984—Pub. L. 98-369 struck out provisions relating to notice by the State to the Secretary of intention to accept, and use of funds where the State fails to accept.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Oct. 1, 1984, and applicable with respect to fiscal years beginning after Sept. 30, 1984, see section 1014(b) of Pub. L. 98-369, set out as a note under section 777 of this title.

§ 777e. Submission and approval of plans and projects

[See main edition for text of (a) to (c)]

(d) Agreements to finance initial costs of acquisition of lands and construction of structures

The Secretary of the Interior may enter into agreements to finance up to 75 per centum of the initial costs of the acquisition of lands or interests therein and the construction of structures or facilities for [1] appropriations currently available for the purposes of this chapter; and to agree to finance up to 75 per centum of the remaining costs over such a period of time as the Secretary may consider necessary. The liability of the United States in any such agreement is contingent upon the continued availability of funds for the purposes of this chapter.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1014(a)(5), 98 Stat. 1016.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369 added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Oct. 1, 1984, and applicable with respect to fiscal years beginning after Sept. 30, 1984, see section 1014(b) of Pub. L. 98-369, set out as a note under section 777 of this title.

§ 777g. Maintenance of projects

(a) Duty of States; status of projects; title to property

To maintain fish-restoration and management projects established under the provisions of this chapter shall be the duty of the States according to their respective laws. Beginning July 1, 1953, maintenance of projects heretofore completed under the provisions of this chapter may be considered as projects under this chapter. Title to any real or personal property acquired by any State, and to improvements placed on State-owned lands through the use of funds paid to the State under the provisions of this chapter, shall be vested in such State.

(b) Funding requirements

(1) Each State shall allocate 10 per centum of the funds apportioned to it for each fiscal year under section 777c of this title for the payment of up to 75 per centum of the costs of the acquisition, development, renovation, or improvement of facilities (and auxiliary facilities necessary to insure the safe use of such facilities) that create, or add to, public access to the waters of the United States to improve the suitability of such waters for recreational boating purposes.

(2) So much of the funds that are allocated by a State under paragraph (1) in any fiscal year that remained unexpended or unobligated at the close of such year are authorized to be made available for the purposes described in paragraph (1) during the succeeding fiscal year, but any portion of such funds that remain unexpended or unobligated at the close of such

[1] So in original. Probably should be "from".

succeeding fiscal year are authorized to be made available for expenditure by the Secretary of the Interior in carrying out the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.

(c) Aquatic resource education program; funding, etc.

Each State may use not to exceed 10 per centum of the funds apportioned to it under section 777c of this title to pay up to 75 per centum of the costs of an aquatic resource education program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms. The non-Federal share of such costs may not be derived from other Federal grant programs. The Secretary shall issue not later than the one hundred and twentieth day after the effective date of this subsection such regulations as he deems advisable regarding the criteria for such programs.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1014(a)(6), 98 Stat. 1016.)

REFERENCES IN TEXT

For effective date of this subsection, referred to in subsec. (c), see Effective Date of 1984 Amendment note below.

AMENDMENTS

1984—Pub. L. 98-369 designated existing provisions as subsec. (a), and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Oct. 1, 1984, and applicable with respect to fiscal years beginning after Sept. 30, 1984, see section 1014(b) of Pub. L. 98-369, set out as a note under section 777 of this title.

§ 777k. Payments of funds to and cooperation with Puerto Rico, the District of Columbia, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, and Virgin Islands

The Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Mayor of the District of Columbia, the Governor of Guam, the Governor of American Samoa, the Governor of the Commonwealth of the Northern Mariana Islands, and the Governor of the Virgin Islands, in the conduct of fish restoration and management projects, as defined in section 777a of this title, upon such terms and conditions as he shall deem fair, just, and equitable, and is authorized to apportion to Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, out of money available for apportionment under this chapter, such sums as he shall determine, not exceeding for Puerto Rico 1 per centum, for the District of Columbia one-third of 1 per centum, for Guam one-third of 1 per centum, for American Samoa one-third of 1 per centum, for the Commonwealth of the Northern Mariana Islands one-third of 1 per centum, and for the Virgin Islands one-third of 1 per centum of the total amount apportioned in any one year, but the Secretary shall in no event require any of said cooperating agencies to pay an amount which will exceed 25 per centum of the cost of any project. Any unexpected or unobligated balance of any apportionment made pursuant to this section shall be made available for expenditure in Puerto Rico, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, as the case may be, in the succeeding year, on any approved projects, and if unexpended or unobligated at the end of such year is authorized to be made available for expenditure by the Secretary of the Interior in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1014(a)(7), 98 Stat. 1016.)

AMENDMENTS

1984—Pub. L. 98-369 added "the Mayor of the District of Columbia," after "the Secretary of Agriculture of Puerto Rico,", "for the District of Columbia one-third of 1 per centum," after "for Puerto Rico 1 per centum," and "the District of Columbia," after "Puerto Rico," in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Oct. 1, 1984, and applicable with respect to fiscal years beginning after Sept. 30, 1984, see section 1014(b) of Pub. L. 98-369, set out as a note under section 777 of this title.

CHAPTER 12—FEDERAL REGULATION AND DEVELOPMENT OF POWER

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 21b, 47b, 47f, 90d-4, 108, 158, 197, 201b, 204*l*, 205a, 207a, 221b, 342b, 391, 391b-1, 402e, 403b, 404b, 405, 407b, 408b, 410b, 435, 459a-1, 460m-11, 460m-21, 460ee, 460gg-2, 460ii-3, 577b, 824a-1, 824a-3, 832h, 833g, 836, 839e, 1278, 2603, 2705, 3215 of this title; title 15 section 790a; title 25 section 326; title 30 section 621; title 33 section 467a; title 42 sections 2019, 7172, 7173, 7473; title 43 sections 617d, 617e, 617k, 617*l*, 1634.

CHAPTER 12A—TENNESSEE VALLEY AUTHORITY

§ 831h. Annual financial statement; purchases and contracts; audit by Comptroller General

[*See main edition for text of* (a)]

(b) Bids; audits; settlements; accounts; contracts

All purchases and contracts for supplies or services, except for personal services, made by the Corporation, shall be made after advertising, in such manner and at such times sufficiently in advance of opening bids, as the Board shall determine to be adequate to insure notice and opportunity for competition: *Provided*, That advertisement shall not be required when, (1) an emergency requires immediate delivery of the supplies or performance of the services; or (2) repair parts, accessories, supplemental equipment, or services are required for supplies or services previously furnished or contracted for; or (3) the aggregate amount involved in any purchase of supplies or procurement of services does not exceed $25,000; in which cases such purchases of supplies or procurement of services may be made in the open market in the manner common among businessmen: *Provided further*, That in comparing bids and in making

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awards the Board may consider such factors as relative quality and adaptability of supplies or services, the bidder's financial responsibility, skill, experience, record of integrity in dealing, ability to furnish repairs and maintenance services, the time of delivery or performance offered, and whether the bidder has complied with the specifications.

[See main edition for text of second and third pars.]

(As amended Dec. 1, 1983, Pub. L. 98-191, § 9(d), 97 Stat. 1332.)

AMENDMENTS

1983—Subsec. (b)(3). Pub. L. 98-191 substituted "$25,000" for "$10,000".

SINGLE AUDIT REQUIREMENTS

Tennessee Valley Authority audits unaffected by single audit requirements of chatper 75 (§ 7501 et seq.) of Title 31, Money and Finance, see section 2(b) of Pub. L. 98-502, set out as a note under section 7501 of Title 31.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 831m, 831n-4 of this title; title 26 section 6402; title 31 sections 3720, 3720A, 9105; title 41 section 612.

§ 831n. Bonds for future construction; amount, terms, and conditions

REFERENCES IN TEXT

Section 8 of the Act of June 28, 1902, chapter 1302, as amended by the Act of December 21, 1905 (ch. 3, sec. 1, 34 Stat. 5), referred to in text, was classified to sections 743, 744, and 744 note of former Title 31 and was repealed in part by Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, the first section of which enacted Title 31, Money and Finance, and in part by Pub. L. 97-452, § 4(b), Jan. 12, 1983, 96 Stat. 2480.

§ 831y-1. Approval of plans by Board as condition precedent to construction and operation; restraining action without approval; other laws unaffected

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 2106.

CHAPTER 12F—PACIFIC NORTHWEST CONSUMER POWER PREFERENCE; RECIPROCAL PRIORITY IN OTHER REGIONS

Sec.

837g-1. Construction of additional facilities by Secretary of Energy for mutually beneficial power sales between Pacific Northwest and California; contribution of funds by non-Federal entities.

§ 837g. Transmission lines between Pacific Northwest and Pacific Southwest; prohibition against construction of lines or related facilities; exceptions of lines and facilities recommended by Secretary or authorized by Congress; authority of Secretary to construct other transmission lines unaffected

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 837g-1 of this title.

§ 837g-1. Construction of additional faciltiies by Secretary of Energy for mutually beneficial power sales between Pacific Northwest and California; contribution of funds by non-Federal entities

Notwithstanding the provisions of section 837g of this title, the Secretary of Energy is authorized to construct or participate in the construction of such additional facilities as he deems necessary to allow mutually beneficial power sales between the Pacific Northwest and California and to accept funds contributed by non-Federal entities for that purpose.

(Pub. L. 98-360, title III, § 300, July 16, 1984, 98 Stat. 416.)

CODIFICATION

Section was not enacted as part of Pub. L. 88-552 which comprises this chapter.

CHAPTER 12G—PACIFIC NORTHWEST FEDERAL TRANSMISSION SYSTEM

§ 838k. Bonneville Power Administration bonds

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 838i, 839e of this title; title 2 section 905.

CHAPTER 12H—PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 838i, 838k of this title; title 26 section 103.

§ 839b. Regional planning and participation

OPERATION AND MAINTENANCE OF FISH PASSAGE FACILITIES WITHIN THE YAKIMA RIVER BASIN; FUNDING

Pub. L. 98-381, title I, § 109, Aug. 17, 1984, 98 Stat. 1340, provided that: "The Secretary of the Interior, acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof and supplementary thereto) [43 U.S.C. 371 et seq.] and in accordance with the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2697) [16 U.S.C. 839 et seq.] is authorized to design, construct, operate, and maintain fish passage facilities within the Yakima River Basin, and to accept funds from any entity, public or private, to design, construct, operate, and maintain such facilities."

§ 839d. Conservation and resource acquisition

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 838k, 839b, 839c, 839e, 839f, 839g of this title; title 26 section 103.

CHAPTER 16A—ATLANTIC TUNAS CONVENTION

§ 971h. Authorization of appropriations

There are authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, for fiscal year 1976, the period beginning July 1, 1976, and ending September 30, 1976, and fiscal years 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, and 1986 such sums as may be necessary for carrying out the purposes and provisions of this chapter, including—

[See main edition for text of (1) and (2)]

(As amended Pub. L. 98-44, title I, § 101, July 12, 1983, 97 Stat. 216.)

AMENDMENTS

1983—Pub. L. 98-44 authorized appropriations for fiscal years 1984 through 1986.

CHAPTER 16B—EASTERN PACIFIC TUNA FISHING

Sec.
972. Definitions.
972a. United States representation on the Council.
(a) Appointment by Secretary of State.
(b) Qualification.
(c) Compensation.
(d) Travel expenses.
972b. Secretary of State to act for United States.
972c. Application to other laws.
972d. Disposition of fees.
972e. Regulations.
972f. Prohibited acts.
(a) Unlawful acts.
(b) Penalties.
(c) Forfeiture.
(d) Application of laws relating to seizures and forfeitures.
972g. Enforcement.
(a) Warrants.
(b) Joint responsibility for enforcement.
(c) Execution of warrants and process.
(d) Arrest; search.
(e) Seizure.
(f) Bond or stipulation for value of the property.
972h. Authorization of appropriations.

§ 972. Definitions

As used in this chapter—

(1) The term "Agreement" means the Eastern Pacific Ocean Tuna Fishing Agreement, signed in San Jose, Costa Rica, March 15, 1983.

(2) The term "Agreement Area" means the area within a perimeter determined as follows: From the point on the mainland where the parallel of 40 degrees north latitude intersects the coast westward along the parallel of 40 degrees north latitude to 40 degrees north latitude by 125 degrees west longitude, thence southerly along the meridian of 125 degrees west longitude to 20 degrees north latitude by 125 degrees west longitude, thence easterly along the parallel of 20 degrees north latitude to 20 degrees north latitude by 120 degrees west longitude, thence southerly along the meridian of 120 degrees west longitude to 5 degrees north latitude by 120 degrees west longitude, thence easterly along the parallel of 5 degrees north latitude to 5 degrees north latitude by 110 degrees west longitude, thence southerly along the meridian of 110 degrees west longitude to 10 degrees south latitude by 110 degrees west longitude, thence easterly along the parallel of 10 degrees south latitude to 10 degrees south latitude by 90 degrees west longitude, thence southerly along the meridian of 90 degrees west longitude to 30 degrees south latitude by 90 degrees west longitude, thence easterly along the parallel of 30 degrees south latitude to the point on the mainland where the parallel intersects the coast; but the Agreement Area does not include the zones within twelve nautical miles of the baseline from which the breadth of territorial sea is measured and the zones within two hundred nautical miles of the baselines of Coastal States not signatories to the Agreement, measured from the same baseline.

(3) The term "designated species of tuna" means yellowfin tuna, Thunnus albacares (Bonnaterre, 1788); bigeye tuna, Thunnus obesus (Lowe, 1839); albacore tuna, Thunnus alalunga (Bonnaterre, 1788); northern bluefin tuna, Thunnus thynnus (Linnaeus, 1758); southern bluefin tuna, Thunnus maccoyii (Castelnau, 1872); skipjack tuna, Katsuwonus pelamis (Linnaeus [1] 1578); black skipjack, Euthynnus Lineatus (Kishinouye [1] 1920); kawakawa, Euthynnus affinis (Cantor, 1849); bullet tuna, Auxis rochei (Risso, 1810),[2] frigate tuna, Ausix thazard (Lacepede, 1800); eastern Pacific bonito, Sarda chiliensis (Cuvier in Cuvier and Valenciennes, 1831); and Indo-Pacific bonito, Sarda orientalis (Temminck and Schlegel, 1844).

(4) The term "Council" means the body consisting of the representatives from each Contracting Party to the Agreement which is a Coastal State of the eastern Pacific Ocean or a member of the Inter-American Tropical Tuna Commission at the time of entry into force of the Agreement.

(Pub. L. 98-445, § 2, Oct. 4, 1984, 98 Stat. 1715.)

SHORT TITLE

Section 1 of Pub. L. 98-445 provided: "That this Act [enacting this chapter] may be cited as the 'Eastern Pacific Tuna Licensing Act of 1984'."

§ 972a. United States representation on the Council

(a) Appointment by Secretary of State

The Secretary of State—

(1) shall appoint a United States representative to the Council; and

(2) may appoint not more than three alternate United States representatives to the Council.

(b) Qualification

An individual is not eligible for appointment as, or to serve as, the United States representative under subsection (a)(1) of this section unless the individual is an officer or employee of the United States Government.

(c) Compensation

An individual is not entitled to compensation for serving as the United States representative or an alternate United States representative.

(d) Travel expenses

While away from home or a regular place of business in the performance of service as the United States representative or an alternate United States representative, an individual is entitled to travel expenses, including per diem in lieu of subsistence, in the same manner as individuals employed intermittently in Govern-

[1] So in original. Probably should be followed by a comma.

[2] So in original. The comma probably should be a semicolon.

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ment service are allowed expenses under section 5703(b) of title 5.

(Pub. L. 98-445, § 3, Oct. 4, 1984, 98 Stat. 1716.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (d), was amended generally by Pub. L. 94-22, § 4, May 19, 1975, 89 Stat. 85, and as so amended does not contain a subsec. (b).

§ 972b. Secretary of State to act for United States

The Secretary of State shall receive, on behalf of the United States Government, reports, requests, recommendations and other communications of the Council, and, in consultation with the Secretary of Commerce, shall act directly thereon or by reference to the appropriate authorities.

(Pub. L. 98-445, § 4, Oct. 4, 1984, 98 Stat. 1716.)

§ 972c. Application to other laws

(a) Notwithstanding section 4 of the Fishermen's Protective Act of 1967 [22 U.S.C. 1974], such Act [22 U.S.C. 1971 et seq.] applies with respect to a seizure by a Contracting Party to the Agreement of a vessel of the United States within the Agreement Area for violation of the Agreement if the Secretary of State determines that the violation is not of such seriousness as to diminish the effectiveness of the Agreement.

(b) The seizure by a Contracting Party to the Agreement of a vessel of the United States shall not be considered to be a seizure described in section 1825(a)(4)(C) of this title if the seizure is consistent with the Agreement.

(Pub. L. 98-445, § 5, Oct. 4, 1984, 98 Stat. 1716.)

REFERENCES IN TEXT

The Fishermen's Protective Act of 1967, referred to in subsec. (a), is act Aug. 27, 1954, ch. 1018, 68 Stat. 883, as amended, which is classified generally to chapter 25 (§ 1971 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of Title 22 and Tables.

§ 972d. Disposition of fees

All fees accruing to the United States under Article III of the Agreement shall be deposited into the Treasury of the United States.

(Pub. L. 98-445, § 6, Oct. 4, 1984, 98 Stat. 1716.)

§ 972e. Regulations

The Secretary of Commerce, in cooperation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall issue such regulations as may be necessary to carry out the purposes and objectives of the Agreement and this chapter. Regulations may be made applicable as necessary to all persons and vessels subject to the jurisdiction of the United States, wherever located. Regulations concerning the conservation of a designated species of tuna may be issued only to implement conservation recommendations made by the Council under Article 3(D) of the Agreement.

(Pub. L. 98-445, § 7, Oct. 4, 1984, 98 Stat. 1716.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 972f, 972g of this title.

§ 972f. Prohibited acts

(a) Unlawful acts

It is unlawful for any person subject to the jurisdiction of the United States—

(1) to engage in fishing for a designated species of tuna within the Agreement Area unless issued a license under the Agreement authorizing such fishing;

(2) to engage in fishing for a designated species of tuna within the Agreement area [3] in contravention of regulations promulgated by the Secretary of Commerce under the Agreement;

(3) knowingly to ship, transport, purchase, sell, offer for sale, export, or have in custody, possession, or control any designated species of tuna taken or retained in violation of regulations issued under section 972e of this title;

(4) to fail to make, keep, or furnish any catch return, statistical record, or other report required by regulations issued under section 972e of this title;

(5) being a person in charge of a vessel of the United States, to fail to stop upon being hailed by an authorized official of the United States, or to refuse to permit officials of the United States to board the vessel or inspect its catch, equipment, books, documents, records, or other articles, or to question individuals on board; or

(6) to import from any country, in violation of any regulation issued under section 972e of this title, any designated species of tuna.

(b) Penalties

Any person who is convicted of violating—

(1) subsection (a)(1), (a)(2), or (a)(3) of this section shall be fined or assessed a civil penalty not more than $25,000, and for a subsequent violation shall be fined or assessed a civil penalty not more than $50,000;

(2) subsection (a)(4) or (a)(5) of this section shall be fined or assessed a civil penalty not more than $5,000, and for a subsequent violation shall be fined or assessed a civil penalty not more than $5,000; or

(3) subsection (a)(6) of this section shall be fined or assessed a civil penalty not more than $100,000.

(c) Forfeiture

All designated species of tuna taken or retained in violation of subsection (a)(1), (2), (3), or (6) of this section, or the monetary value thereof, is subject to forfeiture.

(d) Application of laws relating to seizures and forfeitures

All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeit-

[3] So in original. Probably should be capitalized.

ures incurred, or alleged to have been incurred, under this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter.

(Pub. L. 98-445, § 8, Oct. 4, 1984, 98 Stat. 1717.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (d), are classified generally to Title 19, Customs Duties.

§ 972g. Enforcement

(a) Warrants

The judges of the United States district courts and United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and the regulations issued under section 972e of this title.

(b) Joint responsibility for enforcement

The enforcement of this chapter and the regulations issued under section 972e of this title shall be the joint responsibility of the department in which the Coast Guard is operating, the Department of Commerce, and the United States Customs Service. In addition, the Secretary of Commerce may designate officers and employees of the States of the United States, of the Commonwealth of Puerto Rico, and of American Samoa to carry out enforcement activities under this section. When so designated, such officers and employees may function as Federal law enforcement agents for these purposes.

(c) Execution of warrants and process

An individual authorized to carry out enforcement activities under this section has power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this chapter.

(d) Arrest; search

An individual so authorized to carry out enforcement activities under this section has power—

(1) with or without a warrant or other process, to arrest any person subject to the jurisdiction of the United States at any place within the jurisdiction of the United States committing in his presence or view a violation of this chapter or the regulations issued under section 972e of this title;

(2) with or without a warrant or other process, to search any vessel subject to the jurisdiction of the United States, and, if, as a result of the search he has reasonable cause to believe that such vessel or any individual on board is engaging in operations in violation of this chapter or any regulation issued thereunder to arrest such person.

(e) Seizure

An individual authorized to enforce this chapter may seize, whenever or wherever lawfully found, all species of designated tuna taken or retained in violation of this chapter or the regulations issued under section 972e of this title. Any species so seized may be disposed of pursuant to the order of a court of competent jurisdiction, under subsection (f) of this section or, if perishable, in a manner prescribed by regulations of the Secretary of Commerce.

(f) Bond or stipulation for value of the property

Notwithstanding the provisions of section 2464 of title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any species of designated tuna seized if the process has been levied, on receiving from the claimant of the species a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the species seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the species may be sold for not less than its reasonable market value and the proceeds of such sale placed in the registry of the court pending judgment in the case.

(Pub. L. 98-445, § 9, Oct. 4, 1984, 98 Stat. 1717.)

§ 972h. Authorization of appropriations

There are authorized to be appropriated for fiscal years after fiscal year 1984 such sums as may be necessary to carry out this chapter.

(Pub. L. 98-445, § 10, Oct. 4, 1984, 98 Stat. 1719.)

CHAPTER 21B—PROHIBITION OF CERTAIN FOREIGN FISHING VESSELS IN UNITED STATES FISHERIES

§§ 1100 to 1100a-3. Omitted

CODIFICATION

Sections 1100 to 1100a-3 were omitted pursuant to section 1100 which prohibited certain activities during the five-year period beginning on Oct. 27, 1972.

Section 1100, Pub. L. 92-601, § 1, Oct. 27, 1972, 86 Stat. 1327, provided that during the five-year period beginning on October 27, 1972, it shall be unlawful for any person on board any prohibited vessel to transfer at sea or cause to be transferred at sea any prohibited fish; or to land or cause to be landed any prohibited fish in any port of the United States.

Section 1100a, Pub. L. 92-601, § 2, Oct. 27, 1972, 86 Stat. 1327, prescribed penalties for violations of this chapter.

Section 1100a-1, Pub. L. 92-601, § 3, Oct. 27, 1972, 86 Stat. 1327, provided for enforcement of this chapter.

Section 1100a-2, Pub. L. 92-601, § 4, Oct. 27, 1972, 86 Stat. 1328, authorized the issuance of regulations to implement this chapter.

Section 1100a-3, Pub. L. 92-601, § 5, Oct. 27, 1972, 86 Stat. 1328, provided definitions for this chapter.

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CHAPTER 21C—OFFSHORE SHRIMP FISHERIES

§ 1100b to 1100b–10. Omitted

CODIFICATION

Sections 1100b to 1100b–10 were omitted pursuant to section 13 of Pub. L. 93–242, Jan. 2, 1974, 87 Stat. 1068, as amended by Pub. L. 94–58, § 2, July 24, 1975, 89 Stat. 266, which provided that the provisions of this chapter would expire Sept. 30, 1977.

Section 1100b, Pub. L. 93–242, § 2, Jan. 2, 1974, 87 Stat. 1061; Pub. L. 94–58, § 3(a), July 24, 1975, 89 Stat. 266, provided definitions for this chapter.

Section 1100b–1, Pub. L. 93–242, § 3, Jan. 2, 1974, 87 Stat. 1063; Pub. L. 94–58, § 3(b), July 24, 1975, 89 Stat. 266, authorized the issuance of permits for vessels documented under the laws of the United States to engage in fishing.

Section 1100b–2, Pub. L. 93–242, § 4, Jan. 2, 1974, 87 Stat. 1064; Pub. L. 94–58, § 3(c), July 24, 1975, 89 Stat. 266, established procedures for applying for and granting permits.

Section 1100b–3, Pub. L. 93–242, § 5, Jan. 2, 1974, 87 Stat. 1065; Pub. L. 94–58, § 3(d), July 24, 1975, 89 Stat. 267, provided for issuance of letters of voluntary compliance.

Section 1100b–4, Pub. L. 93–242, § 6, Jan. 2, 1974, 87 Stat. 1065; Pub. L. 94–58, § 3(e), July 24, 1975, 89 Stat. 267, established the Offshore Shrimp Fisheries Fund.

Section 1100b–5, Pub. L. 93–242, § 7, Jan. 2, 1974, 87 Stat. 1065, established requirements for maintaining a logbook and providing the Secretary of Commerce with any other necessary information.

Section 1100b–6, Pub. L. 93–242, § 8, Jan. 2, 1974, 87 Stat. 1066; Pub. L. 94–58, § 3(f), July 24, 1975, 89 Stat. 267, detailed prohibited activities.

Section 1100b–7, Pub. L. 93–242, § 9, Jan. 2, 1974, 87 Stat. 1066; Pub. L. 94–58, § 3(g), July 24, 1975, 89 Stat. 267, prescribed penalties and procedures for violations of this chapter.

Section 1100b–8, Pub. L. 93–242, § 10, Jan. 2, 1974, 87 Stat. 1067, provided for enforcement of this chapter.

Section 1100b–9, Pub. L. 93–242, § 11, Jan. 2, 1974, 87 Stat. 1067, authorized the issuance of regulations to implement this chapter.

Section 1100b–10, Pub. L. 93–142, § 12, Jan. 2, 1974, 87 Stat. 1068, authorized appropriations for the enforcement of this chapter.

CHAPTER 23—NATIONAL WILDERNESS PRESERVATION SYSTEM

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 90e, 90e–2, 272d, 273d, 460aa–1, 460dd–8, 460gg–1, 460*ll*, 460*ll*–1, 460oo, 1281, 3102, 3150, 3199, 3203 of this title; title 43 sections 1782, 1784.

§ 1132. Extent of System

WILDERNESS AREAS

Site of Wilderness	*Date of Designation*
Absaroka-Beartooth Wilderness, Custer and Gallatin National Forests, Montana (92 Stat. 162)	Mar. 27, 1978
Admiralty Island National Monument Wilderness, Tongass National Forest, Alaska (94 Stat. 2418)	Dec. 2, 1980
Agassiz Wilderness, Agassiz National Wildlife Refuge, Minnesota (90 Stat. 263*)	Oct. 19, 1976
Agua Tibia Wilderness, Cleveland National Forest, California (88 Stat. 2154)	Jan. 3, 1975
Aldo Leopold Wilderness, Gila National Forest, New Mexico (94 Stat. 3221)	Dec. 19, 1980
Aleutian Islands Wilderness, Alaska Maritime National Wildlife Refuge, Aleutian Islands Unit, Alaska (94 Stat. 2417)	Dec. 2, 1980
Alexander Springs Wilderness, Ocala National Forest, Florida (98 Stat. 1665)	Sept. 28, 1984

WILDERNESS AREAS—Continued

Site of Wilderness	*Date of Designation*
Allegheny Islands Wilderness, Allegheny National Forest, Pennsylvania (98 Stat. 3100)	Oct. 30, 1984
Alpine Lakes Wilderness, Mount Baker-Snoqualmie and Wenatchee National Forests, Washington (90 Stat. 905)	July 12, 1976
Anaconda-Pintler Wilderness, Beaverhead, Bitterroot, and Deerlodge National Forests, Montana (78 Stat. 891)	Sept. 3, 1964
Andreafsky Wilderness, Yukon Delta National Wildlife Refuge, Alaska (94 Stat. 2418)	Dec. 2, 1980
Ansel Adams Wilderness, Sierra and Inyo National Forests, California (78 Stat. 891; 98 Stat. 1621)	Sept. 3, 1964
Apache Creek Wilderness, Prescott National Forest, Arizona (98 Stat. 1485)	Aug. 28, 1984
Apache Kid Wilderness, Cibola National Forest, New Mexico (94 Stat. 3221)	Dec. 19, 1980
Aravaipa Canyon Wilderness, Graham and Pinal Counties, Arizona (98 Stat. 1491)	Aug. 28, 1984
Arctic Wildlife Refuge Wilderness, Arctic National Wildlife Refuge, Alaska (94 Stat. 2418)	Dec. 2, 1980
Ashdown Gorge Wilderness, Dixie National Forest, Utah (98 Stat. 1658)	Sept. 28, 1984
Badger Creek Wilderness, Mount Hood National Forest, Oregon (98 Stat. 273)	June 26, 1984
Badlands Wilderness, Badlands National Monument, South Dakota (90 Stat. 2693)	Oct. 20, 1976
Bald River Gorge Wilderness, Cherokee National Forest, Tennessee (98 Stat. 3088)	Oct. 30, 1984
Bandelier Wilderness, Bandelier National Monument, New Mexico (90 Stat. 2692)	Oct. 20, 1976
Bear Wallow Wilderness, Apache-Sitgreaves National Forest, Arizona (98 Stat. 1485)	Aug. 28, 1984
Beartown Wilderness, Jefferson National Forest, Virginia (98 Stat. 3105)	Oct. 30, 1984
Beaver Creek Wilderness, Daniel Boone National Forest, Kentucky (88 Stat. 2097)	Jan. 3, 1975
Beaver Dam Mountains Wilderness, Arizona Strip District, Arizona, and Cedar City District, Utah, of Bureau of Land Management (98 Stat. 1493)	Aug. 28, 1984
Becharof Wilderness, Becharof National Wildlife Refuge, Alaska (94 Stat. 2418)	Dec. 2, 1980
Bell Mountain Wilderness, Mark Twain National Forest, Missouri (94 Stat. 3273)	Dec. 22, 1980
Bering Sea Wilderness, Bering Sea National Wildlife Refuge, Alaska (84 Stat. 1104)	Oct. 23, 1970
Big Blue Wilderness, Uncompahgre National Forest, Colorado (94 Stat. 3266)	Dec. 22, 1980
Big Branch Wilderness, Green Mountain National Forest, Vermont (98 Stat. 254)	June 19, 1984
Big Frog Wilderness, Cherokee National Forest, Tennessee (98 Stat. 3088)	Oct. 30, 1984
Big Gum Swamp Wilderness, Osceola National Forest, Florida (98 Stat. 1665)	Sept. 28, 1984
Big Lake Wilderness, Big Lake National Wildlife Refuge, Arkansas (90 Stat. 2633)	Oct. 19, 1976
Big Slough Wilderness, Davy Crockett National Forest, Texas (98 Stat. 3051)	Oct. 30, 1984
Billies Bay Wilderness, Ocala National Forest, Florida (98 Stat. 1665)	Sept. 28, 1984
Birkhead Mountains Wilderness, Uwharrie National Forest, North Carolina (98 Stat. 263)	June 19, 1984
Bisti Wilderness, Albuquerque District of Bureau of Land Management, New Mexico (98 Stat. 3155)	Oct. 30, 1984
Black Canyon of the Gunnison Wilderness, Black Canyon of the Gunnison National Monument, Colorado (90 Stat. 2692)	Oct. 20, 1976
Black Canyon Wilderness, Ochoco National Forest, Oregon (98 Stat. 274)	June 26, 1984
Black Creek Wilderness, De Soto National Forest, Mississippi (98 Stat. 2420)	Oct. 19, 1984
Black Elk Wilderness, Black Hills National Forest, South Dakota (94 Stat. 3268)	Dec. 22, 1980
Black Fork Mountain Wilderness, Ouachita National Forest, Arkansas (98 Stat. 2349)	Oct. 19, 1984
Blackbeard Island Wilderness, Blackbeard Island National Wildlife Refuge, Georgia (88 Stat. 2153)	Jan. 3, 1975
Blackjack Springs Wilderness, Nicolet National Forest, Wisconsin (92 Stat. 1648)	Oct. 21, 1978
Blue Range Wilderness, Apache and Gila National Forests, New Mexico (94 Stat. 3221)	Dec. 19, 1980
Bob Marshall Wilderness, Flathead and Lewis and Clark National Forests, Montana (78 Stat. 891)	Sept. 3, 1964
Bogoslof Wilderness, Bogoslof National Wildlife Refuge, Alaska (84 Stat. 1104)	Oct. 23, 1970
Bosque del Apache Wilderness, Bosque del Apache National Wildlife Refuge, New Mexico (88 Stat. 2154)	Jan. 3, 1975

WILDERNESS AREAS—Continued

Site of Wildernesses	Date of Designation
Boulder Creek Wilderness, Umpqua National Forest, Oregon (98 Stat. 273)	June 26, 1984
Boulder River Wilderness, Mount Baker-Snoqualmie National Forest, Washington (98 Stat. 300)	July 3, 1984
Boundary Waters Canoe Area Wilderness, Superior National Forest, Minnesota (92 Stat. 1649)	Oct. 21, 1978
Box-Death Hollow Wilderness, Dixie National Forest, Utah (98 Stat. 1658)	Sept. 28, 1984
Bradwell Bay Wilderness, Appalachicola National Forest, Florida (88 Stat. 2097)	Jan. 3, 1975
Breadloaf Wilderness, Green Mountain National Forest, Vermont (98 Stat. 254)	June 19, 1984
Breton Wilderness, Breton National Wildlife Refuge, Louisiana (88 Stat. 2154)	Jan. 3, 1975
Bridge Creek Wilderness, Ochoco National Forest, Oregon (98 Stat. 274)	June 26, 1984
Bridger Wilderness, Bridger National Forest, Wyoming (78 Stat. 891)	Sept. 3, 1964
Brigantine Wilderness, Edwin B. Forsythe National Wildlife Refuge, New Jersey (88 Stat. 2154; 98 Stat. 207)	Jan. 3, 1975
Bristol Cliffs Wilderness, Green Mountain National Forest, Vermont (88 Stat. 2097)	Jan. 3, 1975
Buckhorn Wilderness, Olympic National Forest, Washington (98 Stat. 300)	July 3, 1984
Bucks Lake Wilderness, Plumas National Forest, California (98 Stat. 1624)	Sept. 28, 1984
Buffalo National River Wilderness, Buffalo National River, Arkansas (92 Stat. 3489)	Nov. 10, 1978
Bull of the Woods Wilderness, Mount Hood and Willamette National Forests, Oregon (98 Stat. 273)	June 26, 1984
Cabinet Mountains Wilderness, Kaniksu and Kootenai National Forests, Montana (78 Stat. 891)	Sept. 3, 1964
Cache La Poudre Wilderness, Roosevelt National Forest, Colorado (94 Stat. 3266)	Dec. 22, 1980
Caney Creek Wilderness, Ouachita National Forest, Arkansas (88 Stat. 2097)	Jan. 3, 1975
Cape Romain Wilderness, Cape Romain National Wildlife Refuge, South Carolina (88 Stat. 2154)	Jan. 3, 1975
Capitan Mountains Wilderness, Lincoln National Forest, New Mexico (94 Stat. 3221)	Dec. 19, 1980
Caribou Wilderness, Lassen National Forest, California (78 Stat. 891)	Sept. 3, 1964
Carlsbad Caverns Wilderness, Carlsbad Caverns National Park, New Mexico (92 Stat. 3489)	Nov. 10, 1978
Carson-Iceberg Wilderness, Stanislaus and Toiyabe National Forests, California (98 Stat. 1619)	Sept. 28, 1984
Castle Crags Wilderness, Shasta-Trinity National Forest, California (98 Stat. 1619)	Sept. 28, 1984
Castle Creek Wilderness, Prescott National Forest, Arizona (98 Stat. 1485)	Aug. 28, 1984
Catfish Lake South Wilderness, Croatan National Forest, North Carolina (98 Stat. 263)	June 19, 1984
Cedar Bench Wilderness, Prescott National Forest, Arizona (98 Stat. 1485)	Aug. 28, 1984
Cedar Keys Wilderness, Cedar Keys National Wildlife Refuge, Florida (88 Stat. 505)	Aug. 7, 1972
Chama River Canyon Wilderness, Santa Fe and Carson National Forests, New Mexico (92 Stat. 42)	Feb. 24, 1978
Chamisso Wilderness, Chamisso National Wildlife Refuge, Alaska (88 Stat. 2153)	Jan. 3, 1975
Chanchelulla Wilderness, Shasta-Trinity National Forest, California (98 Stat. 1619)	Sept. 28, 1984
Charles C. Deam Wilderness, Hoosier National Forest, Indiana (96 Stat. 1942)	Dec. 22, 1982
Chase Lake Wilderness, Chase Lake National Wildlife Refuge, North Dakota (88 Stat. 2154)	Jan. 3, 1975
Chassahowitzka Wilderness, Chassahowitzka National Wildlife Refuge, Florida (90 Stat. 2633)	Oct. 19, 1976
Cheaha Wilderness, Talladega National Forest, Alabama (96 Stat. 2046)	Jan. 3, 1983
Chiricahua National Monument Wilderness, Chiricahua National Monument, Arizona (90 Stat. 2692)	Oct. 20, 1976
Chiricahua Wilderness, Coronado National Forest, Arizona (78 Stat. 891)	Sept. 3, 1964
Citico Creek Wilderness, Cherokee National Forest, Tennessee (98 Stat. 3088)	Oct. 30, 1984
Clearwater Wilderness, Mount Baker-Snoqualmie National Forest, Washington (98 Stat. 300)	July 3, 1984
Clifty Wilderness, Daniel Boone National Forest, Kentucky (99 Stat. 1351)	Dec. 23, 1985
Cloud Peak Wilderness, Bighorn National Forest, Wyoming (98 Stat. 2808)	Oct. 30, 1984

WILDERNESS AREAS—Continued

Site of Wildernesses	Date of Designation
Cohutta Wilderness, Chattahoochee and Cherokee National Forests, Georgia and Tennessee (88 Stat. 2098)	Jan. 3, 1975
Collegiate Peaks Wilderness, Gunnison, San Isabel, and White River National Forests, Colorado (94 Stat. 3265)	Dec. 22, 1980
Colonel Bob Wilderness, Olympic National Forest, Washington (98 Stat. 300)	July 3, 1984
Columbia Wilderness, Mount Hood National Forest, Oregon (98 Stat. 273)	June 26, 1984
Comanche Peak Wilderness, Roosevelt National Forest, Colorado (94 Stat. 3266)	Dec. 22, 1980
Coronation Island Wilderness, Tongass National Forest, Alaska (94 Stat. 2418)	Dec. 2, 1980
Cottonwood Point Wilderness, Arizona Strip District of Bureau of Land Management, Arizona (98 Stat. 1492)	Aug. 28, 1984
Crab Orchard Wilderness, Crab Orchard National Wildlife Refuge, Illinois (90 Stat. 2033)	Oct. 19, 1976
Cranberry Wilderness, Monongahela National Forest, West Virginia (96 Stat. 2538)	Jan. 13, 1983
Craters of the Moon National Wilderness, Craters of the Moon National Monument, Idaho (84 Stat. 1105)	Oct. 23, 1970
Cruces Basin Wilderness, Carson National Forest, New Mexico (94 Stat. 3222)	Dec. 19, 1980
Cucamonga Wilderness, San Bernardino National Forest, California (78 Stat. 891)	Sept. 3, 1964
Cumberland Island Wilderness, Cumberland Island National Seashore, Georgia (96 Stat. 709)	Sept. 8, 1982
Cummins Creek Wilderness, Siuslaw National Forest, Oregon (98 Stat. 273)	June 26, 1984
Dark Canyon Wilderness, Manti-LaSal National Forest, Utah (98 Stat. 1658)	Sept. 28, 1984
Denali Wilderness, Denali National Park and Preserve, Alaska (94 Stat. 2417)	Dec. 2, 1980
De-na-zin Wilderness, Albuquerque District of Bureau of Land Management, New Mexico (98 Stat. 3155)	Oct. 30, 1984
Deseret Peak Wilderness, Wasatch National Forest, Utah (98 Stat. 1658)	Sept. 28, 1984
Desolation Wilderness, Eldorado National Forest, California (83 Stat. 131)	Oct. 10, 1969
Devils Backbone Wilderness, Mark Twain National Forest, Missouri (94 Stat. 3273)	Dec. 22, 1980
Diamond Peak Wilderness, Deschutes and Willamette National Forests, Oregon (78 Stat. 891)	Sept. 3, 1964
Dick Smith Wilderness, Los Padres National Forest, California (98 Stat. 1620)	Sept. 28, 1984
Dinkey Lakes Wilderness, Sierra National Forest, California (98 Stat. 1620)	Sept. 28, 1984
Dolly Sods Wilderness, Monongahela National Forest, West Virginia (88 Stat. 2098)	Jan. 3, 1975
Dome Land Wilderness, Sequoia National Forest, California (78 Stat. 891)	Sept. 3, 1964
Dome Wilderness, Santa Fe National Forest, New Mexico (94 Stat. 3222)	Dec. 19, 1980
Drift Creek Wilderness, Siuslaw National Forest, Oregon (98 Stat. 273)	June 26, 1984
Dry Creek Wilderness, Ouachita National Forest, Arkansas (98 Stat. 2350)	Oct. 19, 1984
Eagle Cap Wilderness, Wallowa and Whitman National Forests, Oregon (78 Stat. 891)	Sept. 3, 1964
Eagles Nest Wilderness, Arapaho and White River National Forests, Colorado (90 Stat. 870)	July 12, 1976
East Fork Wilderness, Ozark-Saint Francis National Forests, Arkansas (98 Stat. 2350)	Oct. 19, 1984
Ellicott Rock Wilderness, Sumter, Nantahala, and Chattahoochee National Forests, South Carolina, North Carolina, and Georgia (88 Stat. 2097)	Jan. 3, 1975
Emigrant Wilderness, Stanislaus National Forest, California (88 Stat. 2154)	Jan. 3, 1975
Encampment River Wilderness, Medicine Bow National Forest, Wyoming (98 Stat. 2808)	Oct. 30, 1984
Endicott River Wilderness, Tongass National Forest, Alaska (94 Stat. 2418)	Dec. 2, 1980
Escudilla Wilderness, Apache-Sitgreaves National Forest, Arizona (98 Stat. 1488)	Aug. 28, 1984
Everglades Wilderness, Everglades National Park, Florida (92 Stat. 3490)	Nov. 10, 1978
Farallon Wilderness, Farallon National Wildlife Refuge, California (88 Stat. 1744)	Dec. 26, 1974
Fire Island Wilderness, Fire Island National Seashore, New York (94 Stat. 3379)	Dec. 23, 1980
Fitzpatrick Wilderness, Shoshone National Forest, Wyoming (90 Stat. 2635)	Oct. 19, 1976
Flat Tops Wilderness, Routt and White River National Forest, Colorado (89 Stat. 802)	Dec. 12, 1975

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WILDERNESS AREAS—Continued

Site of Wildernesses	Date of Designation
Flatside Wilderness, Ouachita National Forest, Arkansas (98 Stat. 2350)	Oct. 19, 1984
Florida Keys Wilderness, Key Deer, Great White Heron and Key West National Wildlife Refuges, Florida (88 Stat. 2153)	Jan. 3, 1975
Forrester Island Wilderness, Forrester Island National Wildlife Refuge, Alaska (84 Stat. 1104)	Oct. 23, 1970
Fort Niobrara Wilderness, Fort Niobrara National Wildlife Refuge, Nebraska (90 Stat. 2634)	Oct. 19, 1976
Fossil Springs Wilderness, Coconino National Forest, Arizona (98 Stat. 1485)	Aug. 28, 1984
Four Peaks Wilderness, Tonto National Forest, Arizona (98 Stat. 1485)	Aug. 28, 1984
Frank Church—River of No Return Wilderness, Boise, Challis, Payette, Salmon, Bitterroot, and Nezperce National Forests, Idaho (94 Stat. 948; 98 Stat. 60)	July 23, 1980
Galiuro Wilderness, Coronado National Forest, Arizona (78 Stat. 891)	Sept. 3, 1964
Gates of the Arctic Wilderness, Gates of the Arctic National Park, Alaska (94 Stat. 2417)	Dec. 2, 1980
Gates of the Mountains Wilderness, Helena National Forest, Montana (78 Stat. 891)	Sept. 3, 1964
Gearheart Mountain Wilderness, Fremont National Forest, Oregon (78 Stat. 891)	Sept. 3, 1964
Gee Creek Wilderness, Cherokee National Forest, Tennessee (88 Stat. 2097)	Jan. 3, 1975
George D. Aiken Wilderness, Green Mountain National Forest, Vermont (98 Stat. 254)	June 19, 1984
Gila Wilderness, Gila National Forest, New Mexico (78 Stat. 891)	Sept. 3, 1964
Glacier Bay Wilderness, Glacier Bay National Park, Alaska (94 Stat. 2417)	Dec. 2, 1980
Glacier Peak Wilderness, Mount Baker and Wenatchee National Forest, Washington (78 Stat. 891)	Sept. 3, 1964
Glacier View Wilderness, Gifford Pinchot National Forest, Washington (98 Stat. 300)	July 3, 1984
Goat Rocks Wilderness, Gifford Pinchot and Snoqualmie National Forests, Washington (78 Stat. 891)	Sept. 3, 1964
Golden Trout Wilderness, Inyo and Sequoia National Forests, California (92 Stat. 41)	Feb. 24, 1978
Gospel-Hump Wilderness, Nesperce National Forest, Idaho (92 Stat. 43)	Feb. 24, 1978
Grand Wash Cliffs Wilderness, Arizona Strip District of Bureau of Land Management, Arizona (98 Stat. 1492)	Aug. 28, 1984
Granite Chief Wilderness, Tahoe National Forest, California (98 Stat. 1620)	Sept. 28, 1984
Granite Mountain Wilderness, Prescott National Forest, Arizona (98 Stat. 1486)	Aug. 28, 1984
Grassy Knob Wilderness, Siskiyou National Forest, Oregon (98 Stat. 274)	June 26, 1984
Great Bear Wilderness, Flathead National Forest, Montana (92 Stat. 2062)	Oct. 28, 1978
Great Gulf Wilderness, White Mountain National Forest, New Hampshire (78 Stat. 891)	Sept. 3, 1964
Great Sand Dunes Wilderness, Great Sand Dunes National Monument, Colorado (90 Stat. 2692)	Oct. 20, 1976
Great Swamp National Wildlife Refuge Wilderness, Morris County, New Jersey (82 Stat. 883)	Sept. 28, 1968
Gros Ventre Wilderness, Bridger-Teton National Forest, Wyoming (98 Stat. 2808)	Oct. 30, 1984
Guadalupe Mountains Wilderness, Guadalupe Mountains National Park, Texas (92 Stat. 3490)	Nov. 10, 1978
Gulf Islands Wilderness, Gulf Islands National Seashore, Florida and Mississippi (92 Stat. 3490)	Nov. 10, 1978
Haleakala Wilderness, Haleakala National Park, Hawaii (90 Stat. 2692)	Oct. 20, 1976
Hauser Wilderness, Cleveland National Forest, California (98 Stat. 1620)	Sept. 28, 1984
Hawaii Volcanoes Wilderness, Hawaii Volcanoes National Park, Hawaii (92 Stat. 3490)	Nov. 10, 1978
Hazy Islands Wilderness, Hazy Island National Wildlife Refuge, Alaska (84 Stat. 1104)	Oct. 23, 1970
Headwaters of the Pine Wilderness, Nicolet National Forest, Wisconsin (98 Stat. 250)	June 19, 1984
Hell Hole Bay Wilderness, Francis Marion National Forest, South Carolina (94 Stat. 3273)	Dec. 22, 1980
Hellsgate Wilderness, Tonto National Forest, Arizona (98 Stat. 1486)	Aug. 28, 1984

WILDERNESS AREAS—Continued

Site of Wildernesses	Date of Designation
Henry M. Jackson Wilderness, Wenatchee and Mount Baker-Snoqualmie National Forests, Washington (98 Stat. 300)	July 3, 1984
Hercules-Glades Wilderness, Mark Twain National Forest, Missouri (90 Stat. 2635)	Oct. 19, 1976
Hickory Creek Wilderness, Allegheny National Forest, Pennsylvania (98 Stat. 3100)	Oct. 30, 1984
High Uintas Wilderness, Wasatch-Cache and Ashley National Forests, Utah (98 Stat. 1658)	Sept. 28, 1984
Holy Cross Wilderness, San Isabel and White River National Forests, Colorado (94 Stat. 3266)	Dec. 22, 1980
Hoover Wilderness, Inyo and Toiyabe National Forests, California (78 Stat. 891)	Sept. 3, 1964
Hunter-Fryingpan Wilderness, White River National Forest, Colorado (92 Stat. 41)	Feb. 24, 1978
Huron Islands Wilderness, Huron Islands National Wildlife Refuge, Michigan (84 Stat. 1105)	Oct. 23, 1970
Hurricane Creek Wilderness, Ozark-Saint Francis National Forests, Arkansas (98 Stat. 2350)	Oct. 19, 1984
Huston Park Wilderness, Medicine Bow National Forest, Wyoming (98 Stat. 2808)	Oct. 30, 1984
Indian Heaven Wilderness, Gifford Pinchot National Forest, Washington (98 Stat. 300)	July 3, 1984
Indian Mounds Wilderness, Sabine National Forest, Texas (98 Stat. 3051)	Oct. 30, 1984
Indian Peaks Wilderness, Arapaho and Roosevelt National Forests, Colorado (92 Stat. 1095)	Oct. 11, 1978
Innoko Wilderness, Innoko National Wildlife Refuge, Alaska (94 Stat. 2418)	Dec. 22, 1980
Irish Wilderness, Mark Twain National Forest, Missouri (98 Stat. 199)	May 21, 1984
Ishi Wilderness, Lassen National Forest, California (98 Stat. 1620)	Sept. 28, 1984
Island Bay Wilderness, Island Bay National Wildlife Refuge, Florida (84 Stat. 1105)	Oct. 23, 1970
Isle Royale Wilderness, Isle Royale National Park, Michigan (90 Stat. 2692)	Oct. 20, 1976
Izembek Wilderness, Izembek National Wildlife Refuge, Alaska (94 Stat. 2418)	Dec. 2, 1980
James River Face Wilderness, Jefferson National Forest, Virginia (88 Stat. 2098)	Jan. 3, 1975
Jarbidge Wilderness, Humboldt National Forest, Nevada (78 Stat. 891)	Sept. 3, 1964
Jedediah Smith Wilderness, Targhee National Forest, Wyoming (98 Stat. 2808)	Oct. 30, 1984
Jennie Lakes Wilderness, Sequoia National Forest, California (98 Stat. 1624)	Sept. 28, 1984
J. N. "Ding" Darling Wilderness, J. N. "Ding" Darling National Wildlife Refuge, Florida (90 Stat. 2633)	Oct. 19, 1976
John Muir Wilderness, Inyo and Sierra National Forests, California (78 Stat. 891)	Sept. 3, 1964
Joshua Tree Wilderness, Joshua Tree National Monument, California (90 Stat. 2692)	Oct. 20, 1976
Joyce Kilmer-Slickrock Wilderness, Nantahala and Cherokee National Forests, North Carolina and Tennessee (88 Stat. 2097)	Jan. 3, 1975
Juniper Dunes Wilderness, Franklin County, Washington (98 Stat. 304)	July 3, 1984
Juniper Mesa Wilderness, Prescott National Forest, Arizona (98 Stat. 1486)	Aug. 28, 1984
Juniper Prairie Wilderness, Ocala National Forest, Florida (98 Stat. 1665)	Sept. 28, 1984
Kachina Peaks Wilderness, Coconino National Forest, Arizona (98 Stat. 1487)	Aug. 28, 1984
Kaiser Wilderness, Sierra National Forest, California (90 Stat. 2635)	Oct. 10, 1976
Kalmiopsis Wilderness, Siskiyou National Forest, Oregon (78 Stat. 891)	Sept. 3, 1964
Kanab Creek Wilderness, Kaibab National Forest and Arizona Strip District of Bureau of Land Management, Arizona (98 Stat. 1492)	Aug. 28, 1984
Katmai Wilderness, Katmai National Park, Alaska (94 Stat. 2417)	Dec. 2, 1980
Kenai Wilderness, Kenai National Wildlife Refuge, Alaska (94 Stat. 2418)	Dec. 2, 1980
Kendrick Mountain Wilderness, Kaibab and Coconino National Forests, Arizona (98 Stat. 1486)	Aug. 28, 1984
Kimball Creek Wilderness, Nicolet National Forest, Wisconsin (98 Stat. 250)	June 19, 1984
Kimberling Creek Wilderness, Jefferson National Forest, Virginia (98 Stat. 3105)	Oct. 30, 1984
Kisatchie Hills Wilderness, Kisatchie National Forest, Louisiana (94 Stat. 3273)	Dec. 22, 1980
Kobuk Valley Wilderness, Kobuk Valley National Park, Alaska (94 stat. 2417)	Dec. 2, 1980
Koyukuk Wilderness, Koyukuk National Wildlife Refuge, Alaska (94 Stat. 2418)	Dec. 2, 1980

WILDERNESS AREAS—Continued

Site of Wildernesses	Date of Designation
Lacassine Wilderness, Lacassine National Wildlife Refuge, Louisiana (90 Stat. 2633)	Oct. 19, 1976
LaGarita Wilderness, Gunnison and Rio Grande National Forests, Colorado (78 Stat. 891)	Sept. 3, 1964
Lake Chelan-Sawtooth Wilderness, Okanogan and Wenatchee National Forests, Washington (98 Stat. 301)	July 3, 1984
Lake Clark Wilderness, Lake Clark National Park, Alaska (94 Stat. 2417)	Dec. 2, 1980
Lake Woodruff Wilderness, Lake Woodruff National Wildlife Refuge, Florida (90 Stat. 2633)	Oct. 19, 1976
Lassen Volcanic Wilderness, Lassen Volcanic National Park, California (86 Stat. 918)	Oct. 19, 1972
Latir Peak Wilderness, Carson National Forest, New Mexico (94 Stat. 3222)	Dec. 19, 1980
Laurel Fork North Wilderness, Monongahela National Forest, West Virginia (96 Stat. 2538)	Jan. 13, 1983
Laurel Fork South Wilderness, Monongahela National Forest, West Virginia (96 Stat. 2538)	Jan. 13, 1983
Lava Beds Wilderness, Lava Beds National Monument, California (86 Stat. 811)	Oct. 13, 1972
Leaf Wilderness, De Soto National Forest, Mississippi (98 Stat. 2420)	Oct. 19, 1984
Leatherwood Wilderness, Ozark-Saint Francis National Forests, Arkansas (98 Stat. 2350)	Oct. 19, 1984
Lee Metcalf Wilderness, Beaverhead and Gallatin National Forests and Dillon Resource Area, Montana (97 Stat. 901)	Oct. 31, 1983
Lewis Fork Wilderness, Jefferson National Forest, Virginia (98 Stat. 3105)	Oct. 30, 1984
Linville Gorge Wilderness, Pisgah National Forest, North Carolina (78 Stat. 891)	Sept. 3, 1964
Little Dry Run Wilderness, Jefferson National Forest, Virginia (98 Stat. 3105)	Oct. 30, 1984
Little Lake Creek Wilderness, Sam Houston National Forest, Texas (98 Stat. 3051)	Oct. 30, 1984
Little Lake George Wilderness, Ocala National Forest, Florida (98 Stat. 1665)	Sept. 28, 1984
Little Wilson Creek Wilderness, Jefferson National Forest, Virginia (98 Stat. 3105)	Oct. 30, 1984
Lizard Head Wilderness, San Juan and Umcompahgre National Forests, Colorado (94 Stat. 3266)	Dec. 22, 1980
Lone Peak Wilderness, Wasatch and Unita National Forests, Utah (92 Stat. 42)	Feb. 24, 1978
Lost Creek Wilderness, Pike National Forest, Colorado (94 Stat. 3266)	Dec. 22, 1980
Lostwood Wilderness, Lostwood National Wildlife Refuge, North Dakota (88 Stat. 2154)	Jan. 3, 1975
Lye Brook Wilderness, Green Mountain National Forest, Vermont (88 Stat. 2097)	Jan. 3, 1975
Machesna Mountain Wilderness, Los Padres National Forest, California (98 Stat. 1624)	Sept. 28, 1984
Manzano Mountain Wilderness, Cibola National Forest, New Mexico (92 Stat. 42)	Feb. 24, 1978
Marble Mountain Wilderness, Klamath National Forest, California (78 Stat. 891)	Sept. 3, 1964
Maroon Bells-Snowmass Wilderness, White River National Forest, Colorado (78 Stat. 891)	Sept. 3, 1964
Maurille Islands Wilderness, Tongass National Forest, (94 Stat. 2419)	Dec. 2, 1980
Mazatzal Wilderness, Tonto National Forest, Arizona (78 Stat. 891)	Sept. 3, 1964
Medicine Lake Wilderness, Medicine Lake National Wildlife Refuge, Montana (90 Stat. 2634)	Oct. 19, 1976
Menagerie Wilderness, Willamette National Forest, Oregon (98 Stat. 273)	June 26, 1984
Mesa Verde Wilderness, Mesa Verde National Park, Colorado (90 Stat. 2693)	Oct. 20, 1976
Michigan Islands Wilderness, Michigan Islands National Wildlife Refuge, Michigan (84 Stat. 1105)	Oct. 23, 1970
Middle Prong Wilderness, Pisgah National Forest, North Carolina (98 Stat. 263)	June 19, 1984
Middle Santiam Wilderness, Willamette National Forest, Oregon (98 Stat. 273)	June 26, 1984
Mill Creek Wilderness, Ochoco National Forest, Oregon (98 Stat. 274)	June 26, 1984
Miller Peak Wilderness, Coronado National Forest, Arizona (98 Stat. 1486)	Aug. 28, 1984
Mingo Wilderness, Mingo National Wildlife Refuge, Missouri (90 Stat. 2634)	Oct. 19, 1976
Mission Mountains Wilderness, Flathead National Forest, Montana (88 Stat. 2155)	Jan. 3, 1975
Misty Fjords National Monument Wilderness, Tongass National Forest, Alaska (94 Stat. 2419)	Dec. 2, 1980

WILDERNESS AREAS—Continued

Site of Wildernesses	Date of Designation
Mokelumni Wilderness, Eldorado and Stanislaus National Forests, California (78 Stat. 891)	Sept. 3, 1964
Monarch Wilderness, Sierra and Sequoia National Forests, California (98 Stat. 1621)	Sept. 28, 1984
Monomoy Wilderness, Monomoy National Wildlife Refuge, Massachusetts (84 Stat. 1105)	Oct. 23, 1970
Monument Rock Wilderness, Malheru and Wallowa-Whitman National Forests, Oregon (98 Stat. 274)	June 26, 1984
Moosehorn Wilderness, Moosehorn National Wildlife Refuge, Maine (84 Stat. 1105)	Oct. 23, 1970
Moosehorn Wilderness (Baring Unit), Moosehorn National Wildlife Refuge, Maine (88 Stat. 2154)	Jan. 3, 1975
Mount Adams Wilderness, Gifford Pinchot National Forest, Washington (78 Stat. 891)	Sept. 3, 1964
Mount Baker Wilderness, Mount Baker-Snoqualmie National Forest, Washington (98 Stat. 301)	July 3, 1984
Mount Baldy Wilderness, Apache National Forest, Arizona (84 Stat. 1106)	Oct. 23, 1970
Mount Evans Wilderness, Arapaho and Pike National Forests, Colorado (94 Stat. 3267)	Dec. 22, 1980
Mount Hood Wilderness, Mount Hood National Forest, Oregon (78 Stat. 891)	Sept. 3, 1964
Mount Jefferson Wilderness, Williamette, Deschutes, and Mount Hood National Forests, Oregon (82 Stat. 936)	Oct. 2, 1968
Mount Logan Wilderness, Arizona Strip District of Bureau of Land Management, Arizona (98 Stat. 1493)	Aug. 28, 1984
Mount Massive Wilderness, San Isabel National Forest, Colorado (94 Stat. 3267)	Dec. 22, 1980
Mount Naomi Wilderness, Wasatch-Cache National Forest, Utah (98 Stat. 1657)	Sept. 28, 1984
Mount Nebo Wilderness, Uinta National Forest, Utah (98 Stat. 1658)	Sept. 28, 1984
Mount Olympus Wilderness, Wasatch-Cache National Forest, Utah (98 Stat. 1658)	Sept. 28, 1984
Mt. Shasta Wilderness, Shasta-Trinity National Forest, California (98 Stat. 1621)	Sept. 28, 1984
Mount Sneffels Wilderness, Uncompahgre National Forest, Colorado (94 Stat. 3267)	Dec. 22, 1980
Mount Skokomish Wilderness, Olympic National Forest, Washington (98 Stat. 301)	July 3, 1984
Mount Thielsen Wilderness, Umpqua, Willamette, and Winema National Forests, Oregon (98 Stat. 277)	June 26, 1984
Mount Timpanogos Wilderness, Uinta National Forest, Utah (98 Stat. 1658)	Sept. 28, 1984
Mount Trumbull Wilderness, Arizona Strip District of Bureau of Land Management, Arizona (98 Stat. 1493)	Aug. 28, 1984
Mount Washington Wilderness, Deschutes and Willamette National Forests, Oregon (78 Stat. 891)	Sept. 3, 1964
Mt. Wrightson Wilderness, Coronado National Forest, Arizona (98 Stat. 1486)	Aug. 28, 1984
Mount Zirkel Wilderness, Routt National Forest, Colorado (78 Stat. 891)	Sept. 3, 1964
Mountain Lake Wilderness, Jefferson National Forest, Virginia (98 Stat. 3105)	Oct. 30, 1984
Mountain Lakes Wilderness, Winema National Forest, Oregon (78 Stat. 891)	Sept. 3, 1964
Mud Swamp/New River Wilderness, Apalachicola National Forest, Florida (98 Stat. 1665)	Sept. 28, 1984
Munds Mountain Wilderness, Coconino National Forest, Arizona (98 Stat. 1486)	Aug. 28, 1984
Neota Wilderness, Roosevelt National Forest, Colorado (94 Stat. 3267)	Dec. 22, 1980
Never Summer Wilderness, Arapaho National Forest, Colorado (94 Stat. 3267)	Dec. 22, 1980
Noatak Wilderness, Noatak National Preserve, Alaska (94 Stat. 2417)	Dec. 2, 1980
Noisy-Diobsbud Wilderness, Mount Baker-Snoqualmie National Forest, Washington (98 Stat. 301)	July 3, 1984
Norse Peak Wilderness, Mount Baker-Snoqualmie and Wenatchee National Forests, Washington (98 Stat. 301)	July 3, 1984
North Absaroka Wilderness, Shoshone National Forest, Wyoming (78 Stat. 891)	Sept. 3, 1964
North Fork John Day Wilderness, Wallowa-Whitman and Umatilla National Forests, Oregon (98 Stat. 274)	June 26, 1984
North Fork Umatilla Wilderness, Umatilla National Forest, Oregon (98 Stat. 274)	June 26, 1984
North Fork Wilderness, Six Rivers National Forest, California (98 Stat. 1621)	Sept. 28, 1984
Nunivak Wilderness, Yukon Delta National Wildlife Refuge, Alaska (94 Stat. 2418)	Dec. 2, 1980

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WILDERNESS AREAS—Continued

Site of Wildernesses	Date of Designation
Okefenokee Wilderness, Okefenokee National Wildlife Refuge, Georgia (88 Stat. 1179)	Oct. 1, 1974
Oregon Islands Wilderness, Oregon Islands National Wildlife Refuge, Oregon (84 Stat. 1104)	Oct. 23, 1970
Organ Pipe Cactus Wilderness, Organ Pipe Cactus National Monument, Arizona (92 Stat. 3490)	Nov. 10, 1978
Otter Creek Wilderness Monongahela National Forest, West Virginia (88 Stat. 2098)	Jan. 3, 1975
Paddy Creek Wilderness, Mark Twain National Forest, Missouri (96 Stat. 2033)	Jan. 3, 1983
Paiute Wilderness, Arizona Strip District of Bureau of Land Management, Arizona (98 Stat. 1493)	Aug. 28, 1984
Pajarita Wilderness, Coronado National Forest, Arizona (98 Stat. 1487)	Aug. 28, 1984
Paria Canyon-Vermilion Cliffs Wilderness, Arizona Strip District, Arizona, and Cedar City District, Utah, of Bureau of Land Management (98 Stat. 1493)	Aug. 28, 1984
Passage Key Wilderness, Passage Key National Wildlife Refuge, Florida (84 Stat. 1105)	Oct. 23, 1970
Pecos Wilderness, Carson and Sante Fe National Forests, New Mexico (78 Stat. 891)	Sept. 3, 1964
Pelican Island Wilderness, Pelican Island National Wildlife Refuge, Florida (84 Stat. 1105)	Oct. 23, 1970
Pemigewasset Wilderness, White Mountain National Forest, New Hampshire (98 Stat. 259)	June 19, 1984
Peru Peak Wilderness, Green Mountain National Forest, Vermont (98 Stat. 254)	June 19, 1984
Peters Mountain Wilderness, Jefferson National Forest, Virginia (98 Stat. 3105)	Oct. 30, 1984
Petersburg Creek-Duncan Salt Chuck Wilderness, Tongass National Forest, Alaska (94 Stat. 2419)	Dec. 2, 1980
Petrified Forest National Wilderness, Petrified Forest National Park, Arizona (84 Stat. 1106)	Oct. 23, 1970
Philip Burton Wilderness, Point Reyes National Seashore, California (90 Stat. 2515, 2693; 99 Stat. 166)	Oct. 18, 20, 1976
Pine Creek Wilderness, Cleveland National Forest, California (98 Stat. 1621)	Sept. 28, 1984
Pine Mountain Wilderness, Prescott and Tonto National Forests, Arizona (86 Stat. 38)	Feb. 15, 1972
Pine Valley Mountain Wilderness, Dixie National Forest, Utah (98 Stat. 1658)	Sept. 28, 1984
Piney Creek Wilderness, Mark Twain National Forest, Missouri (94 Stat. 3273)	Dec. 22, 1980
Pinnacles Wilderness, Pinnacles National Monument, California (90 Stat. 2693)	Oct. 20, 1976
Platte River Wilderness, Medicine Bow and Routt National Forests, Wyoming and Colorado (98 Stat. 2808)	Oct. 30, 1984
Pocosin Wilderness, Croatan National Forest, North Carolina (98 Stat. 264)	June 19, 1984
Pond Pine Wilderness, Croatan National Forest, North Carolina (98 Stat. 264)	June 19, 1984
Popo Agie Wilderness, Shoshone National Forests, Wyoming (98 Stat. 2808)	Oct. 30, 1984
Porcupine Lake Wilderness, Chequamegon National Forest, Wisconsin (98 Stat. 250)	June 19, 1984
Poteau Mountain Wilderness, Ouachita National Forest, Arkansas (98 Stat. 2350)	Oct. 19, 1984
Presidential Range-Dry River Wilderness, White Mountain National Forest, New Hampshire (88 Stat. 2097)	Jan. 3, 1975
Pusch Ridge Wilderness, Coronado National Forest, Arizona (93 Stat. 40)	Feb. 24, 1978
Ragged Wilderness, Gunnison and White River National Forests, Colorado (94 Stat. 3267)	Dec. 22, 1980
Rainbow Lake Wilderness, Chequamegon National Forest, Wisconsin (88 Stat. 2098)	Jan. 3, 1975
Ramseys Draft Wilderness, George Washington National Forest, Virginia (98 Stat. 3106)	Oct. 30, 1984
Rattlesnake Wilderness, Rattlesnake National Recreation Area, Montana (94 Stat. 2271)	Oct. 19, 1980
Rawah Wilderness, Roosevelt National Forest, Colorado (78 Stat. 891)	Sept. 3, 1964
Red Buttes Wilderness, Siskiyou National Forest, Oregon (98 Stat. 274)	June 26, 1984
Red Rock Lakes Wilderness, Red Rock Lakes National Wildlife Refuge, Montana (90 Stat. 2634)	Oct. 19, 1976
Red Rock-Secret Mountain Wilderness, Coconino National Forest, Arizona (98 Stat. 1487)	Aug. 28, 1984

WILDERNESS AREAS—Continued

Site of Wildernesses	Date of Designation
Richland Creek Wilderness, Ozark-Saint Francis National Forests, Arkansas (98 Stat. 2350)	Oct. 19, 1984
Rincon Mountain Wilderness, Coronado National Forest, Arizona (98 Stat. 1487)	Aug. 28, 1984
Rock Creek Wilderness, Siuslaw National Forest, Oregon (98 Stat. 273)	June 26, 1984
Rockpile Mountain Wilderness, Mark Twain National Forest, Missouri (94 Stat. 3273)	Dec. 22, 1980
Rogue-Umpqua Divide Wilderness, Umpqua and Rogue River National Forests, Oregon (98 Stat. 273)	June 26, 1984
Russel Fjord Wilderness, Tongass National Forest, Alaska (94 Stat. 2419)	Dec. 2, 1980
Russian Wilderness, Klamath National Forest, California (98 Stat. 1622)	Sept. 28, 1984
Saddle Mountain Wilderness, Kaibab National Forest, Arizona (98 Stat. 1493)	Aug. 28, 1984
Saguaro Wilderness, Saguaro National Monument, Arizona (90 Stat. 2693)	Oct. 20, 1976
Saint Lazaria Wilderness, Saint Lazaria National Wildlife Refuge, Alaska (84 Stat. 1104)	Oct. 23, 1970
St. Marks Wilderness, St. Marks Wildlife Refuge, Florida (88 Stat. 2153)	Jan. 3, 1975
Saint Mary's Wilderness, George Washington National Forest, Virginia (98 Stat. 3106)	Oct. 30, 1984
Salmo-Priest Wilderness, Kaniksu and Colville National Forests, Washington (98 Stat. 301)	July 3, 1984
Salmon-Huckleberry Wilderness, Mount Hood National Forest, Oregon (98 Stat. 273)	June 26, 1984
Salome Wilderness, Tonto National Forest, Arizona (98 Stat. 1487)	Aug. 28, 1984
Salt Creek Wilderness, Bitter Lake National Wildlife Refuge, New Mexico (84 Stat. 1105)	Oct. 23, 1970
Salt River Canyon Wilderness, Tonto National Forest, Arizona (98 Stat. 1487)	Aug. 28, 1984
San Gabriel Wilderness, Angeles National Forest, California (82 Stat. 131)	May 24, 1968
San Gorgonio Wilderness, San Bernardino National Forest, California (78 Stat. 891)	Sept. 3, 1964
San Jacinto Wilderness, San Bernardino National Forest, California (78 Stat. 891)	Sept. 3, 1964
San Juan Wilderness, San Juan Islands National Wildlife Refuge, Washington (90 Stat. 2634)	Oct. 19, 1976
San Mateo Canyon Wilderness, Cleveland National Forest, California (98 Stat. 1622)	Sept. 28, 1984
San Pedro Parks Wilderness, Sante Fe National Forest, New Mexico (78 Stat. 891)	Sept. 3, 1964
San Rafael Wilderness, Los Padres National Forest, California (82 Stat. 51)	Mar. 21, 1968
Sandia Mountain Wilderness, Cibola National Forest, New Mexico (92 Stat. 42)	Feb. 24, 1978
Sandwich Range Wilderness, White Mountain National Forest, New Hampshire (98 Stat. 259)	June 19, 1984
Santa Lucia Wilderness, Los Padres National Forest, California (92 Stat. 41)	Feb. 24, 1978
Santa Rosa Wilderness, San Bernardino National Forest, California (98 Stat. 1623)	Sept. 28, 1984
Santa Teresa Wilderness, Coronado National Forest, Arizona (98 Stat. 1487)	Aug. 28, 1984
Savage Run Wilderness, Medicine Bow National Forest, Wyoming (92 Stat. 42)	Feb. 24, 1978
Scapegoat Wilderness, Helena, Lolo, and Lewis and Clark National Forests, Montana (88 Stat. 578)	Aug. 20, 1972
Selawik Wilderness, Selawik Wildlife Refuge, Alaska (94 Stat. 2418)	Dec. 2, 1980
Selway-Bitterroot Wilderness, Bitterroot, Clearwater, Nesperce, and Lolo National Forests, Idaho and Montana (78 Stat. 891)	Sept. 3, 1964
Semidi Wilderness, Alaska Maritime National Wildlife Refuge, Alaska Peninsula Unit, Alaska (94 Stat. 2418)	Dec. 2, 1980
Seney Wilderness, Seney National Wildlife Refuge, Michigan (84 Stat. 1105)	Oct. 23, 1970
Sequoia-Kings Canyon Wilderness, Sequoia and Kings Canyon National Parks, California (98 Stat. 1627)	Sept. 28, 1984
Sheep Mountain Wilderness, Angeles and San Bernardino National Forests, California (98 Stat. 1623)	Sept. 28, 1984
Sheep Ridge Wilderness, Croatan National Forest, North Carolina (98 Stat. 264)	June 19, 1984
Shelp Lake Wilderness, Nicolet National Forest, Wisconsin (98 Stat. 250)	June 19, 1984
Shenandoah Wilderness, Shenandoah National Park, Virginia (90 Stat. 2693)	Oct. 20, 1976

WILDERNESS AREAS—Continued

Site of Wildernesses	Date of Designation
Shing Rock Wilderness, Pisgah National Forest, North Carolina (78 Stat. 891)	Sept. 3, 1964
Sierra Ancha Wilderness, Tonto National Forest, Arizona (78 Stat. 891)	Sept. 3, 1964
Simeonof Wilderness, Simeonof National Wildlife Refuge, Alaska (90 Stat. 2633)	Oct. 19, 1976
Sipsey Wilderness, Bankhead National Forest, Alabama (88 Stat. 2097)	Jan. 3, 1975
Siskiyou Wilderness, Six Rivers, Klamath, and Siskiyou National Forests, California (98 Stat. 1623)	Sept. 28, 1984
Sky Lakes Wilderness, Rogue River and Winema National Forests, Oregon (98 Stat. 274)	June 26, 1984
Snow Mountain Wilderness, Mendocino National Forest, California (98 Stat. 1623)	Sept. 28, 1984
South Absaroka Wilderness, Shoshone National Forest, Wyoming (78 Stat. 891)	Sept. 3, 1964
South Baranof Wilderness, Tongass National Forest, Alaska (94 Stat. 2419)	Dec. 2, 1980
South Prince of Wales Wilderness, Tongass National Forest, Alaska (94 Stat. 2419)	Dec. 2, 1980
South San Juan Wilderness, San Juan National Forest, Colorado (94 Stat. 3267)	Dec. 22, 1980
South Sierra Wilderness, Sequoia and Inyo National Forests, California (98 Stat. 1623)	Sept. 28, 1984
South Warner Wilderness, Modoc National Forest, California (78 Stat. 891)	Sept. 3, 1964
Southern Nantahala Wilderness, Nantahala National Forest, North Carolina (98 Stat. 264)	June 19, 1984
Strawberry Crater Wilderness, Coconino National Forest, Arizona (98 Stat. 1488)	Aug. 28, 1984
Strawberry Mountain Wilderness, Malheur National Forest, Oregon (78 Stat. 891)	Sept. 3, 1964
Stikine-LeConte Wilderness, Tongass National Forest, Alaska (94 Stat. 2419)	Dec. 2, 1980
Superstition Wilderness, Tonto National Forest, Arizona (78 Stat. 891)	Sept. 3, 1964
Swanquarter Wilderness, Swanquarter National Wildlife Refuge, North Carolina (90 Stat. 2634)	Oct. 19, 1976
Sycamore Canyon Wilderness, Coconino, Kaibab, and Prescott National Forests, Arizona (86 Stat. 48)	Mar. 6, 1972
Table Rock Wilderness, Salem District of Bureau of Land Management, Oregon (98 Stat. 274)	June 26, 1984
Tamarac Wilderness, Tamarac National Wildlife Refuge, Minnesota (90 Stat. 2634)	Oct. 19, 1976
Tatoosh Wilderness, Gifford Pinchot National Forest, Washington (98 Stat. 301)	July 3, 1984
Tebenkof Bay Wilderness, Tongass National Forest, Alaska (94 Stat. 2419)	Dec. 2, 1980
Teton Wilderness, Teton National Forest, Wyoming (78 Stat. 891)	Sept. 3, 1964
The Brothers Wilderness, Olympic National Forest, Washington (98 Stat. 301)	July 3, 1984
Theodore Roosevelt Wilderness, Theodore Roosevelt National Park, North Dakota (92 Stat. 3490)	Nov. 10, 1978
Thousand Lakes Wilderness, Lassen National Forest, California (78 Stat. 891)	Sept. 3, 1964
Three Arch Rocks Wilderness, Three Arch Rocks National Wildlife Refuge, Oregon (84 Stat. 1104)	Oct. 23, 1970
Three Sisters Wilderness, Deschutes and Willamette National Forests, Oregon (78 Stat. 891)	Sept. 3, 1964
Thunder Ridge Wilderness, Jefferson National Forest, Virginia (98 Stat. 3106)	Oct. 30, 1984
Togiak Wilderness, Togiak National Wildlife Refuge, Alaska (94 Stat. 2418)	Dec. 2, 1980
Tracy Arm-Fords Terror Wilderness, Tongass National Forest, Alaska (94 Stat. 2419)	Dec. 2, 1980
Trapper Creek Wilderness, Gifford Pinchot National Forest, Washington (98 Stat. 302)	July 3, 1984
Trinity Alps Wilderness, Klamath, Shasta-Trinity, and Six Rivers National Forests, California (98 Stat. 1623)	Sept. 28, 1984
Turkey Hill Wilderness, Angelina National Forest, Texas (98 Stat. 3051)	Oct. 30, 1984
Tuxedni Wilderness, Tuxedni National Wildlife Refuge, Alaska (84 Stat. 1104)	Oct. 23, 1970
Twin Peaks Wilderness, Wasatch-Cache National Forest, Utah (98 Stat. 1658)	Sept. 28, 1984
UL Bend Wilderness, UL Bend National Wildlife Refuge, Montana (90 Stat. 2634)	Oct. 19, 1976
Unimak Wilderness, Alaska Maritime National Wildlife Refuge, Aleutian Islands Unit, Alaska (94 Stat. 2418)	Dec. 2, 1980
Upland Island Wilderness, Angelina National Forest, Texas (98 Stat. 3051)	Oct. 30, 1984

WILDERNESS AREAS—Continued

Site of Wildernesses	Date of Designation
Upper Buffalo Wilderness, Ozark-Saint Francis National Forest, Arkansas (88 Stat. 2097; 98 Stat. 2350)	Jan. 3, 1975
Ventana Wilderness, Los Padres National Forest, California (92 Stat. 41)	Feb. 24, 1978
Ventana Wilderness, Los Padres National Forest, California (83 Stat. 101)	Aug. 18, 1969
Waldo Lake Wilderness, Willamette National Forest, Oregon (98 Stat. 273)	June 26, 1984
Wamba Creek Wilderness, Francis Marion National Forest, South Carolina (94 Stat. 3273)	Dec. 22, 1980
Wambaw Swamp Wilderness, Francis Marion National Forest, South Carolina (94 Stat. 3273)	Dec. 22, 1980
Warren Island Wilderness, Tongass National Forest, Alaska (94 Stat. 2419)	Dec. 2, 1980
Washakie Wilderness (former South Absaroka Wilderness and Stratified Primitive Area), Shoshone National Forest, Wyoming (86 Stat. 792)	Oct. 9, 1972
Washington Islands Wilderness, Copalis, Flattery Rocks, and Quillayute Needles National Wildlife Refuges, Washington (84 Stat. 1104)	Oct. 23, 1970
Welcome Creek Wilderness, Lolo National Forest, Montana (92 Stat. 43)	Feb. 24, 1978
Wellsville Mountain Wilderness, Wasatch-Cache National Forest, Utah (98 Stat. 1658)	Sept. 28, 1984
Weminuche Wilderness (former San Juan and Upper Rio Grande Primitive Area), Rio Grande and San Juan National Forests (88 Stat. 2155)	Jan. 3, 1975
Wenaha-Tucannon Wilderness, Umatilla National Forest, Oregon and Washington (92 Stat. 43)	Feb. 24, 1978
West Chicagof-Yakobi Wilderness, Tongass National Forest, Alaska (94 Stat. 2419)	Dec. 2, 1980
West Clear Creek Wilderness, Coconino National Forest, Arizona (98 Stat. 1487)	Aug. 28, 1984
West Elk Wilderness, Gunnison National Forest, Colorado (78 Stat. 891)	Sept. 3, 1964
West Sister Island Wilderness, West Sister Island National Wildlife Refuge, Ohio (88 Stat. 2154)	Jan. 3, 1975
Wet Beaver Wilderness, Coconino National Forest, Arizona (98 Stat. 1488)	Aug. 28, 1984
Wheeler Peak Wilderness, Carson National Forest, New Mexico (78 Stat. 891)	Sept. 3, 1964
Whisker Lake Wilderness, Nicolet National Forest, Wisconsin (92 Stat. 1648)	Oct. 21, 1978
White Mountain Wilderness, Lincoln National Forest, New Mexico (78 Stat. 891)	Sept. 3, 1964
Wichita Mountains Wilderness, Wichita Mountains, National Wildlife Refuge, Oklahoma (84 Stat. 1105)	Oct. 23, 1970
Wild Rogue Wilderness, Siskiyou National Forest, Oregon (92 Stat. 43)	Feb. 24, 1978
William O. Douglas Wilderness, Wenatchee and Gifford Pinchot National Forests, Washington (98 Stat. 302)	July 3, 1984
Winegar Hole Wilderness, Bridger-Teton National Forest, Wyoming (98 Stat. 2808)	Oct. 30, 1984
Wisconsin Islands Wilderness, Gravel Island and Green Bay National Wilderness Refuges, Wisconsin (84 Stat. 1105)	Oct. 23, 1970
Withington Wilderness, Cibola National Forest, New Mexico (94 Stat. 3222)	Dec. 19, 1980
Wolf Island Wilderness, Wolf Island National Wildlife Refuge, Georgia (88 Stat. 2153)	Jan. 3, 1975
Wonder Mountain Wilderness, Olympic National Forest, Washington (98 Stat. 302)	July 3, 1984
Woodchute Wilderness, Prescott National Forest, Arizona (98 Stat. 1488)	Aug. 28, 1984
Wrangell-Saint Elias Wilderness, Wrangell-Saint Elias National Park, Alaska (94 Stat. 2417)	Dec. 2, 1980
Yolla Bolly-Middle Eel Wilderness, Mendocino and Shasta-Trinity National Forests, California (78 Stat. 891)	Sept. 3, 1964
Yosemite Wilderness, Yosemite National Park Wilderness, California (98 Stat. 1627)	Sept. 28, 1984

CHAPTER 24—CONSERVATION AND PROTECTION OF NORTH PACIFIC FUR SEALS

SUBCHAPTER I—FUR SEAL MANAGEMENT

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1151. Definitions.
1152. Prohibitions.

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1154. Scientific research on fur seal resources; use of fur seals for educational, scientific, or exhibition purposes.
1155. Authority of Secretary of Commerce.
(a) Regulations with respect to taking of fur seals on Pribilof Islands and on lands subject to United States jurisdiction.
(b) Agreements with public and private entities.
(c) Taking of fur seals on Saint Paul and Saint George Islands; preference; separate fund in Treasury.
1156. Enforcement provisions.
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1157. North Pacific Fur Seal Commission; appointment of United States Commissioner, Deputy Commissioner, and Advisors; duties, compensation, and travel expenses.
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SUBCHAPTER II—ADMINISTRATION OF PRIBILOF ISLANDS

1161. Administration of fur seal rookeries and other Federal real and personal property on Pribilof Islands.
1162. Authority of Secretary to operate, maintain, and repair Government-owned property; necessary facilities, services, and equipment for Federal employees and dependents.
1163. Responsibility of Alaska to meet educational needs of Pribilof Islands citizens.
1164. Responsibility of Secretary of Health and Human Services to provide medical and dental care to Pribilof Islands natives.
1165. Disposal of Federal property on Pribilof Islands.
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(b) Contents of property transfer document.
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(b) Administration of Trust.
(c) Trust instruments.
(d) Separate portions of Trust for independent benefit of community of St. Paul and community of St. George.
(e) Authorization of appropriation; interim distributions.
(f) Interest and proceeds from Trust.
(g) Annual report to Congress.
(h) Exemption from taxation.

Sec.
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1168. Civil service retirement benefits.
(a) Credit for services performed by natives.
(b) Adjustment of annuities.
(c) Nonentitlement to lump-sum benefits.
(d) Reimbursement from Operations, Research, and Facilities Account of National Oceanic and Atmospheric Administration in Department of Commerce.
1169. Regulations.
1169a. Annuities and survivor annuities; recomputation.

SUBCHAPTER III—ENFORCEMENT

1171. Seizure and forfeiture of vessels.
1172. Practice and procedure.
(a) Joint responsibility; designation by Secretary of State officers and employees as Federal law enforcement agents; non-Federal employees for civil service purposes.
(b) Issuance of warrants and other process.
(c) Execution of warrants or other process by enforcement agents.
(d) Arrests and searches by enforcement agents.
(e) Seizure of vessels and related articles.
(f) Seizure and disposition of fur seals.
1173. Regulations.
1174. Penalties.
1175. Authorization of appropriations.
1181 to 1187. Omitted.

SUBCHAPTER I—FUR SEAL MANAGEMENT

§ 1151. Definitions

(a) "Commission" means the North Pacific Fur Seal Commission established pursuant to article V of the Convention.

(b) "Convention" means the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, as amended by the protocol signed in Washington on October 8, 1963; by the exchange of notes among the party governments which became effective on September 3, 1969; by the protocol signed in Washington on May 7, 1976; and by the protocol signed in Washington on October 14, 1980, by the parties.

(c) "Cure" or "curing" means the performance of those post-harvest activities traditionally performed on the Pribilof Islands, including cooling, washing, removal of blubber, soaking in brine, draining, treating with salt or boric acid, and packing in containers for shipment of fur seal skins.

(d) "Fur Seal" means the North Pacific Fur Seal, Callorhinus Ursinus.

(e) "Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(f) "Natives of the Pribilof Islands" means any Aleuts who are permanent residents of the Pribilof Islands, or any organization or entity representing such natives.

(g) "North Pacific Ocean" means the waters of the Pacific Ocean north of the thirtieth parallel of north latitude, including the Bering, Okhotsk, and Japan Seas.

(h) "Party" or "parties" means the United States of America, Canada, Japan, and the Union of Soviet Socialist Republics.

(i) "Person" means any individual, partnership, corporation, trust, association or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(j) "Pribilof Islands" means the islands of Saint Paul and Saint George, Walrus and Otter Islands, and Sea Lion Rock.

(k) "Sealing" means the taking of fur seals.

(*l*) "Secretary" means the Secretary of Commerce.

(m) "Take" or "taking" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill.

(Pub. L. 89-702, title I, § 101, Nov. 2, 1966, 80 Stat. 1091; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 835.)

AMENDMENTS

1983—Pub. L. 98-129 amended section generally, substituting provisions defining terms, previously defined in former sections 1159 and 1186 of this title, for provisions enumerating the activities prohibited under this chapter. See section 1152 of this title.

SHORT TITLE OF 1983 AMENDMENT

Section 1 of Pub. L. 98-129 provided: "That this Act [amending this chapter generally, sections 8332 and 8334 of Title 5, Government Organization and Employees, and section 450i of Title 25, Indians] may be cited as the 'Fur Seal Act Amendments of 1983'."

SHORT TITLE

Pub. L. 89-702, which is classified principally to this chapter, is popularly known as the Fur Seal Act of 1966. Prior to the general amendment of Pub. L. 89-702 by Pub. L. 98-129, section 1 of Pub. L. 89-702 had provided: "That this Act [enacting this chapter, amending section 2254(g) of former Title 5, Executive Departments and Government Officers and Employees, repealing sections 631a to 631q of this title, and amending provisions set out as a note preceding section 21 of Title 48, Territories and Insular Possessions] may be cited as the 'Fur Seal Act of 1966'."

§ 1152. Prohibitions

It is unlawful, except as provided in this chapter or by regulation of the Secretary, for any person or vessel subject to the jurisdiction of the United States to engage in the taking of fur seals in the North Pacific Ocean or on lands or waters under the jurisdiction of the United States, or to use any port or harbor or other place under the jurisdiction of the United States for any purpose connected in any way with such taking, or for any person to transport, import, offer for sale, or possess at any port or place or on any vessel, subject to the jurisdiction of the United States, fur seals or the parts thereof, including, but not limited to, raw, dressed, or dyed fur seal skins, taken contrary to the provisions of this chapter or the Convention, or for any person subject to the jurisdiction of the United States to refuse to permit, except within the Exclusive Economic Zone of the United States, a duly authorized official of Canada, Japan, or the Union of Soviet Socialist Republics to board and search any vessel which is outfitted for the harvesting of living marine resources and which is subject to the jurisdiction of the United States to determine whether such vessel is engaged in sealing contrary to the provisions of said Convention.

(Pub. L. 89-702, title I, § 102, Nov. 2, 1966, 80 Stat. 1091; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 836.)

AMENDMENTS

1983—Pub. L. 98-129 amended section generally, substituting provisions enumerating the activities prohibited under this chapter, which were previously contained in section 1151 of this title, for provisions authorizing sealing by Aleuts, Eskimos, and Indians. See section 1153 of this title.

§ 1153. Sealing permitted by Aleuts, Eskimos, and Indians

(a) Indians, Aleuts, and Eskimos who dwell on the coasts of the North Pacific Ocean are permitted to take fur seals and dispose of their skins after the skins have been officially marked and certified by a person authorized by the Secretary: *Provided*, That the seals are taken for subsistence uses as defined in section 1379(f)(2) of this title, and only in canoes not transported by or used in connection with other vessels, and propelled entirely by oars, paddles, or sails, and manned by not more than five persons each, in the way hitherto practiced and without the use of firearms. This authority shall not apply to Indians, Aleuts, and Eskimos while they are employed by any person for the purpose of taking fur seals or are under contract to deliver the skins to any person.

(b) Indians, Aleuts, and Eskimos who live on the Pribilof Islands are authorized to take fur seals for subsistence purposes as defined in section 1379(f)(2) of this title, under such conditions as recommended by the Commission and accepted by the Secretary of State pursuant to regulations promulgated by the Secretary.

(Pub. L. 89-702, title I, § 103, Nov. 2, 1966, 80 Stat. 1091; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 836.)

AMENDMENTS

1983—Pub. L. 98-129 amended section generally, substituting provisions authorizing sealing by Aleuts, Eskimos, and Indians, which were previously contained in section 1152 of this title, for provisions authorizing scientific research on fur seal resources. See section 1154 of this title.

§ 1154. Scientific research on fur seal resources; use of fur seals for educational, scientific, or exhibition purposes

The Secretary shall (1) conduct such scientific research and investigations on the fur seal resources of the North Pacific Ocean as he deems necessary to carry out the obligations of the

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United States under the Convention, and (2) permit, subject to such terms and conditions as he deems desirable, the taking, transportation, importation, exportation, or possession of fur seals or their parts for educational, scientific, or exhibition purposes.

(Pub. L. 89-702, title I, § 104, Nov. 2, 1966, 80 Stat. 1091; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 836.)

AMENDMENTS

1983—Pub. L. 98-129 amended section generally, substituting provisions authorizing scientific research on fur seal resources, which were previously contained in section 1153 of this title, for provisions delineating the authority of the Secretary of Commerce. See section 1155 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1175 of this title.

§ 1155. Authority of Secretary of Commerce

(a) Regulations with respect to taking of fur seals on Pribilof Islands and on lands subject to United States jurisdiction

The Secretary shall prescribe such regulations with respect to the taking of fur seals on the Pribilof Islands and on lands subject to the jurisdiction of the United States as he deems necessary and appropriate for the conservation, management, and protection of the fur seal population, and to dispose of any fur seals seized or forfeited pursuant to this chapter, and to carry out the provisions of the Convention, and shall deliver to authorized agents of the parties such fur seal skins as the parties are entitled to under the Convention.

(b) Agreements with public and private entities

The Secretary is authorized to enter into agreements with any public or private agency or person for the purpose of carrying out the provisions of the Convention and of this subchapter, including but not limited to the taking of fur seals on the Pribilof Islands, and the curing and marketing of the sealskins and other seal parts, and may retain the proceeds therefrom.

(c) Taking of fur seals on Saint Paul and Saint George Islands; preference; separate fund in Treasury

The Secretary shall give preference to the village corporations of Saint Paul and Saint George Islands established pursuant to section 1607 of title 43 for the taking of fur seals on the village corporations' respective islands, and the curing and marketing of the sealskins and other seal parts, and may retain the proceeds therefrom. Any proceeds therefrom will be deposited in a separate fund in the Treasury and will be available to the Secretary, subject to appropriations, for the purpose of this section. All seal harvests will be financed, to the extent possible, from proceeds collected in preceding years or unsold assets retained from harvests conducted in preceding years. In the event that such assets and proceeds are insufficient, as determined by the Secretary, to finance the seal harvest in accordance with the requirements of the Convention, there are authorized to be appropriated to the Secretary for fiscal year 1984, and for fiscal year 1985 and beyond if the Convention is extended by protocol signed by the parties and made effective as to the United States, such sums as may be necessary to carry out the harvest and curing on the Pribilof Islands. Such amounts as are determined by the Secretary to exceed amounts required to carry out this section shall be transferred to the General Fund of the Treasury.

(Pub. L. 89-702, title I, § 105, Nov. 2, 1966, 80 Stat. 1092; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 836.)

AMENDMENTS

1983—Pub. L. 98-129 amended section generally, substituting provisions delineating the authority of the Secretary of Commerce, which were previously contained in sections 1154 and 1185 of this title, for provisions which had set out enforcement steps. See section 1156 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1172 of this title.

§ 1156. Enforcement provisions

(a) Search of vessels; certificate of identification; exhibition to master

Any person authorized to enforce the provisions of this chapter who has reasonable cause to believe that any vessel outfitted for the harvesting of living marine resources and subject to the jurisdiction of any of the parties to the Convention is violating the provisions of article III of the Convention may, except within the areas in which another State exercises fisheries jurisdiction, board and search such vessel. Such person shall carry a special certificate of identification issued by the Secretary or Secretary of the department in which the Coast Guard is operating which shall be in English, Japanese, and Russian and which shall be exhibited to the master of the vessel upon request.

(b) Seizure; arrest; notice; delivery of vessel or person to authorized officials; custody

If, after boarding and searching such vessel, such person continues to have reasonable cause to believe that such vessel, or any person onboard, is violating said article, he may seize such vessel or arrest such person, or both. The Secretary of State shall, as soon as practicable, notify the party having jurisdiction over the vessel or person of such seizure or arrest.

The Secretary or the Secretary of the department in which the Coast Guard is operating, upon request of the Secretary of State, shall deliver the seized vessel or arrested person, or both, as promptly as practicable to the authorized officials of said party: *Provided*, That whenever said party cannot immediately accept such delivery, the Secretary or the Secretary of the department in which the Coast Guard is operating may, upon the request of the Secretary of State, keep the vessel or person in custody within the United States.

(c) Testimony of enforcement agents

At the request of said party, the Secretary or the Secretary of the department in which the Coast Guard is operating, shall direct the person authorized to enforce the provisions of this chapter to attend the trial as a witness in any case arising under said article or give testimony by deposition, and shall produce such records and files or copies thereof as may be necessary to establish the offense.

(Pub. L. 89-702, title I, § 106, Nov. 2, 1966, 80 Stat. 1092; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 837.)

AMENDMENTS

1983—Pub. L. 98-129 amended section generally, substituting provisions setting out enforcement steps, which were previously contained in section 1155 of this title, for provisions establishing the North Pacific Fur Seal Commission. See section 1157 of this title.

§ 1157. North Pacific Fur Seal Commission; appointment of United States Commissioner, Deputy Commissioner, and Advisors; duties, compensation, and travel expenses

The President shall appoint to the Commission a United States Commissioner who shall serve at the pleasure of the President. The President may appoint one Native from each of the two inhabited Pribilof Islands to serve as Advisors to the Commissioner and as liaisons between the Commissioner and the Natives of the Pribilof Islands. The President may also appoint other interested parties as Advisors to the Commissioner. Such Advisors shall serve at the pleasure of the President. The President may also appoint a Deputy United States Commissioner who shall serve at the pleasure of the President. The Deputy Commissioner shall be the principal adviser of the Commissioner, and shall perform the duties of the Commissioner in the case of his death, resignation, absence, or illness. The Commissioner, the Deputy Commissioner, and the Advisors shall receive no compensation for their services. The Commissioners may be paid traval [1] expenses and per diem in lieu of subsistence at the rates authorized by section 5703 of title 5 when engaged in the performance of their duties.

(Pub. L. 89-702, title I, § 107, Nov. 2, 1966, 80 Stat. 1093; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 838.)

CODIFICATION

"Section 5703 of title 5" was substituted in text for "section 5 of the Administrative Expense Act of 1946" on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1983—Pub. L. 98-129 amended section generally, substituting provisions establishing the North Pacific Fur Seal Commission, which were previously contained in section 1156 of this title, for provisions empowering the Secretaries of State and Commerce to accept or reject recommendations made by the Commission. See section 1158 of this title.

[1] So in original. Probably should be "travel".

ALTERNATE UNITED STATES COMMISSIONERS

Secretary of State authorized to designate Alternate United States Commissioners, see sections 2672a and 2672b of Title 22, Foreign Relations and Intercourse.

§ 1158. Acceptance or rejection by Secretaries of State and Commerce of Commission recommendations

The Secretary of State, with the concurrence of the Secretary, is authorized to accept or reject, on behalf of the United States, recommendations made by the Commission pursuant to article V of the Convention.

(Pub. L. 89-702, title I, § 108, Nov. 2, 1966, 80 Stat. 1093; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 838.)

AMENDMENTS

1983—Pub. L. 98-129 amended section generally, substituting provisions empowering the Secretaries of State and Commerce to accept or reject recommendations made by the Commission, which were previously contained in section 1157 of this title, for provisions authorizing Federal agency consultation with and technical assistance to the Secretary of Commerce or the Commission. See section 1159 of this title.

§ 1159. Federal agency consultations with and technical assistance to Secretary of Commerce or Commission; reimbursement for assistance

The head of any Federal agency is authorized to consult with and provide technical assistance to the Secretary or the Commission whenever such assistance is needed and reasonably can be furnished in carrying out the provisions of this subchapter. Any Federal agency furnishing assistance hereunder may expend its own funds for such purposes, with or without reimbursement.

(Pub. L. 89-702, title I, § 109, Nov. 2, 1966, 80 Stat. 1093; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 838.)

AMENDMENTS

1983—Pub. L. 98-129 amended section generally, substituting provisions authorizing Federal agency consultation with and technical assistance to the Secretary or the Commission, which were previously contained in section 1158 of this title, for provisions defining terms. See section 1151 of this title.

SUBCHAPTER II—ADMINISTRATION OF PRIBILOF ISLANDS

§ 1161. Administration of fur seal rookeries and other Federal real and personal property on Pribilof Islands

The Secretary shall administer the fur seal rookeries and other Federal real and personal property on the Pribilof Islands, with the exception of lands purchased by the U.S. Fish and Wildlife Service under section 1417 of the Alaska National Interest Lands Conservation Act (Public Law 96-487) or acquired or purchased by any other authority after October 14, 1983, and, in consultation with the Secretary of the Interior, shall ensure that activities on such Islands are consistent with the purposes of conserving, managing, and protecting the North Pacific fur seals and other wildlife and for

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other purposes consistent with that primary purpose.

(Pub. L. 89-702, title II, § 201, Nov. 2, 1966, 80 Stat. 1093; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 838.)

REFERENCES IN TEXT

Section 1417 of the Alaska National Interest Lands Conservation Act, referred to in text, is Pub. L. 96-487, title XIV, § 1417, Dec. 2, 1980, 94 Stat. 2500, which is not classified to the Code.

AMENDMENTS

1983—Pub. L. 98-129 substituted provisions enumerating the steps to be followed by the Secretary of Commerce in administering the fur seal rookeries and the Federal real and personal property on the Pribilof Islands for provisions which had provided that: "The Pribilof Islands shall continue to be administered as a special reservation by the Secretary of Commerce for the purposes of conserving, managing, and protecting the North Pacific fur seals and other wildlife, and for other purposes."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1166 of this title.

§ 1162. Authority of Secretary to operate, maintain, and repair Government-owned property; necessary facilities, services, and equipment for Federal employees and dependents

In carrying out the provisions of this subchapter, the Secretary is authorized—

(1) to operate, maintain, and repair such Government-owned property, both real and personal, and other facilities held by the Secretary on the Pribilof Islands as may be necessary; and

(2) to provide the employees of the Department of Commerce and other Federal agencies and their dependents, at reasonable rates to be determined by the Secretary, with such facilities, services, and equipment as he deems necessary, including, but not limited to, food, fuel, shelter, and transportation.

(Pub. L. 89-702, title II, § 202, Nov. 2, 1966, 80 Stat. 1093; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 838.)

AMENDMENTS

1983—Pub. L. 98-129 substituted provisions authorizing the Secretary to operate, maintain, and repair such Government-owned property, both real and personal, and other facilities held by the Secretary on the Pribilof Islands as may be necessary, and to provide the employees of the Department of Commerce and other Federal agencies and their dependents, at reasonable rates to be determined by the Secretary, with such facilities, services, and equipment as he deems necessary, including, but not limited to, food, fuel, shelter, and transportation, for provisions authorizing the Secretary to enter into contracts or agreements or leases with, or to issue permits to, public or private agencies or persons, including the natives of the Pribilof Islands, in accordance with such terms and conditions as he deemed desirable for the use of any Government-owned real or personal property located on the islands, for the furnishing of accommodations for tourists and other visitors, for educational, recreational, residential, or commercial purposes, for the operation, maintenance, and repair of Government-owned facilities and utilities, for the transportation and storage of food and other supplies, and for such other purposes as the Secretary deemed desirable.

§ 1163. Responsibility of Alaska to meet educational needs of Pribilof Islands citizens

The State of Alaska will be responsible for meeting the educational needs of the citizens of the Pribilof Islands.

(Pub. L. 89-702, title II, § 203, Nov. 2, 1966, 80 Stat. 1093; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 838.)

AMENDMENTS

1983—Pub. L. 98-129 substituted provisions directing that the State of Alaska be responsible for meeting the educational needs of the citizens of the Pribilof Islands for provisions which had authorized the Secretary (1) to provide, with or without reimbursement, the natives of the Pribilof Islands with such facilities, services, and equipment as he deemed necessary, including, but not limited to food, fuel, shelter, transportation, and education, (2) to provide the employees of the Department of Commerce and other Federal agencies and their dependents, and tourists and other persons, at reasonable rates to be determined by the Secretary, with such facilities, services, and equipment as he deemed necessary, including, but not limited to, food, fuel, shelter, transportation, and education, (3) to purchase, transport, store, and distribute such supplies and equipment to carry out the provisions of this section as the Secretary deemed necessary, and (4) to purchase, construct, operate, and maintain the facilities necessary to carry out the provisions of this section.

§ 1164. Responsibility of Secretary of Health and Human Services to provide medical and dental care to Pribilof Islands natives

The Secretary of Health and Human Services shall provide medical and dental care to the Natives of the Pribilof Islands with or without reimbursement, as provided by other law. He is authorized to provide such care to Federal employees and their dependents and tourists and other persons in the Pribilof Islands at reasonable rates to be determined by him. He may purchase, lease, construct, operate, and maintain such facilities, supplies, and equipment as he deems necessary to carry out the provisions of this section; and the costs of such items, including medical and dental care, shall be charged to the budget of the Secretary of Health and Human Services. Nothing in this chapter shall be construed as superseding or limiting the authority and responsibility of the Secretary of Health and Human Services under the Act of August 5, 1954, as amended [42 U.S.C. 2001 et seq.], or any other law with respect to medical and dental care of natives or other persons in the Pribilof Islands.

(Pub. L. 89-702, title II, § 204, Nov. 2, 1966, 80 Stat. 1094; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 839.)

REFERENCES IN TEXT

The Act of August 5, 1954, as amended, referred to in text, is act Aug. 5, 1954, ch. 658, 68 Stat. 674, as amended, which is classified generally to subchapter I (§ 2001 et seq.) of chapter 22 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1983—Pub. L. 98-129 substituted provisions formerly set out in section 1165 of this title relating to medical

and dental care of the natives of the Pribilof Islands for prvisions which had authorized the Secretary to enter into an agreement with the Governor of the State of Alaska pursuant to which the State assumed full responsibility for furnishing education to the natives of the Pribilof Islands and also to enter into agreements with said Governor pursuant to which the State furnished to such natives adequate food, shelter, transportation, and such other facilities, services, and equipment as the Secretary deemed necessary, with the State of Alaska, in assuming such responsibility, to meet the educational needs of the said natives in the same manner as the State met the educational needs of all of its citizens, including the furnishing of necessary facilities therefor.

§ 1165. Disposal of Federal property on Pribilof Islands

(a) Submission to Congress of property transfer document

Any provision of law relating to the transfer and disposal of Federal property to the contrary notwithstanding, the Secretary, after consultation with the Secretary of the department in which the Coast Guard is operating, is authorized to bargain, grant, sell or otherwise convey, on such terms as he deems to be in the best interests of the United States and in furtherance of the purposes of this chapter, any and all right, title, and interest of the United States in and to the property, both real and personal, held by the Secretary on the Pribilof Islands: *Provided*, That such property is specified in a document entitled "Transfer of Property on the Pribilof Islands: Descriptions, Terms and Conditions," which is submitted to the Congress on or before October 31, 1983.

(b) Contents of property transfer document

The property transfer document described in subsection (a) of this section shall include, but need not be limited to—

(1) a description of each conveyance;

(2) the terms to be imposed on each conveyance;

(3) designation of the recipient of each conveyance;

(4) a statement noting acceptance of each conveyance, including the terms, if any, under which it is accepted; and

(5) an identification of all Federal property to be retained by the Federal Government on the Pribilof Islands to meet its responsibilities as described in this chapter and under the Convention.

(c) Report to Congress of fair market value of transferred property

Within 60 days of the transfer of real or personal property specified in the document described in subsection (a) of this section, the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate shall be given a report prepared by the Secretary stating the fair market value at the time of the transfer of all real and personal property conveyed.

(d) Memorandum of Understanding

A Memorandum of Understanding shall be entered into by the Secretary, a representative of the local governmental authority on each Island, the trustee or trustees, and the appropriate officer of the State of Alaska setting forth the respective responsibilities of the Federal Government, the Trust, and the State regarding—

(1) application of Federal retirement benefits, severance pay, and insurance benefits with respect to Natives of the Pribilof Islands;

(2) funding to be allocated by the State of Alaska for the construction of boat harbors on St. Paul and St. George Islands;

(3) assumption of the State of Alaska of traditional State responsibilities for facilities and services on such islands in accordance with applicable laws and regulations;

(4) preservation of wildlife resources within the Secretary's jurisdiction;

(5) continued activities relating to the implementation of the Convention;

(6) oversight of the operation of the Trust established by section 1166(a) of this title to further progress toward creation of a stable, diversified, and enduring economy not dependent up commercial fur sealing;

(7) the cooperation of government agencies, rendered through existing programs, in assisting with an orderly transition from Federal management and the creation of a private enterprise economy on the Pribilof Islands as described in this chapter; and

(8) such other matters as may be necessary and appropriate for carrying out the purposes of the chapter, including the assumption of responsibilities to ensure an orderly transition from Federal management of the Pribilof Islands.

The Memorandum shall be submitted to Congress on or before October 31, 1983.

(e) Taxation

The grant, sale, transfer or conveyance of any real or personal property pursuant to this section shall not be subject to any form of Federal, State or local taxation. The basis for computing gain or loss on subsequent sale or disposition of such real or personal property for purposes of any Federal, State or local tax imposed on, or measured by revenue shall be the fair market value of such real or personal property at the time of receipt.

(f) Agreements with governmental agencies and third parties

In carrying out the purposes of this chapter, the Secretary is authorized to enter into agreements, including but not limited to land exchange agreements with other Departments and Agencies of both the State and Federal Governments, and with third parties, notwithstanding any provision of law relating to the transfer and disposal of Federal property to the contrary; except that the authority of the Secretary of the Interior regarding exchanges involving lands in the National Wildlife Refuge System on October 14, 1983, is not affected by this section.

(g) Report to Congress on status of negotiations

The Secretary shall submit to Congress a report, no later than October 1, 1983, providing

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information on the status of the negotiations for concluding the documents described in subsections (a) and (d) of this section.

(Pub. L. 89-702, title II, § 205, Nov. 2, 1966, 80 Stat. 1094; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 839.)

AMENDMENTS

1983—Pub. L. 98-129 amended section generally, substituting provisions relating to the disposal of Federal property on the Pribilof Islands for provisions relating to the medical and dental care of Pribilof Islands natives. See section 1164 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1166, 1175 of this title.

§ 1166. Pribilof Islands Trust

(a) Establishment; funding; distributions; investments

(1) In order to promote the development of a stable, self-sufficient enduring and diversified economy not dependent on sealing, the Secretary shall cause to be established a Trust for the benefit of the Natives of the Pribilof Islands, to be known as the "Pribilof Islands Trust" (hereinafter referred to as the "Trust").

(2) All amounts appropriated to the Secretary under subsection (e) of this section shall be transferred by the Secretary to the Trust within fifteen days after submission of the Trust instrument to Congress in accordance with the requirements of subsection (c) of this section.

(3) Except as provided in subsection (e)(2) of this section, none of the amounts transferred to the Trust pursuant to paragraph (2) shall be distributed by the trustee or trustees for the benefit of the Natives of the Pribilof Islands until 30 days after submission to Congress of the documents described in section 1165(a) and (d) of this title. Such distributions shall be made by the trustee or trustees only after the Secretary has determined that such Trust has been established and will be operated in accordance with a trust instrument, or instruments, approved by the Secretary which further the purposes and policies of this chapter.

(4) Until the termination of the period described in paragraph (3), the trustee or trustees shall invest the amounts transferred pursuant to paragraph (2) in securities with maturities suitable for the needs of the Trust, bearing interest rates at rates determined by the trustee or trustees, taking into consideration average market yields on outstanding marketable obligations of the United States of comparable maturities. The income from such investments shall be credited to, and form a part of the Trust.

(b) Administration of Trust

The Trust shall be administered in accordance with such terms and conditions as are prescribed by the Secretary, and as set forth in the Trust instrument. In establishing such terms and conditions, the Secretary shall consult with the Natives of the Pribilof Islands, and other interested parties concerning the conservation, management and protection of the fur seal population.

(c) Trust instrument

There may be one Trust instrument establishing the Trust described in subsection (a) of this section, or two such instruments, each relating to one of the two portions of the Trust as provided in subsection (d) of this section, which shall address, but need not be limited to, such matters as—

(1) establishing standards and procedures for the disbursement by the trustee or trustees of Trust assets for purposes of fostering in the Pribilof Islands a stable, diversified, and enduring economy not dependent upon sealing after Federal management of the islands is terminated, which procedures may include formal participation of Pribilof Islands Native councils, corporations, or other such entities;

(2) establishing the Secretary as trustor;

(3) establishing the procedure for appointment of the trustee or trustees by the Secretary after consultation with the Natives of the Pribilof Islands;

(4) setting forth the rights, duties, powers and obligations of a trustee who shall act as an independent fiduciary and who shall be a United States citizen having recognized competence in business;

(5) providing for the management and investment of Trust assets, pending distribution, by an investment manager or advisor, who may be the trustee, having recognized competence in such fields;

(6) establishing methods and procedures for providing Congress and the Secretary with the annual reports described in subsection (g) of this section;

(7) establishing Trust purposes in accordance with the purposes described in section 1161 of this title and subsection (a) of this section;

(8) the duties of the trustee or trustees and the standards of care and diligence that shall govern the exercise of trust powers thereunder;

(9) compensation of the trustee or trustees;

(10) the term, termination and final distribution of the Trust estate;

(11) mandating the applicability of the laws of the State of Alaska to the creation and governance of the Trust;

(12) defraying of community expenses; and

(13) payment of necessary administrative and legal expenses.

The Trust instrument or instruments described in this subsection shall be submitted to Congress on or before October 14, 1983.

(d) Separate portions of Trust for independent benefit of community of St. Paul and community of St. George

The Trust shall be divided into two portions pursuant to a formula established by the Secretary after consultation with the natives of both Islands, to be accounted for separately for the independent benefit of the community of St. Paul and the community of St. George.

(e) Authorization of appropriation; interim distributions

(1) There are authorized to be appropriated to the Secretary $20,000,000 for the purpose of funding the Trust in accordance with the requirements of subsection (a)(2) of this section.

(2) Prior to the termination of the period described in subsection (a)(3) of this section, the trustee or trustees may make interim distributions for the benefit of the Natives of the Pribilof Islands, upon approval of the Secretary, of up to five percent of the amounts transferred to the Trust pursuant to subsection (a)(2) of this section if, as determined by the Secretary, such interim distributions are required to carry out the purposes of this chapter.

(f) Interest and proceeds from Trust

The interest on, and the proceeds from the sale or redemption of, any asset or obligation held in the Trust shall be credited to and form a part of the Trust.

(g) Annual report to Congress

The trustee or trustees shall submit to Congress and to the Secretary an annual report, the first of which is due on April 30, 1984, and subsequent reports on the same date each year thereafter during the life of the Trust, providing information on expenditures made from the Trust and progress towards achieving the purposes set out in subsection (a) of this section. On April 30, 1986, the Secretary shall also submit a report to the Congress detailing all progress toward achieving these purposes since October 14, 1983. For purposes of preparing such report, the Secretary by regulation may require that the trustee and the State of Alaska submit such relevant information to the Secretary as he deems appropriate.

(h) Exemption from taxation

The funds appropriated to the Trust and the earnings and distribution therefrom shall not be subject to any form of Federal, State or local taxation: *Provided*, That this exemption shall not apply to any income from the investment or other use of such distributions.

(Pub. L. 89-702, title II, § 206, Nov 2, 1966, 80 Stat. 1094; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 840.)

CODIFICATION

In subsec. (g), "October 14, 1983" was substituted for "enactment of this Act", meaning the enactment of Pub. L. 98-129 which amended this section generally.

AMENDMENTS

1983—Pub. L. 98-129 amended section generally, substituting provisions for the creation and functioning of a Pribilof Islands Trust for provisions which authorized the Secretary to set apart land on Saint Paul Island for a townsite and to aid in the development of a municipal government therefor.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1165 of this title.

§ 1167. Leases, permits, agreements, and contracts with public or private agencies or persons

The Secretary is authorized to enter into agreements or contracts or leases with, or to issue permits to, any public or private agency or person for carrying out the provisions of the Convention or this chapter.

(Pub. L. 89-702, title II, § 207, Nov. 2, 1966, 80 Stat. 1095; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 842.)

AMENDMENTS

1983—Pub. L. 98-129 amended section generally, substituting provisions authorizing the Secretary to enter into agreements or contracts or leases with, or to issue permits to, any public or private agency or person for carrying out the provisions of the Convention or this chapter for provisions which had set a fine of not more than $500 or imprisonment for not more than six months, or both, for violating regulations of the Secretary relating to the use and management of the Pribilof Islands or the protection or conservation of fur seals, wildlife, or other natural resources.

§ 1168. Civil service retirement benefits

(a) Credit for services performed by natives

Service by natives of the Pribilof Islands engaged in the taking and curing of fur seal skins and other activities in connection with the administration of such islands prior to January 1, 1950, as determined by the Secretary based on records available to him, shall be considered for purposes of credit under subchapter III of chapter 83 of title 5 as civilian service performed by an employee, as defined in said subchapter.

(b) Adjustment of annuities

The annuity of any person or the annuity of the survivor of any person who shall have performed service described in subsection (a) of this section, and who, prior to November 2, 1966, died or shall have been retired on annuity payable from the civil service retirement and disability fund, shall, upon application filed by the annuitant within one year after November 2, 1966, be adjusted, effective as of the first day of the month immediately following November 2, 1966, so that the amount of the annuity shall be the same as if such subsection had been in effect at the time of such person's retirement or death.

(c) Nonentitlement to lump-sum benefits

In no case shall credit for the service described in subsection (a) of this section entitle a person to the benefits of section 8342(h) of title 5.

(d) Reimbursement from Operations, Research, and Facilities Account of National Oceanic and Atmospheric Administration in Department of Commerce

Notwithstanding any other provisions of this chapter or any other law, benefits under subchapter III of chapter 83 of title 5 made available by reason of the provisions of this section shall be paid from the civil service retirement and disability fund subject to reimbursement to such fund from the Operations, Research, and Facilities Account of the National Oceanic and Atmospheric Administration in the Department of Commerce, for the purpose of compensating said retirement fund for the cost, as determined by the Director of the Office of Personnel Man-

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agement during each fiscal year, of benefits provided by this section.

(Pub. L. 89-702, title II, § 208, Nov. 2, 1966, 80 Stat. 1096; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 842.)

CODIFICATION

"Subchapter III of chapter 83 of title 5" was substituted for "the Civil Service Retirement Act, as amended" in subsec. (a) and for "the Civil Service Retirement Act" in subsec. (d), and "section 8342(h) of title 5" was substituted for "section 11(h) of the Civil Service Retirement Act" in subsec. (c) on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1983—Subsecs. (a) to (c). Pub. L. 98-129 reenacted subsecs. (a) to (c) without change.

Subsec. (d). Pub. L. 98-129 reenacted subsec. (d) without change other than the substitution of "subject to reimbursement to such fund from the Operations, Research, and Facilities Account of the National Oceanic and Atmospheric Administration in the Department of Commerce, for the purpose of compensating said retirement fund for the cost, as determined by the Civil Service Commission during each fiscal year, of benefits provided by this section" for "subject to reimbursement to such fund from the gross receipts of the Pribilof Islands fund, established in section 1187 of this title, for the purpose of compensating said retirement fund for the cost, as determined by the Civil Service Commission during each fiscal year, of benefits provided by this section. This reimbursement to the civil service retirement fund shall be considered a cost of administering the fur seal program".

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" was substituted for "Civil Service Commission" in subsec. (d) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1175 of this title.

§ 1169. Regulations

The Secretary is authorized to prescribe such regulations as he deems necessary to carry out the provisions of this subchapter.

(Pub. L. 89-702, title II, § 211, as added Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 844.)

§ 1169a. Annuities and survivor annuities; recomputation

(a)(1) [1] An annuity or survivor annuity based on the service of an employee or Member who performed service described in the second paragraph (13)[2] of subsection (b) or subsection (*l*)(1)(C) of section 8332 of title 5, as added by subsections (b) and (e), respectively, of section 209 of this Act [Pub. L. 89-702], shall, upon application to the Office of Personnel Management, be recomputed in accordance with the second paragraph (13) of subsection (b) and subsection (*l*), respectively, of such section 8332, regardless of whether the employee or Member retires before, on, or after October 14, 1983.

(2) Any recomputation of annuity under paragraph (1) of this subsection shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received by the Office.

(Pub. L. 89-702, title II, § 212, as added Pub. L. 98-369, div. B, title II, § 2208(b), July 18, 1984, 98 Stat. 1061.)

REFERENCES IN TEXT

The second par. (13) of subsec. (b) of section 8332 of title 5, referred to in subsec. (a)(1), relates to service performed by a Native of the Pribilof Islands. That par. (13) was added by subsec. (b) of section 209 of Pub. L. 89-702 (as added by section 2 of Pub. L. 98-129) and is set out in the Code as the first par. (13) of subsec. (b) of section 8332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section 2208(c) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting this section and amending section 8332 of Title 5, Government Organization and Employees] shall take effect as of October 14, 1983."

SUBCHAPTER III—ENFORCEMENT

§ 1171. Seizure and forfeiture of vessels

(a) Every vessel subject to the jurisdiction of the United States that is employed in any manner in connection with a violation of the provision of this chapter, including its tackle, apparel, furniture, appurtenances, cargo, and stores shall be subject to forfeiture; and all fur seals, or parts thereof, taken or retained in violation of this chapter, or the monetary value thereof, shall be forfeited.

(b) All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of a vessel, including its tackle, apparel, furniture, appurtenances, cargo, and stores for violation of the customs laws, the disposition of such vessel, including its tackle, apparel, furniture, appurtenances, cargo, and stores or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall appiy to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter.

(Pub. L. 89-702, title III, § 301, Nov. 2, 1966, 80 Stat. 1096; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 844.)

[1] So in original. No subsec. (b) has been enacted.

[2] See References in Text note below.

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AMENDMENTS

1983—Pub. L. 98-129 amended section generally, substituting provisions, which were contained in section 1181 of this title, relating to seizure and forfeiture of vessels for provisions prohibiting the taking of sea otters on the high seas.

§ 1172. Practice and procedure

(a) Joint responsibility; designation by Secretary of State officers and employees as Federal law enforcement agents; non-Federal employees for civil service purposes

Enforcement of the provisions of this chapter is the joint responsibility of the Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating. In addition, the Secretary may designate officers and employees of the States of the United States to enforce the provisions of this chapter which relate to persons or vessels subject to the jurisdiction of the United States. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes; but they shall not be held and considered as employees of the United States for the purpose of any laws administered by the Office of Personnel Management.

(b) Issuance of warrants and other process

The judges of the United States district courts and United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process, including warrants or other process issued in admiralty proceedings in Federal district courts, as may be required for enforcement of this chapter and any regulations issued thereunder.

(c) Execution of warrants or other process by enforcement agents

Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this chapter.

(d) Arrests and searches by enforcement agents

Such person so authorized shall have the power—

(1) with or without a warrant or other process, to arrest any person committing in his presence or view a violation of this chapter or the regulations issued thereunder;

(2) with a warrant or other process or without a warrant, if he has reasonable cause to believe that a vessel subject to the jurisdiction of the United States or any person onboard is in violation of any provision of this chapter or the regulations issued thereunder, to search such vessel and to arrest such person.

(e) Seizure of vessels and related articles

Such person so authorized may seize any vessel subject to the jurisdiction of the United States, together with its tackle, apparel, furniture, appurtenances, cargo, and stores, used or employed contrary to the provisions of this chapter or the regulations issued hereunder or which it reasonably appears has been used or employed contrary to the provisions of this chapter or the regulations issued hereunder.

(f) Seizure and disposition of fur seals

Such person so authorized may seize, whenever and wherever lawfully found, all fur seals taken or retained in violation of this chapter or the regulations issued thereunder. Any fur seals so seized or forfeited to the United States pursuant to this chapter shall be disposed of in accordance with the provisions of section 1155 of this title.

(Pub. L. 89-702, title III, § 302, Nov. 2, 1966, 80 Stat. 1097; Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 844.)

AMENDMENTS

1983—Pub. L. 98-129 amended section generally, substituting provisions, which were contained in section 1182 of this title, relating to practice and procedure in connection with the enforcement of this chapter for provisions which had authorized the sale by the Secretary of sea otter skins that had been forfeited to or seized by the United States.

§ 1173. Regulations

The Secretary is authorized to prescribe such regulations as he deems necessary and appropriate to carry out the provisions of this subchapter.

(Pub. L. 89-702, title III, § 303, as added Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 845.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1183 of this title prior to the complete revision of this chapter by Pub. L. 98-129.

§ 1174. Penalties

(a) Any person who knowingly violates any provision of this chapter or of any permit or regulation issued thereunder shall, upon conviction, be fined not more than $20,000 for such violation, or imprisoned for not more than one year, or both.

(b) Any person who violates any provision of this chapter or any regulation or permit issued hereunder may be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Hearings held during proceedings for the assessment of civil penalties authorized by this subsection shall be conducted in accordance with section 554 of title 5. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and

give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. Any civil penalty assessed may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty, and such court shall have jurisdiction to hear and decide any such action.

(Pub. L. 89-702, title III, § 304, as added Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 845.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1184 of this title prior to the complete revision of this chapter by Pub. L. 98-129.

§ 1175. Authorization of appropriations

(a) There are authorized to be appropriated to the operations, research, and facilities account of the National Oceanic and Atmospheric Administration in the Department of Commerce, such sums as may be necessary, up to $2,000,000, for fiscal year 1984 for the purpose of upgrading Federal property to be transferred pursuant to section 1165 of this title, $736,000 for fiscal year 1984 for the purposes of sections 1154 and 1168 of this title and such sums as may be necessary for each fiscal year thereafter for the purposes of sections 1154 and 1168 of this title.

(b) The contract authority of the Secretary under this chapter is effective for any fiscal year only to the extent that appropriations are available for such purposes.

(Pub. L. 89-702, title III, § 305, as added Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 845.)

§§ 1181 to 1187. Omitted

CODIFICATION

Sections were omitted in the general revision of this chapter by Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 835.

Section 1181, Pub. L. 89-702, title IV, § 401, Nov. 2, 1966, 80 Stat. 1097, related to seizure and forfeiture of vessels. See section 1171 of this title.

Section 1182, Pub. L. 89-702, title IV, § 402, Nov. 2, 1966, 80 Stat. 1097; Pub. L. 90-578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; 1978 Reorg. Plan No. 2 of 1978, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784, set out additional enforcement provisions. See section 1172 of this title.

Section 1183, Pub. L. 89-702, title IV, § 403, Nov. 2, 1966, 80 Stat. 1098; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, authorized the Secretary of Commerce to issue regulations. See section 1173 of this title.

Section 1184, Pub. L. 89-702, title IV, § 404, Nov. 2, 1966, 80 Stat. 1098, set out the penalties for violations. See section 1174 of this title.

Section 1185, Pub. L. 89-702, title IV, § 405, Nov. 2, 1966, 80 Stat. 1098; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, related to contracts or agreements for research. See section 1155(b) of this title.

Section 1186, Pub. L. 89-702, title IV, § 406, Nov. 2, 1966, 80 Stat. 1098, defined terms as used in this chapter. See section 1151 of this title.

Section 1187, Pub. L. 89-702, title IV, § 407, Nov. 2, 1966, 80 Stat. 1098, related to the creation of a Pribilof Islands fund. See section 1166 of this title.

CHAPTER 25B—REEFS FOR MARINE LIFE CONSERVATION

Sec.
1220d. "Obsolete ship" defined.

§ 1220. State applications for obsolete ships for use as offshore reefs

(a) Conservation of marine life

Any State may apply to the Secretary of Transportation (hereafter [1] referred to in this chapter as the "Secretary") for obsolete ships which, but for the operation of this chapter, would be designated by the Secretary for scrapping if the State intends to sink such ships for use as an offshore artificial reef for the conservation of marine life.

(b) Manner and form of applications; minimum requirements

A State shall apply for obsolete ships under this chapter in such manner and form as the Secretary shall prescribe, but such application shall include at least (1) the location at which the State proposes to sink the ships, (2) a certificate from the Administrator, Environmental Protection Agency, that the proposed use of the particular vessel or vessels requested by the State will be compatible with water quality standards and other appropriate environmental protection requirements, and (3) statements and estimates with respect to the conservation goals which are sought to be achieved by use of the ships.

[See main edition for text of (c)]

(As amended Pub. L. 98-623, title II, § 207(1), (2), Nov. 8, 1984, 98 Stat. 3397.)

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98-623, § 207, substituted "Secretary of Transportation" for "Secretary of Commerce" and "obsolete ships" for "Liberty ships", wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1220a, 1220d of this title.

§ 1220a. Transfer of title; terms and conditions

If, after consideration of such comments and views as are received pursuant to section 1220(c) of this title, the Secretary finds that the use of obsolete ships proposed by a State will not violate any Federal law, contribute to degradation of the marine environment, create undue interference with commercial fishing or navigation, and is not frivolous, he may transfer without consideration to the State all right, title, and interest of the United States in and to any obsolete ships which are available for transfer under this chapter if—

[1] So in original. Probably should be "hereinafter".

[*See main edition for text of (1) to (3)*]

(4) the transfer would be at no cost to the Government with the State taking delivery of such obsolete ships at fleetside of the National Defense Reserve Fleet in an "as is—where is" condition.

(As amended Pub. L. 98-623, title II, § 207(1), (3), Nov. 8, 1984, 98 Stat. 3397.)

AMENDMENTS

1984—Pub. L. 98-623 substituted "obsolete ships" for "Liberty ships" wherever appearing in provisions preceding par. (1) and in par. (4), and substituted "may transfer" for "shall transfer" in provisions preceding par. (1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1220d of this title.

§ 1220b. Obsolete ships available; number; equitable administration

A State may apply for more than one obsolete ship under this chapter. The Secretary shall, however, taking into account the number of obsolete ships which may be or become available for transfer under this chapter, administer this chapter in an equitable manner with respect to the various States.

(As amended Pub. L. 98-623, title II, § 207(1), Nov. 8, 1984, 98 Stat. 3397.)

AMENDMENTS

1984—Pub. L. 98-623 substituted "obsolete ships" for "Liberty ships" wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1220d of this title.

§ 1220c. Denial of applications; finality of decision

A decision by the Secretary denying any application for a [2] obsolete ship under this chapter is final.

(As amended Pub. L. 98-623, title II, § 207(1), Nov. 8, 1984, 98 Stat. 3397.)

AMENDMENTS

1984—Pub. L. 98-623 substituted "obsolete ship" for "Liberty ship".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1220d of this title.

§ 1220d. "Obsolete ship" defined

For purposes of sections 1220, 1220a, 1220b, and 1220c of this title, the term "obsolete ship" means any vessel owned by the Department of Transportation that has been determined to be of insufficient value for commercial or national defense purposes to warrant its maintenance and preservation in the national defense reserve fleet and has been designated as an artificial reef candidate.

(Pub. L. 92-402, § 7, as added Pub. L. 98-623, title II, § 207(4), Nov. 8, 1984, 98 Stat. 3397.)

[2] So in original. Probably should be "an".

CHAPTER 27—NATIONAL TRAILS SYSTEM

Sec.
1241. Congressional statement of policy and declaration of purpose.
(a) Considerations for determining establishment of trails.
(b) Initial components.
(c) Volunteer citizen involvement.
1242. National trails system.
(a) Composition: recreation trails; scenic trails; historic trails; connecting or side trails; uniform markers.
(b) Extended trails.
(c) Comprehensive plan submitted by Secretary of the Interior to Congress; revisions; content; consultation.
1250. Volunteer trails assistance.
(a) Volunteer planning, development, maintenance, and management of trails.
(b) Scope of volunteer work.
(c) Use of Federal facilities, equipment, tools, and technical assistance.
1251. Definitions.

§ 1241. Congressional statement of policy and declaration of purpose

[*See main edition for text of (a) and (b)*]

(c) Volunteer citizen involvement

The Congress recognizes the valuable contributions that volunteers and private, nonprofit trail groups have made to the development and maintenance of the Nation's trails. In recognition of these contributions, it is further the purpose of this chapter to encourage and assist volunteer citizen involvement in the planning, development, maintenance, and management, where appropriate, of trails.

(As amended Pub. L. 98-11, title II, § 202, Mar. 28, 1983, 97 Stat. 42.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-11, § 202(1), substituted "The" for "the" before "purpose".
Subsec. (c). Pub. L. 98-11, § 202(2), added subsec. (c).

SHORT TITLE OF 1983 AMENDMENT

Section 201 of Pub. L. 98-11 provided that: "This title [enacting sections 1250 and 1251 of this title and amending sections 1241 to 1247, and 1249 of this title] may be cited as the 'National Trails System Act Amendments of 1983'."

§ 1242. National trails system

(a) Composition: recreation trails; scenic trails; historic trails; connecting or side trails; uniform markers

The national system of trails shall be composed of the following:

(1) National recreation trails, established as provided in section 1243 of this title, which will provide a variety of outdoor recreation uses in or reasonably accessible to urban areas.

(2) National scenic trails, established as provided in section 1244 of this title, which will be extended trails so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the

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nationally significant scenic, historic, natural, or cultural qualities of the areas through which such trails may pass. National scenic trails may be located so as to represent desert, marsh, grassland, mountain, canyon, river, forest, and other areas, as well as landforms which exhibit significant characteristics of the physiographic regions of the Nation.

(3) National historic trails, established as provided in section 1244 of this title, which will be extended trails which follow as closely as possible and practicable the original trails or routes of travel of national historical significance. Designation of such trails or routes shall be continuous, but the established or developed trail, and the acquisition thereof, need not be continuous onsite. National historic trails shall have as their purpose the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment. Only those selected land and water based components of an historic trail which are on federally owned lands and which meet the national historic trail criteria established in this chapter are included as Federal protection components of a national historic trail. The appropriate Secretary may certify other lands as protected segments of an historic trail upon application from State or local governmental agencies or private interests involved if such segments meet the national historic trail criteria established in this chapter and such criteria supplementary thereto as the appropriate Secretary may prescribe, and are administered by such agencies or interests without expense to the United States.

(4) Connecting or side trails, established as provided in section 1245 of this title, which will provide additional points of public access to national recreation, national scenic or national historic trails or which will provide connections between such trails.

The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker for the national trails system.

(b) Extended trails

For purposes of this section, the term "extended trails" means trails or trail segments which total at least one hundred miles in length, except that historic trails of less than one hundred miles may be designated as extended trails. While it is desirable that extended trails be continuous, studies of such trails may conclude that it is feasible to propose one or more trail segments which, in the aggregate, constitute at least one hundred miles in length.

(c) Comprehensive plan submitted by Secretary of the Interior to Congress; revisions; content; consultation

On October 1, 1982, and at the beginning of each odd numbered fiscal year thereafter, the Secretary of the Interior shall submit to the Speaker of the United States House of Representatives and to the President of the United States Senate, an initial and revised (respectively) National Trails System plan. Such comprehensive plan shall indicate the scope and extent of a completed nationwide system of trails, to include (1) desirable nationally significant scenic and historic components which are considered necessary to complete a comprehensive national system, and (2) other trails which would balance out a complete and comprehensive nationwide system of trails. Such plan, and the periodic revisions thereto, shall be prepared in full consultation with the Secretary of Agriculture, the Governors of the various States, and the trails community.

(As amended Pub. L. 98-11, title II, § 203, Mar. 28, 1983, 97 Stat. 42.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-11, § 203(1), (2), designated existing provisions as subsec. (a), redesignated former subsecs. (a) to (d) as pars. (1) to (4), respectively, and, in provisions preceding par. (1), substituted "shall be composed of the following:" for "shall be composed of—".

Subsec. (a)(2). Pub. L. 98-11, § 203(3), added provision authorizing the location of national scenic trails so as to represent desert, marsh, grassland, mountain, canyon, river, forest, and other areas, as well as landforms which exhibit significant characteristics of the physiographic regions of the Nation.

Subsec. (a)(3). Pub. L. 98-11, § 203(4), (5), substituted "in this chapter are included as Federal" for "in this chapter, are established as initial Federal" in fourth sentence and struck out "subsequently" after "The appropriate Secretary may" in fifth sentence.

Subsecs. (b), (c). Pub. L. 98-11, § 203(6), added subsecs. (b) and (c).

§ 1243. National recreation trails; establishment and designation; prerequisites

[See main edition for text of (a)]

(b) As provided in this section, trails within park, forest, and other recreation areas administered by the Secretary of the Interior or the Secretary of Agriculture or in other federally administered areas may be established and designated as "National Recreation Trails" by the appropriate Secretary and, when no Federal land acquisition is involved—

(i) trails in or reasonably accessible to urban areas may be designated as "National Recreation Trails" by the appropriate Secretary with the consent of the States, their political subdivisions, or other appropriate administering agencies;

(ii) trails within park, forest, and other recreation areas owned or administered by States may be designated as "National Recreation Trails" by the appropriate Secretary with the consent of the State; and

(iii) trails on privately owned lands may be designated "National Recreation Trails" by the appropriate Secretary with the written consent of the owner of the property involved.

(As amended Pub. L. 98-11, title II, § 204, Mar. 28, 1983, 97 Stat. 43.)

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AMENDMENTS

1983—Subsec. (b)(1), (ii). Pub. L. 98-11, § 204(1), substituted "appropriate Secretary" for "Secretary of the Interior".

Subsec. (b)(iii). Pub. L. 98-11, § 204(2)-(4), added cl. (iii).

§ 1244. National scenic and national historic trails

(a) Establishment and designation; administration

National scenic and national historic trails shall be authorized and designated only by Act of Congress. There are hereby established the following National Scenic and National Historic Trails:

[*See main edition for text of (1) to (10)*]

(11) The Potomac Heritage National Scenic Trail, a corridor of approximately seven hundred and four miles following the route as generally depicted on the map identified as "National Trails System, Proposed Potomac Heritage Trail" in "The Potomac Heritage Trail", a report prepared by the Department of the Interior and dated December 1974, except that no designation of the trail shall be made in the State of West Virginia. The map shall be on file and available for public inspection in the office of the Director of the National Park Service, Washington, District of Columbia. The trail shall initially consist of only those segments of the corridor located within the exterior boundaries of federally administered areas. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Potomac Heritage Trail. The Secretary of the Interior may designate lands outside of federally administered areas as segments of the trail, only upon application from the States or local governmental agencies involved, if such segments meet the criteria established in this chapter and are administered by such agencies without expense to the United States. The trail shall be administered by the Secretary of the Interior.

(12) The Natchez Trace National Scenic Trail, a trail system of approximately six hundred and ninety-four miles extending from Nashville, Tennessee, to Natchez, Mississippi, as depicted on the map entitled "Concept Plan, Natchez Trace Trails Study" in "The Natchez Trace", a report prepared by the Department of the Interior and dated August 1979. The map shall be on file and available for public inspection in the office of the Director of the National Park Service, Department of the Interior, Washington, District of Columbia. The trail shall be administered by the Secretary of the Interior.

(13) The Florida National Scenic Trail, a route of approximately thirteen hundred miles extending through the State of Florida as generally depicted in "The Florida Trail", a national scenic trail study draft report prepared by the Department of the Interior and dated February 1980. The report shall be on file and available for public inspection in the office of the Chief of the Forest Service, Washington, District of Columbia. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Florida Trail except with the consent of the owner thereof. The Secretary of Agriculture may designate lands outside of federally administered areas as segments of the trail, only upon application from the States or local governmental agencies involved, if such segments meet the criteria established in this chapter and are administered by such agencies without expense to the United States. The trail shall be administered by the Secretary of Agriculture.

(b) Additional national scenic or national historic trails; feasibility studies; consultations; submission of studies to Congress; scope of studies; qualifications for national historic trail designation

The Secretary of the Interior, through the agency most likely to administer such trail, and the Secretary of Agriculture where lands administered by him are involved, shall make such additional studies as are herein or may hereafter be authorized by the Congress for the purpose of determining the feasibility and desirability of designating other trails as national scenic or national historic trails. Such studies shall be made in consultation with the heads of other Federal agencies administering lands through which such additional proposed trails would pass and in cooperation with interested interstate, State, and local governmental agencies, public and private organizations, and landowners and land users concerned. The feasibility of designating a trail shall be determined on the basis of an evaluation of whether or not it is physically possible to develop a trail along a route being studied, and whether the development of a trail would be financially feasible. The studies listed in subsection (c) of this section shall be completed and submitted to the Congress, with recommendations as to the suitability of trail designation, not later than three complete fiscal years from the date of enactment of their addition to this subsection, or from November 10, 1978, whichever is later. Such studies, when submitted, shall be printed as a House or Senate document, and shall include, but not be limited to:

[*See main edition for text of (1) and (2)*]

(3) the characteristics which, in the judgment of the appropriate Secretary, make the proposed trail worthy of designation as a national scenic or national historic trail; and in the case of national historic trails the report shall include the recommendation of the Secretary of the Interior's National Park System Advisory Board as to the national historic significance based on the criteria developed under the Historic Sites Act of 1935 (49 Stat. 666; 16 U.S.C. 461);

[*See main edition for text of (4) to (10)*]

(11) to qualify for designation as a national historic trail, a trail must meet all three of the following criteria:

[*See main edition for text of (A)*]

(B) It must be of national significance with respect to any of several broad facets of American history, such as trade and commerce, exploration, migration and settlement, or military campaigns. To qualify as nationally significant, historic use of the trail must have had a far-reaching effect on broad patterns of American culture. Trails significant in the history of native Americans may be included.

[*See main edition for text of (C)*]

(c) Routes subject to consideration for designation as national scenic trails

The following routes shall be studied in accordance with the objectives outlined in subsection (b) of this section:

[*See main edition for text of (1) to (23)*]

(24) Juan Bautista de Anza Trail, following the overland route taken by Juan Bautista de Anza in connection with his travels from the United Mexican States to San Francisco, California.

(25) Trail of Tears, including the associated forts and specifically, Fort Mitchell, Alabama, and historic properties, extending from the vicinity of Murphy, North Carolina, through Georgia, Alabama, Tennessee, Kentucky, Illinois, Missouri, and Arkansas, to the vicinity of Tahlequah, Oklahoma.

(26) Illinois Trail, extending from the Lewis and Clark Trail at Wood River, Illinois, to the Chicago Portage National Historic Site, generally following the Illinois River and the Illinois and Michigan Canal.

(27) Jedediah Smith Trail, to include the routes of the explorations led by Jedediah Smith—

(A) during the period 1826–1827, extending from the Idaho-Wyoming border, through the Great Salt Lake, Sevier, Virgin, and Colorado River Valleys, and the Mojave Desert, to the San Gabriel Mission, California; thence through the Tehachapi Mountains, San Joaquin and Stanislaus River Valleys, Ebbetts Pass, Walker River Valley, Bald Mount, Mount Grafton, and Great Salt Lake to Bear Lake, Utah; and

(B) during 1828, extending from the Sacramento and Trinity River Valleys along the Pacific coastline, through the Smith and Willamette River Valleys to the Fort Vancouver National Historic Site, Washington, on the Columbia River.

(28) General Crook Trail, extending from Prescott, Arizona, across the Mogollon Rim to Fort Apache.

(29) Beale Wagon Road, within the Kaibab and Coconino National Forests in Arizona: *Provided*, That such study may be prepared in conjunction with ongoing planning processes for these National Forests to be completed before 1990.

(30) Pony Express Trail, extending from Saint Joseph, Missouri, through Kansas, Nebraska, Colorado, Wyoming, Utah, Nevada, to Sacramento, California, as indicated on a map labeled "Potential Pony Express Trail", dated October 1983 and the California Trail, extending from the vicinity of Omaha, Nebraska, and Saint Joseph, Missouri, to various points in California, as indicated on a map labeled "Potential California Trail" and dated August 1, 1983. Notwithstanding subsection (b) of this section, the study under this paragraph shall be completed and submitted to the Congress no later than the end of two complete fiscal years beginning after August 28, 1984. Such study shall be separated into two portions, one relating to the Pony Express Trail and one relating to the California Trail.

(d) Trail advisory councils; establishment and termination; term and compensation; membership; chairman

The Secretary charged with the administration of each respective trail shall, within one year of the date of the addition of any national scenic or national historic trail to the System, and within sixty days of November 10, 1978, for the Appalachian and Pacific Crest National Scenic Trails, establish an advisory council for each such trail, each of which councils shall expire ten years from the date of its establishment. If the appropriate Secretary is unable to establish such an advisory council because of the lack of adequate public interest, the Secretary shall so advise the appropriate committees of the Congress. The appropriate Secretary shall consult with such council from time to time with respect to matters relating to the trail, including the selection of rights-of-way, standards for the erection and maintenance of markers along the trail, and the administration of the trail. The members of each advisory council, which shall not exceed thirty-five in number, shall serve for a term of two years and without compensation as such, but the Secretary may pay, upon vouchers signed by the chairman of the council, the expenses reasonably incurred by the council and its members in carrying out their responsibilities under this section. Members of each council shall be appointed by the appropriate Secretary as follows:

(1) the head of each Federal department or independent agency administering lands through which the trail route passes, or his designee;

(2) a member appointed to represent each State through which the trail passes, and such appointments shall be made from recommendations of the Governors of such States;

(3) one or more members appointed to represent private organizations, including corporate and individual landowners and land users, which in the opinion of the Secretary, have an established and recognized interest in the trail, and such appointments shall be made from recommendations of the heads of such organizations: *Provided*, That the Appalachian Trail Conference shall be represented by a sufficient number of persons to represent the various sections of the country through which the Appalachian Trail passes; and

(4) the Secretary shall designate one member to be chairman and shall fill vacan-

cies in the same manner as the original appointment.

[*See main edition for text of* (e)]

(f) Comprehensive national historic trail plan; consultation; submission to Congressional committees

Within two complete fiscal years of the date of enactment of legislation designating a national historic trail or the Continental Divide National Scenic Trail or the North Country National Scenic Trail as part of the system, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, and the relevant Advisory Council established pursuant to subsection (d) of this section, submit to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the management, and use of the trail, including but not limited to, the following items:

(1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of any anticipated cooperative agreements to be consummated with State and local government agencies or private interests, and for national scenic or national historic trails an identified carrying capacity of the trail and a plan for its implementation;

(2) the process to be followed by the appropriate Secretary to implement the marking requirements established in section 1246(c) of this title;

(3) a protection plan for any high potential historic sites or high potential route segments; and

(4) general and site-specific development plans, including anticipated costs.

(As amended Pub. L. 98-11, title II, § 205, Mar. 28, 1983, 97 Stat. 43; Pub. L. 98-405, § 1, Aug. 28, 1984, 98 Stat. 1483.)

REFERENCES IN TEXT

The Historic Sites Act of 1935 (49 Stat. 666; 16 U.S.C. 461), referred to in subsec. (b)(3), which is also known as the Historic Sites, Buildings, and Antiquities Act, is act Aug. 21, 1935, ch. 593, 49 Stat. 666, as amended, which is classified to sections 461 to 467 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 461 of this title and Tables.

AMENDMENTS

1984—Subsec. (c)(30). Pub. L. 98-405 added par. (30).

1983—Subsec. (a)(11) to (13). Pub. L. 98-11, § 205(a), added pars. (11) to (13).

Subsec. (b). Pub. L. 98-11, § 205(b)(1), added sentence in the provisions preceding par. (1) requiring that the feasibility of designating a trail be determined on the basis of an evaluation of whether or not it is physically possible to develop a trail along a route being studied, and whether the development of a trail would be financially feasible.

Subsec. (b)(3). Pub. L. 98-11, § 205(b)(2), substituted "16 U.S.C. 461" for "U.S.C. 461".

Subsec. (b)(11)(B). Pub. L. 98-11, § 205(b)(3), inserted "exploration," after "commerce," in first sentence.

Subsec. (c)(9). Pub. L. 98-11, § 205(c)(1), substituted "Santa Fe, New Mexico" for "Sante Fe, New Mexico".

Subsec. (c)(24) to (29). Pub. L. 98-11, § 205(c)(2), added pars. (24) to (29).

Subsec. (d). Pub. L. 98-11, § 205(d)(1), in provisions preceding par. (1), added requirement that the Secretary advise the appropriate committees in the Congress if the Secretary is unable to establish an advisory council because of the lack of adequate public interest.

Subsec. (d)(1) to (4). Pub. L. 98-11, § 205(d)(2), redesignated pars. (i) to (iv) as (1) to (4), respectively, and in par. (1) as so redesignated substituted "the head of each Federal department or independent agency administering lands through which the trail route passes, or his designee" for "a member appointed to represent each Federal department or independent agency administering lands through which the trail route passes, and each appointee shall be the person designated by the head of such department or agency".

Subsec. (f)(1). Pub. L. 98-11, § 205(e)(1), (2), substituted "national historic trails" for "national recreational trails".

Subsec. (f)(3), (4). Pub. L. 98-11, § 205(e)(3), added pars. (3) and (4).

§ 1245. Connecting or side trails; establishment, designation, and marking as components of national trails system; location

Connecting or side trails within park, forest, and other recreation areas administered by the Secretary of the Interior or Secretary of Agriculture may be established, designated, and marked by the appropriate Secretary as components of a national recreation, national scenic or national historic trail. When no Federal land acquisition is involved, connecting or side trails may be located across lands administered by interstate, State, or local governmental agencies with their consent, or, where the appropriate Secretary deems necessary or desirable, on privately owned lands with the consent of the landowner. Applications for approval and designation of connecting and side trails on non-Federal lands shall be submitted to the appropriate Secretary.

(As amended Pub. L. 98-11, title II, § 206, Mar. 28, 1983, 97 Stat. 45.)

AMENDMENTS

1983—Pub. L. 98-11 substituted "marked by the appropriate Secretary as components" for "marked as components" and ", or, where the appropriate Secretary deems necessary or desirable, on privately owned lands with the consent of the landowner. Applications for approval and designation of connecting and side trails on non-Federal lands shall be submitted to the appropriate Secretary" for "; *Provided*, That such trails provide additional points of public access to national recreation, national scenic or national historic trails".

§ 1246. Administration and development of national trails system

(a) Consultation of Secretary with other agencies; transfer of management responsibilities; selection of rights-of-way; criteria for selection; notice; impact upon established uses

(1)(A) The Secretary charged with the overall administration of a trail pursuant to section 1244(a) of this title shall, in administering and managing the trail, consult with the heads of

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all other affected State and Federal agencies. Nothing contained in this chapter shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for federally administered lands which are components of the National Trails System. Any transfer of management responsibilities may be carried out between the Secretary of the Interior and the Secretary of Agriculture only as provided under subparagraph (B).

(B) The Secretary charged with the overall administration of any trail pursuant to section 1244(a) of this title may transfer management of any specified trail segment of such trail to the other appropriate Secretary pursuant to a joint memorandum of agreement containing such terms and conditions as the Secretaries consider most appropriate to accomplish the purposes of this chapter. During any period in which management responsibilities for any trail segment are transferred under such an agreement, the management of any such segment shall be subject to the laws, rules, and regulations of the Secretary provided with the management authority under the agreement, except to such extent as the agreement may otherwise expressly provide.

(2) Pursuant to section 1244(a) of this title, the appropriate Secretary shall select the rights-of-way for national scenic and national historic trails and shall publish notice of the availability of appropriate maps or descriptions in the Federal Register: *Provided*, That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land. The location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate Secretary. In selecting rights-of-way for trail purposes, the Secretary shall obtain the advice and assistance of the States, local governments, private organizations, and landowners and land users concerned.

(b) Relocation of segment of national, scenic or historic, trail right-of-way; determination of necessity with official having jurisdiction; necessity for Act of Congress

After publication of notice of the availability of appropriate maps or descriptions in the Federal Register, the Secretary charged with the administration of a national scenic or national historic trail may relocate segments of a national scenic or national historic trail right-of-way, with the concurrence of the head of the Federal agency having jurisdiction over the lands involved, upon a determination that: (i) such a relocation is necessary to preserve the purposes for which the trail was established, or (ii) the relocation is necessary to promote a sound land management program in accordance with established multiple-use principles: *Provided*, That a substantial relocation of the rights-of-way for such trail shall be by Act of Congress.

(c) Facilities on national, scenic or historic, trails; permissible activities; use of motorized vehicles; trail markers; establishment of uniform marker; placement of uniform markers; trail interpretation sites

National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts shall be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any national scenic trail shall be prohibited and nothing in this chapter shall be construed as authorizing the use of motorized vehicles within the natural and historical areas of the national park system, the national wildlife refuge system, the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary: *Provided*, That the Secretary charged with the administration of such trail shall establish regulations which shall authorize the use of motorized vehicles when, in his judgment, such vehicles are necessary to meet emergencies or to enable adjacent landowners or land users to have reasonable access to their lands or timber rights: *Provided further*, That private lands included in the national recreation, national scenic, or national historic trails by cooperative agreement of a landowner shall not preclude such owner from using motorized vehicles on or across such trails or adjacent lands from time to time in accordance with regulations to be established by the appropriate Secretary. Where a national historic trail follows existing public roads, developed rights-of-way or waterways, and similar features of man's nonhistorically related development, approximating the original location of a historic route, such segments may be marked to facilitate retracement of the historic route, and where a national historic trail parallels an existing public road, such road may be marked to commemorate the historic route. Other uses along the historic trails and the Continental Divide National Scenic Trail, which will not substantially interfere with the nature and purposes of the trail, and which, at the time of designation, are allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with the administration of the trail. The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker, including thereon an appropriate and distinctive symbol for each national recreation, national scenic, and national historic trail. Where the trails cross lands administered by

Federal agencies such markers shall be erected at appropriate points along the trails and maintained by the Federal agency administering the trail in accordance with standards established by the appropriate Secretary and where the trails cross non-Federal lands, in accordance with written cooperative agreements, the appropriate Secretary shall provide such uniform markers to cooperating agencies and shall require such agencies to erect and maintain them in accordance with the standards established. The appropriate Secretary may also provide for trail interpretation sites, which shall be located at historic sites along the route of any national scenic or national historic trail, in order to present information to the public about the trail, at the lowest possible cost, with emphasis on the portion of the trail passing through the State in which the site is located. Wherever possible, the sites shall be maintained by a State agency under a cooperative agreement between the appropriate Secretary and the State agency.

[*See main edition for text of* (d)]

(e) Right-of-way lands outside exterior boundaries of federally administered areas; cooperative agreements or acquisition; failure to agree or acquire; agreement or acquisition by Secretary concerned; right of first refusal for original owner upon disposal

Where the lands included in a national scenic or national historic trail right-of-way are outside of the exterior boundaries of federally administered areas, the Secretary charged with the administration of such trail shall encourage the States or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations, and individuals to provide the necessary trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of the national scenic or national historic trail: *Provided*, That if the State or local governments fail to enter into such written cooperative agreements or to acquire such lands or interests therein after notice of the selection of the right-of-way is published, the appropriate Secretary may (i) enter into such agreements with landowners, States, local governments, private organizations, and individuals for the use of lands for trail purposes, or (ii) acquire private lands or interests therein by donation, purchase with donated or appropriated funds or exchange in accordance with the provisions of subsection (f) of this section: *Provided further*, That the appropriate Secretary may acquire lands or interests therein from local governments or governmental corporations with the consent of such entities. The lands involved in such rights-of-way should be acquired in fee, if other methods of public control are not sufficient to assure their use for the purpose for which they are acquired: *Provided*, That if the Secretary charged with the administration of such trail permanently relocates the right-of-way and disposes of all title or interest in the land, the original owner, or his heirs or assigns, shall be offered, by notice given at the former owner's last known address, the right of first refusal at the fair market price.

(f) Exchange of property within the right-of-way by Secretary of the Interior; property subject to exchange; equalization of value of property; exchange of national forest lands by Secretary of Agriculture; tracts lying outside trail acquisition area

(1) The Secretary of the Interior, in the exercise of his exchange authority, may accept title to any non-Federal property within the right-of-way and in exchange therefor he may convey to the grantor of such property any federally owned property under his jurisdiction which is located in the State wherein such property is located and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require. The Secretary of Agriculture, in the exercise of his exchange authority, may utilize authorities and procedures available to him in connection with exchanges of national forest lands.

(2) In acquiring lands or interests therein for a National Scenic or Historic Trail, the appropriate Secretary may, with consent of a landowner, acquire whole tracts notwithstanding that parts of such tracts may lie outside the area of trail acquisition. In furtherance of the purposes of this chapter, lands so acquired outside the area of trail acquisition may be exchanged for any non-Federal lands or interests therein within the trail right-of-way, or disposed of in accordance with such procedures or regulations as the appropriate Secretary shall prescribe, including: (i) provisions for conveyance of such acquired lands or interests therein at not less than fair market value to the highest bidder, and (ii) provisions for allowing the last owners of record a right to purchase said acquired lands or interests therein upon payment or agreement to pay an amount equal to the highest bid price. For lands designated for exchange or disposal, the appropriate Secretary may convey these lands with any reservations or covenants deemed desirable to further the purposes of this chapter. The proceeds from any disposal shall be credited to the appropriation bearing the costs of land acquisition for the affected trail.

(g) Condemnation proceedings to acquire private lands; limitations; availability of funds for acquisition of lands or interests therein; acquisition of high potential, route segments or historic sites

The appropriate Secretary may utilize condemnation proceedings without the consent of the owner to acquire private lands or interests therein pursuant to this section only in cases where, in his judgment, all reasonable efforts to acquire such lands or interests therein by negotiation have failed, and in such cases he shall acquire only such title as, in his judgment, is reasonably necessary to provide passage across such lands: *Provided*, That condemnation proceedings may not be utilized to acquire fee title or lesser interests to more than an average of one hundred and twenty-five acres per mile. Money appropriated for Federal purposes from

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the land and water conservation fund shall, without prejudice to appropriations from other sources, be available to Federal departments for the acquisition of lands or interests in lands for the purposes of this chapter. For national historic trails, direct Federal acquisition for trail purposes shall be limited to those areas indicated by the study report or by the comprehensive plan as high potential route segments or high potential historic sites. Except for designated protected components of the trail, no land or site located along a designated national historic trail or along the Continental Divide National Scenic Trail shall be subject to the provisions of section 303 of title 49 unless such land or site is deemed to be of historical significance under appropriate historical site criteria such as those for the National Register of Historic Places.

(h) Development and maintenance of national, scenic or historic, trails; cooperation with States over portions located outside of federally administered areas; cooperative agreements; participation of volunteers; reservation of right-of-way for trails in conveyances by Secretary of the Interior

(1) The Secretary charged with the administration of a national recreation, national scenic, or national historic trail shall provide for the development and maintenance of such trails within federally administered areas and shall cooperate with and encourage the States to operate, develop, and maintain portions of such trails which are located outside the boundaries of federally administered areas. When deemed to be in the public interest, such Secretary may enter written cooperative agreements with the States or their political subdivisions, landowners, private organizations, or individuals to operate, develop, and maintain any portion of such a trail either within or outside a federally administered area. Such agreements may include provisions for limited financial assistance to encourage participation in the acquisition, protection, operation, development, or maintenance of such trails, provisions providing volunteer in the park or volunteer in the forest status (in accordance with the Volunteers in the Parks Act of 1969 [16 U.S.C. 18g et seq.] and the Volunteers in the Forests Act of 1972 [16 U.S.C. 558a et seq.]) to individuals, private organizations, or landowners participating in such activities, or provisions of both types. The appropriate Secretary shall also initiate consultations with affected States and their political subdivisions to encourage—

(A) the development and implementation by such entities of appropriate measures to protect private landowners from trespass resulting from trail use and from unreasonable personal liability and property damage caused by trail use, and

(B) the development and implementation by such entities of provisions for land practices, compatible with the purposes of this chapter,

for property within or adjacent to trail rights-of-way. After consulting with States and their political subdivisions under the preceding sentence, the Secretary may provide assistance to such entities under appropriate cooperative agreements in the manner provided by this subsection.

(2) Whenever the Secretary of the Interior makes any conveyance of land under any of the public land laws, he may reserve a right-of-way for trails to the extent he deems necessary to carry out the purposes of this chapter.

(i) Regulations; issuance; concurrence and consultation; revision; publication; violations; penalties; utilization of national park or national forest authorities

The appropriate Secretary, with the concurrence of the heads of any other Federal agencies administering lands through which a national recreation, national scenic, or national historic trail passes, and after consultation with the States, local governments, and organizations concerned, may issue regulations, which may be revised from time to time, governing the use, protection, management, development, and administration of trails of the national trails system. In order to maintain good conduct on and along the trails located within federally administered areas and to provide for the proper government and protection of such trails, the Secretary of the Interior and the Secretary of Agriculture shall prescribe and publish such uniform regulations as they deem necessary and any person who violates such regulations shall be guilty of a misdemeanor, and may be punished by a fine of not more than $500, or by imprisonment not exceeding six months, or by both such fine and imprisonment. The Secretary responsible for the administration of any segment of any component of the National Trails System (as determined in a manner consistent with subsection (a)(1) of this section) may also utilize authorities related to units of the national park system or the national forest system, as the case may be, in carrying out his administrative responsibilities for such component.

(j) Types of trail use allowed

Potential trail uses allowed on designated components of the national trails system may include, but are not limited to, the following: bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, and surface water and underwater activities. Vehicles which may be permitted on certain trails may include, but need not be limited to, motorcycles, bicycles, four-wheel drive or all-terrain off-road vehicles. In addition, trail access for handicapped individuals may be provided. The provisions of this subsection shall not supersede any other provisions of this chapter or other Federal laws, or any State or local laws.

(k) Donations or other conveyances of qualified real property interests

For the conservation purpose of preserving or enhancing the recreational, scenic, natural, or historical values of components of the national trails system, and environs thereof as determined by the appropriate Secretary, landowners are authorized to donate or otherwise convey qualified real property interests to qualified organizations consistent with section 170(h)(3) of title 26, including, but not limited

to, right-of-way, open space, scenic, or conservation easements, without regard to any limitation on the nature of the estate or interest otherwise transferable within the jurisdiction where the land is located. The conveyance of any such interest in land in accordance with this subsection shall be deemed to further a Federal conservation policy and yield a significant public benefit for purposes of section 6 of Public Law 96-541.

(As amended Pub. L. 98-11, title II, § 207, Mar. 28, 1983, 97 Stat. 45.)

REFERENCES IN TEXT

The Volunteers in the Parks Act of 1969, referred to in subsec. (h)(1), is Pub. L. 91-357, July 29, 1970, 84 Stat. 472, as amended, which is classified generally to subchapter II (§ 18g et seq.) of chapter 1 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 18g of this title and Tables.

The Volunteers in the Forests Act of 1972, referred to in subsec. (h)(1), probably means the Volunteers in the National Forests Act of 1972, Pub. L. 92-300, May 18, 1972, 86 Stat. 147, as amended, which is classified generally to section 558a et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 558a of this title and Tables.

Section 6 of Public Law 96-541, referred to in subsec. (k), is section 6 of Pub. L. 96-541, Dec. 17, 1980, 94 Stat. 3206, which amended section 170 of Title 26, Internal Revenue Code, and enacted and amended provisions set out as notes under section 170 of Title 26.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-11, § 207(a), designated existing provisions as par. (2), added par. (1), and in par. (2) substituted "shall publish notice of the availability of appropriate maps or descriptions in the Federal Register" for "shall publish notice thereof in the Federal Register, together with appropriate maps and descriptions".

Subsec. (b). Pub. L. 98-11, § 207(b), inserted "of the availability of appropriate maps or descriptions" after "After publication of notice", and struck out "together with appropriate maps and descriptions," after "Federal Register,".

Subsec. (c). Pub. L. 98-11, § 207(c), added provision that the appropriate Secretary may also provide for trail interpretation sites, which shall be located at historic sites along the route of any national scenic or national historic trail, in order to present information to the public about the trail, at the lowest possible cost, with emphasis on the portion of the trail passing through the State in which the site is located, and that, whenever possible, the sites be maintained by a State agency under a cooperative agreement between the appropriate Secretary and the State agency.

Subsec. (e). Pub. L. 98-11, § 207(d), in the first sentence, substituted "subsection (f) of this section" for "subsection (g) of this section", and added a further proviso authorizing the appropriate Secretary to acquire lands or interests therein from local governments or governmental corporations with the consent of such entities.

Subsec. (f). Pub. L. 98-11, § 207(e), designated existing provisions as par. (1) and added par. (2).

Subsec. (g). Pub. L. 98-11, § 207(f), substituted "Except for designated protected components of the trail, no land or site located" for "No land or site located" in the last sentence.

Subsec. (h). Pub. L. 98-11, § 207(g), designated the first of two sentences of existing provisions as par. (1) and the last sentence as par. (2); and in par. (1), as so designated, substituted "and maintain any portion of such a trail either within" for "and maintain any portion of a national scenic or national historic trail either within" and added third, fourth, and fifth sentences making provision for the inclusion in written cooperative agreements provisions for limited financial assistance to encourage participation in acquisition, protection, operation, development, or maintenance of trails and for volunteer in the park or volunteer in the forest status, for the initiation of consultations with affected States and their political subdivisions, and for the giving of assistance after consultation under appropriate cooperative agreements.

Subsec. (i). Pub. L. 98-11, § 207(h), added direction that the Secretary responsible for the administration of any segment of any component of the National Trails System also utilize authorities related to units of the national park system or the national forest system in carrying out his administrative responsibilities for such component.

Subsecs. (j), (k). Pub. L. 98-11, § 207(i), added subsecs. (j) and (k).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1244, 1249 of this title.

§ 1247. State and local area recreation and historic trails

[*See main edition for text of* (a) *to* (c)]

(d) Interim use of railroad rights-of-way

The Secretary of Transportation, the Chairman of the Interstate Commerce Commission, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976 [45 U.S.C. 801 et seq.], shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes. If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Commission shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this chapter, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use.

(e) Designation and marking of trails; approval of Secretary of the Interior

Such trails may be designated and suitably marked as parts of the nationwide system of trails by the States, their political subdivisions, or other appropriate administering agencies

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with the approval of the Secretary of the Interior.

(As amended Pub. L. 98-11, title II, § 208, Mar. 28, 1983, 97 Stat. 48.)

REFERENCES IN TEXT

The Housing Act of 1961, referred to in subsec. (b), is Pub. L. 87-70, June 30, 1961, 75 Stat. 149, as amended. Title VII of the Housing Act of 1961 was classified generally to chapter 8C (§ 1500 et seq.) of Title 42, The Public Health and Welfare, and was omitted from the Code pursuant to section 5316 of Title 42 which terminated authority to make grants or loans under such title VII after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 12, Banks and Banking, and Tables.

The Railroad Revitalization and Regulatory Reform Act of 1976, referred to in subsec. (d), is Pub. L. 94-210, Feb. 5, 1976, 90 Stat. 31, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 45, Railroads, and Tables.

AMENDMENTS

1983—Subsecs. (d), (e). Pub. L. 98-11, § 208(2), added subsec. (d) and redesignated former subsec. (d) as (e).

§ 1249. Authorization of appropriations

(a)(1) There are hereby authorized to be appropriated for the acquisition of lands or interests in lands not more than $5,000,000 for the Appalachian National Scenic Trail and not more than $500,000 for the Pacific Crest National Scenic Trail. From the appropriations authorized for fiscal year 1979 and succeeding fiscal years pursuant to the Land and Water Conservation Fund Act (78 Stat. 897), as amended [16 U.S.C. 460*l*-4 et seq.], not more than the following amounts may be expended for the acquisition of lands and interests in lands authorized to be acquired pursuant to the provisions of this chapter: for the Appalachian National Scenic Trail, not to exceed $30,000,000 for fiscal year 1979, $30,000,000 for fiscal year 1980, and $30,000,000 for fiscal year 1981, except that the difference between the foregoing amounts and the actual appropriations in any one fiscal year shall be available for appropriation in subsequent fiscal years.

(2) It is the express intent of the Congress that the Secretary should substantially complete the land acquisition program necessary to insure the protection of the Appalachian Trail within three complete fiscal years following March 21, 1978. Until the entire acquisition program is completed, he shall transmit in writing at the close of each fiscal year the following information to the Committee on Energy and Natural Resources of the Senate and to the Committee on Interior and Insular Affairs of the House of Representatives:

(A) the amount of land acquired during the fiscal year and the amount expended therefor;

(B) the estimated amount of land remaining to be acquired; and

(C) the amount of land planned for acquisition in the ensuing fiscal year and the estimated cost thereof.

[*See main edition for text of* (b)]

(c)(1) There is hereby authorized to be appropriated such sums as may be necessary to implement the provisions of this chapter relating to the trails designated by section 1244(a)(3), (4), (5), (6), (7), (8), (9), and (10) of this title: *Provided,* That no such funds are authorized to be appropriated prior to October 1, 1978: *And provided further,* That notwithstanding any other provisions of this chapter or any other provisions of law, no funds may be expended by Federal agencies for the acquisition of lands or interests in lands outside the exterior boundaries of existing Federal areas for the Continental Divide National Scenic Trail, the North Country National Scenic Trail, Ice Age National Senic Trail, the Oregon National Historic Trail, the Mormon Pioneer National Historic Trail, the Lewis and Clark National Historic Trail, and the Iditarod National Historic Trail, except that funds may be expended for the acquisition of lands or interests therein for the purpose of providing for one trail interpretation site, as described in section 1246(c) of this title, along with such trail in each State crossed by the trail.

(2) There is hereby authorized to be appropriated for fiscal year 1983 and subsequent fiscal years such sums as may be necessary to implement the provisions of this chapter relating to the trails designated by paragraphs (9) through (13) of section 1244(a) of this title. Not more than $500,000 may be appropriated for the purposes of acquisition of land and interests therein for the trail designated by section 1244(a)(12) of this title, and not more than $2,000,000 may be appropriated for the purposes of the development of such trail. The administering agency for the trail shall encourage volunteer trail groups to participate in the development of the trail.

(As amended Pub. L. 98-11, title II, § 209, Mar. 28, 1983, 97 Stat. 48.)

REFERENCES IN TEXT

The Land and Water Conservation Fund Act (78 Stat. 897), as amended, referred to in subsec. (a)(1), probably means the Land and Water Conservation Fund Act of 1965, Pub. L. 88-578, Sept. 3, 1964, 78 Stat. 897, as amended, which is classified generally to part B (§ 460*l*-4 et seq.) of subchapter LXIX of chapter 1 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 460*l*-4 of this title and Tables.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-11, § 209(1), (2), inserted "(a)(1)" before "There are hereby authorized to be appropriated" at the beginning of the undesignated opening paragraph, and substituted "for the" for "(a) The" before "Appalachian National Scenic Trail" at the beginning of former subsec. (a).

Subsec. (a)(2). Pub. L. 98-11, § 209(3), (4), inserted "(2)" before the sentence beginning "It is the express intent of the Congress" and substituted "protection of the Appalachian Trail" for "protection of the Trail".

Subsec. (c). Pub. L. 98-11, § 209(5), designated existing provisions as par. (1), added provision that funds may be expended for the acquisition of lands or interests therein for the purpose of providing for one trail interpretation site, as described in section 1246(c) of this title, and added par. (2).

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EFFECTIVE DATE OF APPROPRIATION AUTHORIZATIONS UNDER PUB. L. 98-11; CONTRACT AUTHORITY

Section 101 of Pub. L. 98-11 provided that: "Authorizations of appropriations under this Act [enacting sections 1250 and 1251 of this title, amending sections 1241 to 1247, and 1249 of this title, and enacting provisions set out as a note under section 1241 of this title] shall be effective only for the fiscal year beginning on October 1, 1983, and subsequent fiscal years. Notwithstanding any other provision of this Act, authority to enter into contracts, and to make payments, under this Act shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts."

§ 1250. Volunteer trails assistance

(a) Volunteer planning, development, maintenance, and management of trails

(1) In addition to the cooperative agreement and other authorities contained in this chapter, the Secretary of the Interior, the Secretary of Agriculture, and the head of any Federal agency administering Federal lands, are authorized to encourage volunteers and volunteer organizations to plan, develop, maintain, and manage, where appropriate, trails throughout the Nation.

(2) Wherever appropriate in furtherance of the purposes of this chapter, the Secretaries are authorized and encouraged to utilize the Volunteers in the Parks Act of 1969 [16 U.S.C. 18g et seq.], the Volunteers in the Forests Act of 1972 [16 U.S.C. 558a et seq.], and section 460*l*-8 of this title (relating to the development of Statewide Comprehensive Outdoor Recreation Plans).

(b) Scope of volunteer work

Each Secretary or the head of any Federal land managing agency may assist volunteers and volunteer organizations in planning, developing, maintaining, and managing trails. Volunteer work may include, but need not be limited to—

(1) planning, developing, maintaining, or managing (A) trails which are components of the national trails system, or (B) trails which, if so developed and maintained, could qualify for designation as components of the national trails system; or

(2) operating programs to organize and supervise volunteer trail building efforts with respect to the trails referred to in paragraph (1), conducting trail-related research projects, or providing education and training to volunteers on methods of trails planning, construction, and maintenance.

(c) Use of Federal facilities, equipment, tools, and technical assistance

The appropriate Secretary or the head of any Federal land managing agency may utilize and make available Federal facilities, equipment, tools, and technical assistance to volunteers and volunteer organizations, subject to such limitations and restrictions as the appropriate Secretary or the head of any Federal land managing agency deems necessary or desirable.

(Pub. L. 90-543, § 11, as added Pub. L. 98-11, title II, § 210, Mar. 28, 1983, 97 Stat. 49.)

REFERENCES IN TEXT

The Volunteers in the Parks Act of 1969, referred to in subsec. (a)(2), is Pub. L. 91-357, July 29, 1970, 84 Stat. 472, as amended, which is classified generally to subchapter II (§ 18g et seq.) of chapter 1 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 18g of this title and Tables.

The Volunteers in the Forests Act of 1972, referred to in subsec. (a)(2), probably means the Volunteers in the National Forests Act of 1972, Pub. L. 92-300, May 18, 1972, 86 Stat. 147, as amended, which is classified generally to section 558a et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 558a of this title and Tables.

§ 1251. Definitions

As used in this chapter:

(1) The term "high potential historic sites" means those historic sites related to the route, or sites in close proximity thereto, which provide opportunity to interpret the historic significance of the trail during the period of its major use. Criteria for consideration as high potential sites include historic significance, presence of visible historic remnants, scenic quality, and relative freedom from intrusion.

(2) The term "high potential route segments" means those segments of a trail which would afford high quality recreation experience in a portion of the route having greater than average scenic values or affording an opportunity to vicariously share the experience of the original users of a historic route.

(3) The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and any other territory or possession of the United States.

(4) The term "without expense to the United States" means that no funds may be expended by Federal agencies for the development of trail related facilities or for the acquisition of lands or interests in lands outside the exterior boundaries of Federal areas. For the purposes of the preceding sentence, amounts made available to any State or political subdivision under the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 460*l*-4 et seq.] or any other provision of law shall not be treated as an expense to the United States.

(Pub. L. 90-543, § 12, as added Pub. L. 98-11, title II, § 210, Mar. 28, 1983, 97 Stat. 50.)

REFERENCES IN TEXT

The Land and Water Conservation Fund Act of 1965, referred to in par. (4), is Pub. L. 88-578, Sept. 3, 1964, 78 Stat. 897, as amended, which is classified generally to part B (§ 460*l*-4 et seq.) of subchapter LXIX of chapter 1 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 460*l*-4 of this title and Tables.

CHAPTER 28—WILD AND SCENIC RIVERS

§ 1274. Component rivers and adjacent lands

(a) Designation

The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

[*See main edition for text of (1) to (15)*]

(16) PERE MARQUETTE, MICHIGAN—The segment downstream from the junction of the Middle and Little South Branches to its junction with United States Highway 31 as generally depicted on the boundary map entitled "Proposed Boundary Location, Pere Marquette Wild and Scenic River,"; to be administered by the Secretary of Agriculture. After consultation with State and local governments and the interested public, the Secretary shall take such action as is provided for under subsection (b) of this section with respect to the segment referred to in this paragraph within one year from November 10, 1978. Any development or management plan prepared pursuant to subsection (b) of this section shall include (a) provisions for the dissemination of information to river users and (b) such regulations relating to the recreational and other uses of the river as may be necessary in order to protect the area comprising such river (including lands contiguous or adjacent thereto) from damage or destruction by reason of overuse and to protect its scenic, historic, esthetic and scientific values. Such regulations shall further contain procedures and means which shall be utilized in the enforcement of such development and management plan. For the purposes of carrying out the provisions of this chapter with respect to the river designated by this paragraph, there are authorized to be appropriated not more than $8,125,000 for the acquisition of lands or interests in lands and $402,000 for development. Notwithstanding any other provision of this chapter, the installation and operation of facilities or other activities within or outside the boundaries of the Pere Marquette Wild and Scenic River for the control of the lamprey eel shall be permitted subject to such restrictions and conditions as the Secretary of Agriculture may prescribe for the protection of water quality and other values of the river, including the wild and scenic characteristics of the river.

[*See main edition for text of (17) to (23)*]

(24) SALMON, IDAHO—(A) The segment of the main river from the mouth of the North Fork of the Salmon River downstream to Long Tom Bar in the following classes:

[*See main edition for text of (i) and (ii), (B) and (C)*]

(D) Subject to existing rights of the State of Idaho, including the right of access, with respect to the beds of navigable streams, tributaries or rivers, dredge and placer mining in any form including any use of machinery for the removal of sand and gravel for mining purposes shall be prohibited within the segment of the Salmon River designated as a component of the Wild and Scenic Rivers System by this paragraph; within the fifty-three-mile segment of the Salmon River from Hammer Creek downstream to the confluence of the Snake River; and within the Middle Fork of the Salmon River; and its tributary streams in their entirety: *Provided,* That nothing in this paragraph shall be deemed to prohibit the removal of sand and gravel, outside the boundaries of the Frank Church—River of No Return Wilderness or the Gospel-Hump Wilderness, above the high water mark of the Salmon River or the Middle Fork and its tributaries for the purposes of construction or maintenance of public roads; *Provided further,* That this paragraph shall not apply to any written mineral leases approved by the Board of Land Commissioners of the State of Idaho prior to January 1, 1980.

[*See main edition for text of (E) and (F), (25) to (50)*]

(51) [1] VERDE, ARIZONA—The segment from the boundary between national forest and private land in sections 26 and 27, township 13 north, range 5 east, Gila Salt River meridian, downstream to the confluence with Red Creek, as generally depicted on a map entitled "Verde River—Wild and Scenic River", dated March 1984, which is on file and available for public inspection in the Office of the Chief, Forest Service, United States Department of Agriculture; to be administered by the Secretary of Agriculture. This designation shall not prevent water users receiving Central Arizona Project water allocations from diverting that water through an exchange agreement with downstream water users in accordance with Arizona water law. After consultation with State and local governments and the interested public and within two years after August 28, 1984, the Secretary shall take such action as is required under subsection (b) of this section.

(51) [1] AU SABLE, MICHIGAN—The segment of the main stem from the project boundary of the Mio Pond project downstream to the project boundary at Alcona Pond project as generally depicted on a map entitled "Au Sable River" which is on file and available for public inspection in the Office of the Chief, Forest Service, United States Department of Agriculture; to be administered by the Secretary of Agriculture.

(52) [2] TUOLUMNE, CALIFORNIA—The main river from its sources on Mount Dana and Mount Lyell in Yosemite National Park to Don Pedro Reservoir consisting of approximately 83 miles as generally depicted on the proposed boundary map entitled "Alternative A" contained in the Draft Tuolumne Wild and Scenic River Study and Environmental Impact Statement published by the United States Department of the Interior and Department of Agriculture in May 1979; to be administered by the Secretary of the Interior and the Secretary of Agriculture. After consultation with State and local governments and the interested public and within two

[1] So in original. There are two pars. designated (51).
[2] So in original. There are two pars. designated (52).

years from September 28, 1984, the Secretary shall take such action as is required under subsection (b) of this section. Nothing in this chapter shall preclude the licensing, development, operation, or maintenance of water resources facilities on those portions of the North Fork, Middle Fork or South Fork of the Tuolumne or Clavey Rivers that are outside the boundary of the wild and scenic river area as designated in this section. Nothing in this section is intended or shall be construed to affect any rights, obligations, privileges, or benefits granted under any prior authority of law including chapter 4 of the Act of December 19, 1913, commonly referred to as the Raker Act (38 Stat. 242) and including any agreement or administrative ruling entered into or made effective before September 28, 1984. For fiscal years commencing after September 30, 1985, there are authorized to be appropriated such sums as may be necessary to implement the provisions of this subsection.

(52)[3] ILLINOIS, OREGON: The segment from the boundary of the Siskiyou National Forest downstream to its confluence with the Rogue River as generally depicted on a map entitled "Illinois River Study" and is also part of a report entitled "A Proposal: Illinois Wild and Scenic River"; to be administered by the Secretary of Agriculture. After consultation with State and local governments and the interested public, the Secretary shall take such action as is required under subsection (b) of this section within one year from October 19, 1984. For the purposes of this chapter with respect to the river designated by this paragraph, effective October 1, 1984, there are authorized to be appropriated such sums as necessary for the acquisition of lands or interests in lands, and such sums as necessary for development.

(53) OWYHEE, OREGON: The South Fork from the Idaho-Oregon State line downstream to Three Forks; the Owyhee River from Three Forks downstream to China Gulch; and the Owyhee River downstream from Crooked Creek to the Owyhee Reservoir as generally depicted on a map entitled "Owyhee, Oregon" dated April 1984; all three segments to be administered as a wild river by the Secretary of the Interior. After consultation with State and local governments and the interested public, the Secretary shall take such appropriate action as is required under subsection (b) of this section within one year from October 19, 1984. For the purposes of this chapter with respect to the river designated by this paragraph, effective October 1, 1984, there are authorized to be appropriated such sums as necessary for the acquisition of lands or interests and such sums as necessary for development.

[See main edition for text of (b)]

(As amended Pub. L. 98-231, § 1, Mar. 14, 1984, 98 Stat. 60; Pub. L. 98-406, title I, § 104, Aug. 28, 1984, 98 Stat. 1491; Pub. L. 98-425, title II, § 201, Sept. 28, 1984, 98 Stat. 1632; Pub. L. 98-444, Oct. 4, 1984, 98 Stat. 1714; Pub. L. 98-494, § 1, Oct. 19, 1984, 98 Stat. 2274.)

[3] So in original. There are two pars. designated (52).

REFERENCES IN TEXT

The Raker Act, referred to in par. (52) of subsec. (a) appearing first, is act Dec. 19, 1913, ch. 4, 38 Stat. 242, which is not classified to the Code.

AMENDMENTS

1984—Subsec. (a)(16). Pub. L. 98-444, § 1, added "Notwithstanding any other provision of this chapter, the installation and operation of facilities or other activities within or outside the boundaries of the Pere Marquette Wild and Scenic River for the control of the lamprey eel should be permitted subject to such restrictions and conditions as the Secretary of Agriculture may prescribe for the protection of water quality and other values of the river, including the wild and scenic characteristics of the river."

Subsec. (a)(51). Pub. L. 98-444, § 2, added the par. (51) set out second relating to Au Sable, Michigan.

Pub. L. 98-406 added the par. (51) appearing first relating to Verde, Arizona.

Subsec. (a)(52). Pub. L. 98-494 added the par. (52) appearing second relating to Illinois, Oregon.

Pub. L. 98-425 added the par. (52) appearing first relating to Tuolumne, California.

Subsec. (a)(53). Pub. L. 98-494 added par. (53).

CHANGE OF NAME

"Frank Church—River of No Return Wilderness" was substituted in subsec. (a)(24)(D) for "River of No Return Wilderness" pursuant to Pub. L. 98-231, § 1, Mar. 14, 1984, 98 Stat. 60, which redesignated the River of No Return Wilderness as the Frank Church—River of No Return Wilderness.

§ 1276. Rivers constituting potential additions to national wild and scenic rivers system

(a) Enumeration of designated rivers

The following rivers are hereby designated for potential addition to the national wild and scenic rivers system:

[See main edition for text of (1) to (88)]

(89) Wildcat Brook, New Hampshire: The segment from its headwaters including the principal tributaries to its confluence with the Ellis River. The study authorized in this paragraph shall be completed no later than six years from June 19, 1984, and an interim report shall be prepared and submitted to the Congress no later than three years from June 19, 1984.

(90)[4] Horsepasture, North Carolina: The segment from Bohaynee Road (N.C. 281) downstream to Lake Jocassee.

(90)[4] The North Umpqua, Oregon: The segment from the Soda Springs Powerhouse to the confluence of Rock Creek. The provisions of section 1278(a) of this title shall apply to tributary Steamboat Creek in the same manner as such provisions apply to the rivers referred to in such section 1278(a) of this title. The Secretary of Agriculture shall, in the Umpqua National Forest plan, provide that management practices for Steamboat Creek and its immediate environment conserve, protect, and enhance the anadromous fish habitat and population.

(b) Studies and reports

[See main edition for text of (1) and (2)]

[4] So in original. There are two pars. designated (90).

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(3) The studies of the rivers named in paragraphs (59) through (76) of subsection (a) of this section shall be completed and reports submitted thereon not later than five full fiscal years after November 10, 1978. The study of rivers named in paragraphs (62) through (64) of subsection (a) of this section shall be completed and the report thereon submitted by not later than April 1981. The study of the river named in paragraph (90) of subsection (a) of this section [5] shall be completed not later than three years after October 17, 1984.

(4) There are authorized to be appropriated for the purpose of conducting the studies of the rivers named in subparagraphs (28) through (56) such sums as may be necessary, but not more than $4,060,000. There are authorized to be appropriated for the purpose of conducting the studies of the rivers named in subparagraphs (59) through (76) such sums as may be necessary. There are authorized to be appropriated for the purpose of conducting the study of the river named in paragraph (90) [6] such sums as may be necessary.

(5) The studies of the rivers in paragraphs (77) through (88) shall be completed and reports transmitted thereon not later than three full fiscal years from December 2, 1980. For the rivers listed in paragraphs (77), (78), and (79) the studies prepared and transmitted to the Congress pursuant to section 6505(c) of title 42 shall satisfy the requirements of this section.

(6) Studies of rivers listed in paragraphs (80) and (81) shall be completed, and reports submitted within and not later than the time when the Bristol Bay Cooperative Region Plan is submitted to Congress in accordance with section 3183 [7] of this title.

[See main edition for text of (c) and (d)]

(As amended Pub. L. 98-323, title II, § 201, June 19, 1984, 98 Stat. 261; Pub. L. 98-484, § 5, Oct. 17, 1984, 98 Stat. 2259; Pub. L. 98-494, § 2, Oct. 19, 1984, 98 Stat. 2274.)

REFERENCES IN TEXT

Paragraph (90) of subsection (a) of this section, referred to in subsec. (b)(3) and (4), refers to par. (90) of subsec. (a) appearing first which was added by Pub. L. 98-484 and which relates to Horsepasture, North Carolina.

CODIFICATION

In the original, section 3183 of this title, referred to in subsec. (b)(6), was "section 1204 of the Alaska National Interest Lands Conservation Act" and has been editorially translated as section 3183 of this title, which is section 1203 of that Act, as the probable intent of Congress, in view of that Act being enacted without a section 1204 and section 1203 of that Act relating to the Bristol Bay Cooperative Region Plan.

AMENDMENTS

1984—Subsec. (a)(89). Pub. L. 98-323 added par. (89).
Subsec. (a)(90). Pub. L. 98-494 added the par. (90) appearing second relating to North Umpqua, Oregon.
Pub. L. 98-484, § 5(a), added the par. (90) appearing first relating to Horsepasture, North Carolina.

Subsec. (b)(3). Pub. L. 98-484, § 5(b), required completion of the study of the Horsepasture River, North Carolina, within three years after Oct. 17, 1984.

Subsec. (b)(4). Pub. L. 98-484, § 5(c), authorized appropriations for conducting study of the Horsepasture River, North Carolina.

Subsec. (b)(5), (6). Pub. L. 98-484, § 5(c), redesignated pars. (4) and (5) added by Pub. L. 96-487, § 604(b), as pars. (5) and (6), respectively, which redesignation had been editorially made for purposes of codification, thereby requiring no change in text. See 1980 Amendment note.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 6 of Pub. L. 98-484 provided that: "The provisions of this Act [amending this section] shall take effect on the date of the enactment of this Act [Oct. 17, 1984]."

§ 1278. Restrictions on water resources projects

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1274, 1276, 1279, 1280 of this title.

§ 1281. Administration

MANAGEMENT OF SEGMENT OF SALMON RIVER DESIGNATED AS COMPONENT OF WILD AND SCENIC RIVER SYSTEM LOCATED WITHIN FRANK CHURCH—RIVER OF NO RETURN WILDERNESS OR GOSPEL-HUMP WILDERNESS

Pub. L. 96-312, § 9(b), July 23, 1980, 94 Stat. 953, as amended Pub. L. 98-231, § 1, Mar. 14, 1984, 98 Stat. 60, provided: "That segment of the main Salmon River designated as a component of the Wild and Scenic Rivers System by this Act [see section 1274(a)(24) of this title], which lies within the Frank Church—River of No Return Wilderness or the Gospel-Hump Wilderness designated by Public Law 95-237 [Pub. L. 95-237, § 4, Feb. 24, 1978, 92 Stat. 43], shall be managed under the provisions of the Wild and Scenic Rivers Act, as amended [this chapter], and the regulations promulgated pursuant thereto, notwithstanding section 10(b) of the Wild and Scenic Rivers Act [subsec. (b) of this section] or any provisions of the Wilderness Act [section 1131 et seq. of this title] to the contrary."

CHAPTER 31—MARINE MAMMAL PROTECTION

SUBCHAPTER II—CONSERVATION AND PROTECTION OF MARINE MAMMALS

§ 1371. Moratorium on taking and importing marine mammals and marine mammal products

(a) Imposition; exceptions

There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this chapter, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

[See main edition for text of (1)]

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 1374 of this title subject to regulations prescribed by the Secretary in accordance with section 1373 of this title. In any event it shall be the immediate goal that the incidental kill or incidental serious injury

[5] See References in Text note below.
[6] So in original. Probably refers to paragraph (90) of subsec. (a) of this section. See References in Text note below.
[7] See Codification note below.

of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate; provided that this goal shall be satisfied in the case of the incidental taking of marine mammals in the course of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commerical fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary—

(A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States; and

(B) in the case of yellowfin tuna harvested with purse seines in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

(i) the government of the harvesting nation has adopted a regulatory program governing the incidental taking of marine mammals in the course of such harvesting that is comparable to that of the United States; and

(ii) the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of marine mammals by United States vessels in the course of such harvesting.

[*See main edition for text of* (3) *to* (5); (b) *and* (c)]

(As amended Pub. L. 98-364, title I, § 101, July 17, 1984, 98 Stat. 440.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-364 amended last sentence generally, thereby restating existing provisions in cl. (A) and adding cl. (B).

§ 1374. Permits

[*See main edition for text of* (a) *to* (g)]

(h) General permits; extension of general permit to American Tunaboat Association; monitoring of incidental taking of marine mammals

(1) Consistent with the regulations prescribed pursuant to section 1373 of this title and to the requirements of section 1371 of this title, the Secretary may issue general permits for the taking of such marine mammals, together with regulations to cover the use of such general permits.

(2)(A) Subject to subparagraph (B), the general permit issued under paragraph (1) on December 1, 1980 to the American Tunaboat Association is extended to authorize and govern the taking of marine mammals incidental to commercial purse seine fishing for yellowfin tuna during each year after December 31, 1984.

(B) The extension granted under subparagraph (A) is subject to the following conditions:

(i) The extension shall cease to have force and effect at the time the general permit is surrendered or terminated.

(ii) The permittee and certificate holders shall use the best marine mammal safety techniques and equipment that are economically and technologically practicable.

(iii) During the period of the extension, the terms and conditions of the general permit that are in effect on July 17, 1984, shall apply, except that—

(I) the Secretary may make such adjustments as may be appropriate to those terms and conditions that pertain to fishing gear and fishing practice requirements and to permit administration;

(II) any such term and condition may be amended or terminated if the amendment or termination is based on the best scientific information available, including that obtained under the monitoring program required under paragraph (3)(A); and

(III) during each year of the extension, not to exceed 250 coastal spotted dolphin (Stenella attenuata) and not to exceed 2,750 eastern spinner dolphin (Stenella longirostris) may be incidentally taken under the general permit, and no accidental taking of either species is authorized at any time when incidental taking of that species is permitted.

(C) The quota on the incidental taking of coastal spotted dolphin and eastern spinner dolphin under paragraph (2)(B)(iii)(III) shall be treated—

(i) as within, and not in addition to, the overall annual quota under the general permit on the incidental taking of marine mammals; and

(ii) for purposes of paragraph (2)(B)(iii)(II), as a term of the general permit in effect on July 17, 1984.

(3)(A) The Secretary shall, commencing on January 1, 1985, undertake a scientific research program to monitor for at least five consecutive years, and periodically as necessary thereafter, the indices of abundance and trends of marine mammal population stocks which are incidentally taken in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

(B) If the Secretary determines, on the basis of the best scientific information available (including that obtained under the monitoring program), that the incidental taking of marine mammals permitted under the general permit referred to in paragraph (2) is having a significant adverse effect on a marine mammal population stock, the Secretary shall take such action as is necessary, after notice and an opportunity for an agency hearing on the record, to modify the applicable incidental take quotas

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or requirements for gear and fishing practices (or both such quotas and requirements) for such fishing so as to ensure that the marine mammal population stock is not significantly adversely affected by the incidental taking.

(C) For each year after 1984, the Secretary shall include in his annual report to the public and the Congress under section 1373(f) of this title a discussion of the proposed activities to be conducted each year as part of the monitoring program required by subparagraph (A).

(D) There are authorized to be appropriated to the Department of Commerce for purposes of carrying out the monitoring program required under this paragraph not to exceed $4,000,000 for the period beginning October 1, 1984, and ending September 30, 1988.

(As amended Pub. L. 98-364, title I, § 102, July 17, 1984, 98 Stat. 440.)

AMENDMENTS

1984—Subsec. (h). Pub. L. 98-364 designated existing provisions as par. (1), and added pars. (2) and (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1371, 1372, 1373, 1384 of this title; title 19 section 1466.

§ 1379. Transfer of management authority

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1153, 1362, 1371, 1372 of this title.

§ 1384. Authorization of appropriations

(a) Department of Commerce

There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under this subchapter (other than section 1374(h)(3) of this title), $7,223,000 for fiscal year 1982, $8,000,000 for fiscal year 1983, and $8,800,000 for each of fiscal years 1984, 1985, 1986, 1987, and 1988.

(b) Department of the Interior

There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out such functions and responsibilities as it may have been given under this subchapter, $1,600,000 for fiscal year 1982, $1,760,000 for fiscal year 1983, $2,000,000 for fiscal year 1984, $2,500,000 for fiscal year 1985, and $3,000,000 for each of fiscal years 1986, 1987, and 1988.

(As amended Pub. L. 98-364, title I, § 104(1), (2), July 17, 1984, 98 Stat. 442.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-364, § 104(1), added "(other than section 1374(h)(3) of this title)" after "this subchapter" and substituted "for each of fiscal years 1984, 1985, 1986, 1987, and 1988" for "for fiscal year 1984".

Subsec. (b). Pub. L. 98-364, § 104(2), substituted "$2,000,000 for fiscal year 1984, $2,500,000 for fiscal year 1985, and $3,000,000 for each of fiscal years 1986, 1987, and 1988" for "and $2,000,000 for fiscal year 1984".

SUBCHAPTER III—MARINE MAMMAL COMMISSION

§ 1401. Establishment

[*See main edition for text of* (a)]

(b) Membership and term of office

(1) Effective September 1, 1982, the Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate. The President shall make his selection from a list of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. Such list shall be submitted to him by the Chairman of the Council on Environmental Quality and unanimously agreed to by that Chairman, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation and the Chairman of the National Academy of Sciences. No member of the Commission may, during his period of service on the Commission, hold any other position as an officer or employee of the United States except as a retired officer or retired civilian employee of the United States.

[*See main edition for text of* (2); (c) *to* (e)]

(As amended Pub. L. 98-364, title I, § 103(a), July 17, 1984, 98 Stat. 441.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-364 substituted "The President shall make his selection from a list of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. Such list shall be submitted to him by the Chairman of the Council on Environmental Quality and unanimously agreed to by that Chairman, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation and the Chairman of the National Academy of Sciences" for "The President shall make his selection from a list, submitted to him by the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences, of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals".

§ 1406. Administration

The Commission, in carrying out its responsibilities under this subchapter, may—

[*See main edition for text of* (1) *to* (4)]

(5) incur such necessary expenses and exercise such other powers, as are consistent with and reasonably required to perform its functions under this subchapter; except that no fewer than 11 employees must be employed under paragraph (1) at any time. Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimburse-

ment from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of General Services.

(As amended Pub. L. 98-364, title I, § 103(b), July 17, 1984, 98 Stat. 442.)

AMENDMENTS

1984—Par. (5). Pub. L. 98-364 added "; except that no fewer than 11 employees must be employed under paragraph (1) at any time" at the end.

§ 1407. Authorization of appropriations

There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out this subchapter, $672,000 for fiscal year 1982, $1,000,000 for fiscal year 1983, and $1,100,000 for each of fiscal years 1984, 1985, 1986, 1987, and 1988.

(As amended Pub. L. 98-364, title I, § 104(3), July 17, 1984, 98 Stat. 442.)

AMENDMENTS

1984—Pub. L. 98-364 substituted "for each of fiscal years 1984, 1985, 1986, 1987, and 1988" for "for fiscal year 1984".

CHAPTER 32—MARINE SANCTUARIES

Sec.
1431. Findings, purposes, and policies.
(a) Findings.
(b) Purposes and policies.
1432. Definitions.
1433. Sanctuary designation standards.
(a) Standards.
(b) Factors and consultations required in making determinations and findings.
1434. Procedures for designation and implementation.
(a) Sanctuary proposal.
(b) Taking effect of designations.
(c) Access and valid rights.
1435. Application of regulations and international negotiations.
(a) Regulations.
(b) Negotiations.
1436. Research and education.
1437. Enforcement.
(a) In general.
(b) Civil penalties.
(c) Jurisdiction.
1438. Authorization of appropriations.
1439. Severability.

§ 1431. Findings, purposes, and policies

(a) Findings

The Congress finds that—

(1) this Nation historically has recognized the importance of protecting special areas of its public domain, but these efforts have been directed almost exclusively to land areas above the high-water mark;

(2) certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational, or esthetic qualities which give them special national significance;

(3) while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment;

(4) a Federal program which identifies special areas of the marine environment will contribute positively to marine resources conservation and management; and

(5) such a Federal program will also serve to enhance public awareness, understanding, appreciation, and wise use of the marine environment.

(b) Purposes and policies

The purposes and policies of this chapter are—

(1) to identify areas of the marine environment of special national significance due to their resource or human-use values;

(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas that will complement existing regulatory authorities;

(3) to support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas;

(4) to enhance public awareness, understanding, appreciation, and wise use of the marine environment; and

(5) to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.

(As amended Pub. L. 98-498, title I, § 102, Oct. 19, 1984, 98 Stat. 2296.)

AMENDMENTS

1984—Pub. L. 98-498 amended section generally, substituting provisions relating to Congressional declaration of findings, purposes and policies for provisions defining "Secretary" and "State". See section 1432 of this title.

SHORT TITLE OF 1984 AMENDMENT

Section 101 of title I of Pub. L. 98-498 provided that: "This title [enacting sections 1435 to 1439 of this title and amending sections 1431 to 1434 of this title] may be cited as the 'Marine Sanctuaries Amendments of 1984'."

§ 1432. Definitions

As used in this chapter, the term—

(1) "draft management plan" means the plan described in section 1434(a)(1)(E) [1] of this title;

(2) "Magnuson Act" means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(3) "marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, consistent with international law;

(4) "Secretary" means the Secretary of Commerce; and

(5) "State" means each of the several States, the District of Columbia, the Com-

[1] So in original. Probably should be "1434(a)(1)(C)(v)".

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monwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

(As amended Pub. L. 98-498, title I, § 102, Oct. 19, 1984, 98 Stat. 2297.)

REFERENCES IN TEXT

The Magnuson Fishery Conservation and Management Act, referred to in par. (2), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§ 1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

1984—Pub. L. 98-498 amended section generally, substituting provisions which set forth definitions for provisions which related to the designation of sanctuaries. See section 1433 of this title.

ADDITIONAL DEFINITIONS

Section 3 of Pub. L. 92-532, which is classified to section 1402 of Title 33, Navigation and Navigable Waters, defines for purposes of this chapter the terms "Administrator", "Ocean waters", "Material", "United States", "Person", "Dumping", "District Court of the United States", "Dredged material", "High-level radioactive waste", and "Transport" or "Transportation".

§ 1433. Sanctuary designation standards

(a) Standards

The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary—

(1) determines that the designation will fulfill the purposes and policies of this chapter; and

(2) finds that—

(A) the area is of special national significance due to its resource or human-use values;

(B) existing State and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(C) designation of the area as a national marine sanctuary will facilitate the objectives in subparagraph (B); and

(D) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(b) Factors and consultations required in making determinations and findings

(1) Factors

For purposes of determining if an area of the marine environment meets the standards set forth in subsection (a) of this section, the Secretary shall consider—

(A) the area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, and the biogeographic representation of the site;

(B) the area's historical, cultural, archaeological, or paleontological significance;

(C) the present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(D) the present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);

(E) the existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of this chapter;

(F) the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(G) the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(H) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development; and

(I) the socioeconomic effects of sanctuary designation.

(2) Consultation

In making determinations and findings, the Secretary shall consult with—

(A) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;

(B) the Secretaries of State, Defense, Transportation, and the Interior, the Administrator, and the heads of other interested Federal agencies;

(C) the responsible officials or relevant agency heads of the appropriate State and local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a national marine sanctuary;

(D) the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson Act (16 U.S.C. 1852) that may be affected by the proposed designation; and

(E) other interested persons.

(3) Resource assessment report

In making determinations and findings, the Secretary shall draft, as part of the environmental impact statement referred to in section 1434(a)(1) [1] of this title, a resource assess-

[1] So in original. Probably should be "1434(a)(2)".

ment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial or recreational uses. The Secretary, in consultation with the Secretary of the Interior, shall draft a resource assessment section for the report regarding any commercial or recreational resource uses in the area under consideration that are subject to the primary jurisdiction of the Department of the Interior.

(As amended Pub. L. 98-498, title I, § 102, Oct. 19, 1984, 98 Stat. 2297.)

AMENDMENTS

1984—Pub. L. 98-498 amended section generally, substituting provisions relating to sanctuary designation standards for provisions relating to penalties. See sction 1437(b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1434 of this title.

§ 1434. Procedures for designation and implementation

(a) Sanctuary proposal

(1) Notice

In proposing to designate a national marine sanctuary, the Secretary shall—

(A) issue, in the Federal Register, a notice of the proposal, proposed regulations that may be necessary and reasonable to implement the proposal, and a summary of the draft management plan;

(B) provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal; and

(C) on the same day the notice required by subparagraph (A) is issued, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a prospectus on the proposal which shall contain—

(i) the terms of the proposed designation;

(ii) the basis of the findings made under section 1433(a) of this title with respect to the area;

(iii) an assessment of the considerations under section 1433(b)(1) of this title;

(iv) proposed mechanisms to coordinate existing regulatory and management authorities within the area;

(v) the draft management plan detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement, including surveillance activities for the area;

(vi) an estimate of the annual cost of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education;

(vii) the draft environmental impact statement;

(viii) an evaluation of the advantages of cooperative State and Federal management if all or part of a proposed marine sanctuary is within the territorial limits of any State or is superjacent to the subsoil and seabed within the seaward boundary of a State, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 et seq.); and

(ix) the proposed regulations referred to in subparagraph (A).

(2) Environmental impact statement

The Secretary shall—

(A) prepare a draft environmental impact statement, as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), on the proposal that includes the resource assessment report required under section 1433(b)(3) of this title, maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area; and

(B) make copies of the draft environmental impact statement available to the public.

(3) Public hearing

No sooner than thirty days after issuing a notice under this subsection, the Secretary shall hold at least one public hearing in the coastal area or areas that will be most affected by the proposed designation of the area as a national marine sanctuary for the purpose of receiving the views of interested parties.

(4) Terms of designation

The terms of designation of a sanctuary shall include the geographic area proposed to be included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. The terms of designation may be modified only by the same procedures by which the original designation is made.

(5) Fishing regulations

The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the United States Fishery Conservation Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the

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fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations.

(6) Committee action

After receiving the prospectus under subsection (a)(1)(C) of this section, the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the prospectus. If within the forty-five day period of continuous session of Congress beginning on the date of submission of the prospectus, either Committee issues a report concerning matters addressed in the prospectus, the Secretary shall consider this report before publishing a notice to designate the national marine sanctuary.

(b) Taking effect of designations

(1) Notice

In designating a national marine sanctuary, the Secretary shall publish in the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, and submit such notice to the Congress. The Secretary shall advise the public of the availability of the final management plan and the final environmental impact statement with respect to such sanctuary. No notice of designation may occur until the expiration of the period for Committee action under subsection (a)(6) of this section. The designation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless—

(A) the designation or any of its terms is disapproved by enactment of a joint resolution of disapproval described in paragraph (3); or

(B) in the case of a natural marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.

(2) Withdrawal of designation

If the Secretary considers that actions taken under paragraph (1)(A) or (B) will affect the designation of a national marine sanctuary in a manner that the goals and objectives of the sanctuary cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not disapproved under paragraph (1)(A) or not certified under paragraph (1)(B) shall take effect.

(3) Resolution of disapproval

For the purposes of this subsection, the term "resolution of disapproval" means a joint resolution which states after the resolving clause the following: "That the Congress disapproves the national marine sanctuary designation entitled that was submitted to Congress by the Secretary of Commerce on .", the first blank space being filled with the title of the designation and the second blank space being filled with the date on which the notice was submitted to Congress. In the event that the disapproval is addressed to one or more terms of the designation, the joint resolution shall state after the resolving clause the following: 'That the Congress approves the national marine sanctuary designation entitled that was submitted to Congress by the Secretary of Commerce on but disapproves the following terms of such designation: .', the first blank space being filled with the title of the designation, the second blank space being filled with the date on which the notice was submitted to Congress, and the third blank space referencing each term of the designation which is disapproved.

(4) Procedures

(A) In computing the forty-five-day periods of continuous session of Congress pursuant to subsection (a)(6) of this section and paragraph (1) of this subsection—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain are excluded.

(B) When the committee to which a joint resolution has been referred has reported such a resolution, it shall at any time thereafter be in order to move to proceed to the consideration of the resolution. The motion shall be privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) This subsection is enacted by Congress as an exercise of the rulemaking power of each House of Congress, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the case of resolutions described in this subsection. This subsection supersedes other rules only to the extent that they are inconsistent therewith, and is enacted with full recognition of the constitutional right of either House to change the rules (so far as those relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(c) Access and valid rights

(1) Nothing in this chapter shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access if the lease, permit, license, or right—

(A) was in existence on October 19, 1984, with respect to any national marine sanctuary designated before that date; or

(B) is in existence on the date of designation of any national marine sanctuary, with respect to any national marine sanctuary designated after October 19, 1984.

(2) The exercise of a lease, permit, license, or right is subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated.

(As amended Pub. L. 98–498, title I, § 102, Oct. 19, 1984, 98 Stat. 2298.)

REFERENCES IN TEXT

The Submerged Lands Act, referred to in subsec. (a)(1)(C)(viii), is act May 22, 1953, ch. 65, 67 Stat. 29, as amended, which is classified generally to subchapters I and II (§§ 1301 et seq., 1311 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43, and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (a)(2)(A), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

1984—Pub. L. 98–498 amended section generally, substituting provisions relating to procedures for designation and implementation of a marine sanctuary for provisions relating to authorization of appropriations. See section 1438 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1432, 1433, 1435 of this title.

§ 1435. Application of regulations and international negotiations

(a) Regulations

The regulations issued under section 1434 of this title shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with—

(1) generally recognized principles of international law;

(2) an agreement between the United States and the foreign state of which the person is a citizen; or

(3) an agreement between the United States and the flag state of a foreign vessel, if the person is a crewmember of the vessel.

(b) Negotiations

The Secretary of State, in consultation with the Secretary, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of any national marine sanctuary and to promote the purposes for which the sanctuary is established.

(Pub. L. 92–532, title III, § 305, as added Pub. L. 98–498, title I, § 102, Oct. 19, 1984, 98 Stat. 2302.)

INTERNATIONAL COOPERATION

For direction that the Secretary of State seek effective international action and cooperation through the development of appropriate international rules and regulations in support of the policy of this chapter and chapter 27 of Title 33, Navigation and Navigable Waters, see section 1419 of Title 33.

§ 1436. Research and education

The Secretary shall conduct research and educational programs as are necessary and reasonable to carry out the purposes and policies of this chapter.

(Pub. L. 92–532, title III, § 306, as added Pub. L. 98–498, title I, § 102, Oct. 19, 1984, 98 Stat. 2302.)

§ 1437. Enforcement

(a) In general

The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this chapter. The Secretary shall, whenever appropriate, utilize by agreement the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities on a reimbursable basis in carrying out the Secretary's responsibilities under this chapter.

(b) Civil penalties

(1) Civil penalty

Any person subject to the jurisdiction of the United States who violates any regulation issued under this chapter shall be liable to the United States for a civil penalty of not more than $50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(2) Notice

No penalty shall be assessed under this subsection until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

(3) In rem jurisdiction

A vessel used in the violation of a regulation issued under this chapter shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

(c) Jurisdiction

The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued under this chapter, and to

grant such other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States. The Attorney General may bring suit either on the Attorney General's own initiative or at the request of the Secretary.

(Pub. L. 92-532, title III, § 307, as added Pub. L. 98-498, title I, § 102, Oct. 19, 1984, 98 Stat. 2302.)

§ 1438. Authorization of appropriations

To carry out this chapter, there are authorized to be appropriated:

(1) $3,000,000 for fiscal year 1985.
(2) $3,300,000 for fiscal year 1986.
(3) $3,600,000 for fiscal year 1987.
(4) $3,900,000 for fiscal year 1988.

(Pub. L. 92-532, title III, § 308, as added Pub. L. 98-498, title I, § 102, Oct. 19, 1984, 98 Stat. 2303.)

§ 1439. Severability

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of this Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

(Pub. L. 92-532, title III, § 309, as added Pub. L. 98-498, title I, § 102, Oct. 19, 1984, 98 Stat. 2303.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 92-532, which enacted this chapter and chapter 27 (§ 1401 et seq.) of Title 33, Navigation and Navigable Waters.

CHAPTER 33—COASTAL ZONE MANAGEMENT

Sec.
1463a. Omitted.
1463b. National Coastal Resources Research and Development Institute.
(a) Establishment by Secretary; administration.
(b) Purposes of Institute.
(c) Determination of Institute policies.
(d) Establishment of Advisory Council; functions and composition.
(e) Administration of Institute.
(f) Evaluation of Institute by Secretary.
(g) Report to Secretary.
(h) Access to Institute books, records, and documents.
(i) Status of Institute employees.
(j) Authorization of appropriations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3505, 3509 of this title; title 33 sections 1503, 1508; title 42 sections 9111, 9115; title 43 sections 1351, 1866; title 46 section 13101.

§ 1453. Definitions

PROC. NO. 5030. EXCLUSIVE ECONOMIC ZONE

Proc. No. 5030, Mar. 10, 1983, 48 F.R. 10605, provided:

WHEREAS the Government of the United States of America desires to facilitate the wise development and use of the oceans consistent with international law;

WHEREAS international law recognizes that, in a zone beyond its territory and adjacent to its territorial sea, known as the Exclusive Economic Zone, a coastal State may assert certain sovereign rights over natural resources and related jurisdiction; and

WHEREAS the establishment of an Exclusive Economic Zone by the United States will advance the development of ocean resources and promote the protection of the marine environment, while not affecting other lawful uses of the zone, including the freedoms of navigation and overflight, by other States;

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution and laws of the United States of America, do hereby proclaim the sovereign rights and jurisdiction of the United States of America and confirm also the rights and freedoms of all States within an Exclusive Economic Zone, as described herein.

The Exclusive Economic Zone of the United States is a zone contiguous to the territorial sea, including zones contiguous to the territoral sea of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement), and United States overseas territories and possessions. The Exclusive Economic Zone extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. In cases where the maritime boundary with a neighboring State remains to be determined, the boundary of the Exclusive Economic Zone shall be determined by the United States and other State concerned in accordance with equitable principles.

Within the Exclusive Economic Zone, the United States has, to the extent permitted by international law, (a) sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and non-living, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and (b) jurisdiction with regard to the establishment and use of artificial islands, and installations and structures having economic purposes, and the protection and preservation of the marine environment.

This Proclamation does not change existing United States policies concerning the continental shelf, marine mammals and fisheries, including highly migratory species of tuna which are not subject to United States jurisdiction and require international agreements for effective management.

The United States will exercise these sovereign rights and jurisdiction in accordance with the rules of international law.

Without prejudice to the sovereign rights and jurisdiction of the United States, the Exclusive Economic Zone remains an area beyond the territory and territorial sea of the United States in which all States enjoy the high seas freedoms of navigation, overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of March, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

RONALD REAGAN.

§ 1463a. Omitted

CODIFICATION

Section, Pub. L. 96-464, § 12(a)-(g), Oct. 17, 1980, 94 Stat. 2067; Pub. L. 98-620, title IV, § 402(20), Nov. 8, 1984, 98 Stat. 3358, which required the Secretary of Commerce to submit to Congress any final rule promulgated pursuant to this chapter and provided procedures for Congressional disapproval of such rules was omitted pursuant to section 12(h) of Pub. L. 96-464,

which provided that this section would cease to have any force or effect after Sept. 30, 1985.

§ 1463b. National Coastal Resources Research and Development Institute

(a) Establishment by Secretary; administration

The Secretary of Commerce shall provide for the establishment of a National Coastal Resources Research and Development Institute (hereinafter in this section referred to as the "Institute") to be administered by the Oregon State Marine Science Center.

(b) Purposes of Institute

The Institute shall conduct research and carry out educational and demonstration projects designed to promote the efficient and responsible development of ocean and coastal resources, including arctic resources. Such projects shall be based on biological, geological, genetic, economic and other scientific research applicable to the purposes of this section and shall include studies on the economic diversification and environmental protection of the Nation's coastal areas.

(c) Determination of Institute policies

(1) The policies of the Institute shall be determined by a Board of Governors composed of—

(A) two representatives appointed by the Governor of Oregon;

(B) one representative appointed by the Governor of Alaska;

(C) one representative appointed by the Governor of Washington;

(D) one representative appointed by the Governor of California; and

(E) one representative appointed by the Governor of Hawaii.

(2) Such policies shall include the selection, on a nationally competitive basis, of the research, projects, and studies to be supported by the Institute in accordance with the purposes of this section.

(d) Establishment of Advisory Council functions and composition

(1) The Board of Governors shall establish an Advisory Council composed of specialists in ocean and coastal resources from the academic community.

(2) To the maximum extent practicable, the Advisory Council shall be composed of such specialists from every coastal region of the Nation.

(3) The Advisory Council shall provide such advice to the Board of Governors as such Board shall request, including recommendations regarding the support of research, projects, and studies in accordance with the purposes of this section.

(e) Administration of Institute

The Institute shall be administered by a Director who shall be appointed by the Chancellor of the Oregon Board of Higher Education in consultation with the Board of Governors.

(f) Evaluation of Institute by Secretary

The Secretary of Commerce shall conduct an ongoing evaluation of the activities of the Institute to ensure that funds received by the Institute under this section are used in a manner consistent with the provisions of this section.

(g) Report to Secretary

The Institute shall report to the Secretary of Commerce on its activities within 2 years after July 17, 1984.

(h) Access to Institute books, records and documents

The Comptroller General of the United States, and any of his duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers and records of the Institute that are pertinent to the funds received under this section.

(i) Status of Institute employees

Employees of the Institute shall not, by reason of such employment, be considered to be employees of the Federal Government for any purpose.

(j) Authorization of appropriations

For the purposes of this section, there are authorized to be appropriated in each fiscal year $5,000,000, commencing with fiscal year 1985.

(Pub. L. 98-364, title II, § 201, July 17, 1984, 98 Stat. 443.)

REFERENCES IN TEXT

This section, referred to in subsecs. (a) to (d), (f), (h) and (j), was in the original "this title", meaning title II of Pub. L. 98-364, which enacted this section.

CODIFICATION

Section was not enacted as part of the Coastal Zone Management Act of 1972 which comprises this chapter.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 34—RURAL ENVIRONMENTAL CONSERVATION PROGRAM

§ 1501. Establishment and purpose of programs; contracting and purchasing authority of Secretary; maintenance of continuing and stable supply of agricultural commodities and forest products

Notwithstanding any other provision of law the Secretary shall carry out the purposes specified in clauses (1), (2), (3), (4), and (6) of section 590g(a) of this title, section 590p(b) of this title, and in the Water Bank Act [16 U.S.C. § 1301 et seq.] by entering into contracts of three, five, ten, or twenty-five years with, and at the option of, eligible owners and operators of land as determined by the Secretary and having such control as the Secretary determines to be needed on the farms, ranches, wet-

lands, forests, or other lands covered thereby. In addition, the Secretary is hereby authorized to purchase easements for a term of not less than 50 years to promote said purpose of this chapter, including the sound use and management of flood plains, shore lands, and aquatic areas of the Nation. Such contracts shall be designed to assist farm, ranch, wetland, and nonindustrial private forest owners and operators, or other owners or operators, to make, in orderly progression over a period of years, such changes, if any, as are needed to effectuate any of the purposes specified in clauses (1), (2), (3), (4), and (6) of section 590g(a) of this title; section 590p(b) of this title; the Water Bank Act; in enlarging fish and wildlife and recreation sources; in improving the level of management of nonindustrial private forest lands; and in providing long-term wildlife and upland game cover. In carrying out the provisions of this chapter, due regard shall be given to the maintenance of a continuing and stable supply of agricultural commodities and forest products adequate to meet consumer demand at prices fair to both producers and consumers.

(As amended Pub. L. 99-198, title XIII, § 1318(b)(2), Dec. 23, 1985, 99 Stat. 1531.)

AMENDMENTS

1985—Pub. L. 99-198 substituted "easements for a term of not less than 50 years" for "perpetual easements" in second sentence.

CHAPTER 35—ENDANGERED SPECIES

§ 1540. Penalties and enforcement

[*See main edition for text of* (a) *to* (c)]

(d) Rewards and incidental expenses

The Secretary or the Secretary of the Treasury shall pay, from sums received as penalties, fines, or forfeitures of property for any violation of this chapter or any regulation issued hereunder (1) a reward to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this chapter or any regulation issued hereunder. The amount of the reward, if any, is to be designated by the Secretary or the Secretary of the Treasury, as appropriate. Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of his official duties is ineligible for payment under this subsection, and (2) the reasonable and necessary costs incurred by any person in providing temporary care for any fish, wildlife, or plant pending the disposition of any civil or criminal proceeding alleging a violation of this chapter with respect to that fish, wildlife, or plant.

[*See main edition for text of* (e) *to* (h)]

(As amended Pub. L. 98-327, § 4, June 25, 1984, 98 Stat. 271.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-327 substituted a comma for "a reward" after "shall pay" in first sentence, added "(1) a reward" before "to any person", and added cl. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1536, 1539 of this title; title 42 section 10601.

CHAPTER 36—FOREST AND RANGELAND RENEWABLE RESOURCES PLANNING

SUBCHAPTER I—PLANNING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 460*oo*, 472a, 539c, 582a, 670*o*, 1641, 2101 of this title; title 43 section 1721.

§ 1600. Congressional findings

ACT REFERRED TO IN OTHER SECTIONS

The National Forest Management Act of 1976 is referred to in sections 460*ll*, 460qq of this title; title 43 section 1635.

§ 1604. National Forest System land and resource management plans

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 460*oo*, 539d, 542d, 1611 of this title; title 42 section 8855; title 43 section 1752.

§ 1606a. Reforestation Trust Fund

[*See main edition for text of* (a) *to* (c)]

(d) Obligations from Trust Fund

The Secretary of Agriculture is on and after December 19, 1985, authorized to obligate such sums as are available in the Trust Fund (including any amounts not obligated in previous fiscal years) for—

(1) reforestation and timber stand improvement as specified in section 1601(d) of this title; and

(2) properly allocable administrative costs of the Federal Government for the activities specified above.

(e) Repealed. Pub. L. 99-190, § 101(d) [title II, § 201], Dec. 19, 1985, 99 Stat. 1224, 1245

(Pub. L. 99-190, § 101(d) [title II, § 201], Dec. 19, 1985, 99 Stat. 1224, 1245.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-190 amended subsec. (d) generally, substituting provisions authorizing the Secretary to obligate available sums in the Trust Fund, for provisions requiring the Secretary to expend all available amounts in each of fiscal years 1983, 1984, and 1985.

Subsec. (e). Pub. L. 99-190 struck out subsec. (e) which related to sense of Congress with respect to disposition of unexpended funds.

CHAPTER 38—FISHERY CONSERVATION AND MANAGEMENT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 917, 1432, 1827, 3125, 3373, 3377, 3601, 3607, 3631 of this title; title 22 section 1980; title 33 section 1321; title 42 sections 9601, 9603.

SUBCHAPTER I—GENERALLY

§ 1802. Definitions

As used in this chapter, unless the context otherwise requires—

[*See main edition for text of (1) to (26)*]

(27) The term "vessel of the United States" means—

(A) any vessel documented under the laws of the United States;

(B) any vessel numbered in accordance with chapter 123 of title 46 and measuring less than 5 net tons; or

(C) any vessel numbered under chapter 123 of title 46 and used exclusively for pleasure.

[*See main edition for credits*]

CODIFICATION

In par. (27)(B), (C), "chapter 123 of title 46" was substituted for "the Federal Boat Safety Act of 1971 [46 U.S.C. 1451 et seq.]" on authority of Pub. L. 98-89, § 2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 917a, 3377, 3601 of this title; title 22 sections 1971, 1980; title 46 App. section 1271.

SUBCHAPTER II—FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES

§ 1811. Fishery conservation zone

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 773, 1021, 1802, 1827 of this title; title 46 section 12101.

SUBCHAPTER III—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

§ 1821. Foreign fishing

[*See main edition for text of (a) and (b)*]

(c) Governing international fishery agreements

Foreign fishing described in subsection (a) of this section may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 1823 of this title. Any such international fishery agreement shall hereafter in this chapter be referred to as a "governing international fishery agreement". Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this chapter. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions:

[*See main edition for text of (1)*]

(2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that—

[*See main edition for text of (A) to (C)*]

(D) United States observers required under subsection (i) of this section be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel;

[*See main edition for text of (E) to (G)*]

and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

[*See main edition for text of (3) and (4)*]

(d) Total allowable level of foreign fishing

[*See main edition for text of (1) to (3)*]

(4) If with respect to any harvesting season for any United States fishery for which the total allowable level of foreign fishing is determined under paragraph (2)(B), the Secretary, in consultation with the Secretary of State, approves the determination by any appropriate fishery management council that any portion of the optimum yield for that harvesting season will not be harvested by vessels of the United States, the Secretary of State, in accordance with subsection (e) of this section, may allocate such portion for use during that harvesting season by foreign fishing vessels; except that if—

[*See main edition for text of (A) and (B)*]

then such portion or part may be allocated for use by foreign fishing vessels in such succeeding harvesting season. The determinations required to be made under subparagraphs (A) and (B) of the preceding sentence shall be made by the Secretary in consultation with the Secretary of State and on the basis of any recomendation [1] of any appropriate fishery management council.

(e) Allocation of allowable level

(1)(A) The Secretary of State, in cooperation with the Secretary, may make allocations to foreign nations from the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States.

[*See main edition for text of (B) to (D)*]

(E) The determinations required to be made under subparagraphs (A) and (D)(ii), and the apportionments required to be made under subparagraph (C), with respect to a foreign nation shall be based on—

(i) whether, and to what extent, such nation imposes tariff barriers or nontariff

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[1] So in original. Probably should be "recommendation".

barriers on the importation, or otherwise restricts the market access, of both United States fish and fishery products, particularly fish and fishery products for which the foreign nation has requested an allocation;

(ii) whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;

[*See main edition for text of (iii) to (viii), (2); (f) to (h)*]

(i) Full observer coverage program

[*See main edition for text of (1) to (5)*]

(6) If at any time the requirement set forth in paragraph (1) cannot be met because of insufficient appropriations, the Secretary shall, in implementing a supplementary observer program:

(A) certify as observers, for the purposes of this subsection, individuals who are citizens or nationals of the United States and who have the requisite education or experience to carry out the functions referred to in paragraph (3);

(B) establish standards of conduct for certified observers equivalent to those applicable to Federal personnel;

(C) establish a reasonable schedule of fees that certified observers or their agents shall be paid by the owners and operators of foreign fishing vessels for observer services; and

(D) monitor the performance of observers to ensure that it meets the purposes of this chapter.

[*See main edition for text of (j)*]

(Pub. L. 94-265, title II, § 201, Apr. 13, 1976, 90 Stat. 337; Pub. L. 95-354, § 4(1)-(4), Aug. 28, 1978, 92 Stat. 519, 520; Pub. L. 96-61, § 3(a), Aug. 15, 1979, 93 Stat. 407; Pub. L. 96-118, § 5, Nov. 16, 1979, 93 Stat. 860; Pub. L 96-561, title II, §§ 230, 231(a), 236, Dec. 22, 1980, 94 Stat. 3296, 3297, 3299; Pub. L. 97-453, § 2(a), Jan. 12, 1983, 96 Stat. 2481; Pub. L. 98-623, title IV, § 404(1), (2), Nov. 8, 1984, 98 Stat. 3408.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c), (d)(2)(A), (e)(2)(C)(iii), (h), and (i)(3), (6)(D), was in the original "this Act", meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

1984—Subsec. (d)(4). Pub. L. 98-623, § 404(1), substituted "may allocate" for "shall allocate" in provisions preceding subpar. (A).

Subsec. (e)(1)(A). Pub. L. 98-623, § 404(2)(A), substituted "may make allocations to foreign nations from" for "shall determine the allocation among foreign nations of".

Subsec. (e)(1)(E)(i). Pub. L. 98-623, § 404(2)(B), substituted "both United States fish and fishery products" for "United States fish or fishery products" and inserted ", particularly fish and fishery products for which the foreign nation has requested an allocation".

Subsec. (e)(1)(E)(ii). Pub. L. 98-623, § 404(2)(C), amended provisions generally, thereby substituting "in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation" for "in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen".

1983—Subsec. (c)(2)(D). Pub. L. 97-453, § 2(a)(1), amended par. (D) generally, substituting "United States observers required under subsection (i) of this section be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel" for "duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers".

Subsec. (i)(6). Pub. L. 97-453, § 2(a)(5)(A)(ii), added par. (6).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 2(b) of Pub. L. 97-453 provided that: "The amendments made by subsection (a)(1) and (5)(A)(ii) [amending subsecs. (c)(2)(D) and (i)(6) of this section] shall take effect January 1, 1984."

§ 1823. Congressional oversight of governing international fishery agreements

GOVERNING INTERNATIONAL FISHERY AGREEMENTS WITH ICELAND AND THE EUROPEAN ECONOMIC COMMUNITY

Pub. L. 98-623, title I, Nov. 8, 1984, 98 Stat. 3394, provided that: "Notwithstanding section 203 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1823) [this section]—

"(1) the governing international fishery agreement between the Government of the United States and the European Economic Community Concerning Fisheries Off the Coasts of the United States, as contained in the Message to Congress from the President of the United States dated August 27, 1984, is hereby approved by Congress as a governing international fishery agreement for purposes of that Act [this chapter], and may enter into force with respect to the United States in accordance with the terms of Article XIX of the agreement after the date of the enactment of this title [Nov. 8, 1984], upon signature of the agreement by both parties; and

"(2) the governing international fishery agreement between the Government of the United States and the Government of the Republic of Iceland Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated September 29, 1984, is hereby approved by Congress as a governing international fishery agreement for purposes of that Act [this chapter], and may enter into force with respect to the United States in accordance with the terms of Article XVI of the agreement after the date of the enactment of this title [Nov. 8, 1984]."

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH FAROE ISLANDS AND DENMARK

Pub. L. 98-498, title IV, § 440, Oct. 19, 1984, 98 Stat. 2310, provided that: "Notwithstanding section 203 of the Magnuson Fishery Conservation and Management Act of 1976 [this section], the Governing International Fishery Agreement between the Government of the United States of America of the One Part and the Home Government of the Faroe Islands and the Government of Denmark of the Other Part Concerning Faroese Fishing in Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated July 13, 1984—

"(1) is approved by Congress as a governing international fishery agreement for purposes of that Act [this chapter]; and

"(2) may enter into force with respect to the United States in accordance with the terms of Article XVI of the Agreement following the enactment of this title [Oct. 19, 1984]."

EXTENSION OF INTERNATIONAL FISHERY AGREEMENTS

Pub. L. 98-364, title I, § 106, July 17, 1984, 98 Stat. 442, provided that: "Notwithstanding any provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) [this chapter], and upon certification by the Secretary of State to the President of the Senate and the Speaker of the House of Representatives that a new governing international fishery agreement in conformity with such Act has been negotiated by the United States and the European Economic Community, the existing governing international fishery agreement referred to in section 2(a)(7) of the Fishery Conservation Zone Transition Act (16 U.S.C. 1823, note) [Pub. L. 95-6] may be extended or reinstated, as the case may be, and may be in force and effect with respect to the United States, for the period of time ending on the earlier of (1) the effective date of the new governing international fishery agreement, or (2) September 30, 1984."

CONGRESSIONAL APPROVAL OF CERTAIN GOVERNING INTERNATIONAL FISHERY AGREEMENTS

Pub. L. 95-6, § 2, Feb. 21, 1977, 91 Stat. 15, as amended by Pub. L. 95-8, § 1, Mar. 3, 1977, 91 Stat. 18; Pub. L. 95-219, § 1, Dec. 28, 1977, 91 Stat. 1613; Pub. L. 96-561, title II, § 238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 97-212, § 10(a), June 30, 1982, 96 Stat. 148; Pub. L. 98-44, title I, § 105, July 12, 1983, 97 Stat. 217; Pub. L. 98-364, title I, § 105, July 17, 1984, 98 Stat. 442, provided that:

[*See main edition for text of* (a) *and* (b)]

"(c) Notwithstanding such section 203 [this section]—

"(1) the governing international fishery agreement referred to in subsection (a)(5), as extended until December 31, 1985, pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of the United States dated May 8, 1984, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976 [this chapter];

"(2) the governing international fishery agreement referred to in subsection (a)(6), as extended until December 31, 1985, pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of the United States dated May 7, 1984, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976 [this chapter]; and

"(3) the governing international fishery agreement referred to in subsection (a)(4), as contained in the message to the House of Representatives and the Senate from the President of the United States dated May 3, 1983, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976 [this chapter].

The government international fishery agreements referred to in paragraphs (1) and (2) shall enter into force and effect with respect to the United States on July 1, 1984; and the governing international fishery agreement referred to in paragraph (3) shall enter into force and effect with respect to the United States on July 1, 1983."

§ 1825. Import prohibitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 972c of this title.

SUBCHAPTER IV—NATIONAL FISHERY MANAGEMENT PROGRAM

§ 1851. National standards for fishery conservation and management

(a) In general

Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this subchapter shall be consistent with the following national standards for fishery conservation and management:

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

[*See main edition for text of* (2) *to* (7); (b)]

(As amended Pub. L. 98-623, title IV, § 404(3), Nov. 8, 1984, 98 Stat. 3408.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-623 added "for the United States fishing industry".

ATLANTIC STRIPED BASS CONSERVATION

Pub. L. 98-613, §§ 1-9, Oct. 31, 1984, 98 Stat. 3187-3190, provided that:

"SECTION 1. SHORT TITLE.

"This Act [enacting this note and amending section 757g of this title] may be cited as the 'Atlantic Striped Bass Conservation Act'.

"SEC. 2. FINDINGS AND PURPOSES.

"(a) FINDINGS.—The Congress finds and declares the following:

"(1) Atlantic striped bass are of historic commercial and recreational importance and economic benefit to the Atlantic coastal States and to the Nation.

"(2) As a consequence of increased fishing pressure, environmental pollution, the loss and alteration of habitat, and the inadequacy of fishery conservation and management practices and controls, certain stocks of Atlantic striped bass have been severely reduced in number.

"(3) Because no single government entity has full management authority throughout the range of the Atlantic striped bass, the harvesting and conservation of these fish have been subject to diverse, inconsistent, and intermittent State regulation that has been detrimental to the long-term maintenance of stocks of the species and to the interests of fishermen and the Nation as a whole.

"(4) It is in the national interest to implement effective procedures and measures to provide for effective interjurisdictional conservation and management of this species.

"(b) PURPOSE.—It is therefore declared to be the purpose of the Congress in this Act to support and encourage the development, implementation, and enforcement of effective interstate action regarding the

conservation and management of the Atlantic striped bass.

"SEC. 3. DEFINITIONS.

"As used in this Act—

"(1) The term 'Act of 1976' means the Act entitled 'An Act to provide for the conservation and management of the fisheries, and for other purposes', approved April 13, 1976 (16 U.S.C. 1801 et seq.).

"(2) The term 'Atlantic striped bass' means members of stocks or populations of the species Morone saxatilis, which ordinarily migrate seaward of the waters described in paragraph (3)(A).

"(3) The term 'coastal waters' means—

"(A) all waters, whether salt or fresh, of a coastal State shoreward of the baseline from which the territorial sea of the United States is measured; and

"(B) the waters of a coastal State seaward from the baseline referred to in subparagraph (A) to the inner boundary of the exclusive economic zone.

"(4) The term 'coastal State' means Pennsylvania and each State of the United States bordering on the Atlantic Ocean north of the State of South Carolina.

"(5) The term 'Commission' means the Atlantic States Marine Fisheries Commission established under the interstate compact consented to and approved by the Congress in Public Laws 77-539 [May 4, 1942, ch. 283, 56 Stat. 267] and 81-721 [Aug. 19, 1950, ch. 763, 64 Stat. 467].

"(6) The term 'fishing' means—

"(A) the catching, taking, or harvesting of Atlantic striped bass, except when incidental to harvesting that occurs in the course of commercial or recreational fish catching activities directed at a species other than Atlantic striped bass;

"(B) the attempted catching, taking, or harvesting of Atlantic striped bass; and

"(C) any operation at sea in support of, or in preparation for, any activity described in subparagraph (A) or (B).

The term does not include any scientific research authorized by the Federal Government or by any State government.

"(7) The term 'Plan' means the Interstate Fisheries Management Plan for Striped Bass, dated October 1, 1981, prepared by the Commission, and all amendments thereto related to fishing, including interim restoration measures for Chesapeake Bay striped bass stocks as developed by the Atlantic States Marine Fisheries Commission Striped Bass Management Board in December 1983, whether or not such language is formally adopted as an amendment to the Plan of October 1, 1981.

"(8) The term 'Secretary' means the Secretary of Commerce.

"(9) The term 'Secretaries' means the Secretary of Commerce and the Secretary of the Interior.

"SEC. 4. COMMISSION FUNCTIONS.

"(a) COASTAL STATE REGULATORY MEASURES.—The Commission shall decide during June 1985 whether each coastal state [State] has adopted all regulatory measures necessary to fully implement the Plan in its coastal waters. The Commission shall immediately notify the Secretaries of each negative determination made by it under the preceding sentence.

"(b) MONITORING OF ENFORCEMENT.—Commencing on July 1, 1985, the Commission shall monitor on a biannual basis the enforcement of the Plan by each coastal State for purposes of deciding if that enforcement is satisfactory. Enforcement by a coastal State may not be considered satisfactory by the Commission if, in its view, the enforcement is being carried out in such a manner that the implementation of the Plan within its coastal waters is being, or will likely be, substantially and adversely affected.

"(c) NOTIFICATION TO SECRETARY OF RESULTS OF ENFORCEMENT MONITORING.—On December 30, 1985, and on the closing date of each biannual period thereafter, the Commission shall notify the Secretaries of the results of the monitoring under subsection (b) of each coastal State.

"(d) SECRETARIAL ACTION AFTER NOTIFICATION.—Immediately upon receiving notice from the Commission—

"(1) under subsection (a) that a coastal State has not taken the actions described in that subsection; or

"(2) under subsection (c) that the enforcement of the Plan by a coastal State is not satisfactory;

the Secretary shall determine, within 30 days, whether that coastal State is in compliance with the Plan and, if the State is not in compliance, the Secretary shall declare a moratorium on fishing for Atlantic striped bass within the coastal waters of that coastal State. In making such a determination, the Secretary shall carefully consider and review the comments of the Commission, that coastal State in question, and the Secretary of the Interior.

"SEC. 5. MORATORIUM.

"(a) DEFINITIONS.—For purposes of this section—

"(1) The term 'moratorium area' means the coastal waters with respect to which a declaration under section 4(d) applies.

"(2) The term 'moratorium period' means the period beginning on the day on which moratorium is declared under section 4(d) regarding a coastal State and ending on the day on which the Commission notifies the Secretary that that State has taken appropriate remedial action with respect to those matters that were the cause of the moratorium being declared.

"(b) PROHIBITED ACTS DURING MORATORIUM.—During a moratorium period, it is unlawful for any person—

"(1) to engage in fishing within the moratorium area;

"(2) to land, or attempt to land, Atlantic striped bass that are caught, taken, or harvested in violation of paragraph (1);

"(3) to land lawfully harvested Atlantic striped bass within the boundaries of a coastal State when a moratorium declared under section 4(d) applies to that State; or

"(4) to fail to return to the water Atlantic striped bass to which the moratorium applies that are caught incidental to harvesting that occurs in the course of commercial or recreational fish catching activities, regardless of the physical condition of the striped bass when caught.

"(c) PENALTIES AND FORFEITURES.—(1) Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act that is unlawful under subsection (b), shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $1,000 for each violation. Each day of continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited act committed and, with respect to the violator, the degree of culpability, any history of prior violations, ability to pay, and such other matters as justice may require.

"(2) Subsections (b) through (e) of section 308 of the Act of 1976 (16 U.S.C. 1858(b)-(e); relating to review of civil penalties, action upon failure to pay assessment, compromise, and subpenas) shall apply to penalties assessed under paragraph (1) to the same extent and in the same manner as if those penalties were assessed under subsection (a) of such section 308.

"(d) CIVIL FORFEITURES.—(1) Any vessel (including its gear, equipment, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with, or the result of, the commission of any act that is un-

lawful under subsection (b), shall be subject to forfeiture to the United States. All or part of the vessel may, and all such fish (or the fair market value thereof) shall, be forfeited to the United States under a civil proceeding described in paragraph (2). The district courts of the United States have jurisdiction over proceedings under this subsection.

"(2) Subsections (c) through (e) of section 310 of the Act of 1976 (16 U.S.C. 1860(c)-(e); relating to judgment, procedure, and rebuttable presumptions) apply with respect to proceedings for forfeiture commenced under this subsection to the same extent and in the same manner as if the proceeding were commenced under subsection (a) of such section 310.

"(e) ENFORCEMENT.—The Secretary shall enforce a moratorium declared under section 4(d). The Secretary may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal department or agency and of any agency of a coastal State in carrying out that enforcement.

"SEC. 6. COMPREHENSIVE ANNUAL SURVEYS.

"For the purposes of implementing the provisions of this Act, the Secretary and the Secretary of the Interior shall jointly conduct a comprehensive annual survey of the Atlantic striped bass fisheries. Each survey shall include, but not be limited to, a compilation and assessment of the recreational and commercial landings of that species in the coastal States during the period considered in the survey. The results of each annual survey shall be published in the Federal Register.

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"Funds for activities in fiscal year 1985 under this Act shall be made available only from funds appropriated for the Department of Commerce and the Department of the Interior for fiscal year 1985. For fiscal year 1986, there are authorized such sums as may be necessary or appropriate to carry out the provisions of this Act.

"SEC. 8. SECRETARIAL STUDY.

"Within six months of the date of enactment of this Act [Oct. 31, 1984], the Secretaries shall review the existing Plan and shall report to the Commission, the Chairman of the House Committee on Merchant Marine and Fisheries, the Chairman of the Senate Committee on Commerce, Science and Transportation and the Chairman of the Senate Committee on Environment and Public Works on the adequacy of the Plan to achieve the purposes of this Act. Such report shall include recommendations for additional measures that may need to be taken and include recommendations concerning specific State actions regarding the management and conservation of striped bass.

"SEC. 9. EFFECTIVE PERIOD.

"Sections 1 through 8 shall take effect upon enactment of this Act [Oct. 31, 1984] and shall cease to have force and effect 18 months after the date of enactment of this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1802 of this title.

§ 1852. Regional Fishery Management Councils

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971b, 1379, 1433, 1802, 2803, 2804, 3602 of this title; title 30 section 1415.

§ 1856. State jurisdiction

(a) In general

(1) Except as provided in subsection (b) of this section, nothing in this chapter shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.

(2) For the purposes of this chapter, except as provided in subsection (b) of this section, the jurisdiction and authority of a State shall extend—

(A) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party;

(B) with respect to the body of water commonly known as Nantucket Sound, to the pocket of water west of the seventieth meridian west of Greenwich; and

(C) to the waters of southeastern Alaska (for the purpose of regulating fishing for other than any species of crab) that are—

(i) north of the line representing the international boundary at Dixon Entrance and the westward extension of that line; east of 138 degrees west longitude; and not more than three nautical miles seaward from the coast, from the lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and from any island or group of islands, including the islands of the Alexander Archipelago (except Forrester Island); or

(ii) between the islands referred to in clause (i) (except Forrester Island) and the mainland.

(3) Except as otherwise provided by paragraph (2), a State may not directly or indirectly regulate any fishing vessel outside its boundaries, unless the vessel is registered under the law of that State.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 98-623, title IV, § 404(4), Nov. 8, 1984, 98 Stat. 3408.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-623 designated existing provisions as pars. (1) to (3), in par. (2), as so designated, redesignated cls. (1) and (2) as subpars. (A) and (B), respectively, and added subpar. (C), and in par. (3), as so designated, added exception relating to par. (2).

§ 1858. Civil penalties

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1824, 1827, 3606, 3637 of this title.

§ 1859. Criminal offenses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1824, 3606, 3637 of this title.

§ 1860. Civil forfeitures

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3606, 3637 of this title.

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§ 1861. Enforcement

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1821, 1824, 1857, 1859, 1860, 3607, 3637 of this title.

CHAPTER 39—MINING ACTIVITY WITHIN NATIONAL PARK SYSTEM AREAS

§ 1910. Civil actions for just compensation by mining claim holders

The holder of any patented or unpatented mining claim subject to this chapter who believes he has suffered a loss by operation of this chapter, or by orders or regulations issued pursuant thereto, may bring an action in a United States district court to recover just compensation, which shall be awarded if the court finds that such loss constitutes a taking of property compensable under the Constitution.

(As amended Pub. L. 98-620, title IV, § 402(21), Nov. 8, 1984, 98 Stat. 3358.)

AMENDMENTS

1984—Pub. L. 98-620 struck out provision which required the court to expedite its consideration of any claim brought pursuant to this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 40—SOIL AND WATER RESOURCES CONSERVATION

Sec.
2005a. Technical assistance for water resources.
(a) Authority of Secretary of Agriculture.
(b) Report to Congress.

§ 2004. Continuing appraisal of soil, water, and related resources

[*See main edition for text of* (a) *to* (c)]

(d) Completion dates

The Secretary shall conduct four comprehensive appraisals under this section, to be completed by December 31, 1979, December 31, 1986, December 31, 1995, and December 31, 2005, respectively. The Secretary may make such additional interim appraisals as the Secretary considers appropriate.

(As amended Pub. L. 99-198, title XII, § 1252(a), Dec. 23, 1985, 99 Stat. 1516.)

AMENDMENTS

1985—Subsec. (d). Pub. L. 99-198 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "The appraisal shall be completed by December 31, 1979, and at each five-year interval thereafter during the period this chapter is in effect."

§ 2005. Soil and water conservation program

[*See main edition for text of* (a)]

(b) Completion dates

The initial program shall be completed not later than December 31, 1979, and program updates shall be completed by December 31, 1987, December 31, 1997, and December 31, 2007, respectively.

(As amended Pub. L. 99-198, title XII, § 1252(b), Dec. 23, 1985, 99 Stat. 1516.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-198 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The program plan shall be completed not later than December 31, 1979, and be updated at each five-year interval thereafter during the period this chapter is in effect."

§ 2005a. Technical assistance for water resources

(a) Authority of Secretary of Agriculture

Notwithstanding any other provision of law, the Secretary of Agriculture may formulate plans and provide technical assistance to property owners and agencies of State and local governments and interstate river basin commissions, at their request, to—

(1) protect the quality and quantity of subsurface water, including water in the Nation's aquifers;

(2) enable property owners to reduce their vulnerability to flood hazards that also may affect water resources; and

(3) control the salinity in the Nation's agricultural water resources.

(b) Report to Congress

The Secretary shall submit by February 15, 1987, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report evaluating the plans and technical assistance authorized in subsection (a) of this section. Such report shall include any recommendations as to whether the plan and assistance should be extended, how any plan and assistance could be improved, and any other relevant information and data relating to costs and other elements of the plan or assistance that would be helpful to such Committees.

(Pub. L. 99-198, title XII, § 1251, Dec. 23, 1985, 99 Stat. 1516.)

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Soil and Water Resources Conservation Act of 1977 which comprises this chapter.

§ 2006. Reports to Congress

(a) Appraisal, program, and detailed statement of policy when Congress convenes

(1) At the time Congress convenes in 1980, 1987, 1996, and 2006, the President shall transmit to the Speaker of the House of Representatives and the President of the Senate the appraisal developed under section 2004 of this title and completed prior to the end of the previous year.

(2) At the time Congress convenes in 1980, 1988, 1998, and 2008, the President shall transmit to the Speaker of the House of Representatives and the President of the Senate the initial program or updated program developed under section 2005 of this title and completed prior to

the end of the previous year, together with a detailed statement of policy regarding soil and water conservation activities of the United States Department of Agriculture.

(b) Annual report accompanying budget covering program effectiveness

The Secretary, during budget preparation for fiscal year 1982 and annually thereafter during the period this chapter is in effect, shall prepare and transmit to the Congress, through the President, a report to accompany the budget which evaluates the program's effectiveness in attaining the purposes of this chapter. The report, prepared in concise summary form with appropriate detailed appendices, shall contain pertinent data from the current resource appraisal required to be prepared by section 2004 of this title, shall set forth the progress in implementing the program required to be developed by section 2005 of this title, and shall contain appropriate measurements of pertinent costs and benefits. The evaluation shall assess the balance between economic factors and environmental quality factors. The report shall also indicate plans for implementing action and recommendations for new legislation where warranted.

(c) Redesignated (b)

(As amended Pub. L. 99-198, title XII, § 1252(c), Dec. 23, 1985, 99 Stat. 1516.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-198, § 1252(c)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: "On the first day Congress convenes in 1980 and at each five-year interval thereafter during the period this chapter is in effect the President shall transmit to the Speaker of the House of Representatives and the President of the Senate, the appraisal and the program as required by sections 2004 and 2005 of this title, together with a detailed statement of policy regarding soil and water conservation activities of the United States Department of Agriculture."

Subsecs. (b), (c). Pub. L. 99-198, § 1252(c)(2), (3), struck out subsec. (b) which provided for an annual report of program and policy achievement, and redesignated subsec. (c) as (b).

§ 2009. Termination of program

The provisions of this chapter shall terminate on December 31, 2008.

(As amended Pub. L. 99-198, title XII, § 1252(d), Dec. 23, 1985, 99 Stat. 1517.)

AMENDMENTS

1985—Pub. L. 99-198 substituted "2008" for "1985".

CHAPTER 43—PUBLIC TRANSPORTATION PROGRAMS FOR NATIONAL PARK SYSTEM AREAS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 460ll-1, 460ll-2, 460ll-3, 460ll-4, 460ll-5 of this title.

CHAPTER 44A—ANTARCTIC MARINE LIVING RESOURCES CONVENTION

Sec.
2431. Findings and purpose.
(a) Findings.
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§ 2431. Findings and purpose

(a) Findings

The Congress finds that—

(1) the Convention on the Conservation of Antarctic Marine Living Resources establishes international mechanisms and creates legal obligations necessary for the protection and conservation of Antarctic marine living resources;

(2) the Convention incorporates an innovative ecosystem approach to the management of Antarctic marine living resources, including standards designed to ensure the health of the individual populations and species and to maintain the health of the Antarctic marine ecosystem as a whole;

(3) the Convention serves important United States environmental and resource management interests;

(4) the Convention represents an important contribution to United States long term legal and political objectives of maintenance of Antarctica as an area of peaceful international cooperation;

(5) United States basic and directed research programs concerning the marine living resources of the Antarctic are essential to achieve the United States goal of effective implementation of the objectives of the Convention; and

(6) the United States has important security, economic, and environmental interests in developing and maintaining a fleet of icebreaking vessels capable of operating effectively in the heavy ice regions of Antarctica.

(b) Purpose

The purpose of this chapter is to provide the legislative authority necessary to implement, with respect to the United States, the Convention on the Conservation of Antarctic Marine Living Resources.

(Pub. L. 98-623, title III, § 302, Nov. 8, 1984, 98 Stat. 3398.)

SHORT TITLE

Section 301 of title III of Pub. L. 98-623 provided that: "This title [enacting this chapter] may be cited as the 'Antarctic Marine Living Resources Convention Act of 1984'."

§ 2432. Definitions

For purposes of this chapter—

(1) Antarctic Convergence

The term "Antarctic Convergence" means a line joining the following points along the parallels of latitude and meridians of longitude: 50 degrees south, 0 degrees; 50 degrees south, 30 degrees east; 45 degrees south, 30 degrees east; 45 degrees south, 80 degrees east; 55 degrees south, 80 degrees east; 55 degrees south, 150 degrees east; 60 degrees south, 150 degrees east; 60 degrees south; [1] 50 degrees west; 50 degrees south, 50 degrees west; and 50 degrees south, 0 degrees.

(2) Antarctic marine living resources

The term "Antarctic marine living resources" means the population of finfish, molluscs, crustaceans and all other species of living organisms, including birds, found south of the Antarctic Convergence.

(3) Commission

The term "Commission" means the Commission for the Conservation of Antarctic Marine Living Resources established pursuant to article VII of the Convention.

(4) Convention

The term "Convention" means the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, Australia, May 7, 1980, and entered into force with respect to the United States on April 7, 1982.

(5) Harvesting or other associated activities

The terms "harvesting" and "harvesting or other associated activities" mean—

(A) the harassing, molesting, harming, pursuing, hunting, shooting, wounding, killing, trapping, or capturing of Antarctic marine living resources;

(B) attempting to engage in any activity set forth in subparagraph (A);

(C) any other activity which can reasonably be expected to result in any activity described in subparagraph (A); and

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

(6) Harvest

The term "harvest" means to engage in harvesting or other associated activities.

(7) Import

The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing constitutes an importation within the meaning of the customs laws of the United States.

(8) Person

The term "person" means an individual, partnership, corporation, trust, association, and any other entity subject to the jurisdiction of the United States.

(9) Scientific Committee

The term "Scientific Committee" means the Scientific Committee for the Conservation of Antarctic Marine Living Resources established pursuant to article XIV of the Convention.

(10) Vessel of the United States

The term "vessel of the United States" means—

(A) a vessel documented under chapter 121 of title 46 or a vessel numbered as provided in chapter 123 of that title;

(B) a vessel owned in whole or in part by—

(i) the United States or a territory, commonwealth, or possession of the United States;

(ii) a State or political subdivision thereof;

(iii) a citizen or national of the United States; or

(iv) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States;

unless the vessel has been granted the nationality of a foreign nation in accordance with Article 5 of the 1958 Convention on the High Seas; and

(C) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation in accordance with Article 5 of the 1958 Convention on the High Seas.

[1] So in original. Probably should be a comma.

(11) Vessel subject to the jurisdiction of the United States

The term "vessel subject to the jurisdiction of the United States" includes a vessel without nationality or a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of Article 6 of the 1958 Convention on the High Seas.

(Pub. L. 98–623, title III, § 303, Nov. 8, 1984, 98 Stat. 3398.)

REFERENCES IN TEXT

The customs laws of the United States, referred to in par. (7), are classified generally to Title 19, Customs Duties.

§ 2433. Representatives

(a) Representative to the Commission

The Secretary of State, with the concurrence of the Secretary of Commerce and the Director of the National Science Foundation, shall appoint an officer or employee of the United States as the United States representative to the Commission.

(b) Representative to the Scientific Committee

The Secretary of Commerce and the Director of the National Science Foundation, with the concurrence of the Secretary of State, shall designate the United States representative to the Scientific Committee.

(c) Compensation

The United States representatives to the Commission and the Scientific Committee shall receive no additional compensation by reason of their services as such representatives.

(Pub. L. 98–623, title III, § 304, Nov. 8, 1984, 98 Stat. 3400.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2443 of this title.

§ 2434. Conservation measures; system of observation and inspection

(a) Conservation measures

(1) The Secretary of State, with the concurrence of the Secretary of Commerce and the Director of the National Science Foundation, is authorized—

(A) to decide on behalf of the United States whether the United States is unable to accept or can no longer accept a conservation measure adopted by the Commission pursuant to article IX of the Convention, and

(B) to notify the Commission of any such decision in accordance with article IX of the Convention.

(2) The Secretary of State shall—

(A) publish in the Federal Register, if practicable, timely notice of each proposed decision under paragraph (1) and invite written public comment regarding it; and

(B) publish in the Federal Register notice of each notification made to the Commission under paragraph (1).

(b) System of observation and inspection

The Secretary of State, with the concurrence of the Secretary of Commerce, the Director of the National Science Foundation and the Secretary of the department in which the Coast Guard is operating, is authorized to agree on behalf of the United States to the establishment of a system of observation and inspection, and to interim arrangements pending establishment of such a system, pursuant to article XXIV of the Convention.

(c) Communications from the Commission

The Secretary of State is further authorized to receive, on behalf of the United States Government, reports, requests, and other communications from the Commission and to take appropriate action on them, either directly or by reference to the appropriate authority.

(Pub. L. 98–623, title III, § 305, Nov. 8, 1984, 98 Stat. 3400.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2439 of this title.

§ 2435. Unlawful activities

It is unlawful for any person—

(1) to engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States pursuant to article IX of the Convention;

(2) to violate any regulation promulgated under this chapter;

(3) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control or possession of, any Antarctic marine living resource (or part or product thereof) which he knows, or reasonably should have known, was harvested in violation of a conservation measure in force with respect to the United States pursuant to article IX of the Convention or in violation of any regulation promulgated under this chapter, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the Antarctic marine living resource (or part or product thereof);

(4) to refuse to permit any authorized officer or employee of the United States to board a vessel of the United States or a vessel subject to the jurisdiction of the United States for purposes of conducting any search or inspection in connection with the enforcement of the Convention, this chapter, or any regulations promulgated under this chapter;

(5) to assault, resist, oppose, impede, intimidate, or interfere with any authorized officer or employee of the United States in the conduct of any search or inspection described in paragraph (4);

(6) to resist a lawful arrest or detention for any act prohibited by this section; or

(7) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detention of another person, knowing that such other person has committed any act prohibited by this section.

(Pub. L. 98–623, title III, § 306, Nov. 8, 1984, 98 Stat. 3401.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2437, 2438, 2439 of this title.

§ 2436. Regulations

The Secretary of Commerce, after consultation with the Secretary of State, the Secretary of the department in which the Coast Guard is operating, and the heads of other appropriate departments or agencies of the United States, shall promulgate such regulations as are necessary and appropriate to implement the provisions of this chapter.

(Pub. L. 98-623, title III, § 307, Nov. 8, 1984, 98 Stat. 3401.)

§ 2437. Civil penalties

(a) Assessment of penalties

(1) Any person who is found by the Secretary of Commerce, after notice and opportunity for a hearing in accordance with subsection (b) of this section, to have committed any act prohibited by section 2435 of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $5,000 for each violation unless the prohibited act was knowingly committed, in which case the amount of the civil penalty shall not exceed $10,000 for each violation. Each day of a continuing violation shall constitute a separate violation for purposes of this subsection. The amount of any civil penalty shall be assessed by the Secretary of Commerce by written notice. In determining the amount of such penalty, the Secretary of Commerce shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed, and, with respect to the person committing the violation, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require, to the extent that such information is reasonably available to the Secretary.

(2) The Secretary of Commerce may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section, until such time as the matter is referred to the Attorney General under subsection (c) of this section.

(b) Hearings

Hearings for the assessment of civil penalties under subsection (a) of this section shall be conducted in accordance with section 554 of title 5. For the purposes of conducting any such hearing, the Secretary of Commerce may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the Attorney General of the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary of Commerce or to appear and produce documents before the Secretary of Commerce, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Review of civil penalty

Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary of Commerce, the Attorney General, and the appropriate United States Attorney. The Secretary of Commerce shall promptly refer the matter to the Attorney General of the United States, who shall file in such court a certified copy of the record upon which the violation was found or such penalty imposed, as provided in section 2112 of title 28. The court shall set aside the findings and order of the Secretary if the findings and order are found to be unsupported by substantial evidence, as provided in section 706(2)(E) of title 5.

(d) Recovery of civil penalties

The Attorney General of the United States may seek to recover in any appropriate district court of the United States (1) any civil penalty imposed under this section that has become a final and unappealable order and has been referred to the Attorney General by the Secretary of Commerce or (2) any final judgment rendered under this section in favor of the United States by an appropriate Court.

(e) Penalties under other laws

The assessment of a civil penalty under subsection (a) of this section for any act shall not be deemed to preclude the assessment of a civil penalty for such act under any other law.

(Pub. L. 98-623, title III, § 308, Nov. 8, 1984, 98 Stat. 3401.)

§ 2438. Criminal offenses

(a) Offenses

A person is guilty of an offense if that person commits any act prohibited by paragraph (4), (5), (6), or (7) of section 2435 of this title.

(b) Punishment

Any offense described in subsection (a) of this section is punishable by a fine of $50,000, or imprisonment for not more than ten years, or both.

(c) Offenses under other laws

A conviction under subsection (a) of this section for any act shall not be deemed to preclude a conviction for such act under any other law.

(Pub. L. 98-623, title III, § 309, Nov. 8, 1984, 98 Stat. 3403.)

§ 2439. Enforcement

(a) Responsibility

The provisions of this chapter shall be enforced by the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may utilize by agreement, on a reimbursable basis or otherwise, the personnel, services, and facilities of any other department or agency of the United States in the performance of such duties.

(b) Powers of authorized officers and employees

Any officer or employee of the United States who is authorized (by the Secretary of Commerce, the Secretary of the department in which the Coast Guard is operating, or the head of any department or agency of the United States which has entered into an agreement with either Secretary under subsection (a) of this section) to enforce the provisions of this chapter and of any regulation promulgated under this chapter may, in enforcing such provisions—

(1) secure, execute, and serve any order, warrant, subpoena, or other process, which is issued under the authority of the United States;

(2) search without warrant any person, place, vehicle or aircraft subject to the jurisdiction of the United States where there are reasonable grounds to believe that a person has committed or is attempting to commit an act prohibited by section 2435 of this title;

(3) with or without a warrant board and search or inspect any vessel of the United States or vessel subject to the jurisdiction of the United States;

(4) seize without warrant—

(A) any evidentiary item where there are reasonable grounds to believe that a person has committed or is attempting to commit an act prohibited by section 2435 of this title,

(B) any Antarctic marine living resources (or part of [1] product thereof) with respect to which such an act is committed,

(C) any vessel of the United States (including its gear, furniture, appurtenances, stores, and cargo), any vessel subject to the jurisdiction of the United States (including its gear, furniture, appurtenances, stores, and cargo), and any vehicle, aircraft, or other means of transportation subject to the jurisdiction of the United States used in connection with such an act, and

(D) any guns, traps, nets, or equipment used in connection with such an act;

(5) offer and pay rewards for services or information which may lead to the apprehension of persons violating such provisions;

(6) make inquiries, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter which is related to the enforcement of such provisions;

(7) in coordination with the Secretary of the Treasury, detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation into, or exportation from, the United States;

(8) make an arrest with or without a warrant with respect to any act prohibited by paragraph (4), (5), (6), or (7) of section 2435 of this title if such officer or employee has reasonable grounds to believe that the person to be arrested is committing such act in his or her presence or view or has committed such act;

(9) exercise enforcement powers conferred on such officer or employee under a system of observation and inspection, or interim arrangements pending the establishment of such a system, which the Secretary of State has agreed to on behalf of the United States pursuant to section 2434(b) of this title; and

(10) exercise any other authority which such officer or employee is permitted by law to exercise.

(c) Seizure

Subject to the succeeding provisions of this subsection, any property or item seized pursuant to subsection (b) of this section shall be held by any officer or employee of the United States, who is authorized by the Secretary of Commerce or the Secretary of the department in which the Coast Guard is operating, pending the disposition of civil or criminal proceedings concerning the violation relating to the property or item, or the institution of an action in rem for the forfeiture of such property or item. Such authorized officer or employee may, upon the order of a court of competent jurisdiction, either release such seized property or item to the wild or destroy such property or item, when the cost of maintenance of the property or item pending the disposition of the case is greater than the legitimate market value of the property or item. Such authorized officer or employee and all officers or employees acting by or under his or her direction shall be indemnified from any penalties or actions for damages for so releasing or destroying such property or item. Such authorized officer or employee may, in lieu of holding such property or item, permit the owner or consignee thereof to post a bond or other satisfactory surety.

(d) Forfeiture

(1) Any Antarctic marine living resource (or part or product thereof) with respect to which an act prohibited by section 2435 of this title is committed, any vessel of the United States (including its gear, furniture, appurtenances, stoves, and cargo), vessel subject to the jurisdiction of the United States (including its gear, furniture, appurtenances, stoves, and cargo), or vessel, vehicle, or aircraft or other means of transportation subject to the jurisdiction of the United States, which is used in connection with an act prohibited by section 2435 of this title, and all guns, traps, nets, and other equipment used in connection with such act, shall be subject to forfeiture to the United States.

(2) Upon the forfeiture to the United States of any property or item described in paragraph (1), or upon the abandonment or waiver of any claim to any such property or item, it shall be

[1] So in original. Probably should be "or".

disposed of by the Secretary of Commerce, or the Secretary of the department in which the Coast Guard is operating, as the case may be, in such a manner, consistent with the purposes of this chapter, as may be prescribed by regulation.

(e) Application of customs laws

All provisions of law relating to the seizure, forfeiture, and condemnation of property (including vessels) for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, and the compromise of claims, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Customs Service may, for the purposes of this chapter, also be exercised or performed by the Secretary of Commerce or the Secretary of the department in which the Coast Guard is operating, or by such officers or employees of the United States as each Secretary may designate.

(Pub. L. 98-623, title III, § 310, Nov. 8, 1984, 98 Stat. 3403.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (e), are classified generally to Title 19, Customs Duties.

§ 2440. Jurisdiction of courts

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this chapter or of any regulation promulgated under this chapter.

(Pub. L. 98-623, title III, § 311, Nov. 8, 1984, 98 Stat. 3405.)

§ 2441. Federal agency cooperation

(a) Responsibilities

(1) For the purpose of carrying out the policies and objectives of the Convention or to implement any decision of the Commission—

(A) the Director of the National Science Foundation, in consultation with the Secretary of State and the heads of other appropriate departments and agencies of the United States, shall continue to support basic research investigations of the Antarctic marine ecosystem as a part of the United States Antarctic Program;

(B) the Secretary of Commerce, in consultation with the Director of the National Science Foundation, the Secretary of State and the heads of other appropriate Federal agencies, shall design and conduct the program of directed scientific research as set forth in paragraph 2 supplemental to and coordinated with the United States Antarctic Program; and

(C) the Secretary of Commerce and the Director of the National Science Foundation, in consultation with the Secretary of State, may furnish facilities and personnel to the Commission in order to assist the Commission in carrying out its functions.

(2)(A) The Secretary of Commerce, in consultation with the Secretary of State, the Director of the National Science Foundation, and other appropriate Federal officials, shall prepare a plan, which shall be updated annually, for conducting the directed research program required under paragraph (1)(B) for each period of three consecutive fiscal years occurring during the period beginning on October 1, 1985, and ending on September 30, 1991. The plan shall—

(i) describe priority directed research needs for the implementation of the Convention;

(ii) identify which of those needs are to be fulfilled by the United States; and

(iii) specify the design of the research referred to in paragraph (1)(B) and the funds, personnel, and facilities required for the research, including, in particular, the need for the cost of enhanced ship capacity.

(B) In preparing the plan referred to in subparagraph (A), the Secretary of Commerce shall take into account, in addition to any other matters the Secretary considers appropriate, the possibilities of securing productive results, the minimization of duplication, and the methods for monitoring and evaluating a project.

(C) The Secretary of Commerce shall submit to the Congress each year the plan required under subparagraph (A). That part of the plan covering fiscal years 1986 through 1988 shall be submitted not later than October 1, 1985. That part of the plan covering each 3-fiscal-year period thereafter shall be submitted not later than the February 1 occurring before the beginning of the first fiscal year covered by that part of the plan.

(b) Consultation with other agencies

In carrying out their functions under this section, the Secretary of State, the Secretary of Commerce, and the Director of the National Science Foundation shall consult, as appropriate, with the Marine Mammal Commission and with other departments and agencies of the United States.

(c) Icebreaking

The Department of Transportation shall facilitate planning for the design, procurement, maintenance, deployment, and operation of icebreakers needed to provide a platform for Antarctic research. All funds necessary to support icebreaking operations, except for recurring incremental costs associated with specific projects, shall be allocated to the United States Coast Guard.

(Pub. L. 98-623, title III, § 312, Nov. 8, 1984, 98 Stat. 3405.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2443 of this title.

§ 2442. Relationship to existing treaties and statutes

(a) In general

Nothing in this chapter [1] shall be construed as contravening or superseding (1) the provisions of any international treaty, convention, or agreement, if such treaty, convention or agreement is in force with respect to the United States on Nov. 8, 1984, or (2) the provisions of any statute which implements any such treaty, convention, or agreement. Nothing in this chapter shall be construed as contravening or superseding the provisions of any statute enacted before Nov. 8, 1984, which may otherwise apply to Antarctic marine living resources.

(b) Application of more restrictive provisions

Nothing in this section shall be construed to prevent the application of provisions of the Convention, conservation measures adopted by the Commission pursuant to article IX of the Convention, or regulations promulgated under this chapter, which are more restrictive than the provisions of, measures adopted under, or regulations promulgated under, the treaties or statutes described in subsection (a) of this section.

(Pub. L. 98-623, title III, § 313, Nov. 8, 1984, 98 Stat. 3406.)

CODIFICATION

This chapter, the first time it appears in subsec. (a), was in the original "this Act" and was translated as reading "this title", as the probable intent of Congress.

§ 2443. Authorization of appropriations

There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for carrying out the provisions of this chapter, including, but not limited to—

(1) necessary travel expenses of the United States representatives referred to in section 2433 of this title, alternate United States representatives, and authorized advisers and experts, in accordance with sections 5701 through 5708, 5731, and 5733 of title 5 and the regulations issued under those sections;

(2) the United States contribution to the budget of the Commission as provided in article XIX of the Convention; and

(3) the directed research program and the furnishing of facilities and personnel to the Commission referred to in section 2441 of this title.

(Pub. L. 98-623, title III, § 314, Nov. 8, 1984, 98 Stat. 3406.)

§ 2444. Severability

If any provision of this chapter or the application of this chapter to any person or circumstance is held invalid, neither the remainder of this chapter nor the application of that provision to other persons or circumstances shall be affected thereby.

(Pub. L. 98-623, title III, § 315, Nov. 8, 1984, 98 Stat. 3407.)

[1] See Codification note below.

CHAPTER 45—URBAN PARK AND RECREATION RECOVERY PROGRAM

§ 2512. Authorization of appropriations

There are hereby authorized to be appropriated for the purposes of this chapter, not to exceed $150,000,000 for each of the fiscal years 1979 through 1982, and $125,000,000 in fiscal year 1983, such sums to remain available until expended. Not more than 3 per centum of the funds authorized in any fiscal year may be used for grants for the development of local park and recreation recovery action programs pursuant to sections 2506(a) and 2506(c) of this title, and not more than 10 per centum may be used for innovation grants pursuant to section 2505 of this title. Grants made under this chapter for projects in any one State shall not exceed in the aggregate 15 per centum of the aggregate amount of funds authorized to be appropriated in any fiscal year. For the authorizations made in this section, any amounts authorized but not appropriated in any fiscal year shall remain available for appropriation in succeeding fiscal years.

[*See main edition for text of second par.*]

(As amended Pub. L. 98-454, title VI, § 601(a), Oct. 5, 1984, 98 Stat. 1736.)

AMENDMENTS

1984—Pub. L. 98-454 substituted "section" for "subsection" after "For the authorizations made in this".

CHAPTER 46—PUBLIC UTILITY REGULATORY POLICIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 10 section 2483; title 42 sections 6807, 7375.

CHAPTER 48—NATIONAL AQUACULTURE POLICY, PLANNING, AND DEVELOPMENT

§ 2801. Congressional findings, purpose, and policy

(a) Findings

Congress finds the following:

[*See main edition for text of (1) and (2)*]

(3) Although aquaculture currently contributes approximately 13 percent of world seafood production, less than 6 percent of current United States seafood production results from aquaculture. Domestic aquacultural production, therefore, has the potential for significant growth.

[*See main edition for text of (4) to (6)*]

(7) Despite its potential, the development of aquaculture in the United States has been inhibited by many scientific, economic, legal, and production factors, such as inadequate credit, diffused legal jurisdiction, the lack of management information, the lack of supportive Government policies, and the lack of reliable supplies of seed stock.

[*See main edition for text of (8)*]

(b) Purpose

It is the purpose of this chapter to promote aquaculture in the United States by—

(1) declaring a national aquaculture policy;

(2) establishing and implementing a national aquaculture development plan;

(3) establishing the Department of Agriculture as the lead Federal agency with respect to the coordination and dissemination of national aquaculture information by designating the Secretary of Agriculture as the permanent chairman of the coordinating group and by establishing a National Aquaculture Information Center within the Department of Agriculture; and

(4) encouraging aquaculture activities and programs in both the public and private sectors of the economy;

that will result in increased aquacultural production, the coordination of domestic aquaculture efforts, the conservation and enhancement of aquatic resources, the creation of new industries and job opportunities, and other national benefits.

(c) Policy

Congress declares that aquaculture has the potential for reducing the United States trade deficit in fisheries products, for augmenting existing commercial and recreational fisheries and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is, therefore, in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States.

(As amended Pub. L. 99-198, title XVII, § 1732, Dec. 23, 1985, 99 Stat. 1641.)

AMENDMENTS

1985—Subsec. (a)(3). Pub. L. 99-198, § 1732(1), substituted "13 percent" for "10 per centum" and "6 percent" for "3 per centum".

Subsec. (a)(7). Pub. L. 99-198, § 1732(2), inserted "scientific," before "economic," and "the lack of supportive Government policies," after "management information,".

Subsec. (b)(3), (4). Pub. L. 99-198, § 1732(3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (c). Pub. L. 99-198, § 1732(4), inserted "or reducing the United States trade deficit in fisheries products,".

SHORT TITLE OF 1985 AMENDMENT

Section 1731 of subtitle C (§§ 1731-1737) of title XVII of Pub. L. 99-198 provided that: "This subtitle [amending sections 2801 to 2805 and 2809 of this title] may be cited as the 'National Aquaculture Improvement Act of 1985'."

§ 2802. Definitions

As used in this chapter, unless the context otherwise requires—

[*See main edition for text of* (1) *to* (7)]

(8) The term "Secretary" means the Secretary of Agriculture.

(9) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, or any other territory or possession of the United States.

(As amended Pub. L. 99-198, title XVII, § 1733, Dec. 23, 1985, 99 Stat. 1641.)

AMENDMENTS

1985—Pars. (8), (9). Pub. L. 99-198 added par. (8) and redesignated former par. (8) as (9).

§ 2803. National Aquaculture Development Plan

(a) In general

[*See main edition for text of* (1)]

(2) In developing the Plan, and revisions thereto under subsection (d) of this section, beginning not later than six months after September 26, 1980, the Secretary shall consult with the Secretary of Commerce and the Secretary of the Interior, other appropriate Federal officers, States, regional fishery management councils established under section 1852 of this title, and representatives of the aquaculture industry. In addition, the Secretary shall give interested persons and organizations an opportunity to comment during the development of the Plan.

(3) Repealed. Pub. L. 99-198, title XVII, § 1734(1)(C), Dec. 23, 1985, 99 Stat. 1641.

(b) Contents of Plan

The Plan shall—

(1) identify aquatic species that the Secretaries determine to have significant potential for culturing on a commercial or other basis;

[*See main edition for text of* (2) *to* (5)]

(6) include such other research and development, technical assistance, demonstration, extension education, and training programs as the Secretary deems necessary or appropriate to carry out this chapter.

In formulating the Plan, the Secretary shall, to the extent practicable, take into account any significant action that (i) has been, or is proposed to be, undertaken by any other Federal department or agency, any State agency, or any person, and (ii) may affect the implementation of the Plan.

(c) Actions and implementation

The Plan shall specify—

(1) with respect to those actions that the Secretary determines should be undertaken, the period of time within which each such action should be completed, in order to implement the Plan; and

(2) with respect to each such action which of the Secretaries, acting individually, jointly, or collectively, has the responsibility for implementing the action.

The specifications of Secretarial responsibilities under paragraph (2) for implementing actions shall be determined on the basis of—

(A) the responsibilities conferred on the respective Secretaries by law or by any executive action having the effect of law (includ-

ing, but not limited to, Reorganization Plan Numbered 4 of 1970);

(B) the experience, expertise, and other appropriate resources that the department of each such Secretary may have with respect to the action required under the activity concerned; and

(C) the concurrence of the Secretaries.

[*See main edition for text of* (d) *and* (e)]

(As amended Pub. L. 99-198, title XVII, § 1734, Dec. 23, 1985, 99 Stat. 1641.)

AMENDMENTS

1985—Subsec. (a)(2). Pub. L. 99-198, § 1734(1)(A), (B), substituted "Secretary" for "Secretaries" wherever appearing and inserted provisions requiring consultations with the Secretary of Commerce and the Secretary of the Interior.

Subsec. (a)(3). Pub. L. 99-198, § 1734(1)(C), struck out par. (3) which provided for the establishment of an advisory committee to assist in the initial development of the Plan.

Subsec. (b). Pub. L. 99-198, § 1734(2), inserted "to" after "determine" in par. (1), substituted "Secretary deems" for "Secretaries deem" in par. (6), and substituted "Secretary" for "Secretaries" in provisions following par. (6).

Subsec. (c)(1). Pub. L. 99-198, § 1734(3)(A), substituted "Secretary determines" for "Secretaries determine".

Subsec. (c)(2)(C). Pub. L. 99-198, § 1734(3)(B)-(D), added subpar. (C).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2802 of this title.

§ 2804. Functions and powers of Secretaries

[*See main edition for text of* (a) *and* (b)]

(c) Information services

(1) In addition to performing such other mandatory functions under this chapter—

(A) the Secretaries shall collect and analyze scientific, technical, legal, and economic information relating to aquaculture, including acreages, water use, production, marketing, culture techniques, and other relevant matters;

(B) the Secretary shall—

(i) establish, within the Department of Agriculture, a National Aquaculture Information Center that shall serve as a repository for the information generated under subparagraph (A) and other provisions of this chapter and shall, on a request basis, make that information available to the public,

(ii) arrange with foreign nations for the exchange of information relating to aquaculture and support a translation service, and

(iii) conduct a study of the extent to which the United States aquaculture industry has access to relevant Federal programs which assist the agricultural sector and report to Congress on the findings of such study by December 31, 1986;

(C) the Secretary of Commerce shall conduct a study, and report to Congress thereon by December 31, 1987, to determine whether existing capture fisheries could be adversely affected by competition from products produced by commercial aquacultural enterprises and include in such study an assessment of any adverse effect, by species and by geographical region, on such fisheries and recommend measures to ameliorate any such effect; and

(D) the Secretary of the Interior, in consultation with the Secretary of Commerce, shall undertake a study, and report to Congress thereon by December 31, 1987, to identify exotic species introduced into the United States waters as a result of aquaculture activities, and to determine the potential benefits and impacts of the introduction of exotic species.

(2) Any production information submitted to the Secretaries under paragraph (1)(A) shall be confidential and may only be disclosed if required under court order. The Secretaries shall preserve such confidentiality. The Secretaries may release or make public any information in any aggregate or summary form that does not directly or indirectly disclose the identity, business transactions, or trade secrets of any person who submits such information.

(d) Biennial report

The Secretary, through the coordinating group and in consultation with the Secretary of Commerce and the Secretary of the Interior,,[1] shall prepare on a biennial basis, and submit to Congress, a report on the status of aquaculture in the United States. Such report shall contain a description and evaluation of the actions undertaken with respect to the Plan during the reporting period, and explanation of any revisions made to the Plan during the reporting period, and such other comments and recommendations as the Secretary deems appropriate. The report required by this subsection shall be submitted to the Congress not later than February 1, 1988.

(As amended Pub. L. 99-198, title XVII, § 1735, Dec. 23, 1985, 99 Stat. 1642.)

AMENDMENTS

1985—Subsec. (c)(1). Pub. L. 99-198, § 1735(1), amended par. (1) generally. Prior to amendment, par. (1) provided that in addition to performing such other required functions under this chapter, the Secretaries shall (A) establish and maintain an information service for the collection, analysis, and dissemination of scientific, technical, legal, and economic information relating to aquaculture; (B) conduct appropriate surveys, in coordination with other Federal departments and agencies, of public and private aquacultural activities being conducted in the United States for the purpose of acquiring information on acreages, water use, production, culture techniques, and other relevant matters; (C) arrange with foreign nations for the exchange of information relating to aquaculture and support a translation service; (D) conduct a continuing study to determine whether existing capture fisheries could be adversely affected by competition from products produced by commercial aquacultural enterprises and include in such study (i) an assessment of any adverse effect, by species and by geographical region, on such fisheries, and (ii) recommended measures to ame-

[1] So in original.

liorate any such effect; and (E) report to Congress on the findings of the study conducted under subparagraph (D) in the biennial status report required under subsection (d) of this section.

Subsec. (c)(2). Pub. L. 99-198, § 1735(1), amended par. (2) generally, substituting "The Secretaries shall preserve such confidentiality" for "The Secretaries shall prescribe such procedures as may be necessary to preserve such confidentiality".

Subsec. (d). Pub. L. 99-198, § 1735(2), substituted "Secretary" for "Secretaries" wherever appearing; inserted "and in consultation with the Secretary of Commerce and the Secretary of the Interior," after "the coordinating group" in first sentence; struck out "under section 2803(d) of this title" after "revisions made to the Plan", and substituted "Such" for "Each such", substituted "deems appropriate" for "deem appropriate" in second sentence; and substituted "The report required by this subsection shall be submitted to the Congress not later than February 1, 1988" for "The first report required under this subsection shall be submitted to Congress by September 30, 1981".

§ 2805. Coordination of national activities regarding aquaculture

(a) Establishment

There is established within the Office of Science and Technology Policy an interagency aquaculture coordinating group that shall, subject to subsection (f) of this section, operate as a Joint Subcommittee on Aquaculture of the Federal Coordinating Council on Science, Engineering, and Technology (hereinafter in this section referred to as the "Federal Council") established by Executive Order 12039, dated February 24, 1978. The coordinating group shall be composed of the following members or their designees:

(1) The Secretary of Agriculture, who shall be the permanent chairman of the coordinating group.

[*See main edition for text of (2) to (13); (b)*]

(c) Reports

The coordinating group shall regularly report to the Chairman of the Federal Council on the coordinating group's activities and on recommendations concerning Federal policies and programs related to aquaculture.

(d) Federal consistency

Each Federal department and agency that has functions or responsibilities with respect to aquaculture or has jurisdiction over any activity that affects, or that may affect, the achievement of the purpose and policy of this chapter, shall, in consultation with the coordinating group and to the maximum extent practicable, perform such function, responsibility, or activity in a manner that is consistent with the purpose and policy of this chapter.

(e) Functions if Federal Council terminated

If at any time after September 26, 1980, the functions of the Federal Council are by executive action terminated or transferred to an agency other than the Office of Science and Technology Policy, the coordinating group shall carry out its purpose under the direction of the Director. In that event, the recommendations of the coordinating group referred to in subsection (b)(6) of this section and the reports required under subsection (c) of this section shall be made to the Director.

(f) Redesignated (e)

(As amended Pub. L. 99-198, title XVII, § 1736, Dec. 23, 1985, 99 Stat. 1643.)

AMENDMENTS

1985—Subsec. (a)(1). Pub. L. 99-198, § 1736(1), inserted ", who shall be the permanent chairman of the coordinating group".

Subsecs. (c) to (f). Pub. L. 99-198, § 1736(2)-(4), struck out subsec. (c) which provided that each of the Secretaries or their designees, on such rotating basis as determined by the Director, shall serve as the chairman of the coordinating group, with the term of office of the chairman set at two years, redesignated subsecs. (d) to (f) as (c) to (e), respectively, and in subsec. (e), as redesignated, substituted "subsection (c) of this section" for "subsection (d) of this section".

§ 2809. Authorizations for appropriations

For purposes of carrying out the provisions of this chapter, there are authorized to be appropriated—

(1) to the Department of Agriculture, $2,000,000 for each of fiscal years 1984 and 1985, and $1,000,000 for each of fiscal years 1986, 1987, and 1988;

(2) to the Department of Commerce, $2,000,000 for each of fiscal years 1984 and 1985, and $1,000,000 for each of fiscal years 1986, 1987, and 1988; and

(3) to the Department of the Interior, $1,000,000 for each of fiscal years 1984 and 1985, and $1,000,000 for each of fiscal years 1986, 1987, and 1988.

Funds authorized by this section shall be in addition to, and not in lieu of, funds authorized by any other Act.

(As amended Pub. L. 98-623, title IV, § 402, Nov. 8, 1984, 98 Stat. 3407; Pub. L. 99-198, title XVII, § 1737, Dec. 23, 1985, 99 Stat. 1643.)

AMENDMENTS

1985—Pars. (1) to (3). Pub. L. 99-198 added provisions authorizing appropriations of $1,000,000 for each of fiscal years 1986, 1987, and 1988.

1984—Pars. (1), (2). Pub. L. 98-623 substituted provisions authorizing appropriations of $2,000,000 for each of fiscal years 1984 and 1985 for provisions which had authorized appropriations of $7,000,000 for fiscal year 1981, $10,000,000 for fiscal year 1982, and $12,000,000 for fiscal year 1983.

Par. (3). Pub. L. 98-623 substituted provisions authorizing appropriations of $1,000,000 for each of fiscal years 1984 and 1985 for provisions which had authorized appropriations of $3,000,000 for fiscal year 1981, $4,000,000 for fiscal year 1982, and $5,000,000 for fiscal year 1983.

CHAPTER 50—CHESAPEAKE BAY RESEARCH COORDINATION

§§ 3001 to 3007. Omitted

CODIFICATION

Sections 3001 to 3007 were omitted pursuant to section 3007 which provided that this chapter terminated Sept. 30, 1984.

Section 3001, Pub. L. 96-460, § 2, Oct. 15, 1980, 94 Stat. 2044, stated the Congressional findings and purposes for this chapter.

Section 3002, Pub. L. 96-460, § 3, Oct. 15, 1980, 94 Stat. 2045, defined terms for the purposes of this chapter.

Section 3003, Pub. L. 96-460, § 4, Oct. 15, 1980, 94 Stat. 2045, required the Secretary of Commerce to establish in the Department of Commerce an office for Chesapeake Bay Research Coordination.

Section 3004, Pub. L. 96-460, § 5, Oct. 15, 1980, 94 Stat. 2046, established the Chesapeake Bay Research Board.

Section 3005, Pub. L. 96-460, § 6, Oct. 15, 1980, 94 Stat. 2047, authorized appropriations to carry out the purposes of this chapter.

Section 3006, Pub. L. 96-460, § 7, Oct. 15, 1980, 94 Stat. 2047, established the relationship between this chapter and existing Federal, State, and local authority.

Section 3007, Pub. L. 96-460, § 8, Oct. 15, 1980, 94 Stat. 2048, provided that this chapter and the authority conferred by it would terminate Sept. 30, 1984.

CHAPTER 51—ALASKA NATIONAL INTEREST LANDS CONSERVATION

SUBCHAPTER I—GENERAL PROVISIONS

§ 3101. Congressional statement of purpose

ACT REFERRED TO IN OTHER SECTIONS

The Alaska National Interest Lands Conservation Act is referred to in title 43 sections 1614, 1620, 1629a; title 45 section 1212.

§ 3102. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3141 of this title; title 45 section 1202.

SUBCHAPTER II—SUBSISTENCE MANAGEMENT AND USE

§ 3117. Judicial enforcement

[*See main edition for text of* (a)]

(b) **Repealed. Pub. L. 98-620, title IV, § 402(22)(A), Nov. 8, 1984, 98 Stat. 3358**

[*See main edition for text of* (c)]

(As amended Pub. L. 98-620, title IV, § 402(22)(A), Nov. 8, 1984, 98 Stat. 3358.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-620 struck out subsec. (b) which had provided that a civil action filed pursuant to this section was to be assigned for hearing at the earliest possible date, was to take precedence over other matters pending on the docket of the United States district court at that time, and was to be expedited in every way by such court and any appellate court.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

SUBCHAPTER IV — TRANSPORTATION AND UTILITY SYSTEMS IN AND ACROSS, AND ACCESS INTO, CONSERVATION SYSTEM UNITS

§ 3168. Injunctive relief

No court shall have jurisdiction to grant any injunctive relief lasting longer than ninety days against any action pursuant to this subchapter except in conjunction with a final judgment entered in a case involving an action pursuant to this subchapter.

(As amended Pub. L. 98-620, title IV, § 402(22)(B), Nov. 8, 1984, 98 Stat. 3358.)

AMENDMENTS

1984—Pub. L. 98-620 redesignated subsec. (c) as entire section, and struck out subsecs. (a) and (b), which had related, respectively, to Congressional intent concerning, and time periods for, expedited judicial review.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 52—SALMON AND STEELHEAD CONSERVATION AND ENHANCEMENT

SUBCHAPTER V—MISCELLANEOUS

§ 3341. Regulations

The Secretary of Commerce and the Secretary of the Interior may each promulgate such regulations, in accordance with section 553 of title 5, as may be necessary to carry out his functions under this chapter.

(Pub. L. 96-561, title I, § 140, Dec. 22, 1980, 94 Stat. 3286.)

CODIFICATION

Section is set out in this supplement to correct a typographical error appearing in the main edition.

CHAPTER 53—CONTROL OF ILLEGALLY TAKEN FISH AND WILDLIFE

§ 3371. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 1997.

§ 3375. Enforcement

[*See main edition for text of* (a) *to* (c)]

(d) **Rewards and incidental expenses**

Beginning in fiscal year 1983, the Secretary or the Secretary of the Treasury shall pay, from sums received as penalties, fines, or forfeitures of property for any violation of this chapter or any regulation issued hereunder (1) a reward to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this chapter or any regulation issued hereunder. The amount of the reward, if any, is to be designated by the Secretary or the Secretary of the Treasury, as appropriate. Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of his official duties is ineligible for payment under this subsection, and (2) the reasonable and necessary costs incurred by any person in providing temporary care for any fish, wildlife, or plant pending the disposition of any civil or criminal proceeding alleging a violation of this chapter with respect to that fish, wildlife, or plant.

(As amended Pub. L. 98-327, § 4, June 25, 1984, 98 Stat. 271.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-327 substituted a comma for "a reward" after "shall pay" in first sentence, inserted "(1) a reward" before "to any person", and added cl. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 10601.

CHAPTER 55—COASTAL BARRIER RESOURCES

§ 3503. Coastal Barrier Resources System

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3502, 3504, 3510 of this title; title 42 section 4028.

CHAPTER 56—NORTH ATLANTIC SALMON FISHING

§ 3602. United States representation on Council and Commissions

[*See main edition for text of* (a) *and* (b)]

(c) Limited Federal employee status

Individuals who serve as Commissioners and alternate Commissioners shall not receive any compensation for such service. Such individuals shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 171 of title 28.

[*See main edition for text of* (d)]

(As amended Pub. L. 98-44, title I, § 102(1), July 12, 1983, 97 Stat. 216.)

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-44 substituted "shall not be considered" for "shall be considered".

§ 3606. Violations and penalties

[*See main edition for text of* (a) *and* (b)]

(c) Civil forfeiture of vessel

Any vessel used, and any fish (or the fair market value thereof) taken or retained in any manner, in connection with or as the result of the commission of an act which is unlawful under subsection (a) of this section shall be subject to civil forfeiture under section 310 of the Act of 1976 (16 U.S.C. 1860) to the same extent as if such vessel was used in, or such fish was taken or retained in connection with or as the result of, the commission of an act prohibited by section 307 of the Act of 1976 (16 U.S.C. 1857).

(As amended Pub. L. 98-44, title I, § 102(2), July 12, 1983, 97 Stat. 216.)

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-44 added provision that any fish, or the fair market value thereof, taken or retained in connection with or as the result of the commission of an act unlawful under subsection (a) of this section shall be subject to civil forfeitures under section 1860 of this title to the same extent as if such fish was taken or retained in connection with or as the result of the commission of an act prohibited by section 1857 of this title.

CHAPTER 56A—PACIFIC SALMON FISHING

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§ 3631. Definitions

As used in this chapter, unless the context otherwise requires, the term—

(a) "Commission" means the Pacific Salmon Commission established by the Treaty;

(b) "enhancement" means manmade improvements to natural habitats, or the application of artificial fish culture technology, that will lead to the increase of salmon stocks;

(c) "Magnuson Act" means the Act entitled "the Magnuson Fishery Conservation and Management Act," as approved April 13, 1976, and as later amended (16 U.S.C. section 1801 et seq.);

(d) "Panel" means any of the Panels established by the Treaty;

(e) "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State);

(f) "salmon" means any anadromous species of the family Salmonidae and genus Oncorhynchus, commonly known as Pacific salmon, including but not limited to:

Popular names	Scientific name
Chinook or King Salmon	Oncorhynchus tshawytscha
Coho or Silver Salmon	Oncorhynchus kisutch
Pink or Humpback Salmon	Oncorhynchus gorbuscha
Chum or Dog Salmon	Oncorhynchus keta
Sockeye or Red Salmon	Oncorhynchus nerka

and shall also include Steelhead (Salmo gairdneri);

(g) "Secretary" means the Secretary of Commerce;

(h) "Treaty" means the Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985;

(i) "treaty Indian tribe" means any of the federally recognized Indian tribes of the Columbia River basin, Washington coast or Puget Sound areas having reserved fishing rights to salmon stocks subject to the Treaty under treaties with the United States Government; and

(j) "United States Section" means the four United States Commissioners appointed by the President pursuant to this chapter.

(Pub. L. 99-5, § 2, Mar. 15, 1985, 99 Stat. 7.)

REFERENCES IN TEXT

The Magnuson Fishery Conservation and Management Act, referred to in subsec. (c), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§ 1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

SHORT TITLE

Section 1 of Pub. L. 99-5 provided: "That this Act [enacting this chapter and repealing sections 776 to 776f of this title and provisions set out as notes under section 776 of this title] may be cited as the 'Pacific Salmon Treaty Act of 1985'."

§ 3632. United States Section

(a) Commissioners

The United States shall be represented on the Commission by four United States Commissioners who are knowledgeable or experienced concerning Pacific salmon, to be appointed by and serve at the pleasure of the President. Of these, one shall be an official of the United States Government who shall be a nonvoting member of the United States Section; one shall be a resident of the State of Alaska and shall be appointed from a list of at least six qualified individuals nominated by the Governor of that State; one shall be a resident of the States [1] of Oregon,[2] or Washington and shall be appointed from a list of at least six qualified individuals nominated by the Governors of those States; and one shall be appointed from a list of at least six qualified individuals nominated by the treaty Indian tribes of the States of Idaho, Oregon or Washington. Two of the initial appointments shall be for two-year terms; all other appointments shall be for four-year terms. Each Commissioner is eligible for reappointment. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. Unless otherwise agreed, the chairmanship of the United States Section shall rotate annually among all four members with the order of rotation determined by lot at the first meeting.

(b) Alternate Commissioners

The Secretary of State, in consultation with the Secretary and the Secretary of the Interior, shall designate an Alternate Commissioner for each Commissioner from the respective lists referred to in subsection (a) of this section, and may designate an Alternate Commissioner for the Federal Commissioner. In the absence of a Commissioner, the Alternate Commissioner may exercise all functions of such Commissioner at any meeting of the Commission or of the United States Section. Alternate Commissioners are eligible for reappointment and may attend all meetings of the United States Section.

(c) Southern Panel

The United States shall be represented on the southern Panel by six Panel members, of whom—

(1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;

(2) one shall be an official of the State of Oregon, with salmon fishery management responsibility and expertise;

(3) one shall be an official of the State of Washington, with salmon fishery management responsibility and expertise;

(4) two shall be appointed from a list submitted by the treaty Indian tribes of individuals with salmon fishery management responsibility and expertise; and

(5) one shall be appointed from the commercial or recreational sector who is knowledgeable and experienced in the salmon fisheries for which the southern Panel is responsible.

(d) Northern Panel

The United States shall be represented on the northern Panel by six Panel members, of whom—

(1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;

[1] So in original. Probably should be "State".

[2] So in original. The comma probably should not appear.

(2) one shall be an official of the State of Alaska, with salmon fishery management responsibility and expertise; and

(3) four shall be individuals knowledgeable and experienced in the salmon fisheries for which the northern Panel is responsible.

(e) Fraser River Panel

The United States shall be represented on the Fraser River Panel by four Panel members, of whom—

(1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;

(2) one shall be an official of the State of Washington, with salmon fishery management responsibility and expertise;

(3) one shall be appointed from a list submitted by the treaty Indian tribes of individuals with salmon fishery management responsibility and expertise for the fisheries for which the Fraser River Panel is responsible; and

(4) one shall be appointed from the commercial sector of the salmon fishing industry concerned with fisheries for which the Fraser River Panel is responsible.

(f) Panel appointments

Panel members described in subsections (c)(2), (c)(3), (d)(2), and (e)(2) of this section shall be appointed by the Governor of the applicable State. Panel members described in subsections (c)(4) and (e)(3) of this section shall be appointed by the Secretary of the Interior from lists of nominations provided by the appropriate treaty Indian tribes. All other Panel members shall be appointed by the Secretary: *Provided*, That at least one member of the northern Panel shall be a voting member of the North Pacific Fishery Management Council, at least one member of the southern Panel shall be a voting member of the Pacific Fishery Management Council; and the Panel members described in subsections (c)(5), (d)(3), and (e)(4) of this section shall be appointed from lists of nominations provided by the Governors of the applicable States. The appointing authorities listed above may also designate an alternate Panel member, meeting the same qualifications and having the same term of office, to service in the absence of a Panel member appointed under this subsection. Panel members and alternate Panel members, other than the southern Panel member described in subsection (c)(5) of this section, shall serve four-year terms; except that the Secretary of State shall designate one-half of the initial appointments to each Panel as serving two-year terms. The southern Panel member described in subsection (c)(5) of this section and the corresponding alternate shall each be appointed for one-year terms; the first such member shall be appointed from the commercial sector and an alternate shall be appointed from the recreational sector, with the alternate succeeding to the member position in the subsequent year; thereafter the member and alternate positions shall rotate between the commercial and recreational sectors on an annual basis. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. Panel members and alternates shall be eligible for reappointment and may attend all meetings of the relevant United States Panel Section.

(g) Voting requirements

(1) The United States Section shall operate with the objective of attaining consensus decisions in the development and exercise of its single vote within the Commission. A decision of the United States Section shall be taken when there is no dissenting vote.

(2) All decisions and recommendations of the United States Section of the northern and southern Panels shall require the concurring vote of a majority of the United States Panel members present and voting, except that decisions and recommendations of the southern Panel shall require the concurring vote of the members designated in subsections (c)(2) and (c)(3) of this section and one of those members designated in subsection (c)(4) of this section.

(3) All decisions and recommendations of the United States Section of the Fraser River Panel shall require the concurring vote of all United States Panel members present and voting, except that orders referred to in article VI(6) of the Treaty may be agreed to on the basis of a majority, provided that the Panel members representing the State and Tribal fishery management authorities concur.

(4) All decisions and recommendations of any joint Panel shall require the concurring votes of each Panel under the voting rules specified in paragraphs (2) and (3).

(5) To assist in the resolution of disputes affecting decisions of the United States Section or of the United States Panel sections, a three-person Conciliation Board may be established. The members of the Conciliation Board shall be selected by the United States Section as follows: each non-Federal Commissioner shall submit a list of no fewer than three qualified nominees; one person shall be selected from each list by consensus decision of the Federal Commissioner and the other two non-Federal Commissioners. The Conciliation Board shall operate under such bylaws as may be established by the United States Section.

(6) In any matter where the Fraser River Panel is unable to act because the United States Fraser River Panel members have been unable to reach a decision in accordance with paragraph (3) of this subsection, and upon a determination by the Chairman of the United States Section that an action of the Panel is required, the United States Section shall act for the United States Panel members in the Fraser River Panel.

(7) In any matter where the Secretary of State determines that the United States is in jeopardy of not fulfilling its international obligations under the Treaty, the Secretary of State shall so certify to the United States Section. Such certification shall include the reasons for such determination and shall specify the date by which a decision by the United States Section is desired. If the United States Section has not reached a decision by the date specified, the Secretary of State, after consulta-

tion with the Secretary and the Secretary of the Interior, shall report on the matter to the President.

(h) Consultation

In carrying out their functions under the Treaty, the Commissioners and Panel members may consult with such other interested parties as they consider appropriate. The Federal Advisory Committee Act [5 U.S.C. App.] shall not apply.

(Pub. L. 99-5, § 3, Mar. 15, 1985, 99 Stat. 8.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3638 of this title.

§ 3633. Authority and responsibility

(a) Secretary of State

The Secretary of State is authorized to—

(1) receive and transmit, on behalf of the United States, reports, requests, recommendations, proposals, and other communications of and to the Commission and Panels;

(2) in consultation with the Secretary and the Secretary of the Interior, approve, disapprove, object to, or withdraw objections to fishery regimes, including enhancement programs and Fraser River Panel regulations proposed in accordance with the Treaty, on the condition that the United States shall be obligated to carry out such regimes or regulations only to the extent that funds are made available for such purposes in appropriation Acts; and

(3) act upon, or refer to other appropriate authority, any communication referred to in paragraph (1) of this subsection other than a proposed fishery regime or Fraser River Panel regulation.

(b) States and treaty Indian tribes

Recommendations of the Commission on fishery regimes or Fraser River Panel regulations approved by the Secretary of State pursuant to subsection (a)(2) of this section shall be forwarded immediately to the States of Alaska, Oregon, Washington, and Idaho and to the treaty Indian tribes, as appropriate. In the exercise of their general fishery management authority, the States and treaty Indian tribes may adopt corresponding laws, regulations, or orders within their respective jurisdictions.

(c) Secretary of Commerce

In cooperation with the appropriate Regional Fishery Management Councils, States and treaty Indian tribes, the Secretary shall prepare, as appropriate, all statements, reports, and information required by the Treaty and submit such documents to the Secretary of State, who shall transmit them to the Commission.

(Pub. L. 99-5, § 4, Mar. 15, 1985, 99 Stat. 10.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3638 of this title.

§ 3634. Interagency cooperation

(a) States, United States agencies, treaty Indian tribes, private institutions and organizations

In carrying out the provisions of the Treaty and this chapter, the Secretary, in consultation with the Secretary of the Interior, may arrange for cooperation with agencies of the United States, the States, treaty Indian tribes, private institutions and organizations, and may execute such memoranda as may be necessary to reflect such agreements.

(b) United States agencies; facilities and personnel

Agencies of the United States may cooperate in the conduct of scientific and other programs, and may furnish facilities and personnel, for the purposes of assisting the Commission and Panels in carrying out their responsibilities under the Treaty. Such agencies may accept reimbursement from the Commission for providing such services, facilities, and personnel.

(Pub. L. 99-5, § 5, Mar. 15, 1985, 99 Stat. 11.)

§ 3635. Preemption

If any State or treaty Indian tribe has taken any action, or omitted to take any action, the results of which place the United States in jeopardy of not fulfilling its international obligations under the Treaty, or any fishery regime or Fraser River Panel regulation adopted thereunder, the Secretary shall inform the State or tribe of the manner in which the action or inaction places the United States in jeopardy of not fulfilling its international obligations under the Treaty, of any remedial action which would relieve this concern, and of the intention to promulgate Federal regulations if such remedial actions are not undertaken within fifteen days unless an earlier action is required to avoid violation of United States Treaty obligations. Should United States action be required to meet Treaty obligations to Canada in respect to treaty Indian fisheries conducted in terminal areas subject to the continuing jurisdiction of a United States district court, such action shall be taken within the framework of such court jurisdiction. Otherwise, regulations may be promulgated by the Secretary pursuant to section 3636(a) of this title which shall supersede any State or treaty Indian tribal law, regulation or order determined by the Secretary to place the United States in jeopardy of not fulfilling its international obligations under the Treaty. Timely notice of all such determinations shall be disseminated by electronic media and shall be published in local newspapers in the major fishing ports affected and in the Federal Register. In order to enable the United States to fulfill its obligations under article IV(7) of the Treaty, the States of Alaska, Idaho, Oregon and Washington and the treaty Indian tribes shall advise the Secretary of all pertinent laws or regulations pertaining to the harvest of Pacific salmon, together with such amendments thereto as may be adopted from time to time.

(Pub. L. 99-5, § 6, Mar. 15, 1985, 99 Stat. 11.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3636, 3638 of this title.

§ 3636. Rulemaking

(a) Promulgation of regulations by Secretary of Commerce

The Secretary, in consultation with the Secretary of the Interior, the Secretary of the Department in which the Coast Guard is operating and the appropriate Regional Fishery Management Council, shall promulgate such regulations as may be necessary to carry out the United States international obligations under the Treaty and this chapter, pursuant to section 3635 of this title, as well as conforming amendatory regulations applicable to the United States Exclusive Economic Zone. Any such regulation may be made applicable, as necessary, to all persons and all vessels subject to the jurisdiction of the United States, wherever located. Such regulations as are necessary and appropriate to carry out obligations of the United States under the Treaty involve a foreign affairs function, and as such shall not be subject to sections 553 through 557 of title 5, or the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

(b) Additions to fishery regimes and Fraser River Panel regulations

The Secretary, in cooperation with the Regional Fishery Management Councils, States, and treaty Indian tribes, may promulgate regulations applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with, fishery regimes and Fraser River Panel regulations adopted under the Treaty. Such regulations shall not discriminate between residents of different States.

(c) Judicial review

Regulations promulgated by the Secretary under this chapter shall be subject to judicial review by the district courts of the United States to the extent authorized by, and in accordance with, chapter 7 of title 5; except that section 705 of such title is not applicable, and the appropriate court shall only set aside any such regulation on a ground specified in section 706(2)(A), (B), (C), or (D) of such title. A civil action filed pursuant to this section shall be assigned for hearing at the earliest possible date, shall take precedence over other matters pending on the docket of the United States district court at that time, and shall be expedited in every way by such court and any appellate court.

(Pub. L. 99-5, § 7, Mar. 15, 1985, 99 Stat. 12.)

REFERENCES IN TEXT

The National Environmental Policy Act, referred to in subsec. (a), probably means the National Environmental Policy Act of 1969, Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3635, 3638 of this title.

§ 3637. Prohibited acts and penalties

(a) Unlawful acts

It is unlawful for any person or vessel subject to the jurisdiction of the United States—

(1) to violate any provision of this chapter, or of any regulation adopted hereunder, or of any Fraser River Panel regulation approved by the United States under the Treaty;

(2) to refuse to permit any officer authorized to enforce the provisions of this chapter to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this chapter;

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (2);

(4) to resist a lawful arrest for any act prohibited by this section;

(5) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this chapter; or

(6) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.

(b) Civil penalty

Any person who commits any act that is unlawful under subsection (a) of this section shall be liable to the United States for a civil penalty as provided by section 308 of the Magnuson Act (16 U.S.C. 1858).

(c) Criminal penalty

Any person who commits an act that is unlawful under paragraph (2), (3), (4), or (6) of subsection (a) of this section shall be guilty of an offense punishable as provided by section 309(b) of the Magnuson Act (16 U.S.C. 1859(b)).

(d) Forfeiture

(1) Any vessel (including its gear, furniture, appurtenances, stores, and cargo) used in the commission of an act which is prohibited under subsection (a) of this section, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act which is prohibited by subsection (a) of this section, shall be subject to forfeiture as provided by section 310 of the Magnuson Act (16 U.S.C. 1860).

(2) Any fish seized pursuant to this chapter may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed by regulation of the Secretary.

(e) Enforcement authority

The Secretary and the Secretary of the Department in which the Coast Guard is operating shall enforce the provisions of this chapter and shall have the authority provided by sub-

sections 311(a), (b)(1), and (c) of the Magnuson Act (16 U.S.C. 1861(a), (b)(1), and (c)).

(f) Jurisdiction

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under this section and may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

(Pub. L. 99-5, § 8, Mar. 15, 1985, 99 Stat. 12.)

§ 3638. General standard

All actions taken under sections 3632(g), 3633, 3635, and 3636 of this title shall—

(a) take into account the best scientific information available;

(b) result in measures necessary and appropriate for the conservation, management, utilization and development of the Pacific salmon resource, with due consideration of social and economic concerns; and

(c) be consistent with United States obligations under the Treaty, domestic Indian treaties and other applicable law.

(Pub. L. 99-5, § 9, Mar. 15, 1985, 99 Stat. 13.)

§ 3639. Advisory committee

(a) Appointment; membership

The United States Section shall appoint an advisory committee of not less than twelve but not more than twenty members who are knowledgeable and experienced with respect to fisheries subject to the Treaty. One-half the membership of the committee shall be residents of the State of Alaska and one member shall be a resident of the State of Idaho. Each member shall serve a term of two years and shall be eligible for reappointment.

(b) Functions

Members of the advisory committee may attend all public meetings of the Commission and Panels and all nonexecutive sessions of the United States Section and United States Panel sections. At nonexecutive meetings of the United States Section and United States Panel sections, members of the advisory committee shall be given the opportunity to examine and to be heard on any nonadministrative matter under consideration.

(c) Compensation

The members of the advisory committee shall receive no compensation for their services as such members.

(d) Meetings

The Chairman of the United States Section shall call a meeting of the advisory committee at least one time each year.

(Pub. L. 99-5, § 10, Mar. 15, 1985, 99 Stat. 13.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 3640. Administrative matters

(a) Compensation of Commissioners and Alternate Commissioners

Commissioners and Alternate Commissioners who are not State or Federal employees shall receive compensation at the daily rate of GS-18 of the General Schedule when engaged in the actual performance of duties for the United States Section or for the Commission.

(b) Compensation of Panel Members and Alternate Panel Members

Panel Members and Alternate Panel Members who are not State or Federal employees shall receive compensation at the daily rate of GS-16 of the General Schedule when engaged in the actual performance of duties for the United States Section or for the Commission.

(c) Travel; other expenses

Travel and other necessary expenses shall be paid for all United States Commissioners, Alternate Commissioners, Panel Members, Alternate Panel Members, members of the Joint Technical Committee, and members of the Advisory Committee when engaged in the actual performance of duties for the United States Section or for the Commission.

(d) Individuals not considered Federal employees

Except for officials of the United States Government, such individuals shall not be considered to be Federal employees while engaged in the actual performance of duties for the United States Section or for the Commission, except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5 and chapter 71 [1] of title 28.

(Pub. L. 99-5, § 11, Mar. 15, 1985, 99 Stat. 14.)

REFERENCES IN TEXT

The General Schedule, referred to in subsecs. (a) and (b), is set out under section 5332 of Title 5, Government Organization and Employees.

§ 3641. Authorization of appropriations

There are authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Treaty and this chapter including—

(a) necessary travel expenses of the Commissioners, Panel members, alternate Commissioners, alternate Panel members, United States members of joint technical committees established under article IV of the Treaty, and advisory committee members in accordance with the Federal Travel Regulations and

[1] So in original. Probably should be "chapter 171".

sections 5701, 5702, 5704 through 5708, and 5731 of title 5;

(b) the United States share of the joint expenses of the Commission: *Provided*, That the United States Commissioners and Panel members and alternates shall not, with respect to commitments concerning the United States share of the joint expenses of the Organization, be subject to section 262b of title 22 insofar as it limits the authority of United States representatives to international organizations with respect to such commitments;

(c) amounts for research, enhancement, and other activities necessary to carry out the purposes of the Treaty and this chapter; and

(d) such amounts as may be due to settle accounts upon termination of the International Pacific Salmon Fisheries Commission.

(Pub. L. 99-5, § 12, Mar. 15, 1985, 99 Stat. 14.)

§ 3642. Disposition of property of International Pacific Salmon Fisheries Commission

The Secretary of State shall dispose of any United States property held by the International Pacific Salmon Fisheries Commission on the date of its termination in a manner which would further the purposes of this chapter.

(Pub. L. 99-5, § 13 [part], Mar. 15, 1985, 99 Stat. 15.)

Codification

Section consists of a part of section 13 of Pub. L. 99-5. The remainder of section 13 of Pub. L. 99-5 provided for the repeal, effective Dec. 31, 1985, of the Sockeye Salmon or Pink Salmon Fishing Act of 1947, act July 29, 1947, ch. 345, 61 Stat. 511, as amended, which was classified to chapter 10A (§ 776 et seq.) of this title.

§ 3643. Savings provision

This chapter shall not be interpreted or applied so as to affect or modify rights established in existing Indian treaties and other existing Federal laws, including the Order entered in Confederated Tribes and Bands of the Yakima Indian Nation v. Baldrige, Civil No. 80-342 (WD WASH.). This section shall not be interpreted or applied so as to affect or modify any rights or obligations of the United States pursuant to the Treaty.

(Pub. L. 99-5, § 14, Mar. 15, 1985, 99 Stat. 15.)

§ 3644. Restriction on spending authority

New spending authority or authority to enter into contracts provided in this chapter shall be effective only to such extent, or in such amounts, as are provided in advance in appropriation Acts.

(Pub. L. 99-5, § 15, Mar. 15, 1985, 99 Stat. 15.)

CHAPTER 57—NATIONAL FISH AND WILDLIFE FOUNDATION

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§ 3701. Establishment and purposes of Foundation

(a) Establishment

There is established the National Fish and Wildlife Foundation (hereinafter in this chapter referred to as the "Foundation"). The Foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States.

(b) Purposes

The purposes of the Foundation are—

(1) to encourage, accept, and administer private gifts of property for the benefit of, or in connection with, the activities and services of the United States Fish and Wildlife Service; and

(2) to undertake and conduct such other activities as will further the conservation and management of the fish, wildlife, and plant resources of the United States, and its territories and possessions, for present and future generations of Americans.

(Pub. L. 98-244, § 2, Mar. 26, 1984, 98 Stat. 107.)

Short Title

Section 1 of Pub. L. 98-244 provided that: "This Act [enacting this chapter] may be cited as the 'National Fish and Wildlife Foundation Establishment Act'."

Section Referred to in Other Sections

This section is referred to in sections 3703, 3706 of this title.

§ 3702. Board of Directors of Foundation

(a) Establishment and membership

The Foundation shall have a governing Board of Directors (hereinafter referred to in this chapter as the "Board"), which shall consist of nine Directors, each of whom shall be a United States citizen and—

(1) six of whom must be knowledgeable or experienced in fish and wildlife conservation; and

(2) three of whom must be educated and experienced in the principles of fish and wildlife management.

The membership of the Board, to the extent practicable, shall represent diverse points of view relating to fish and wildlife conservation. The Director of the United States Fish and Wildlife Service shall be an ex officio nonvoting member of the Board. Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purposes of any Federal law.

(b) Appointment and terms

By December 31, 1984, the Secretary of the Interior (hereinafter referred to in this chapter as the "Secretary") shall appoint the Directors of the Board. The Directors shall be appointed for terms of six years; except that the Secretary, in making the initial appointments to the Board, shall appoint three Directors to a term of two years, three Directors to a term of four years, and three Directors to a term of six years. A vacancy on the Board shall be filled within sixty days of said vacancy in the manner in which the original appointment was made. No individual may serve more than two consecutive terms as a Director.

(c) Chairman

The Chairman shall be elected by the Board from its members for a two-year term.

(d) Quorum

A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(e) Meetings

The Board shall meet at the call of the Chairman at least once a year. If a Director misses three consecutive regularly scheduled meetings, that individual may be removed from the Board and that vacancy filled in accordance with subsection (b) of this section.

(f) Reimbursement of expenses

Members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Foundation.

(g) General powers

(1) The Board may complete the organization of the Foundation by—

(A) appointing officers and employees;

(B) adopting a constitution and bylaws consistent with the purposes of the Foundation and the provisions of this chapter; and

(C) undertaking of other such acts as may be necessary to carry out the provisions of this chapter.

(2) The following limitations apply with respect to the appointment of officers and employees of the Foundation:

(A) Officers and employees may not be appointed until the Foundation has sufficient funds to pay them for their service. Officers and employees of the Foundation shall be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

(B) The first officer or employee appointed by the Board shall be the Secretary of the Board who (i) shall serve, at the direction of the Board, as its chief operating officer, and (ii) shall be knowledgeable and experienced in matters relating to fish and wildlife conservation.

(Pub. L. 98–244, § 3, Mar. 26, 1984, 98 Stat. 107.)

REFERENCES IN TEXT

Provisions of title 5 governing appointments in competitive service, referred to in subsec. (g)(2)(A), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (g)(2)(A), is set out under section 5332 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3704 of this title.

§ 3703. Rights and obligations of Foundation

(a) In general

The Foundation—

(1) shall have perpetual succession;

(2) may conduct business throughout the several States, territories, and possessions of the United States;

(3) shall have its principal offices in the District of Columbia; and

(4) shall at all times maintain a designated agent authorized to accept service of process for the Foundation.

The serving of notice to, or service of process upon, the agent required under paragraph (4), or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(b) Seal

The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(c) Powers

To carry out its purposes under section 3701 of this title, the Foundation shall have, in addition to the powers otherwise given it under this chapter, the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

(1) to accept, receive, solicit, hold, administer and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;

(2) to acquire by purchase or exchange any real or personal property or interest therein;

(3) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain or otherwise dispose of any property or income therefrom;

(4) to borrow money and issue bonds, debentures, or other debt instruments;

(5) to sue and be sued, and complain and defend itself in any court of competent juris-

diction, except that the Directors of the Board shall not be personally liable, except for gross negligence;

(6) to enter into contracts or other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its function; and

(7) to do any and all acts necessary and proper to carry out the purposes of the Foundation.

For purposes of this chapter, an interest in real property shall be treated as including, among other things, easements or other rights for preservation, conservation, protection, or enhancement by and for the public of natural, scenic, historic, scientific, educational, inspirational, or recreational resources. A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of the Foundation.

(d) Certain lands, waters, and interests not subject to condemnation

No lands or waters, or interests therein, that are owned by the Foundation and are determined by the Director of the United States Fish and Wildlife Service or the Migratory Bird Conservation Commission, as the case may be, to be valuable for purposes of fish and wildlife conservation or management shall be subject to condemnation by any State or political subdivision, or any agent or instrumentality thereof.

(Pub. L. 98-244, § 4, Mar. 26, 1984, 98 Stat. 108.)

§ 3704. Administrative services and support

The Secretary may provide personnel, facilities, and other administrative services to the Foundation, including reimbursement of expenses under section 3702 of this tilte, not to exceed then current Federal Government per diem rates, for a period of up to five years from March 26, 1984, and may accept reimbursement therefor, to be deposited in the Treasury to the credit of the appropriations then current and chargeable for the cost of providing such services.

(Pub. L. 98-244, § 5, Mar. 26, 1984, 98 Stat. 109.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3709 of this title.

§ 3705. Volunteer status

The Secretary may accept, without regard to the civil service classification laws, rules, or regulations, the services of the Foundation, the Board, and the officers and employees of the Board, without compensation from the Department of the Interior, as volunteers in the performance of the functions authorized herein, in the manner provided for under section 742f(c) of this title.

(Pub. L. 98-244, § 6, Mar. 26, 1984, 98 Stat. 109.)

REFERENCES IN TEXT

The civil service classification laws, referred to in text, are set forth in chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees.

§ 3706. Audits, report requirements, and petition of Attorney General for equitale relief

(a) Audits

For purposes of the Act entitled "An Act for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (Public Law 88-504, 36 U.S.C. 1101-1103), the Foundation shall be treated as a private corporation established under Federal law.

(b) Report

The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to Congress a report of its proceedings and activities during such year, including a full and complete statement of its receipts, expenditures, and investments.

(c) Relief with respect to certain Foundation acts or failure to act

If the Foundation—

(1) engages in, or threatens to engage in, any act, practice, or policy that is inconsistent with its purposes set forth in section 3701(b) of this title; or

(2) refuses, fails, or neglects to discharge its obligations under this chapter, or threatens to do so;

the Attorney General of the United States may petition in the United States District Court for the District of Columbia for such equitable relief as may be necessary or appropriate.

(Pub. L. 98-244, § 7, Mar. 26, 1984, 98 Stat. 110.)

REFERENCES IN TEXT

The Act entitled "An Act for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (Public Law 88-504, 36 U.S.C. 1101-1103), referred to in subsec. (a), is Pub. L. 88-504, Aug. 30, 1964, 78 Stat. 635, as amended, which is classified principally to chapter 42 (§ 1101 et seq.) of Title 36, Patriotic Societies and Observances. For complete classification of this Act to the Code, see Tables.

§ 3707. United States release from liability

The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation nor shall the full faith and credit of the United States extend to any obligation of the Foundation.

(Pub. L. 98-244, § 8, Mar. 26, 1984, 98 Stat. 110.)

§ 3708. Reservation of right to amend and repeal chapter

The Congress expressly reserves the right to repeal or amend this chapter at any time.

(Pub. L. 98-244, § 9, Mar. 26, 1984, 98 Stat. 110.)

§ 3709. Authorization of appropriations

For the ten-year period beginning on October 1, 1984, there are authorized to be appropriated to the Department of the Interior not to exceed $1,000,000 to be made available to the Foundation—

(1) to match, on a one-for-one basis, private contributions made to the Foundation; and

(2) to provide administrative services under section 3704 of this title.

(Pub. L. 98-244, § 10, Mar. 26, 1984, 98 Stat. 110.)

CHAPTER 58—ERODIBLE LAND AND WETLAND CONSERVATION AND RESERVE PROGRAM

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SUBCHAPTER I—DEFINITIONS

§ 3801. Definitions

(a) For purposes of this chapter:

(1) The term "agricultural commodity" means—

(A) any agricultural commodity planted and produced in a State by annual tilling of the soil, including tilling by one-trip planters; or

(B) sugarcane planted and produced in a State.

(2) The term "conservation district" means any district or unit of State or local government formed under State or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district", "soil conservation district", "soil and water conservation district", "resource conservation district", "natural resource district", "land conservation committee", or a similar name.

(3) The term "cost sharing payment" means a payment made by the Secretary to an owner or operator of a farm or ranch containing highly erodible cropland under the provisions of section 3834(b) of this title.

(4)(A) The term "converted wetland" means wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose or to have the effect of making the production of an agricultural commodity possible if—

(i) such production would not have been possible but for such action; and

(ii) before such action—

(I) such land was wetland; and

(II) such land was neither highly erodible land nor highly erodible cropland.

(B) Wetland shall not be considered converted wetland if production of an agricultur-

al commodity on such land during a crop year—

(i) is possible as a result of a natural condition, such as drought; and

(ii) is not assisted by an action of the producer that destroys natural wetland characteristics.

(5) The term "field" means such term as is defined in section 718.2(b)(9) of title 7 of the Code of Federal Regulations (as of January 1, 1985), except that any highly erodible land on which an agricultural commodity is produced after December 23, 1985, and that is not exempt under section 3812 of this title shall be considered as part of the field in which such land was included on December 23, 1985, unless the Secretary permits modification of the boundaries of the field to carry out this chapter.

(6) The term "highly erodible cropland" means highly erodible land that is in cropland use, as determined by the Secretary.

(7)(A) The term "highly erodible land" means land—

(i) that is classified by the Soil Conservation Service as class IV, VI, VII, or VIII land under the land capability classification system in effect on December 23, 1985; or

(ii) that has, or that if used to produce an agricultural commodity, would have an excessive average annual rate of erosion in relation to the soil loss tolerance level, as established by the Secretary, and as determined by the Secretary through application of factors from the universal soil loss equation and the wind erosion equation, including factors for climate, soil erodibility, and field slope.

(B) For purposes of this paragraph, the land capability class or rate of erosion for a field shall be that determined by the Secretary to be the predominant class or rate of erosion under regulations issued by the Secretary.

(8) The term "hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

(9) The term "hydrophytic vegetation" means a plant growing in—

(A) water; or

(B) a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(10) The term "in-kind commodities" means commodities that are normally produced on land that is the subject of an agreement entered into under subchapter IV of this chapter.

(11) The term "rental payment" means a payment made by the Secretary to an owner or operator of a farm or ranch containing highly erodible cropland to compensate the owner or operator for retiring such land from crop production and placing such land in the conservation reserve in accordance with subchapter IV of this chapter.

(12) The term "Secretary" means the Secretary of Agriculture.

(13) The term "shelterbelt" means a vegetative barrier with a linear configuration composed of trees, shrubs, and other approved perennial vegetation.

(14) The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(15) The term "vegetative cover" means—

(A) perennial grasses, legumes, forbs, or shrubs with an expected life span of 5 or more years; or

(B) trees.

(16) The term "wetland", except when such term is part of the term "converted wetland", means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(b) The Secretary shall develop—

(1) criteria for the identification of hydric soils and hydrophytic vegetation; and

(2) lists of such soils and such vegetation.

(Pub. L. 99-198, title XII, § 1201, Dec. 23, 1985, 99 Stat. 1504.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 1985, 1997.

SUBCHAPTER II—HIGHLY ERODIBLE LAND CONSERVATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3842, 3843, 3844 of this title.

§ 3811. Program ineligibility

Except as provided in section 3812 of this title, and notwithstanding any other provision of law, following December 23, 1985, any person who in any crop year produces an agricultural commodity on a field on which highly erodible land is predominate shall be ineligible for—

(1) as to any commodity produced during that crop year by such person—

(A) any type of price support or payment made available under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act;

(B) a farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(C) crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.);

(D) a disaster payment made under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.); or

(E) a loan made, insured, or guaranteed under the Consolidated Farm and Rural

Development Act (7 U.S.C. 1921 et seq.) or any other provision of law administered by the Farmers Home Administration, if the Secretary determines that the proceeds of such loan will be used for a purpose that will contribute to excessive erosion of highly erodible land; or

(2) a payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) during such crop year for the storage of an agricultural commodity acquired by the Commodity Credit Corporation.

(Pub. L. 99-198, title XII, § 1211, Dec. 23, 1985, 99 Stat. 1506.)

REFERENCES IN TEXT

The Agricultural Act of 1949, referred to in par. (1)(A), (D), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§ 1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

The Commodity Credit Corporation Charter Act, referred to in par. (1)(A), is act June 29, 1948, ch. 704, 62 Stat. 1070, as amended, which is classified generally to subchapter II (§ 714 et seq.) of chapter 15 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 714 of Title 15 and Tables.

The Federal Crop Insurance Act, referred to in par. (1)(C), is title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, as amended, which is classified generally to chapter 36 (§ 1501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1501 of Title 7 and Tables.

The Consolidated Farm and Rural Development Act, referred to in par. (1)(E), is title III of Pub. L. 87-128, Aug. 8, 1961, 75 Stat. 307, as amended, which is classified principally to chapter 50 (§ 1921 et seq.) of Title 7. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3812, 3836, 3843 of this title.

§ 3812. Exemptions

(a) Persons eligible for program benefits in connection with production or reduced production of crops on certain lands; eligibility based upon compliance with conservation plan by January 1, 1995

(1) During the period beginning on December 23, 1985, and ending on the later of January 1, 1990, or the date that is 2 years after the date land on which a crop of an agricultural commodity is produced was mapped by the Soil Conservation Service for purposes of classifying such land under the land capability classification system in effect on December 23, 1985, except as provided in paragraph (2), no person shall become ineligible under section 3811 of this title for program loans, payments, and benefits as the result of the production of a crop of an agricultural commodity on any land that was—

(A) cultivated to produce any of the 1981 through 1985 crops of an agricultural commodity; or

(B) set aside, diverted or otherwise not cultivated under a program administered by the Secretary for any such crops to reduce production of an agricultural commodity.

(2) If, as of January 1, 1990, or 2 years after the Soil Conservation Service has completed a soil survey for the farm, whichever is later, a person is actively applying a conservation plan based on the local Soil Conservation Service technical guide and approved by the local soil conservation district, in consultation with the local committees established under section 590h(b) of this title and the Secretary, or by the Secretary, such person shall have until January 1, 1995, to comply with the plan without being subject to program ineligibility.

(b) Persons eligible for program benefits in connection with production of certain planted crops or production of crops on highly erodible land

No person shall become ineligible under section 3811 of this title for program loans, payments, and benefits as the result of the production of a crop of an agricultural commodity—

(1) planted before December 23, 1985;

(2) planted during any crop year beginning before December 23, 1985;

(3) on highly erodible land in an area—

(A) within a conservation district, under a conservation system that has been approved by a conservation district after the district has determined that the conservation system is in conformity with technical standards set forth in the Soil Conservation Service technical guide for such district; or

(B) not within a conservation district, under a conservation system determined by the Secretary to be adequate for the production of such agricultural commodity on any highly erodible land subject to this title; [1] or

(4) on highly erodible land that is planted in reliance on a determination by the Soil Conservation Service that such land was not highly erodible land, except that this paragraph shall not apply to any agricultural commodity that was planted on any land after the Soil Conservation Service determines that such land is highly erodible land.

(c) Program ineligibility inapplicable to pre-December 23, 1985, section 3811 loans

Section 3811 of this title shall not apply to a loan described in section 3811 of this title made before December 23, 1985.

(Pub. L. 99-198, title XII, § 1212, Dec. 23, 1985, 99 Stat. 1506.)

REFERENCES IN TEXT

This title, referred to in subsec. (b)(3)(B), means title XII of Pub. L. 99-198, which enacted this chapter and section 2005a of this title and amended sections 590g, 2004, 2005, 2006, and 2009 of this title, sections 4207 and 4209 of Title 7, Agriculture, and provisions set out as a note under section 1981 of Title 7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3801, 3811, 3843 of this title.

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[1] See References in Text note below.

§ 3813. Soil surveys

The Secretary shall, as soon as is practicable after December 23, 1985, complete soil surveys on those private lands that do not have a soil survey suitable for use in determining the land capability class for purposes of this subchapter. In carrying out this section, the Secretary shall, insofar as possible, concentrate on those localities where significant amounts of highly erodible land are being converted to the production of agricultural commodities.

(Pub. L. 99-198, title XII, § 1213, Dec. 23, 1985, 99 Stat. 1507.)

SUBCHAPTER III—WETLAND CONSERVATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3842, 3843, 3844 of this title.

§ 3821. Program ineligibility

Except as provided in section 3822 of this title and notwithstanding any other provision of law, following December 23, 1985, any person who in any crop year produces an agricultural commodity on converted wetland shall be ineligible for—

(1) as to any commodity produced during that crop year by such person—

(A) any type of price support or payment made available under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act;

(B) a farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(C) crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.);

(D) a disaster payment made under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.); or

(E) a loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) or any other provision of law administered by the Farmers Home Administration, if the Secretary determines that the proceeds of such loan will be used for a purpose that will contribute to conversion of wetlands (other than as provided in this subchapter) to produce an agricultural commodity; or

(2) a payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) during such crop year for the storage of an agricultural commodity acquired by the Commodity Credit Corporation.

(Pub. L. 99-198, title XII, § 1221, Dec. 23, 1985, 99 Stat. 1507.)

REFERENCES IN TEXT

The Agricultural Act of 1949, referred to in par. (1)(A), (D), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§ 1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

The Commodity Credit Corporation Charter Act, referred to in par. (1)(A), is act June 29, 1948, ch. 704, 62 Stat. 1070, as amended, which is classified generally to subchapter II (§ 714 et seq.) of chapter 15 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 714 of Title 15 and Tables.

The Federal Crop Insurance Act, referred to in par. (1)(C), is title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, as amended, which is classified generally to chapter 36 (§ 1501 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1501 of Title 7 and Tables.

The Consolidated Farm and Rural Development Act, referred to in par. (1)(E), is title III of Pub. L. 87-128, Aug. 8, 1961, 75 Stat. 307, as amended, which is classified principally to chapter 50 (§ 1921 et seq.) of Title 7. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3822, 3836 of this title.

§ 3822. Exemptions

(a) Persons eligible for program benefits in connection with production of crops on certain wetlands

No person shall become ineligible under section 3821 of this title for program loans, payments, and benefits as the result of the production of a crop of an agricultural commodity on—

(1) converted wetland if the conversion of such wetland was commenced before December 23, 1985;

(2) an artificial lake, pond, or wetland created by excavating or diking non-wetland to collect and retain water for purposes such as water for livestock, fish production, irrigation (including subsurface irrigation), a settling basin, cooling, rice production, or flood control;

(3) a wet area created by a water delivery system, irrigation, irrigation system, or application of water for irrigation; or

(4) wetland on which production of an agricultural commodity is possible as a result of a natural condition, such as drought, and without action by the producer that destroys a natural wetland characteristic.

(b) Program ineligibility inapplicable to pre-December 23, 1985, section 3821 loans

Section 3821 of this title shall not apply to a loan described in section 3821 of this title made before December 23, 1985.

(c) Personal exemptions from program ineligibility for actions associated with production of commodities having minimal wetland effect

The Secretary may exempt a person from section 3821 of this title for any action associated with the production of an agricultural commodity on converted wetland if the effect of such action, individually and in connection with all other similar actions authorized by the Secretary in the area, on the hydrological and biological aspect of wetland is minimal.

(Pub. L. 99-198, title XII, § 1222, Dec. 23, 1985, 99 Stat. 1508.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3821, 3823 of this title.

§ 3823. Consultation with Secretary of the Interior

The Secretary shall consult with the Secretary of the Interior on such determinations and actions as are necessary to carry out this subchapter, including—

(1) the identification of wetland;

(2) the determination of exemptions under section 3822 of this title; and

(3) the issuance of regulations under section 3844 of this title to carry out this subchapter.

(Pub. L. 99-198, title XII, § 1223, Dec. 23, 1985, 99 Stat. 1508.)

SUBCHAPTER IV—CONSERVATION RESERVE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3801, 3841, 3842, 3843 of this title.

§ 3831. Conservation reserve

(a) Formulation and execution of program through contracts

During the 1986 through 1990 crop years, the Secretary shall formulate and carry out a conservation reserve program, in accordance with this subchapter, through contracts to assist owners and operators of highly erodible cropland in conserving and improving the soil and water resources of their farms or ranches.

(b) Acreage limitation provision of contracts

The Secretary shall enter into contracts with owners and operators of farms and ranches containing highly erodible cropland to place in the conservation reserve—

(1) during the 1986 crop year, not less than 5, nor more than 45, million acres;

(2) during the 1986 through 1987 crop years, a total of not less than 15, nor more than 45, million acres;

(3) during the 1986 through 1988 crop years, a total of not less than 25, nor more than 45, million acres;

(4) during the 1986 through 1989 crop years, a total of not less than 35, nor more than 45, million acres; and

(5) during the 1986 through 1990 crop years, a total of not less than 40, nor more than 45, million acres.

(c) Reduction of contractual acreage limitation in view of lower rental payments in succeeding year; program inclusion of lands posing an environmental or salinity threat

(1)(A) Notwithstanding subsection (b) of this section, effective for each of the fiscal years 1986 through 1989, the Secretary may reduce by up to 25 percent the number of acres of highly erodible land required to be placed under contract during each fiscal year if the Secretary determines that the rental payments to be made under section 3833(b) of this title on such acres are likely to be significantly lower in the succeeding year.

(B) Paragraph (A) shall not affect the requirements of paragraph (5) of subsection (b) of this section.

(2) The Secretary may include in the program established under this subchapter lands that are not highly erodible lands but that pose an off-farm environmental threat or, if permitted to remain in production, pose a threat of continued degradation of productivity due to soil salinity.

(d) County cropland limitation; exception in event local economy of county unaffected

Under the program established under this subchapter, the Secretary shall not place under contract more than 25 percent of the cropland in any one county, except that the Secretary may exceed the limitation established by this subsection in a county to the extent that the Secretary determines that such action would not adversely affect the local economy of such county.

(e) Term of contracts

For the purpose of carrying out this subchapter, the Secretary shall enter into contracts of not less than 10, nor more than 15, years.

(Pub. L. 99-198, title XII, § 1231, Dec. 23, 1985, 99 Stat. 1509.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 1441-1, 1444-1, 1444e, 1445b-3.

§ 3832. Duties of owners and operators

(a) Terms of contract

Under the terms of a contract entered into under this subchapter, during the term of such contract, an owner or operator of a farm or ranch must agree—

(1) to implement a plan approved by the local conservation district (or in an area not located within a conservation district, a plan approved by the Secretary) for converting highly erodible cropland normally devoted to the production of an agricultural commodity on the farm or ranch to a less intensive use (as defined by the Secretary), such as pasture, permanent grass, legumes, forbs, shrubs, or trees, substantially in accordance with a schedule outlined in the plan;

(2) to place highly erodible cropland subject to the contract in the conservation reserve established under this subchapter;

(3) not to use such land for agricultural purposes, except as permitted by the Secretary;

(4) to establish approved vegetative cover on such land;

(5) on the violation of a term or condition of the contract at any time the owner or operator has control of such land—

(A) to forfeit all rights to receive rental payments and cost sharing payments under the contract and to refund to the Secretary any rental payments and cost sharing payments received by the owner or operator under the contract, together with interest thereon as determined by the Secretary, if the Secretary, after considering the recommendations of the soil conservation district and the Soil Conservation Service, determines that such violation is of such nature

as to warrant termination of the contract; or

(B) to refund to the Secretary, or accept adjustments to, the rental payments and cost sharing payments provided to the owner or operator, as the Secretary considers appropriate, if the Secretary determines that such violation does not warrant termination of the contract;

(6) on the transfer of the right and interest of the owner or operator in land subject to the contract—

(A) to forfeit all rights to rental payments and cost sharing payments under the contract; and

(B) to refund to the United States all rental payments and cost sharing payments received by the owner or operator, or accept such payment adjustments or make such refunds as the Secretary considers appropriate and consistent with the objectives of this subchapter;

unless the transferee of such land agrees with the Secretary to assume all obligations of the contract;

(7) not to conduct any harvesting or grazing, nor otherwise make commercial use of the forage, on land that is subject to the contract, nor adopt any similar practice specified in the contract by the Secretary as a practice that would tend to defeat the purposes of the contract, except that the Secretary may permit harvesting or grazing or other commercial use of the forage on land that is subject to the contract in response to a drought or other similar emergency;

(8) not to conduct any planting of trees on land that is subject to the contract unless the contract specifies that the harvesting and commercial sale of trees such as Christmas trees are prohibited, nor otherwise make commercial use of trees on land that is subject to the contract unless it is expressly permitted in the contract, nor adopt any similar practice specified in the contract by the Secretary as a practice that would tend to defeat the purposes of the contract, except that no contract shall prohibit activities consistent with customary forestry practice, such as pruning, thinning, or stand improvement of trees, on lands converted to forestry use;

(9) not to adopt any practice specified by the Secretary in the contract as a practice that would tend to defeat the purposes of this subchapter; and

(10) to comply with such additional provisions as the Secretary determines are desirable and are included in the contract to carry out this subchapter or to facilitate the practical administration thereof.

(b) Conversion plan provisions

The plan referred to in subsection (a)(1) of this section—

(1) shall set forth—

(A) the conservation measures and practices to be carried out by the owner or operator during the term of the contract; and

(B) the commercial use, if any, to be permitted on the land during such term; and

(2) may provide for the permanent retirement of any existing cropland base and allotment history for the land.

(c) Tree acreage minimum reserve

To the extent practicable, not less than one eighth of the number of acres of land that is placed in the conservation reserve under this subchapter in each of the 1986 through 1990 crop years shall be devoted to trees.

(Pub. L. 99-198, title XII, § 1232, Dec. 23, 1985, 99 Stat. 1509.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3833 of this title.

§ 3833. Duties of Secretary

In return for a contract entered into by an owner or operator under section 3832 of this title, the Secretary shall—

(1) share the cost of carrying out the conservation measures and practices set forth in the contract for which the Secretary determines that cost sharing is appropriate and in the public interest;

(2) for a period of years not in excess of the term of the contract, pay an annual rental payment in an amount necessary to compensate for—

(A) the conversion of highly erodible cropland normally devoted to the production of an agricultural commodity on a farm or ranch to a less intensive use; and

(B) the retirement of any cropland base and allotment history that the owner or operator agrees to retire permanently; and

(3) provide conservation technical assistance to assist the owner or operator in carrying out the contract.

(Pub. L. 99-198, title XII, § 1233, Dec. 23, 1985, 99 Stat. 1511.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3831 of this title.

§ 3834. Payments

(a) Time of cost-sharing and annual rental payments

The Secretary shall provide payment for obligations incurred by the Secretary under a contract entered into under this subchapter—

(1) with respect to any cost-sharing payment obligation incurred by the Secretary, as soon as possible after the obligation is incurred; and

(2) with respect to any annual rental payment obligation incurred by the Secretary—

(A) as soon as practicable after October 1 of each calendar year; or

(B) at the discretion of the Secretary, at any time prior to such date during the year that the obligation is incurred.

(b) Federal percentage of cost-sharing payments

In making cost sharing payments to owners and operators under contracts entered into under this subchapter, the Secretary shall pay 50 percent of the cost of establishing conserva-

tion measures and practices set forth in such contracts for which the Secretary determines that cost-sharing is appropriate and in the public interest.

(c) Annual rental payments; encouragement factor; method of determination; acceptance of contract offers

(1) In determining the amount of annual rental payments to be paid to owners and operators for converting highly erodible cropland normally devoted to the production of an agricultural commodity to less intensive use, the Secretary may consider, among other things, the amount necessary to encourage owners or operators of highly erodible cropland to participate in the program established by this subchapter.

(2) The amounts payable to owners or operators in the form of rental payments under contracts entered into under this subchapter may be determined through—

(A) the submission of bids for such contracts by owners and operators in such manner as the Secretary may prescribe; or

(B) such other means as the Secretary determines are appropriate.

(3) In determining the acceptability of contract offers, the Secretary may—

(A) take into consideration the extent of erosion on the land that is the subject of the contract and the productivity of the acreage diverted;

(B) where appropriate, accept contract offers that provide for the establishment of—

(i) shelterbelts and windbreaks; or

(ii) permanently vegetated stream borders, filter strips of permanent grass, forbs, shrubs, and trees that will reduce sedimentation substantially;

(C) establish different criteria in various States and regions of the United States to determine the extent to which erosion may be abated; and

(D) give priority to offers made by owners and operators who are subject to the highest degree of economic stress, such as a general tightening of agricultural credit or an unfavorable relationship between production costs and prices received for agricultural commodities.

(d) Cash or in-kind payments

(1) Except as otherwise provided in this section, payments under this subchapter—

(A) shall be made in cash or in commodities in such amount and on such time schedule as is agreed on and specified in the contract; and

(B) may be made in advance of determination of performance.

(2) If such payment is made with in-kind commodities, such payment shall be made by the Commodity Credit Corporation—

(A) by delivery of the commodity involved to the owner or operator at a warehouse or other similar facility located in the county in which the highly erodible cropland is located or at such other location as is agreed to by the Secretary and the owner or operator;

(B) by the transfer of negotiable warehouse receipts; or

(C) by such other method, including the sale of the commodity in commercial markets, as is determined by the Secretary to be appropriate to enable the owner or operator to receive efficient and expeditious possession of the commodity.

(3) If stocks of a commodity acquired by the Commodity Credit Corporation are not readily available to make full payment in kind to the owner or operator, the Secretary may substitute full or partial payment in cash for payment in kind.

(e) Regulations: payments upon death, disability, or succession

If an owner or operator who is entitled to a payment under a contract entered into under this subchapter dies, becomes incompetent, is otherwise unable to receive such payment, or is succeeded by another person who renders or completes the required performance, the Secretary shall make such payment, in accordance with regulations prescribed by the Secretary and without regard to any other provision of law, in such manner as the Secretary determines is fair and reasonable in light of all of the circumstances.

(f) Rental payments fiscal year limitation; regulations; receipt of other payments unaffected

(1) The total amount of rental payments, including rental payments made in the form of in-kind commodities, made to an owner or operator under this subchapter for any fiscal year may not exceed $50,000.

(2)(A) The Secretary shall issue regulations—

(i) defining the term "person" as used in this subsection; and

(ii) prescribing such rules as the Secretary determines necessary to ensure a fair and reasonable application of the limitation contained in this subsection.

(B) The regulations issued by the Secretary on December 18, 1970, under section 1307 of this title, shall be used to determine whether corporations and their stockholders may be considered as separate persons under this subsection.

(3) Rental payments received by an owner or operator shall be in addition to, and not affect, the total amount of payments that such owner or operator is otherwise eligible to receive under this Act or the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.).

(Pub. L. 99-198, title XII, § 1234, Dec. 23, 1985, 99 Stat. 1511.)

REFERENCES IN TEXT

This Act, referred to in subsec. (f)(3), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354, as amended, known as the Food Security Act of 1985. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of Title 7, Agriculture, and Tables.

The Agricultural Act of 1949, referred to in subsec. (f)(3), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§ 1421 et seq.) of Title 7. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3801 of this title.

§ 3835. Contracts

(a) Ownership or operation requirement

(1) No contract shall be entered into under this subchapter concerning land with respect to which the ownership has changed in the 3-year period preceding the first year of the contract period unless—

(A) the new ownership was acquired by will or succession as a result of the death of the previous owner;

(B) the new ownership was acquired before January 1, 1985; or

(C) the Secretary determines that the land was acquired under circumstances that give adequate assurance that such land was not acquired for the purpose of placing it in the program established by this subchapter.

(2) Paragraph (1) shall not—

(A) prohibit the continuation of an agreement by a new owner after an agreement has been entered into under this subchapter; or

(B) require a person to own the land as a condition of eligibility for entering into the contract if the person—

(i) has operated the land to be covered by a contract under this section for at least 3 years preceding the date of the contract or since January 1, 1985, whichever is later; and

(ii) controls the land for the contract period.

(b) Sales or transfers; options

If during the term of a contract entered into under this subchapter an owner or operator of land subject to such contract sells or otherwise transfers the ownership or right of occupancy of such land, the new owner or operator of such land may—

(1) continue such contract under the same terms or conditions;

(2) enter into a new contract in accordance with this subchapter; or

(3) elect not to participate in the program established by this subchapter.

(c) Modification; waiver

(1) The Secretary may modify a contract entered into with an owner or operator under this subchapter if—

(A) the owner or operator agrees to such modification; and

(B) the Secretary determines that such modification is desirable—

(i) to carry out this subchapter;

(ii) to facilitate the practical administration of this subchapter; or

(iii) to achieve such other goals as the Secretary determines are appropriate, consistent with this subchapter.

(2) The Secretary may modify or waive a term or condition of a contract entered into under this subchapter in order to permit all or part of the land subject to such contract to be devoted to the production of an agricultural commodity during a crop year, subject to such conditions as the Secretary determines are appropriate.

(d) Termination; notice to Congressional Committees

(1) The Secretary may terminate a contract entered into with an owner or operator under this subchapter if—

(A) the owner or operator agrees to such termination; and

(B) the Secretary determines that such termination would be in the public interest.

(2) At least 90 days before taking any action to terminate under paragraph (1) all conservation reserve contracts entered into under this subchapter, the Secretary shall provide written notice of such action to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(Pub. L. 99-198, title XII, § 1235, Dec. 23, 1985, 99 Stat. 1513.)

§ 3836. Base history

(a) A reduction, based on a ratio between the total cropland acreage on the farm and the acreage placed in the conservation reserve authorized by this subchapter, as determined by the Secretary, shall be made during the period of the contract, in the aggregate, in crop bases, quotas, and allotments on the farm with respect to crops for which there is a production adjustment program.

(b) Notwithstanding sections 3811 and 3821 of this title, the Secretary, by appropriate regulation, may provide for preservation of cropland base and allotment history applicable to acreage converted from the production of agricultural commodities under this section, for the purpose of any Federal program under which the history is used as a basis for participation in the program or for an allotment or other limitation in the program, unless the owner and operator agree under the contract to retire permanently that cropland base and allotment history.

(Pub. L. 99-198, title XII, § 1236, Dec. 23, 1985, 99 Stat. 1514.)

SUBCHAPTER V—ADMINISTRATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3843 of this title.

§ 3841. Use of Commodity Credit Corporation

(a)(1) During each of the fiscal years ending September 30, 1986, and September 30, 1987, the Secretary shall use the facilities, services, authorities, and funds of the Commodity Credit Corporation to carry out subchapter IV of this chapter.

(2) During the fiscal year ending September 30, 1988, and each fiscal year thereafter, the Secretary may use the facilities, services, authorities, and funds of the Commodity Credit Corporation to carry out subchapter IV of this chapter, except that the Secretary may not use funds of the Corporation for such purpose unless the Corporation has received funds to

cover such expenditures from appropriations made to carry out this subchapter.

(b) The authority provided by this chapter shall be in addition to, and not in place of, other authority granted to the Secretary and the Commodity Credit Corporation.

(Pub. L. 99-198, title XII, § 1241, Dec. 23, 1985, 99 Stat. 1514.)

§ 3842. Use of other agencies

(a) In carrying out subchapters II, III, and IV of this chapter, the Secretary shall use the services of local, county, and State committees established under section 590h(b) of this title.

(b)(1) In carrying out subchapter IV of this chapter, the Secretary may utilize the services of the Soil Conservation Service and the Forest Service, the Fish and Wildlife Service, State forestry agencies, State fish and game agencies, land-grant colleges, local, county, and State committees established under section 590h of this title, soil and water conservation districts, and other appropriate agencies.

(2) In carrying out subchapter IV of this chapter, at the State and county levels, the Secretary shall consult with, to the extent practicable, the Fish and Wildlife Service, State forestry agencies, State fish and game agencies, land-grant colleges, soil-conservation districts, and other appropriate agencies.

(Pub. L. 99-198, title XII, § 1242, Dec. 23, 1985, 99 Stat. 1515.)

§ 3843. Administration

(a) Appeal procedure

The Secretary shall establish, by regulation, an appeal procedure under which a person who is adversely affected by any determination made under this chapter may seek review of such determination.

(b) Landlord's eligibility unaffected by ineligibility of tenant or sharecropper

Ineligibility under section 3811 or 3812 of this title of a tenant or sharecropper for benefits shall not cause a landlord to be ineligible for benefits for which the landlord would otherwise be eligible with respect to commodities produced on lands other than those operated by the tenant or sharecropper.

(c) Safeguards for tenants and sharecroppers

In carrying out subchapters II through V of this chapter, the Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers, including provision for sharing, on a fair and equitable basis, in payments under the program established by subchapter IV of this chapter.

(Pub. L. 99-198, title XII, § 1243, Dec. 23, 1985, 99 Stat. 1515.)

§ 3844. Regulations

Not later than 180 days after December 23, 1985, the Secretary shall issue such regulations as the Secretary determines are necessary to carry out this chapter, including regulations that—

(1) define the term "person";

(2) govern the determination of persons who shall be ineligible for program benefits under subchapters II and III of this chapter, so as to ensure a fair and reasonable determination of ineligibility; and

(3) protect the interests of landlords, tenants, and sharecroppers.

(Pub. L. 99-198, title XII, § 1244, Dec. 23, 1985, 99 Stat. 1515.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3823 of this title.

§ 3845. Authorization of appropriations

There are authorized to be appropriated without fiscal year limitation such sums as may be necessary to carry out this chapter.

(Pub. L. 99-198, title XII, § 1245, Dec. 23, 1985, 99 Stat. 1516.)

TITLE 17—COPYRIGHTS

This title was enacted by act July 30, 1947, ch. 391, 61 Stat. 652, and was revised in its entirety by Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2541

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 18 section 2319; title 20 section 1047h; title 26 section 543; title 47 sections 542, 544, 605.

Chap.		Sec.
9.	Protection of semiconductor chip products [1]	901

AMENDMENTS

1984—Pub. L. 98-620, title III, § 303, Nov. 8, 1984, 98 Stat. 3356, added item relating to chapter 9.

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 912 of this title.

§ 101. Definitions

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-450, § 1, Oct. 4, 1984, 98 Stat. 1727, provided that: "'This Act [amending sections 109 and 115 of this title and enacting provisions set out as a note under section 109 of this title] may be cited as the 'Record Rental Amendment of 1984'."

§ 104. Subject matter of copyright: National origin

PARTICULAR PROCLAMATIONS, TREATIES AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES OF AMERICA AND OTHER COUNTRIES

The following is based on *Treaties in Force*, as of January 1, 1985, published by the Department of State:

By virtue of Presidential proclamations, treaties, and conventions, the United States has established copyright relations with various other countries. This appendix is an attempt to present a complete and annotated list of those countries. Treaties and conventions on the subject of copyright relations are also included in the preceding pages under appropriate country or subject headings.

Proclamations by the President of the United States extending copyright protection, upon compliance with the provisions of the United States copyright law, to the works of foreign authors prior to July 1, 1909, were issued pursuant to the Act of March 3, 1891 (26 Stat. 1106) and those issued subsequent to July 1, 1909, were issued under the provisions of the Act of March 4, 1909 (35 Stat. 1075), as amended by the Act of December 18, 1919 (41 Stat. 368) and the Act of September 25, 1941 (55 Stat. 732). The Act of March 4, 1909, as amended, became Title 17 of the United States Code when it was codified and enacted into positive law by the Act of July 30, 1947 (61 Stat. 652). Title 17 of the U.S. Code was amended in its entirety by the Act of October 19, 1976 (90 Stat. 2541; Public Law 94-553), which took full effect January 1, 1978. A number of the proclamations were preceded or accompanied by exchanges of diplomatic notes which served as the basis for their issuance. Such exchanges of notes, if printed in the official pamphlet series, may be included in the preceding pages under appropriate country and subject heading.

The period for compliance with the conditions and formalities prescribed by the copyright law was extended by proclamation with respect to certain works in the case of a number of countries because of the disruption or suspension of facilities essential for such compliance during World War I and World War II. In the case of World War I, this period for compliance was extended by proclamations issued under the Act of December 18, 1919 (41 Stat. 368) to fifteen months after the proclamation, as to works published after August 1, 1914, and before the proclamation of peace. In the case of World War II, this period was extended by proclamations issued under the Act of September 25, 1941 (55 Stat. 732) until such time as terminated or suspended, either by the terms of the proclamation itself or by the issuance of a subsequent proclamation. A number of the proclamations issued under the 1919 Act and all of the proclamations issued under the 1941 Act refer to rights previously granted.

KEY TO SYMBOLS

PROCLAMATIONS

P	Proclamation issued pursuant to the Act of March 3, 1891, the Act of March 4, 1909, and as amended, or Title 17 of the United States Code.
Pm	Proclamation including mechanical reproduction rights for musical works under the United States copyright law.
Px	Proclamation providing an extension of time under the Act of December 18, 1919, for compliance with the conditions and formalities prescribed by the United States copyright law.
Pmx	Proclamation specifically including provisions similar to those contained in both "Pm" and "Px" proclamations.
Pxx	Proclamation providing an extension of time under the Act of September 25, 1941, for compliance with the conditions and formalities prescribed by the United States copyright law.
Po	Proclamation specifically issued for the purpose of terminating a proclamation issued under the Act of September 25, 1941.

[1] So in original. Probably should be capitalized.

TREATIES AND CONVENTIONS

BAC Buenos Aires Convention. Convention on literary and artistic copyright between the United States and other American Republics, signed at the Fourth International Conference of American States at Buenos Aires August 11, 1910. U.S. ratification deposited on May 1, 1911. Convention proclaimed by the President of the United States on July 13, 1914.

MCC Mexico City Convention. Convention on literary and artistic copyrights signed at the Second International Conference of American States at Mexico City, January 27, 1902, effective June 30, 1908, to which the United States became a party, effective on that same date. As regards copyright relations with the United States, this convention is considered to have been superseded by adherence of the foreign country and the United States to the Buenos Aires Convention of August 11, 1910.

UCC Universal Copyright Convention. Done at Geneva September 6, 1952. Came into force on September 16, 1955. United States became a party, effective on that same date.

UCC rev. Universal Copyright Convention, revised. Done at Paris July 24, 1971. Came into force on July 10, 1974. United States became a party, effective on that same date.

C Bilateral convention.

Cm Bilateral convention including provisions covering mechanical reproduction rights for musical work.

T Treaty relating in part to copyright.

Pg Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms. Done at Geneva October 29, 1971. Entered into force with respect to the United States on March 10, 1974.

PROCLAMATIONS, TREATIES, AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES AND OTHER COUNTRIES

Country	Document	Date of document	Date effective	Reference
Algeria	UCC	Sept. 6, 1952	Aug. 28, 1973	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
Andorra	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
Argentina	Pm	Aug. 23, 1934	Aug. 23, 1934	49 Stat. 3413.
	BAC	Aug. 11, 1910	Apr. 19, 1950	38 Stat. 1785.
	UCC	Sept. 6, 1952	Feb. 13, 1958	6 UST 2731.
	Pg	Oct. 29, 1971	June 30, 1973	25 UST 309.
Australia [1]	Pm	Apr. 3, 1918	Mar. 15, 1918	40 Stat. 1764.
	Pxx [2]	Dec. 29, 1949	Dec. 29, 1949	64 Stat. A385.
	UCC	Sept. 6, 1952	May 1, 1969	6 UST 2731.
	UCC rev.	July 24, 1971	Feb. 28, 1978	25 UST 1341.
	Pg	Oct. 29, 1971	June 22, 1974	25 UST 309.
Austria [3]	P	Sept. 20, 1907	Sept. 20, 1907	35 Stat. 2155.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Px	May 25, 1922	May 25, 1922	42 Stat. 2273.
	Pm	Mar. 11, 1925	Aug. 1, 1920	44 Stat. 2571.
	Pxx	June 15, 1960	June 15, 1960	74 Stat. C69.
	UCC	Sept. 6, 1952	July 2, 1957	6 UST 2731.
	Pg	Oct. 29, 1971	Aug. 21, 1982	25 UST 309.
Bahamas, The.	UCC	Sept. 6, 1952	July 10, 1973	6 UST 2731.
	UCC rev.	July 24, 1971	Dec. 27, 1976	25 UST 1341.

PROCLAMATIONS, TREATIES, AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES AND OTHER COUNTRIES—Continued

Country	Document	Date of document	Date effective	Reference
Bangladesh.	UCC	Sept. 6, 1952	Aug. 5, 1975	6 UST 2731.
	UCC rev.	July 24, 1971	Aug. 5, 1975	25 UST 1341.
Barbados.	UCC	Sept. 6, 1952	June 18, 1983	6 UST 2731.
	UCC rev.	July 24, 1971	June 18, 1983	25 UST 1341.
	Pg	Oct. 29, 1971	July 29, 1983	25 UST 309.
Belgium	P	July 1, 1891	July 1, 1891	27 Stat. 981.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	June 14, 1911	....do....	37 Stat. 1688.
	UCC	Sept. 6, 1952	Aug. 31, 1960	6 UST 2731.
Belize	UCC [20]	....do....	Sept. 21, 1981	6 UST 2731.
Bolivia	BAC	Aug. 11, 1910	May 15, 1914	38 Stat. 1785.
Brazil	BAC	....do....	Aug. 31, 1915	Do.
	Pm	Apr. 2, 1957	Apr. 2, 1957	8 UST 424.
	UCC	Sept. 6, 1952	Jan. 13, 1960	6 UST 2731.
	UCC rev.	July 24, 1971	Dec. 11, 1975	25 UST 1341.
	Pg	Oct. 29, 1971	Nov. 28, 1975	25 UST 309.
Bulgaria	UCC	Sept. 6, 1952	June 7, 1975	6 UST 2731.
	UCC rev.	July 24, 1971	....do....	25 UST 1341.
Cambodia (See Kampuchea)				
Cameroon.	UCC	Sept. 6, 1952	May 1, 1973	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
Canada [1]	Pm	Dec. 27, 1923	Jan. 1, 1924	43 Stat. 1932.
	UCC	Sept. 6, 1952	Aug. 10, 1962	6 UST 2731.
Chile	P	May 25, 1896	May 25, 1896	29 Stat. 880.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	Nov. 18, 1925	July 1, 1925	44 Stat. 2590.
	BAC	Aug. 11, 1910	June 14, 1955	38 Stat. 1785.
	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
	Pg	Oct. 29, 1971	Mar. 24, 1977	25 UST 309.
China	T [4]	Oct. 8, 1903	Jan. 13, 1904	33 Stat. 2208.
	T [4]	Nov. 4, 1946	Nov. 30, 1948	63 Stat. 1299.
Colombia.	BAC	Aug. 11, 1910	Dec. 23, 1936	38 Stat. 1785.
	UCC	Sept. 6, 1952	June 18, 1976	6 UST 2731.
	UCC rev.	July 24, 1971	....do....	25 UST 1341.
Costa Rica.	P	Oct. 19, 1899	Oct. 19, 1899	31 Stat. 1955.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	MCC	Jan. 27, 1902	June 30, 1908	35 Stat. 1934.
	BAC	Aug. 11, 1910	Nov. 30, 1916	38 Stat. 1785.
	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
	UCC rev.	July 24, 1971	Mar. 7, 1980	25 UST 1341.
	Pg	Oct. 29, 1971	June 17, 1982	25 UST 309.
Cuba	P	Nov. 17, 1903	Nov. 17, 1903	33 Stat. 2324.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	Nov. 27, 1911	May 29, 1911	37 Stat. 1721.
	UCC	Sept. 6, 1952	June 18, 1957	6 UST 2731.
Czechoslovakia.	Pm	Apr. 27, 1927	Mar. 1, 1927	45 Stat. 2906.
	UCC	Sept. 6, 1952	Jan. 6, 1960	6 UST 2731.
	UCC rev.	July 24, 1971	Apr. 17, 1980	25 UST 1341.
Danzig	Pm	Apr. 7, 1934	Apr. 7, 1934	48 Stat. 1737.
Denmark [5]	P	May 8, 1893	May 8, 1893	28 Stat. 1219.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pmx	Dec. 9, 1920	Dec. 9, 1920	41 Stat. 1810.
	Pxx	Feb. 4, 1952	Feb. 4, 1952	66 Stat. C20.
	UCC	Sept. 6, 1952	Feb. 9, 1962	6 UST 2731.
	UCC rev.	July 24, 1971	July 11, 1979	25 UST 1341.
	Pg	Oct. 29, 1971	Mar. 24, 1977	25 UST 309.

PROCLAMATIONS, TREATIES, AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES AND OTHER COUNTRIES—Continued

Country	Document	Date of document	Date effective	Reference
Dominican Republic.	MCC	Jan. 27, 1902	June 30, 1908	35 Stat. 1934.
	BAC	Aug. 11, 1910	Oct. 31, 1912	38 Stat. 1785.
	UCC	Sept. 6, 1952	May 8, 1983	6 UST 2731.
	UCC rev.	July 24, 1971	.....do.....	25 UST 1341.
Ecuador...	BAC	Aug. 11, 1910	Aug. 31, 1914	38 Stat. 1785.
	UCC	Sept. 6, 1952	June 5, 1957	6 UST 2731.
	Pg	Oct. 29, 1971	Sept. 14, 1974	25 UST 309.
Egypt.....	Pg	.....do.....	Apr. 23, 1978	Do.
El Salvador.	MCC	Jan. 27, 1902	June 30, 1908	35 Stat. 1934.
	UCC	Sept. 6, 1952	Mar. 29, 1979	6 UST 2731.
	UCC rev	July 24, 1971	.....do.....	25 UST 1341.
	Pg	Oct. 29, 1971	Feb. 9, 1979	25 UST 309.
Fiji	UCC	Sept. 6, 1952	Oct. 10, 1970	6 UST 2731.
	Pg	Oct. 29, 1971	Apr. 18, 1973	25 UST 309.
Finland ...	Pm	Dec. 15, 1928	Jan. 1, 1929	45 Stat. 2980.
	Pxx	Nov. 16, 1951	Nov. 16, 1951	66 Stat. C5.
	UCC	Sept. 6, 1952	Apr. 16, 1963	6 UST 2731.
	Pg	Oct. 29, 1971	Apr. 18, 1973	25 UST 309.
France [6]...	P	July 1, 1891	July 1, 1891	27 Stat. 981.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	May 24, 1918	May 24, 1918	40 Stat. 1784.
	Pxx	Mar. 27, 1947	Mar. 27, 1947	61 Stat. 1057.
	Po	May 26, 1950	Dec. 29, 1950	64 Stat. A413.
	UCC	Sept. 6, 1952	Jan. 14, 1956	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Pg	Oct. 29, 1971	Apr. 18, 1973	25 UST 309.
German Dem. Rep.	UCC	Sept. 6, 1952	Oct. 5, 1973	6 UST 2731.
	UCC rev.	July 24, 1971	Dec. 10, 1980	25 UST 1341.
Germany [3].	P	Apr. 15, 1892	Apr. 15, 1892	27 Stat. 1021.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	Dec. 8, 1910	Dec. 8, 1910	36 Stat. 2761.
	Px	May 25, 1922	May 25, 1922	42 Stat. 2271.
	Pxx	July 12, 1967	July 12, 1967	18 UST 2369.
Germany, Fed. Rep.	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Pg	Oct. 29, 1971	May 18, 1974	25 UST 309.
Ghana	UCC	Sept. 6, 1952	Aug. 22, 1962	6 UST 2731.
Greece.....	Pm	Feb. 23, 1932	Mar. 1, 1932	47 Stat. 2502.
	UCC	Sept. 6, 1952	Aug. 24, 1963	6 UST 2731.
Guatemala.	MCC	Jan. 27, 1902	June 30, 1908	35 Stat. 1934.
	BAC	Aug. 11, 1910	Mar. 28, 1913	38 Stat. 1785.
	UCC	Sept. 6, 1952	Oct. 28, 1964	6 UST 2731.
	Pg	Oct. 29, 1971	Feb. 1, 1977	25 UST 309.
Guinea	UCC	Sept. 6, 1952	Nov. 13, 1981	6 UST 2731.
	UCC rev.	July 24, 1971	.....do.....	25 UST 1341.
Haiti	BAC	Aug. 11, 1910	Nov. 27, 1919	38 Stat. 1785.
	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
Holy See .	UCC	.....do.....	Oct. 5, 1955	Do.
	UCC rev.	July 24, 1971	May 6, 1980	25 UST 1341.
	Pg	Oct. 29, 1971	July 18, 1977	25 UST 309.
Honduras.	MCC	Jan. 27, 1902	June 30, 1908	35 Stat. 1934.
	BAC	Aug. 11, 1910	Apr. 27, 1914	38 Stat. 1785.
Hungary [3].	Cm [7]	Jan. 30, 1912	Oct. 16, 1912	37 Stat. 1631.
	Px	June 3, 1922	June 3, 1922	42 Stat. 2277.
	T [8, 9]	Feb. 10, 1947	Sept. 15, 1947	61 Stat. 2065.
	UCC	Sept. 6, 1952	Jan. 23, 1971	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Pg	Oct. 29, 1971	May 28, 1975	25 UST 309.
Iceland	UCC	Sept. 6, 1952	Dec. 18, 1956	6 UST 2731.
India [3, 10]...	Pm	Oct. 21, 1954	Aug. 15, 1947	5 UST 2529.
	UCC	Sept. 6, 1952	Jan. 21, 1958	6 UST 2731.
	Pg	Oct. 29, 1971	Feb. 12, 1975	25 UST 309.

PROCLAMATIONS, TREATIES, AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES AND OTHER COUNTRIES—Continued

Country	Document	Date of document	Date effective	Reference
Ireland [1]..	Pm [11]	Sept. 28, 1929	Oct. 1, 1929	46 Stat. 3005.
	UCC	Sept. 6, 1952	Jan. 20, 1959	6 UST 2731.
Israel [12]....	Pm	May 4, 1950	May 15, 1948	64 Stat. A402.
	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
Italy.....	Pg	Oct. 29, 1971	May 1, 1978	25 UST 309.
	P [13]	Oct. 31, 1892	Oct. 31, 1892	27 Stat. 1043.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm [13]	May 1, 1915	May 1, 1915	39 Stat. 1725.
	Px	June 3, 1922	June 3, 1922	42 Stat. 2276.
	T [8, 14]	Feb. 10, 1947	Sept. 15, 1947	61 Stat. 1245.
	Pxx	Dec. 12, 1951	Dec. 12, 1951	66 Stat. C13.
	UCC	Sept. 6, 1952	Jan. 24, 1957	6 UST 2731.
	UCC rev.	July 24, 1971	Jan. 25, 1980	25 UST 1341.
	Pg	Oct. 29, 1971	Mar. 24, 1977	25 UST 309.
Japan.....	C [15]	Nov. 10, 1905	May 10, 1906	34 Stat. 2890.
	C [16]	May 19, 1908	Aug. 6, 1908	35 Stat. 2044.
	T [17]	Sept. 8, 1951	Apr. 28, 1952	3 UST 3169.
	Pm [18]	Nov. 10, 1953	.....do.....	5 UST 118.
	UCC	Sept. 6, 1952	Apr. 28, 1956	6 UST 2731.
	UCC rev.	July 24, 1971	Oct. 21, 1977	25 UST 1341.
	Pg	Oct. 29, 1971	Oct. 14, 1978	25 UST 309.
Kampuchea [4].	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
Kenya.....	UCC	.....do.....	Sept. 7, 1966	Do.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Pg	Oct. 29, 1971	Apr. 21, 1976	25 UST 309.
Korea	C [19]	May 19, 1908	Aug. 6, 1908	35 Stat. 2041.
Laos [4].....	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
Lebanon..	UCC	.....do.....	Oct. 17, 1959	Do.
Liberia.....	UCC	.....do.....	July 27, 1956	Do.
Liechtenstein.	UCC	.....do.....	Jan. 22, 1959	Do.
Luxembourg.	P	June 29, 1910	June 29, 1910	36 Stat. 2716.
	Pm	June 14, 1911	.....do.....	37 Stat. 1689.
	UCC	Sept. 6, 1952	Oct. 15, 1955	6 UST 2731.
	Pg	Oct. 29, 1971	Mar. 8, 1976	25 UST 309.
Malawi	UCC	Sept. 6, 1952	Oct. 26, 1965	6 UST 2731.
Malta.....	UCC	.....do.....	Nov. 19, 1968	Do.
Mauritius.	UCC	.....do.....	Mar. 12, 1968	Do.
Mexico.....	P	Feb. 27, 1896	Feb. 27, 1896	29 Stat. 877.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	BAC	Aug. 11, 1910	Apr. 24, 1964	38 Stat. 1785.
	UCC	Sept. 6, 1952	May 12, 1957	6 UST 2731.
	UCC rev.	July 24, 1971	Oct. 31, 1975	25 UST 1341.
	Pg	Oct. 29, 1971	Dec. 21, 1973	25 UST 309.
Monaco ...	Pm	Oct. 15, 1952	Oct. 15, 1952	67 Stat. C16.
	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
	UCC rev.	July 24, 1971	Dec. 13, 1974	25 UST 1341.
	Pg	Oct. 29, 1971	Dec. 2, 1974	25 UST 309.
Morocco..	UCC	Sept. 6, 1952	May 8, 1972	6 UST 2731.
	UCC rev.	July 24, 1971	Jan. 28, 1976	25 UST 1341.
Netherlands and Possessions.	P	Nov. 20, 1899	Nov. 20, 1899	31 Stat. 1961.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	Feb. 26, 1923	Oct. 2, 1922	42 Stat. 2297.
	UCC	Sept. 6, 1952	June 22, 1967	6 UST 2731.
New Zealand [1].	Pm	Feb. 9, 1917	Dec. 1, 1916	39 Stat. 1815.
	Px	May 25, 1922	May 25, 1922	42 Stat. 2274.
	Pxx	Apr. 24, 1947	Apr. 24, 1947	61 Stat. 1065.
	Po	May 26, 1950	Dec. 29, 1950	64 Stat. A414.
	UCC	Sept. 6, 1952	Sept. 11, 1964	6 UST 2731.
	Pg	Oct. 29, 1971	Aug. 13, 1976	25 UST 309.

PROCLAMATIONS, TREATIES, AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES AND OTHER COUNTRIES—Continued

Country	Document	Date of document	Date effective	Reference
Nicaragua.	MCC	Jan. 27, 1902	June 30, 1908	35 Stat. 1934.
	BAC	Aug. 11, 1910	Dec. 15, 1913	38 Stat. 1785.
	UCC	Sept. 6, 1952	Aug. 16, 1961	6 UST 2731.
Nigeria	UCC	.....do.....	Feb. 14, 1962	Do.
Norway	P	July 1, 1905	July 1, 1905	34 Stat. 3111.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	June 14, 1911	Sept. 9, 1910	37 Stat. 1687.
	UCC	Sept. 6, 1952	Jan. 23, 1963	6 UST 2731.
	UCC rev.	July 24, 1971	Aug. 7, 1974	25 UST 1341.
	Pg	Oct. 29, 1971	Aug. 1, 1978	25 UST 309.
Pakistan [1].	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
Palestine (excluding Trans-Jordan) [1].	Pm	Sept 29, 1933	Oct. 1, 1933	48 Stat. 1713
	Pxx [12]	Mar. 10, 1944	Mar. 10, 1944	58 Stat. 1129.
	Po [12]	May 26, 1950	Dec. 29, 1950	64 Stat. A412.
Panama	BAC	Aug. 11, 1910	Nov. 25, 1913	38 Stat. 1785.
	UCC	Sept. 6, 1952	Oct. 17, 1962	6 UST 2731.
	UCC rev.	July 24, 1971	Sept. 3, 1980	25 UST 1341.
	Pg	Oct. 29, 1971	June 29, 1974	25 UST 309.
Paraguay.	BAC	Aug. 11, 1910	Sept. 20, 1917	38 Stat. 1785.
	UCC	Sept. 6, 1952	Mar. 11, 1962	6 UST 2731.
	Pg	Oct. 29, 1971	Feb. 13, 1979	25 UST 309.
Peru	BAC	Aug. 11, 1910	Apr. 30, 1920	38 Stat. 1785.
	UCC	Sept. 6, 1952	Oct. 16, 1963	6 UST 2731.
Philippines.	Pm	Oct. 21, 1948	Oct. 21, 1948	62 Stat. 1568.
	UCC [21]	Sept. 6, 1952		6 UST 2731.
Poland	Pm	Feb. 14, 1927	Feb. 16, 1927	44 Stat. 2634.
	UCC	Sept. 6, 1952	Mar. 9, 1977	6 UST 2731.
	UCC rev.	July 24, 1971	.....do.....	25 UST 1341.
Portugal	P	July 20, 1893	July 20, 1893	28 Stat. 1222.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	UCC	Sept. 6, 1952	Dec. 25, 1956	6 UST 2731.
	UCC rev.	July 24, 1971	July 30, 1981	25 UST 1341.
Rumania.	Pm [22]	May 14, 1928	May 14, 1928	45 Stat. 2949.
	T [8, 23]	Feb. 10, 1947	Sept. 15, 1947	61 Stat. 1757.
Senegal	UCC	Sept. 6, 1952	July 9, 1974	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
South Africa [1].	Pm	June 26, 1924	July 1, 1924	43 Stat. 1957.
Spain [3]	P [24]	July 10, 1895	July 10, 1895	29 Stat. 871.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	Oct. 10, 1934	Oct. 10, 1934	49 Stat. 3420.
	UCC	Sept. 6, 1952	Sept. 16, 1955	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Pg	Oct. 29, 1971	Aug. 24, 1974	25 UST 309.
Sri Lanka (formerly Ceylon).	UCC	Sept. 6, 1952	Jan. 25, 1984	6 UST 2731.
	UCC rev.	July 24, 1971	Jan. 25, 1984	25 UST 1341.
Sweden	P	May 26, 1911	June 1, 1911	37 Stat. 1682.
	Pm	Feb. 27, 1920	Feb. 1, 1920	41 Stat. 1787.
	UCC	Sept. 6, 1952	July 1, 1961	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Pg	Oct. 29, 1971	Apr. 18, 1973	25 UST 309.
Switzerland.	P	July 1, 1891	July 1, 1891	27 Stat. 981.
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
	Pm	Nov. 22, 1924	July 1, 1923	43 Stat. 1976.
	UCC	Sept. 6, 1952	Mar. 30, 1956	6 UST 2731.
Thailand.	T [25]	Dec. 16, 1920	Sept. 1, 1921	42 Stat. 1928.
	T [25]	Nov. 13, 1937	Oct. 1, 1938	53 Stat. 1731.
	T [25]	May 29, 1968	June 8, 1968	17 UST 5843.
Tunisia	P [26]	Oct. 4, 1912	Oct. 4, 1912	37 Stat. 1765.
	UCC	Sept. 6, 1952	June 19, 1969	6 UST 2731.
	UCC rev.	July 24, 1971	June 10, 1975	25 UST 1341.

PROCLAMATIONS, TREATIES, AND CONVENTIONS ESTABLISHING COPYRIGHT RELATIONS BETWEEN THE UNITED STATES AND OTHER COUNTRIES—Continued

Country	Document	Date of document	Date effective	Reference
Union of Soviet Socialist Reps.	UCC	Sept. 6, 1952	May 27, 1973	6 UST 2731.
United Kingdom [1].	UCC	.....do.....	Sept. 27, 1959	Do.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
	Pg	Oct. 29, 1971	Apr. 18, 1973	25 UST 309.
United Kingdom and Possessions [1].	P	July 1, 1891	July 1, 1891	27 Stat. 981
	P	Apr. 9, 1910	July 1, 1909	36 Stat. 2685.
United Kingdom and the British Dominions, Colonies and Possessions with the exception of Canada, Australia, New Zealand, South Africa and Newfoundland [1].	Pm	Jan. 1, 1915	Jan. 1, 1915	38 Stat. 2044.
	Pmx	Apr. 10, 1920	Feb. 2, 1920	41 Stat. 1790.
United Kingdom, including certain British Territories [1] and Palestine [12].	Pxx	Mar. 10, 1944	Mar. 10, 1944	58 Stat. 1129.
	Po	Mar. 26, 1950	Dec. 29, 1950	64 Stat. A412.
Uruguay	BAC	Aug. 11, 1910	Dec. 17, 1919	38 Stat. 1785.
	Pg	Oct. 29, 1971	Jan. 18, 1983	25 UST 309.
Venezuela.	UCC	Sept. 6, 1952	Sept. 30, 1966	6 UST 2731.
	Pg	Oct. 29, 1971	Nov. 18, 1982	25 UST 309.
Yugoslavia.	UCC	Sept. 6, 1952	May 11, 1966	6 UST 2731.
	UCC rev.	July 24, 1971	July 10, 1974	25 UST 1341.
Zaire	Pg	Oct. 29, 1971	Nov. 29, 1977	25 UST 309.
Zambia	UCC	Sept. 6, 1952	June 1, 1965	6 UST 2731.

[1] The proclamations of July 1, 1891, and April 9, 1910 apply to "Great Britain and the British possessions," but the proclamations of January 1, 1915 and April 10, 1920 specifically except Australia, Canada, Newfoundland, New Zealand, and South Africa. The proclamations of March 10, 1944 and May 26, 1950 enumerate the various British territories to which they apply; the enumeration does not mention the areas specifically excepted in the proclamations of 1915 and 1920. Proclamations establishing individual copyright relations with Australia, Canada, Ireland, New Zealand, Palestine, and South Africa are listed separately. See also footnotes 2, 11, and 12. The proclamation of December 27, 1923 regarding Canada is considered as applying to Newfoundland at the present time.

The copyright proclamations of July 1, 1891, April 9, 1910, January 1, 1915, April 10, 1920, and March 10, 1944 regarding Great Britain and possessions each applied when issued to the areas now within the boundaries of Burma, Ceylon, India, and Pakistan. See footnote 10 with respect to India. No announcement has been made as to the application of the proclamations to Burma, Ceylon, and Pakistan since they acquired their new status.

[2] The proclamation of December 29, 1949 extends for one year from its date the period of time for compliance by citizens

of Australia with the conditions and formalities prescribed by the copyright law of the United States.

[3]The United States entered into treaties restoring friendly relations with Austria, Germany, and Hungary at Vienna on August 24, 1921 (42 Stat. 1946; TS 659); at Berlin on August 25, 1921 (42 Stat. 1939; TS 658); and at Budapest on August 29, 1921 (42 Stat. 1951; TS 610). By virtue of these treaties the United States became entitled to the benefits of the provisions relative to copyright protection in the treaties of peace signed by Austria, Germany, and Hungary at Saint-Germain-en-Laye on September 10, 1919, at Versailles on June 28, 1919, and at Trianon on June 4, 1920, respectively. See also footnote 7.

[4]The status of copyright relations with China is currently under study, particularly in the light of the recent establishment of diplomatic relations with the People's Republic of China.

[5]Treaties and conventions containing provisions relative to copyright protection in territories ceded to the United States are not included in this table: for example, the Treaty of Peace with Spain signed at Paris, December 10, 1898 (30 Stat. 1754; TS 343); and the Convention with Denmark for the Cession to the United States of the Danish West Indies, signed at New York, August 4, 1916 (39 Stat. 1706; TS 629).

[6]The Department of State has made no announcement as to the application of the proclamations of July 1, 1891, April 9, 1910, May 24, 1918, and March 27, 1947 to Cambodia, Laos, and Viet-Nam.

[7]Copyright convention signed at Budapest January 30, 1912 (TS 571). This convention was continued in force following World War I by notice given by the United States on May 27, 1922 to Hungary in pursuance of Article 224 of the Treaty of Trianon concluded on June 4, 1920 (III Redmond 3539), to the benefits of which the United States became entitled by the Treaty of August 29, 1921 establishing friendly relations between the United States and Hungary (42 Stat. 1951; TS 660). The convention of 1912 was kept in force or revived following World War II by notice given on March 9, 1948 by the United States to Hungary pursuant to Article 10 of the Treaty of Peace with Hungary (61 Stat. 2065; Department of State Bulletin, March 21, 1948, p. 382).

[8]Treaty of Peace with Hungary (Annex IV A) dated at Paris February 10, 1947 (TIAS 1651).

[9]Except with respect to rights of third parties, the provisions relating to protection of copyright in the annexes to the Treaties of Peace with Hungary, Italy, and Rumania dated at Paris February 10, 1947, are bilateral in character. For example, the provisions of Annex IV A of the Treaty of Peace with Hungary relate, in general, to copyright relations between Hungary, on the one hand, and each of the other ratifying or adhering States, on the other. Those provisions do not pertain to copyright relations between those other States, except for third party rights. Annex IV of the Treaty of Peace with Bulgaria dated at Paris February 10, 1947 (61 Stat. 1915; TIAS 1650) contains similar provisions. See also footnote 13.

[10]The proclamation of October 21, 1954 affirms the existence of copyright relations with India after August 15, 1947 (the effective date of the Indian Independence Act). See also footnote 1.

[11]The Department of State has determined that the entry into force on April 18, 1949 of the Republic of Ireland Act had no effect upon the proclamation of September 28, 1929 regarding the Irish Free State (Eire). Copyright relations with Ireland are therefore governed by that proclamation. See also footnote 1.

[12]The proclamations of March 10, 1944 and May 26, 1950, regarding Great Britain and possessions, also specifically refer to Palestine (excluding Trans-Jordan). See also footnote 1.

[13]The exchanges of notes between the United States and Italy, on the basis of which the proclamations of October 31, 1892 and May 1, 1915 were issued, were the subject of a note delivered on March 13, 1948 to the Italian Foreign Office by the American Embassy at Rome with respect to prewar bilateral treaties and other international agreements which the United States desired to keep in force or revive pursuant to Article 44 of the Treaty of Peace with Italy. The note stated in part "that the Government of the United States of America wishes to include the reciprocal copyright arrangement between the United States and Italy effected pursuant to the exchange of notes signed at Washington October 28, 1892 and the exchange of notes signed at Washington September 2, 1914, February 12, March 4, and March 11, 1915, among the prewar bilateral treaties and other international agreements with Italy which the United States desires to keep in force or revive. Accordingly, it is understood that the aforementioned arrangement will continue in force and that the Government of each country will extend to the nationals of the other country treatment as favorable with respect to copyright as was contemplated at the time the arrangement was entered into by the two countries." (Department of State Bulletin, April 4, 1948, p. 455.)

[14]Treaty of Peace with Italy (Annex XV A) dated at Paris January 10, 1947 (TIAS 1648).

[15]Copyright convention, signed at Tokyo November 10, 1905 (TS 450). This convention is considered as having been abrogated on April 22, 1953, pursuant to the provisions of Article 7 of the Treaty of Peace with Japan signed at San Francisco September 8, 1951 (TIAS 2490), since it was not included in the notification which was given on behalf of the United States Government to the Japanese Government on April 22, 1953, indicating the prewar bilateral treaties or conventions which the United States wished to continue in force or revive.

[16]Convention between the United States and Japan for reciprocal protection of inventions, designs, trademarks, and copyrights in China and other countries where either contracting party may exercise extraterritorial jurisdiction, signed at Washington May 19, 1908 (TS 507). This convention is considered as having been abrogated on April 22, 1953, pursuant to the provisions of Article 7 of the Treaty of Peace with Japan signed at San Francisco September 8, 1951 (TIAS 2490), since it was not included in the notification which was given on behalf of the United States Government to the Japanese Government on April 22, 1953, indicating the prewar bilateral treaties or conventions which the United States wished to continue in force or revive.

[17]Treaty of Peace with Japan (Articles 12, 14, and 15) signed at San Francisco September 8, 1951 (TIAS 2490). See also footnotes 15, 16, 18, and 19.

[18]The proclamation of November 10, 1953 extends benefits under the copyright law for a period of four years from the coming into force of the Treaty of Peace with Japan (TIAS 2490). That period expired April 28, 1956.

[19]Copyright convention with Japan for reciprocal protection in Korea of inventions, designs, trademarks, and copyrights signed at Washington May 19, 1908 (TS 506). This convention is considered as having been abrogated on April 22, 1953, pursuant to the provisions of Article 7 of the Treaty of Peace with Japan signed at San Francisco September 8, 1951 (TIAS 2490), since it was not included in the notification which was given on behalf of the United States Government to the Japanese Government on April 22, 1953, indicating the prewar bilateral treaties or conventions which the United States wished to continue in force or revive.

[20]Belize notified the Director-General of UNESCO on December 1, 1982, of its decision to apply "provisionally, and on the basis of reciprocity" the Universal Copyright Convention as adopted at Geneva on September 6, 1952, the application of which had been extended to its territory before the attainment of independence from the United Kingdom on September 21, 1981.

[21]An instrument of accession was deposited by the Philippine Government August 19, 1955. In a communication received by the State Department January 17, 1956, UNESCO stated that by a note dated November 14, 1955, the Philippine Government informed the Director General of UNESCO that "the President of the * * * Philippines has directed the withdrawal of the * * * accession * * * to the Universal Copyright Convention prior to the date of November 19, 1955, at which time the Convention would become effective" for the Philippines. The Director General notified the Philippine Government that he "proposed to submit their communication to the States concerned, upon whom it is incumbent to declare what legal inference they intend to draw from it."

[22]In a note delivered February 26, 1948 to the Rumanian Minister for Foreign Affairs by the American Minister at Bucharest with respect to prewar bilateral treaties and other international agreements which the United States desired to keep in force or revive pursuant to Article 10 of the Treaty of Peace with Rumania, the following statement was made regarding the proclamation of May 14, 1928 and the exchange of notes on which it is based: "It shall be understood that the reciprocal copyright arrangement between the United States and Rumania effected pursuant to the exchange of notes signed at Bucharest May 13 and October 13, 1928 and at Washington May 12 and 19, 1928 and the proclamation issued May 14, 1928 by the President of the United States of America will continue in force." (Department of State Bulletin, March 14, 1948, p. 356.) See also footnote 9.

[23]Treaty of Peace with Rumania, dated at Paris, February 10, 1947 (TIAS 1649).

[24]The proclamation of July 10, 1895 regarding Spain was based upon an arrangement between the United States and Spain effected by an exchange of notes signed at Washington July 6 and 15, 1895. An agreement restoring the arrangement of July 6 and 15, 1895 was effected by an exchange of notes signed at Madrid January 29 and November 18 and 26, 1902 (II Malloy 1710), following the Treaty of Peace between the United States and Spain signed at Paris December 10, 1898 (30 Stat. 1754; TS 343). The latter treaty also contains in Article XIII the following provisions: "The rights of property secured by copyrights and patents acquired by Spaniards in the Island of Cuba, and in Puerto Rico, the Philippines and other ceded territories, at the time of the exchange of ratifications of this treaty, shall continue to be respected. Spanish scientific, literary and artistic works, not subversive of public order in the territories in question, shall continue to be admitted free of duty into such territories, for the period of ten years, to be reckoned from the date of the exchange of ratifications of this treaty."

[25]Treaty of friendship, commerce and navigation, protocol and exchanges of notes, signed at Bangkok November 13, 1937 (TS 940). This treaty replaces the treaty of friendship, commerce and navigation between the United States and Thailand signed at Washington December 16, 1920 (TS 655), Article XII of which contains provisions relating to copyright protection. The treaty of amity and economic relations, with three exchanges of notes between the United States and Thailand signed at Bangkok May 29, 1966 (TIAS 6540), replaces the treaty of November 13, 1937. Article V.2 contains provisions relating to copyright.

[26]The proclamation of October 4, 1912 stated, in effect, that the law "in Tunis" extended to U.S. citizens protection substantially equal to the protection secured under the copyright law of the United States and declared that "the subjects of Tunis" were entitled to the benefits of the Act of March 4, 1909, as amended, except copyright controlling the mechanical reproduction of a copyrighted musical work.

§ 109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord

[See main edition for text of (a)]

(b)(1) Notwithstanding the provisions of subsection (a), unless authorized by the owners of copyright in the sound recording and in the musical works embodied therein, the owner of a particular phonorecord may not, for purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of, the possession of that phonorecord by rental, lease, or lending, or by any other act or practice in the nature of rental, lease, or lending. Nothing in the preceding sentence shall apply to the rental, lease, or lending of a phonorecord for nonprofit purposes by a nonprofit library or nonprofit educational institution.

(2) Nothing in this subsection shall affect any provision of the antitrust laws. For purposes of the preceding sentence, "antitrust laws" has the meaning given that term in the first section of the Clayton Act and includes section 5 of the Federal Trade Commission Act to the extent that section relates to unfair methods of competition.

(3) Any person who distributes a phonorecord in violation of clause (1) is an infringer of copyright under section 501 of this title and is subject to the remedies set forth in sections 502, 503, 504, 505, and 509. Such violation shall not be a criminal offense under section 506 or cause such person to be subject to the criminal penalties set forth in section 2319 of title 18.

(c) Notwithstanding the provisions of section 106(5), the owner of a particular copy lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to display that copy publicly, either directly or by the projection of no more than one image at a time, to viewers present at the place where the copy is located.

(d) The privileges prescribed by subsections (a) and (b) [1] do not, unless authorized by the coyright [2] owner, extend to any person who has acquired possession of the copy or phonorecord from the copyright owner, by rental, lease, loan, or otherwise, without acquiring ownership of it.

(As amended Pub. L. 98–450, § 2, Oct. 4, 1984, 98 Stat. 1727.)

REFERENCES IN TEXT

The first section of the Clayton Act, referred to in subsec. (b)(2), is classified to section 12 of Title 15, Commerce and Trade.

Section 5 of the Federal Trade Commission Act, referred to in subsec. (b)(2), is classified to section 45 of Title 15.

Subsection (b), referred to in subsec. (d), was redesignated subsection (c) by section 2(1) of Pub. L. 98–450.

AMENDMENTS

1984—Subsecs. (b) to (d). Pub. L. 98–450 added subsec. (b) and redesignated existing subsecs. (b) and (c) as (c) and (d), respectively.

[1] See References in Text note below.

[2] So in original. Probably should be "copyright".

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENT

Section 4 of Pub. L. 98–450 provided that:

"(a) The amendments made by this Act [amending sections 109 and 115 of this title and enacting provisions set out as a note under section 101 of this title] shall take effect on the date of the enactment of this Act [Oct. 4, 1984].

"(b) The provisions of section 109(b) of title 17, United States Code, as added by section 2 of this Act, shall not affect the right of an owner of a particular phonorecord of a sound recording, who acquired such ownership before the date of the enactment of this Act [Oct. 4, 1984], to dispose of the possession of that particular phonorecord on or after such date of enactment in any manner permitted by section 109 of title 17, United States Code, as in effect on the day before the date of the enactment of this Act.

"(c) The amendments made by this Act [amending sections 109 and 115 of this title and enacting provisions set out as a note under section 101 of this title] shall not apply to rentals, leasings, lendings (or acts or practices in the nature of rentals, leasings, or lendings) occurring after the date which is five years after the date of the enactment of this Act [Oct. 4, 1984]."

§ 115. Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords

In the case of nondramatic musical works, the exclusive rights provided by clauses (1) and (3) of section 106, to make and to distribute phonorecords of such works, are subject to compulsory licensing under the conditions specified by this section.

[See main edition for text of (a) and (b)]

(c) Royalty payable under compulsory license

[See main edition for text of (1) and (2)]

(3) A compulsory license under this section includes the right of the maker of a phonorecord of a nondramatic musical work under subsection (a)(1) to distribute or authorize distribution of such phonorecord by rental, lease, or lending (or by acts or practices in the nature of rental, lease, or lending). In addition to any royalty payable under clause (2) and chapter 8 of this title, a royalty shall be payable by the compulsory licensee for every act of distribution of a phonorecord by or in the nature of rental, lease, or lending, by or under the authority of the compulsory licensee. With respect to each nondramatic musical work embodied in the phonorecord, the royalty shall be a proportion of the revenue received by the compulsory licensee from every such act of distribution of the phonorecord under this clause equal to the proportion of the revenue received by the compulsory licensee from distribution of the phonorecord under clause (2) that is payable by a compulsory licensee under that clause and under chapter 8. The Register of Copyrights shall issue regulations to carry out the purpose of this clause.

(4) Royalty payments shall be made on or before the twentieth day of each month and shall include all royalties for the month next preceding. Each monthly payment shall be made under oath and shall comply with requirements that the Register of Copyrights

shall prescribe by regulation. The Register shall also prescribe regulations under which detailed cumulative annual statements of account, certified by a certified public accountant, shall be filed for every compulsory license under this section. The regulations covering both the monthly and the annual statements of account shall prescribe the form, content, and manner of certification with respect to the number of records made and the number of records distributed.

(5) If the copyright owner does not receive the monthly payment and the monthly and annual statements of account when due, the owner may give written notice to the licensee that, unless the default is remedied within thirty days from the date of the notice, the compulsory license will be automatically terminated. Such termination renders either the making or the distribution, or both, of all phonorecords for which the royalty has not been paid, actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.

(As amended Pub. L. 98-450, § 3, Oct. 4, 1984, 98 Stat. 1727.)

AMENDMENTS

1984—Subsec. (c)(3) to (5). Pub. L. 98-450 added par. (3) and redesignated existing pars. (3) and (4) as (4) and (5), respectively.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENT

Amendment by Pub. L. 98-450 effective Oct. 4, 1984, but not applicable to rentals, leasings, lendings (or acts or practices in the nature of rentals, leasings, or lendings) occurring five years after Oct. 4, 1984, see section 4 of Pub. L. 98-450, set out as a note under section 109 of this title.

CHAPTER 2—COPYRIGHT OWNERSHIP AND TRANSFER

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 912 of this title.

CHAPTER 3—DURATION OF COPYRIGHT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 912 of this title.

CHAPTER 4—COPYRIGHT NOTICE, DEPOSIT, AND REGISTRATION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 912 of this title.

CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 912 of this title.

§ 501. Infringement of copyright

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 116, 411, 510, 602 of this title.

§ 502. Remedies for infringement: Injunctions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 116, 411, 510 of this title.

§ 503. Remedies for infringement: Impounding and disposition of infringing articles

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 116, 411, 510 of this title.

§ 504. Remedies for infringement: Damages and profits

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 116, 405, 411, 412, 510 of this title; title 28 section 1498.

§ 505. Remedies for infringement: Costs and attorney's fees

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 116, 411, 412, 510 of this title.

§ 506. Criminal offenses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 116, 411, 509 of this title; title 18 section 2319.

§ 509. Seizure and forfeiture

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 116, 411 of this title; title 18 section 2318.

CHAPTER 6—MANUFACTURING REQUIREMENTS AND IMPORTATION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 912 of this title.

CHAPTER 7—COPYRIGHT OFFICE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 908, 912 of this title.

§ 708. Copyright Office fees

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 205, 407, 408, 704, 705, 706, 908 of this title.

CHAPTER 8—COPYRIGHT ROYALTY TRIBUNAL

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 111, 115, 116, 912 of this title.

§ 801. Copyright Royalty Tribunal: Establishment and purpose

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 804, 810 of this title; title 47 section 545.

§ 805. Staff of the Tribunal

CROSS REFERENCES

Computation and disbursement of pay of Tribunal personnel, see section 142g of Title 2, The Congress.

CHAPTER 9—PROTECTION OF SEMICONDUCTOR CHIP PRODUCTS

Sec.
901. Definitions.
902. Subject matter of protection.
903. Ownership and transfer.[1]
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906. Limitation on exclusive rights: reverse engineering; first sale.
907. Limitation on exclusive rights: innocent infringement.
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§ 901. Definitions

(a) As used in this chapter—

(1) a "semiconductor chip product" is the final or intermediate form of any product—

(A) having two or more layers of metallic, insulating, or semiconductor material, deposited or otherwise placed on, or etched away or otherwise removed from, a piece of semiconductor material in accordance with a predetermined pattern; and

(B) intended to perform electronic circuitry functions;

(2) a "mask work" is a series of related images, however fixed or encoded—

(A) having or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and

(B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product;

(3) a mask work is "fixed" in a semiconductor chip product when its embodiment in the product is sufficiently permanent or stable to permit the mask work to be perceived or reproduced from the product for a period of more than transitory duration;

(4) to "distribute" means to sell, or to lease, bail, or otherwise transfer, or to offer to sell, lease, bail, or otherwise transfer;

(5) to "commercially exploit" a mask work is to distribute to the public for commercial purposes a semiconductor chip product embodying the mask work; except that such term includes an offer to sell or transfer a semiconductor chip product only when the offer is in writing and occurs after the mask work is fixed in the semiconductor chip product;

(6) the "owner" of a mask work is the person who created the mask work, the legal representative of that person if that person is deceased or under a legal incapacity, or a party to whom all the rights under this chapter of such person or representative are transferred in accordance with section 903(b); except that, in the case of a work made within the scope of a person's employment, the owner is the employer for whom the person created the mask work or a party to whom all the rights under this chapter of the employer are transferred in accordance with section 903(b);

(7) an "innocent purchaser" is a person who purchases a semiconductor chip product in good faith and without having notice of protection with respect to the semiconductor chip product;

(8) having "notice of protection" means having actual knowledge that, or reasonable grounds to believe that, a mask work is protected under this chapter; and

(9) an "infringing semiconductor chip product" is a semiconductor chip product which is made, imported, or distributed in violation of the exclusive rights of the owner of a mask work under this chapter.

(b) For purposes of this chapter, the distribution or importation of a product incorporating a semiconductor chip product as a part thereof is a distribution or importation of that semiconductor chip product.

(Added Pub. L. 98-620, title III, § 302, Nov. 8, 1984, 98 Stat. 3347.)

Short Title

Section 301 of title III of Pub. L. 98-620 provided that: "This title [enacting this chapter] may be cited as the 'Semiconductor Chip Protection Act of 1984'."

Authorization of Appropriations

Section 304 of title III of Pub. L. 98-620 provided that: "There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title and the amendments made by this title [enacting this chapter]."

§ 902. Subject matter of protection

(a)(1) Subject to the provisions of subsection (b), a mask work fixed in a semiconductor chip product, by or under the authority of the owner of the mask work, is eligible for protection under this chapter if—

(A) on the date on which the mask work is registered under section 908, or is first commercially exploited anywhere in the world, whichever occurs first, the owner of the mask work is (i) a national or domiciliary of the United States, (ii) a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty affording protection to mask works to which the United States is also a party, or (iii) a stateless person, wherever that person may be domiciled;

(B) the mask work is first commercially exploited in the United States; or

(C) the mask work comes within the scope of a Presidential proclamation issued under paragraph (2).

(2) Whenever the President finds that a foreign nation extends, to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first

[1] So in original. Does not conform to section catchline.

commercially exploited in that nation, or (B) on substantially the same basis as provided in this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

(b) Protection under this chapter shall not be available for a mask work that—

(1) is not original; or

(2) consists of designs that are staple, commonplace, or familiar in the semiconductor industry, or variations of such designs, combined in a way that, considered as a whole, is not original.

(c) In no case does protection under this chapter for a mask work extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3348.)

EX. ORD. NO. 12504. PROTECTION OF SEMICONDUCTOR CHIP PRODUCTS

Ex. Ord. No. 12504, Jan. 31, 1985, 50 F.R. 4849, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901 *et seq.*) and in order to provide for the orderly implementation of that Act, it is hereby ordered that, subject to the authority of the Director of the Office of Management and Budget under Executive Order No. 11030, as amended [44 U.S.C. 1505 note], requests for issuance by the President of a proclamation extending the protection of Chapter 9 of title 17 of the United States Code against unauthorized duplication of semiconductor chip products to foreign nationals, domiciliaries, and sovereign authorities shall be presented to the President through the Secretary of Commerce in accordance with such regulations as the Secretary may, after consultation with the Secretary of State, prescribe and cause to be published in the Federal Register.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 914 of this title.

§ 903. Ownership, transfer, licensing, and recordation

(a) The exclusive rights in a mask work subject to protection under this chapter belong to the owner of the mask work.

(b) The owner of the exclusive rights in a mask work may transfer all of those rights, or license all or less than all of those rights, by any written instrument signed by such owner or a duly authorized agent of the owner. Such rights may be transferred or licensed by operation of law, may be bequeathed by will, and may pass as personal property by the applicable laws of intestate succession.

(c)(1) Any document pertaining to a mask work may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document. The Register of Copyrights shall, upon receipt of the document and the fee specified pursuant to section 908(d), record the document and return it with a certificate of recordation. The recordation of any transfer or license under this paragraph gives all persons constructive notice of the facts stated in the recorded document concerning the transfer or license.

(2) In any case in which conflicting transfers of the exclusive rights in a mask work are made, the transfer first executed shall be void as against a subsequent transfer which is made for a valuable consideration and without notice of the first transfer, unless the first transfer is recorded in accordance with paragraph (1) within three months after the date on which it is executed, but in no case later than the day before the date of such subsequent transfer.

(d) Mask works prepared by an officer or employee of the United States Government as part of that person's official duties are not protected under this chapter, but the United States Government is not precluded from receiving and holding exclusive rights in mask works transferred to the Government under subsection (b).

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3349.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 901 of this title.

§ 904. Duration of protection

(a) The protection provided for a mask work under this chapter shall commence on the date on which the mask work is registered under section 908, or the date on which the mask work is first commercially exploited anywhere in the world, whichever occurs first.

(b) Subject to subsection (c) and the provisions of this chapter, the protection provided under this chapter to a mask work shall end ten years after the date on which such protection commences under subsection (a).

(c) All terms of protection provided in this section shall run to the end of the calendar year in which they would otherwise expire.

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3349.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 910, 914 of this title.

§ 905. Exclusive rights in mask works

The owner of a mask work provided protection under this chapter has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the mask work by optical, electronic, or any other means;

(2) to import or distribute a semiconductor chip product in which the mask work is embodied; and

(3) to induce or knowingly to cause another person to do any of the acts described in paragraphs (1) and (2).

(Added Pub. L. 98-620, title III, § 302, Nov. 8, 1984, 98 Stat. 3350.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 906, 910 of this title.

§ 906. Limitation on exclusive rights: reverse engineering; first sale

(a) Notwithstanding the provisions of section 905, it is not an infringement of the exclusive rights of the owner of a mask work for—

(1) a person to reproduce the mask work solely for the purpose of teaching, analyzing, or evaluating the concepts or techniques embodied in the mask work or the circuitry, logic flow, or organization of components used in the mask work; or

(2) a person who performs the analysis or evaluation described in paragraph (1) to incorporate the results of such conduct in an original mask work which is made to be distributed.

(b) Notwithstanding the provisions of section 905(2), the owner of a particular semiconductor chip product made by the owner of the mask work, or by any person authorized by the owner of the mask work, may import, distribute, or otherwise dispose of or use, but not reproduce, that particular semiconductor chip product without the authority of the owner of the mask work.

(Added Pub. L. 98-620, title III, § 302, Nov. 8, 1984, 98 Stat. 3350.)

§ 907. Limitation on exclusive rights: innocent infringement

(a) Notwithstanding any other provision of this chapter, an innocent purchaser of an infringing semiconductor chip product—

(1) shall incur no liability under this chapter with respect to the importation or distribution of units of the infringing semiconductor chip product that occurs before the innocent purchaser has notice of protection with respect to the mask work embodied in the semiconductor chip product; and

(2) shall be liable only for a reasonable royalty on each unit of the infringing semiconductor chip product that the innocent purchaser imports or distributes after having notice of protection with respect to the mask work embodied in the semiconductor chip product.

(b) The amount of the royalty referred to in subsection (a)(2) shall be determined by the court in a civil action for infringement unless the parties resolve the issue by voluntary negotiation, mediation, or binding arbitration.

(c) The immunity of an innocent purchaser from liability referred to in subsection (a)(1) and the limitation of remedies with respect to an innocent purchaser referred to in subsection (a)(2) shall extend to any person who directly or indirectly purchases an infringing semiconductor chip product from an innocent purchaser.

(d) The provisions of subsections (a), (b), and (c) apply only with respect to those units of an infringing semiconductor chip product that an innocent purchaser purchased before having notice of protection with respect to the mask work embodied in the semiconductor chip product.

(Added Pub. L. 98-620, title III, § 302, Nov. 8, 1984, 98 Stat. 3350.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 913 of this title.

§ 908. Registration of claims of protection

(a) The owner of a mask work may apply to the Register of Copyrights for registration of a claim of protection in a mask work. Protection of a mask work under this chapter shall terminate if application for registration of a claim of protection in the mask work is not made as provided in this chapter within two years after the date on which the mask work is first commercially exploited anywhere in the world.

(b) The Register of Copyrights shall be responsible for all administrative functions and duties under this chapter. Except for section 708, the provisions of chapter 7 of this title relating to the general responsibilities, organization, regulatory authority, actions, records, and publications of the Copyright Office shall apply to this chapter, except that the Register of Copyrights may make such changes as may be necessary in applying those provisions to this chapter.

(c) The application for registration of a mask work shall be made on a form prescribed by the Register of Copyrights. Such form may require any information regarded by the Register as bearing upon the preparation or identification of the mask work, the existence or duration of protection of the mask work under this chapter, or ownership of the mask work. The application shall be accompanied by the fee set pursuant to subsection (d) and the identifying material specified pursuant to such subsection.

(d) The Register of Copyrights shall by regulation set reasonable fees for the filing of applications to register claims of protection in mask works under this chapter, and for other services relating to the administration of this chapter or the rights under this chapter, taking into consideration the cost of providing those services, the benefits of a public record, and statutory fee schedules under this title. The Register shall also specify the identifying material to be deposited in connection with the claim for registration.

(e) If the Register of Copyrights, after examining an application for registration, determines, in accordance with the provisions of this chapter, that the application relates to a mask work which is entitled to protection under this chapter, then the Register shall register the claim of protection and issue to the applicant a certificate of registration of the claim of protection under the seal of the Copyright Office. The effective date of registration of a claim of protection shall be the date on which an application, deposit of identifying material, and fee,

which are determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration of the claim, have all been received in the Copyright Office.

(f) In any action for infringement under this chapter, the certificate of registration of a mask work shall constitute prima facie evidence (1) of the facts stated in the certificate, and (2) that the applicant issued the certificate has met the requirements of this chapter, and the regulations issued under this chapter, with respect to the registration of claims.

(g) Any applicant for registration under this section who is dissatisfied with the refusal of the Register of Copyrights to issue a certificate of registration under this section may seek judicial review of that refusal by bringing an action for such review in an appropriate United States district court not later than sixty days after the refusal. The provisions of chapter 7 of title 5 shall apply to such judicial review. The failure of the Register of Copyrights to issue a certificate of registration within four months after an application for registration is filed shall be deemed to be a refusal to issue a certificate of registration for purposes of this subsection and section 910(b)(2), except that, upon a showing of good cause, the district court may shorten such four-month period.

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3351.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 902, 903, 904, 910, 912, 913 of this title.

§ 909. Mask work notice

(a) The owner of a mask work provided protection under this chapter may affix notice to the mask work, and to masks and semiconductor chip products embodying the mask work, in such manner and location as to give reasonable notice of such protection. The Register of Copyrights shall prescribe by regulation, as examples, specific methods of affixation and positions of notice for purposes of this section, but these specifications shall not be considered exhaustive. The affixation of such notice is not a condition of protection under this chapter, but shall constitute prima facie evidence of notice of protection.

(b) The notice referred to in subsection (a) shall consist of—

(1) the words "mask force",[2] the sumbol [3] "*M*", or the symbol Ⓜ (the letter M in a circle); and

(2) the name of the owner or owners of the mask work or an abbreviation by which the name is recognized or is generally known.

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3352.)

§ 910. Enforcement of exclusive rights

(a) Except as otherwise provided in this chapter, any person who violates any of the exclusive rights of the owner of a mask work under this chapter, by conduct in or affecting commerce, shall be liable as an infringer of such rights.

(b)(1) The owner of a mask work protected under this chapter, or the exclusive licensee of all rights under this chapter with respect to the mask work, shall, after a certificate of registration of a claim of protection in that mask work has been issued under section 908, be entitled to institute a civil action for any infringement with respect to the mask work which is committed after the commencement of protection of the mask work under section 904(a).

(2) In any case in which an application for registration of a claim of protection in a mask work and the required deposit of identifying material and fee have been received in the Copyright Office in proper form and registration of the mask work has been refused, the applicant is entitled to institute a civil action for infringement under this chapter with respect to the mask work if notice of the action, together with a copy of the complaint, is served on the Register of Copyrights, in accordance with the Federal Rules of Civil Procedure. The Register may, at his or her option, become a party to the action with respect to the issue of whether the claim of protection is eligible for registration by entering an appearance within sixty days after such service, but the failure of the Register to become a party to the action shall not deprive the court of jurisdiction to determine that issue.

(c)(1) The Secretary of the Treasury and the United States Postal Service shall separately or jointly issue regulations for the enforcement of the rights set forth in section 905 with respect to importation. These regulations may require, as a condition for the exclusion of articles from the United States, that the person seeking exclusion take any one or more of the following actions:

(A) Obtain a court order enjoining, or an order of the International Trade Commission under section 337 of the Tariff Act of 1930 excluding, importation of the articles.

(B) Furnish proof that the mask work involved is protected under this chapter and that the importation of the articles would infringe the rights in the mask work under this chapter.

(C) Post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

(2) Articles imported in violation of the rights set forth in section 905 are subject to seizure and forfeiture in the same manner as property imported in violation of the customs laws. Any such forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be, except that the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of the law.

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3352.)

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[2] So in original. Probably should be "mask work".

[3] So in original. Probably should be "symbol".

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 337 of the Tariff Act of 1930, referred to in subsec. (c)(1)(A), is classified to section 1337 of Title 19, Customs Duties.

The customs laws, referred to in subsec. (c)(2), are classified generally to Title 19.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 908, 911, 913 of this title.

§ 911. Civil actions

(a) Any court having jurisdiction of a civil action arising under this chapter may grant temporary restraining orders, preliminary injunctions, and permanent injunctions on such terms as the court may deem reasonable to prevent or restrain infringement of the exclusive rights in a mask work under this chapter.

(b) Upon finding an infringer liable, to a person entitled under section 910(b)(1) to institute a civil action, for an infringement of any exclusive right under this chapter, the court shall award such person actual damages suffered by the person as a result of the infringement. The court shall also award such person the infringer's profits that are attributable to the infringement and are not taken into account in computing the award of actual damages. In establishing the infringer's profits, such person is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the mask work.

(c) At any time before final judgment is rendered, a person entitled to institute a civil action for infringement may elect, instead of actual damages and profits as provided by subsection (b), an award of statutory damages for all infringements involved in the action, with respect to any one mask work for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in an amount not more than $250,000 as the court considers just.

(d) An action for infringement under this chapter shall be barred unless the action is commenced within three years after the claim accrues.

(e)(1) At any time while an action for infringement of the exclusive rights in a mask work under this chapter is pending, the court may order the impounding, on such terms as it may deem reasonable, of all semiconductor chip products, and any drawings, tapes, masks, or other products by means of which such products may be reproduced, that are claimed to have been made, imported, or used in violation of those exclusive rights. Insofar as practicable, applications for orders under this paragraph shall be heard and determined in the same manner as an application for a temporary restraining order or preliminary injunction.

(2) As part of a final judgment or decree, the court may order the destruction or other disposition of any infringing semiconductor chip products, and any masks, tapes, or other articles by means of which such products may be reproduced.

(f) In any civil action arising under this chapter, the court in its discretion may allow the recovery of full costs, including reasonable attorneys' fees, to the prevailing party.

(Added Pub. L. 98-620, title III, § 302, Nov. 8, 1984, 98 Stat. 3353.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 913 of this title.

§ 912. Relation to other laws

(a) Nothing in this chapter shall affect any right or remedy held by any person under chapters 1 through 8 of this title, or under title 35.

(b) Except as provided in section 908(b) of this title, references to "this title" or "title 17" in chapters 1 through 8 of this title shall be deemed not to apply to this chapter.

(c) The provisions of this chapter shall preempt the laws of any State to the extent those laws provide any rights or remedies with respect to a mask work which are equivalent to those rights or remedies provided by this chapter, except that such preemption shall be effective only with respect to actions filed on or after January 1, 1986.

(d) The provisions of sections 1338, 1400(a), and 1498(b) and (c) of title 28 shall apply with respect to exclusive rights in mask works under this chapter.

(e) Notwithstanding subsection (c), nothing in this chapter shall detract from any rights of a mask work owner, whether under Federal law (exclusive of this chapter) or under the common law or the statutes of a State, heretofore or hereafter declared or enacted, with respect to any mask work first commercially exploited before July 1, 1983.

(Added Pub. L. 98-620, title III, § 302, Nov. 8, 1984, 98 Stat. 3354.)

§ 913. Transitional provisions

(a) No application for registration under section 908 may be filed, and no civil action under section 910 or other enforcement proceeding under this chapter may be instituted, until sixty days after the date of the enactment of this chapter.

(b) No monetary relief under section 911 may be granted with respect to any conduct that occurred before the date of the enactment of this chapter, except as provided in subsection (d).

(c) Subject to subsection (a), the provisions of this chapter apply to all mask works that are first commercially exploited or are registered under this chapter, or both, on or after the date of the enactment of this chapter.

(d)(1) Subject to subsection (a), protection is available under this chapter to any mask work that was first commercially exploited on or after July 1, 1983, and before the date of the enactment of this chapter, if a claim of protection in the mask work is registered in the Copyright Office before July 1, 1985, under section 908.

(2) In the case of any mask work described in paragraph (1) that is provided protection under this chapter, infringing semiconductor chip product units manufactured before the date of the enactment of this chapter may, without liability under sections 910 and 911, be imported into or distributed in the United States, or both, until two years after the date of registration of the mask work under section 908, but only if the importer or distributor, as the case may be, first pays or offers to pay the reasonable royalty referred to in section 907(a)(2) to the mask work owner, on all such units imported or distributed, or both, after the date of the enactment of this chapter.

(3) In the event that a person imports or distributes infringing semiconductor chip product units described in paragraph (2) of this subsection without first paying or offering to pay the reasonable royalty specified in such paragraph, or if the person refuses or fails to make such payment, the mask work owner shall be entitled to the relief provided in sections 910 and 911.

(Added Pub. L. 98-620, title III, § 302, Nov. 8, 1984, 98 Stat. 3354.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in text, is the date of enactment of Pub. L. 98-620, which was approved Nov. 8, 1984.

§ 914. International transitional provisions

(a) Notwithstanding the conditions set forth in subparagraphs (A) and (C) of section 902(a)(1) with respect to the availability of protection under this chapter to nationals, domiciliaries, and sovereign authorities of a foreign nation, the Secretary of Commerce may, upon the petition of any person, or upon the Secretary's own motion, issue an order extending protection under this chapter to such foreign nationals, domiciliaries, and sovereign authorities if the Secretary finds—

(1) that the foreign nation is making good faith efforts and reasonable progress toward—

(A) entering into a treaty described in section 902(a)(1)(A); or

(B) enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

(2) that the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation, of mask works; and

(3) that issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

(b) While an order under subsection (a) is in effect with respect to a foreign nation, no application for registration of a claim for protection in a mask work under this chapter may be denied solely because the owner of the mask work is a national, domiciliary, or sovereign authority of that foreign nation, or solely because the mask work was first commercially exploited in that foreign nation.

(c) Any order issued by the Secretary of Commerce under subsection (a) shall be effective for such period as the Secretary designates in the order, except that no such order may be effective after the date on which the authority of the Secretary of Commerce terminates under subsection (e). The effective date of any such order shall also be designated in the order. In the case of an order issued upon the petition of a person, such effective date may be no earlier than the date on which the Secretary receives such petition.

(d)(1) Any order issued under this section shall terminate if—

(A) the Secretary of Commerce finds that any of the conditions set forth in paragraphs (1), (2), and (3) of subsection (a) no longer exist; or

(B) mask works of nationals, domiciliaries, and sovereign authorities of that foreign nation or mask works first commercially exploited in that foreign nation become eligible for protection under subparagraph (A) or (C) of section 902(a)(1).

(2) Upon the termination or expiration of an order issued under this section, registrations of claims of protection in mask works made pursuant to that order shall remain valid for the period specified in section 904.

(e) The authority of the Secretary of Commerce under this section shall commence on the date of the enactment of this chapter, and shall terminate three years after such date of enactment.

(f)(1) The Secretary of Commerce shall promptly notify the Register of Copyrights and the Committees on the Judiciary of the Senate and the House of Representatives of the issuance or termination of any order under this section, together with a statement of the reasons for such action. The Secretary shall also publish such notification and statement of reasons in the Federal Register.

(2) Two years after the date of the enactment of this chapter, the Secretary of Commerce, in consultation with the Register of Copyrights, shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the actions taken under this section and on the current status of international recognition of mask work protection. The report shall include such recommendations for modifications of the protection accorded under this chapter to mask works owned by nationals, domiciliaries, or sovereign authorities of foreign nations as the Secretary, in consultation with the Register of Copyrights, considers would promote the purposes of this chapter and international comity with respect to mask work protection.

(Added Pub. L. 98-620, title III, § 302, Nov. 8, 1984, 98 Stat. 3355.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsecs. (e) and (f)(2), is the date of enactment of Pub. L. 98-620, which was approved Nov. 8, 1984.